

Sri Lanka: Return to uncertainty



Sri Lanka Project
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Sri Lanka: Return to uncertainty

1. Introduction

This report examines in detail the current developments in the peace process in Sri Lanka, outlines some of the continuing problems that may de-stabilise the process and considers the impact of refugee returns to the country. There are indications that Western governments may see the peace process as a green light to precipitate a large-scale repatriation of refugees.

This report demonstrates that talk of large-scale returns is injudicious while the situation in Sri Lanka is so uncertain and there are as yet no mechanisms to guarantee the safety and dignity of the returnees. The widespread devastation brought about by 19 years of civil war has seriously damaged the infrastructure of large parts of the country and whilst many Sri Lankans are likely to return once the peace has been secured, a large-scale influx of refugees from abroad without proper plans for their security, welfare and resettlement may have the effect of destabilising local communities and eventually the peace process.

Despite a ceasefire, human rights violations are still being committed and impunity among Sri Lankan security forces remains a concern, as no effective action has been taken to punish perpetrators. The Liberation Tigers of Tamil Eelam (LTTE) are also committing human rights abuses. There are currently an estimated 800,000 internally displaced people (IDP) in Sri Lanka and their resettlement alone is likely to be extremely difficult for the Sri Lankan government. A large part of the infrastructure in north-east Sri Lanka, such as roads, electricity installations, communication facilities, houses and other buildings, agricultural and industrial facilities, has been destroyed. This report briefly deals with this issue and highlights the particular problems of the IDPs, including Muslims and the Sinhalese, and Tamil refugees in India.

Although the war has resulted in widespread devastation and great human suffering, the Sri Lankan conflict is a lesser known problem in the Western media and as a result of the low profile, it has become harder to argue the case of the Sri Lankan refugees. This report examines the current political difficulties in Sri Lanka and the impact the various problems referred to above may have on returning refugees.

2. The Sri Lankan conflict

Discriminatory measures introduced after independence from Britain in 1948 in the fields of education, employment, use of language and economic development, denied equal rights to the Tamil minority. The failure of successive Sinhalese-dominated Sri Lankan governments to implement agreements with Tamil leaders saw the deterioration of relations between the two communities. Peaceful protests by the Tamil minority against discrimination were suppressed by state violence. Discrimination and violence led to armed revolt by Tamil youths in the late 1970s, and the Liberation Tigers of Tamil Eelam (LTTE) emerged as a major force confronting the Sri Lankan government.

Negotiations between Sri Lankan governments and the LTTE broke down in 1990 and 1995. Hundreds of thousands of people were either internally displaced or fled the country in renewed fighting. In January 2000, Norway became involved in shuttle diplomacy in the conflict. The United National Front (UNF) coalition led by the United National Party (UNP) was elected to government in December 2001.

Following the success of the UNF, the new Sri Lankan government and the LTTE signed a ceasefire agreement (Memorandum of Understanding or MOU) on 22 February 2002. The agreement was negotiated by a Norwegian team and peace talks between the two parties are scheduled to take place in Thailand. There is opposition from some sections of the Sri Lankan population, but the agreement has been widely welcomed within and outside the island. The involvement of Norway and the international community presents a greater opportunity for the success of the peace efforts and a political solution to the protracted conflict in the South-Asian region. However, many problems remain and continue to cause concern.

3. Political developments

Despite the initial optimism generated by the possibility of co-operation to achieve peace, the increasing acrimony between the UNF and the opposition People's Alliance (PA) has the potential of destabilising the whole process. The elected executive President Chandrika Kumaratunge is the leader of the PA while Prime Minister Ranil Wickremasinghe, who commands the confidence of Parliament and the Cabinet of Ministers, belongs to the UNF. Many observers believe that UNF's success at the December general elections is an expression of the Sri Lankan peoples' yearning for lasting peace. The UNF also scored resounding victories in two rounds of local government elections held on 20 March and 20 May 2002.

The President has severely criticized the ceasefire agreement and the UNF proposal to remove the ban on the LTTE. She was angered that the complete agreement was not shown to her until after it was signed. Under the Sri Lankan Constitution, the President holds enormous powers and is the commander-in-chief of the armed forces. The circumstances present little room for government manoeuvre and it has become extremely difficult for the government to act without the approval of the President, particularly in the area of defence.

As a result, some government members have indicated that an impeachment motion against the President may be initiated in Parliament. An impeachment motion may be brought against the President for intentional violation of the Constitution, bribery, misconduct or corruption involving abuse of powers or offence involving moral turpitude. The impeachment motion must be signed by two-thirds of the whole number of MPs. If the motion is signed by more than half but less than two-thirds of the MPs, then the Speaker of Parliament must be satisfied that the allegations merit an inquiry.

If the motion is thereafter accepted in a vote in Parliament by a two-thirds majority, then it will be referred to the Supreme Court for inquiry. Even if the Supreme Court finds the President guilty, she may be removed only by another vote with a two-thirds majority in Parliament.¹ The government has only a slender majority in the legislature and given the

¹ Article 38 of the Sri Lankan Constitution

complex procedure, impeachment would be extremely difficult. However, the acceptance of an impeachment motion by the Speaker, has an important constraint on the President. She cannot dissolve Parliament while an impeachment motion is pending.

President Chandrika Kumaratunge has the option of dissolving Parliament after 5 December 2002 (a year after the last elections)². She exercised this power in 2001 and dissolved Parliament, leading to the fall of the PA. Some observers believe she will dissolve Parliament after 5 December 2002, unless an impeachment motion is pending or a concrete agreement is reached between her and the Prime Minister. Reports in late May 2002 suggest that the government may pre-empt her intentions by calling for general elections on an earlier date.

Press reports suggest that the government also want to introduce a constitutional amendment, which will allow the President to dissolve Parliament only with the agreement of the Prime Minister. Another proposed amendment will prevent dismissal of MPs of the Opposition who vote with the government. The government lacks the two-thirds majority needed for the amendments in Parliament but government members say publicly that they are hopeful of gaining the support of more than 20 Opposition MPs.³ This claim is yet to be established.

The police are currently investigating the alleged involvement of Sanath Goonetilleke, the former media advisor to President Chandrika, in illegal activities. On the request of the Cabinet, the Attorney General has directed the police to re-investigate the murders of Tamil Congress leader Kumar Ponnambalam, Jaffna journalist Mylvaganam Nimalarajan and Rohana Kumara, editor of the Sinhala journal *Satana*. Allegations have been made that top politicians in the PA government and the Presidential Security Division (PSD) were involved in these murders or became aware of them later but failed to take any action. The government is also preparing to launch investigations into alleged corruption in which the President is said to have been involved.

These developments have certainly hardened the attitude of President Chandrika and there appears to be little hope of achieving the high level of cooperation that is needed to solve the ethnic conflict. Colombo newspaper *Sunday Leader* columnist DBS Jeyaraj sums up the current situation as follows:

“..... the rise of Sinhala hard-line opposition to the process despite the people's verdict for peace is also making Wickremasinghe defensive. Faced with mounting political opposition, uncooperative defence circles, hostile media and a cunning executive president, Wickremasinghe feels beleaguered. If he is confident about the LTTE's genuine intentions he may be able to face these problems boldly and overcome them. But with growing mistrust about Tiger bona fides, Ranil too vacillates and wavers. His recent pronouncements are confusing and often contradictory of his previously stated position. Also emerging is a dangerous similarity with that of Kumaratunge. This in turn is ringing alarm bells in the Tiger camp.”⁴

² Article 70 (1) (a) of the Constitution

³ The UNF and ally SLMC have 114 seats in the 225-member legislature. Even if the TNA, with 15 seats, supports the government, it is not sufficient to reach the two-thirds majority mark of 150.

⁴ *Sunday Leader* (Sri Lankan newspaper), 2 June 2002

Apart from the problems between the UNF and the PA, parties and groups such as the People's Liberation Front (JVP) and Sihala Urumaya have openly declared their opposition to peace talks with the LTTE. As time passes and opposition to the peace process gathers momentum, the UNF government which exhibited determination at the beginning seems now to show hesitancy. The LTTE's actions have also not helped the government to move forward with clarity and confidence. The peace talks, which were to be held in Thailand in June, have been postponed. The government wants the LTTE to agree to a definite date for the talks before the ban on the LTTE could be lifted. The Tigers say they would agree to a date only after the ban is removed. Each party appears to suspect that the other party is engaged in some insidious and covert plan to undermine its position.

4. Ceasefire agreement

The LTTE have indicated that it would not be possible for them to participate in peace talks unless the ceasefire agreement is fully implemented. They have cited a number of instances after independence, when incumbent governments failed to implement agreements reached with Tamil political leaders, particularly the Bandaranaike-Chelvanayakam Pact in 1957 and the Senanayake-Chelvanayakam Pact in 1965, which envisaged some measure of autonomy to the Tamil regions. The LTTE say that if the government does not show its sincerity by implementing the ceasefire agreement at this stage, it would be difficult to believe that any agreement that is reached later in peace talks would be implemented. Government MPs point out that the position of the LTTE is unreasonable in that the Tigers themselves are not fully implementing the ceasefire agreement.

One of the objections of the LTTE was that their members were unable to enter the islands west of the Jaffna peninsula for political work as provided for in the ceasefire agreement. These islands were controlled by cadres of the Tamil group Eelam People's Democratic Party (EPDP) and the Sri Lankan Navy. Although the LTTE were allowed in mid-June, reports say that there is tension after security forces on Kayts Island allegedly assaulted senior LTTE cadre on 21 June. The ceasefire agreement also provides for the vacation of buildings, such as temples and schools, occupied by the security forces, in spite of which the security forces continue to occupy many of the buildings. The military on the other hand has accused the LTTE of ceasefire violations such as abductions, arms running and construction of buildings and bunkers.

5. India's involvement

Many observers believe that a solution to the Sri Lankan conflict is difficult without the blessings of India. However, developments in India are hardly contributing to the process. According to observers, India is committed to peace in Sri Lanka but remains concerned that any perceived success of the LTTE, whose main objective is the creation of a separate state in Sri Lanka, may encourage separatist sentiments in India, particularly in the southern Indian state of Tamil Nadu.

The Indian government has welcomed the peace process, but has refused the request by the LTTE to station its advisor, Anton Balasingham, in Chennai (Madras) during peace talks. The refusal followed a letter by the Chief Minister of Tamil Nadu O. Pannerchelvam to the Indian central government on 10 January 2002, indicating that the

presence of the LTTE in the state would not be tolerated. It should be noted that the massacre of members of the Tamil group Eelam People's Revolutionary Liberation Front (EPRLF) in June 1990 and the assassination of Rajiv Gandhi in May 1991 took place in Tamil Nadu. In May 1992, India proscribed the LTTE and since then has extended the ban. It was extended by two more years on 14 May 2002. The LTTE has also been declared a terrorist organisation in India under the Prevention of Terrorism Ordinance (POTO) of 2001.

In March 2002, J Jayalalitha, who is well known for her opposition to the LTTE, was nominated as new Chief Minister of Tamil Nadu. The Tamil Nadu state legislative assembly adopted a resolution in April, urging the central government to have LTTE leader V Prabhakaran extradited to India or send in the Indian Army to capture him. Indian Foreign Minister Jaswant Singh said on 11 June 2002 that he was satisfied with the peace process, but that India would continue to demand the extradition of Mr Prabhakaran.

6. The ban on the LTTE

A Tamil National Alliance (TNA)⁵ delegation told the Sri Lankan Prime Minister on 24 May 2002 that the ban on the LTTE should be lifted to allow the organisation to participate in peace talks as legitimate representatives of the Tamil people. The LTTE have categorically stated that they would not take part in peace talks unless its proscription in Sri Lanka is removed. They also point out that any peace agreement concluded while the ban remains may not be accepted as having legal validity and that there is the possibility that the government may use such reason to deny implementation of the agreement.

The LTTE were proscribed under Emergency Regulations (ER) in January 1998, after an attack on the Buddhist holy site, the *Dalada Maligawa* in Kandy. When the state of Emergency lapsed, President Chandrika introduced regulations on 4 July 2001 under the Prevention of Terrorism Act (PTA) re-imposing the ban. Experts say that there are real difficulties in removing the ban. Under ER, the President could have lifted the ban by a regulation published in the government *Gazette*. But PTA is permanent legislation and requires regulations made by the President to be brought before Parliament as soon as possible.⁶ The regulations banning the LTTE have not so far been brought before Parliament. When the regulations are tabled, they may be rescinded by Parliament.

However, some political analysts believe that the demand for the lifting of the ban is only a tactical move and is not a pre-requisite for the commencement of peace negotiations. They point out that the ceasefire agreement was signed while the ban was in force and that the LTTE have been permitted under the agreement to commence political activities by setting-up offices in the north-east.

There are other difficulties. The JVP and the influential Buddhist clergy are opposed to the removal of the ban, demanding that the LTTE make a public declaration before peace talks commence, renouncing their objective of forming a separate state in the

⁵ The TNA was formed in October 2001 and is composed of the Tamil parties, Tamil United Liberation Front (TULF), the Suresh faction of Eelam People's Revolutionary Liberation Front (EPRLF), Tamil Eelam Liberation Organisation (TELO) and All Ceylon Tamil Congress (ACTC). The TNA has taken the position that the Sri Lankan government should hold peace talks only with the LTTE.

⁶ Section 27 (3) of the PTA

north-east. Under the Sri Lankan Constitution, any person may apply to the Supreme Court and have a separatist organisation proscribed.⁷

The primary aim of the LTTE is the creation of a separate state called *Thamil Eelam* in the territory of Sri Lanka. The LTTE have not so far renounced this objective. In his media interview on 10 April, LTTE leader V Prabhakaran said: "As far as the demand for *Eelam* is concerned, the LTTE have not made any decision whether to give up the demand or accept an alternative". If the ban were to be lifted, the JVP, and other ultra-nationalist organisations would, without doubt, petition the Supreme Court for a declaration that the LTTE is a separatist organisation, requiring it to be proscribed.

When the LTTE earlier said that they would agree for a date for the peace talks only if the proscription were lifted, the government indicated that necessary steps would be taken. The government was also said to be exploring ways of suspending the ban for a specified period of time. But in late May 2002, the government declared that the removal of the ban was only possible if the LTTE agreed to a definite date for peace talks. It was also said that the initial talks in Thailand would be on the interim administration for the north-east. But Prime Minister Ranil Wickremasinghe has now taken a position similar to that of President Kumaratunge, declaring that the talks would be on substantive political issues to resolve the conflict permanently. In early June 2002, LTTE advisor Anton Balasingham said that the Tigers were deeply disappointed that the government was backtracking on the issues of de-proscription and interim administration.

7. New bilateral agreements

The Sri Lankan government plans to hand over oil storage facilities in Trincomalee to the India Oil Company. Press reports also indicate that a military cooperation pact may be signed with the US. These reports say that the agreement will allow free movement of US military planes and ships in Sri Lankan territory in exchange for military hardware and joint operations in the US fight against terrorism. These developments are viewed with growing apprehension by the LTTE. These measures may also introduce Indian and US military presence in Trincomalee. The full implications of the agreements are still unclear.

Further, the US embassy in Colombo has made statements about what the results of the peace negotiations should be and has also accused the LTTE of ceasefire violations after the Sri Lanka Monitoring Mission (SLMM) began its work.⁸ Tamil observers say that the US policy on Sri Lanka is unclear and suspect some hidden strategy. Despite assurances of the Colombo embassy that the US will not resort to any measures that are detrimental to the interests of the Tamil community, Tamil political parties are apprehensive that the US-Sri Lanka agreement would have an adverse impact on the peace process and the solution to the ethnic conflict. Some analysts have expressed the view that these are strategic moves by the Sri Lankan government in case peace talks breakdown and war resumes. Others are of the opinion that they are intended to bring maximum pressure on the LTTE before and during negotiations. These developments and change of attitudes indicate the growing mistrust between the two parties to the conflict.

⁷ Article 157A (4) & (5) of the Constitution

⁸ The SLMM, comprising personnel from Nordic countries was appointed under the ceasefire agreement. For details see *Sri Lanka Monitor Briefing* of March 2002, titled *Accord heralds new phase* - www.gn.apc.org/brcslproject.

8. Human rights

Several UN bodies have expressed concern over abuse of human rights in Sri Lanka. The previous government failed to take adequate measures to curb violations, compensate victims of abuses or punish the perpetrators. Amnesty International has stated that some actions of the last government encouraged abuses. The violations of human rights are more fully dealt with in a December 2001 report of the Refugee Council.⁹

Ian Martin, who visited Sri Lanka on behalf of the London-based International Working Group on Sri Lanka (IWG) in March/April 2002, says that the ceasefire agreement deals only with a narrow range of human rights. He has pointed out that attention now to human rights issues would support the peace process and that tolerance of human rights abuses would threaten it.¹⁰ He has suggested that parallel, complementary human rights monitoring would be desirable and would not conflict with the role of the SLMM. A UN role and the association of international monitors within the framework of a civil society monitoring network, such as for election monitoring, have also been suggested. Under the ceasefire agreement, the SLMM has no presence in the LTTE-controlled Mullaitivu and Kilinochchi districts. In the circumstances, it is difficult for people to complain about violations by the LTTE in these districts.

9. Human rights and ceasefire violations

The SLMM is said to have received over 250 complaints of ceasefire violations, up to the end of May, by both the LTTE and the security forces. The Human Rights Commission (HRC) has also received complaints. According to reports, the government and the LTTE have been buying arms and recruiting for the forces. The LTTE are reported to be preventing state and private buses using the A9 road directly from Colombo to Jaffna. There have also been reports of security force arrests, attacks and harassment of the Tamil people in the north-east.

The LTTE have abducted a number of people for ransom, particularly in the east. The Muslim community has specially been targeted.¹¹ Abductions have taken place even after the LTTE leader V Prabhakaran is said to have ordered eastern Tiger leader Karikalan to end the practice. On 26 April, the LTTE abducted 82 year-old K V Sithamparapillai from Batticaloa town.¹² Although his relatives paid Rs 300,000 (\$3,100), the LTTE had demanded another Rs 2.2 million (\$22,800). After considerable publicity about the abduction, he was released, but remains under pressure to make the payment.¹³ A Tamil family from Canada that visited the Vanni has been taken into custody by the LTTE. There are fears that refugee returnees and foreign Tamil nationals may come under increasing pressure.

The LTTE have imposed taxes on goods, including goods such as rice and sugar sent into the north-east by the government. At the Muhamalai checkpoint on the A9 Vavuniya-Jaffna road, everyone entering the Jaffna peninsula must pay a tax to the Tigers. Equipment brought into Jaffna is heavily taxed. For example, a tax of Rs 40,000

⁹ *Sri Lanka: Human rights and return of refugees*, December 2001 – www.refugeecouncil.org.uk.

¹⁰ Ian Martin, a former Secretary General of Amnesty International was in Sri Lanka from 26 March – 3 April 2002. For a copy of the report contact: iwg@gn.apc.org.

¹¹ *Sri Lanka Monitor*, February 2002

¹² Amnesty International report of 29 April 2002 - ASA 37/007/2002

¹³ Amnesty International report of 3 May 2002 – ASA 37/010/2002

(\$450) is levied for each computer that is brought in. According to human rights agencies, people in Tiger-held areas of Jaffna are being coerced to deposit their monies in the *Tamil Eelam Bank*, which is controlled by the LTTE. The LTTE also seem to be insisting that young people should obtain Tiger permits to leave the north-east region. Amnesty International has accused the LTTE of forcibly recruiting children and has published the names of 21 children allegedly recruited by the Tigers in Vavuniya and Batticaloa. The LTTE have denied the allegation, but Amnesty has urged them to make public their recruitment policy and also make clear where complaints about recruitment of children can be made.¹⁴

People in Jaffna complain of security force harassment and have carried out a number of demonstrations. The military is reported to be strengthening its bases in the peninsula and constructing a large base in Chavakachcheri East and checkpoints at Eluthumadduval. New military bases are being established along the coast at short distances. As the ceasefire agreement provides that fishing will not be permitted within one nautical mile from either side along the coast and two nautical miles seaward from security force camps on the coast, the new camps in effect will totally prevent fishing, threatening the livelihood of thousands of fishermen.

In early May 2002, The Sri Lankan Navy shot and injured two Tamil women at Nilaveli, in Trincomalee District, one of whom later died. MP Joseph Pararajasingham says that the Navy shot dead two Muslim fishermen at sea off Vaharai in Batticaloa District, on 1 May and wounded another. The Navy also attacked fishermen in Trincomalee on 5 May. There have been a number of other incidents involving the Navy. In Amparai District, the police Special Task Force (STF) fired over civilian protesters at Thirukovil on 22 May. Following the shooting, thousands of people demonstrated in the streets.

The people of Veeramunai in Batticaloa District have complained to the SLMM that the STF had threatened them following a demonstration on 23 and 24 May 2002. The STF had allegedly said that the peace process would come to an end in a month's time and when that happens all the houses in Veeramunai will be demolished. The STF had also told people to be prepared for such an eventuality with a coffin for each household. The Human Rights Commission has summoned the STF commander for an enquiry. In late June, five people were killed and over 100 shops were burned in clashes between Muslims and Tamils at Valaichenai in Batticaloa District.

10. The military

Observers say that the full co-operation of the armed forces is necessary for the success of the peace process. They have pointed out that in areas where there is the most friction between the LTTE and the armed forces, the commanding officers are known to be supporters of the Sri Lankan President. According to sources in Colombo, the Navy and the STF may be influenced by the opposition shown by senior politicians to the ceasefire agreement. The new Defence minister Tilak Marapane appears to remain a figurehead, while President Chandrika continues to retain and exercise her powers. President Chandrika has declared that the agreement may impinge on national security concerns and compromise the island's sovereignty. She specifically says that the agreement is inadequate on rules of engagement at sea and naval powers regarding interdiction of arms shipments.

¹⁴ Amnesty International reports of 14 February 2002 (ASA 37/005/2002) and 11 March 2002 (ASA 37/007/2002)

11. Prevention of Terrorism Act

According to the International Committee of the Red Cross (ICRC), more than 1,700 Tamils were detained in December 2001 under the PTA in various prisons, detention centres, police stations and Army camps.¹⁵ No charges had been filed against most of the detainees. The Attorney General has stated that the cases are being reviewed and many detainees, such as those held on charges of withholding information on terrorist activities from the authorities, are being released. Government officials now claim that there are only 800 detainees under the PTA. The Attorney General's Department has not disclosed details of the releases. Human rights lawyers in Colombo say that there is no evidence that 900 detainees have been released.

Ian Martin has recommended a thorough review of the cases under the PTA and payment of compensation to victims of human rights abuses and has urged that a clear and comprehensive policy of remedying past injustices would go a long way in effective curtailment of future abuses.¹⁶ Colombo human rights observers believe that a large number of Tamils will continue to remain in detention for political reasons and may be used as bargaining chips in the peace negotiations.

The UN Working Group on Disappearances has noted that the PTA falls below international standards and human rights agencies have urged for the past ten years that it should be repealed or brought in line with international standards.¹⁷ Ministers of the new government have indicated that the PTA will not be amended or repealed, but action would be taken to expedite the cases. This shows that the government intends to allow that has been condemned internationally to remain in the statute book.

Justice minister WJM Lakkubandara has declared that that the Committee of Inquiry into Undue Arrest and Harassment (CIUAH), which was appointed in July 1998 to look into the harassment of Tamils by the security forces, will not be re-appointed.¹⁸ Although the government has taken some measures regarding the release of detainees, there has been no reference to the prosecution of security force personnel recognized by the Supreme Court as perpetrators of illegal detention and torture and those identified by four presidential commissions on disappearances as responsible for disappearances. This means impunity among security forces will continue, as evidenced by the increasing reports of torture in southern Sri Lanka.

12. Landmines

Both the military and the LTTE are involved in clearing landmines in areas under their control. Jaffna, Kilinochchi, Mullaitivu, Mannar and Vavuniya districts are areas which have a large number of buried mines posing danger to the civilian population. These are also the home areas of most IDPs and asylum seekers. The Jaffna peninsula, particularly the southern Thenmaratchy area, is affected by landmines. According to reports, UNHCR officers in Jaffna have expressed the view that minefields created a serious problem.

¹⁵ *Sri Lanka Monitor*, December 2001

¹⁶ IWG mission report, op.cit.

¹⁷ Report of the UN Working Group on a visit to Sri Lanka October 1999 E/CN.4/2000/64/Add.1

¹⁸ *Sri Lanka Monitor*, December 2001

The LTTE estimate that there are 1.4 million landmines in the Vanni alone and only 6% have been cleared. In March 2002, the World Bank, UNDP and the Sri Lankan government signed an agreement for release of \$1 million to strengthen UNDP's landmine action project.¹⁹ The UN has estimated that more than 500 people have been injured by landmines since 1995 and an average of 15 new victims are reported each month.²⁰

The LTTE's Humanitarian De-mining Bureau (HDB) have complained that they have not received support from the UN or other international agencies and that the lack of resources is holding up resettlement of hundreds of thousands of people. As a result, they say, that they are focusing only on some areas currently identified for refugee resettlement and have to ignore large areas. The Sri Lankan government has entered into an agreement with the US, who have deployed a Quick Reaction De-mining Force (QRDF) in Army-controlled Saralalai. Head of QRDF, Don Smith says that it will take at least five years to remove all the landmines in the peninsula.²¹ The HDB estimates that the area around the Elephant Pass military base has 1,400 landmines per kilometre of defence lines. People returning to their home areas face danger from the mines and many have suffered serious injuries. Kanthasamy Sivathas, 16, was injured by a landmine at Meesalai on 14 May. He was one of several landmine victims in May.

13. Infrastructure

13.1 Buildings

A large part of the infrastructure in the north-east, where most Sri Lankan IDPs and refugees come from, has been destroyed. No comprehensive study has been carried out to assess the damage. But a study carried out in Jaffna in 1991 on the destruction in the Jaffna city at the time may provide some scale of the damage.²² Damage to buildings alone in the Jaffna city was estimated at Rs 4 billion (\$42 million). There has been considerably more destruction since this study. Before the destruction of the entire town of Chavakachcheri in September 2000, the Jaffna government secretariat estimated that 120,000 buildings, including 80,000 houses, had been damaged or destroyed in the Jaffna peninsula. A similar number may have been destroyed in the east. Returning refugees to Thiriyai in Trincomalee District in June 2002 found that their entire village, including a 200 year-old temple, had been razed to the ground.

Comparatively few people have received compensation or assistance to rebuild their houses. The European Commission says that there has been 'major destruction of towns and villages in the North and East of the island'. The Commission's targets, given below, in the assistance programmes indicate the massive task facing the Sri Lankan government, the international agencies and the local population in reconstruction:²³

- Improve access to potable water and construct adequate sanitary facilities. Training projects on the principles and practicalities of clean water and sanitation.

¹⁹ World Bank – www.worldbank.org/lk

²⁰ Mineaction – www.mineaction.org

²¹ *Virakesari* (Sri Lankan newspaper), 19 June 2002

²² *Assessment of war damage to the city of Jaffna* – Report commissioned by the Jaffna Municipal Commissioner, November 1991

²³ <http://europa.eu.int>

- Increase household food production: Rehabilitation of irrigation systems to improve crop production.
- Health and community services: Establishment or renovation of health facilities and improved access to emergency and specialized care. Renovation of orphanages and assistance with projects to improve community activities. Provision of materials and labour costs to reconstruct and renovate schools.
- Increase capacity for vocational training, and to support business opportunities through small business loans.
- Provision of semi-permanent shelter, storage space for contingency stocks of relief supplies and project related equipment and basic domestic items. Improve access to services, schools, offices and other public facilities.

The reconstruction of the regions devastated by war is expected to cost hundreds of millions of dollars and analysts believe that the peace process depends on massive foreign aid. The Sri Lankan government says that the previous government had not left funds for re-development. The government arranged a visit in late May for the heads of 40 foreign missions to Jaffna for an assessment of the needs.²⁴

13.2 Military occupation

The Army occupies community centres, schools, temples and churches, hospitals, hotels, factories, libraries and government department buildings. The military has also taken over hundreds of houses, private lands and buildings. Owners have not received any rent for most of the buildings occupied. In the Jaffna peninsula alone, 140 temples are occupied by the military. Although military commanders say that the buildings will be vacated by D-Day+140²⁵, there is no clear statement about the buildings that lie within the perimeter of Army camps, which in some places extend to several miles.

In the east, the STF have stated that they will not be vacating buildings, as these are needed in the preparation for the next phase of the war. Human rights agencies say that in Jaffna, Trincomalee and Batticaloa the security forces have set-up new military bases and have expanded current positions. New military zones have also been declared by local commanders, preventing refugee re-settlement in these areas. A large number of military bases lie in populated areas. If camps are to be relocated, huge amounts of funds are needed for the construction of new military bases away from populated areas. The government currently lacks the necessary resources.

13.3 Education and health

According to School Education minister Suranimala Rajapakse, there is a shortage of 9,600 teachers in the north-east. In some areas there are less than 5% of the teaching staff needed. Ceylon Tamil Teachers Association's (CTTA) Mahasivam says 1,200 teachers are needed in Mullaitivu District alone. A large number of school buildings have been commandeered for military purposes and many have been destroyed in aerial bombardment. The North-East Provincial Council administration has estimated that Rs 143 million (\$1.6 million) is needed to repair schools damaged by the war in the Vanni.

²⁴ *Sri Lanka: Peace hopes hinge on massive foreign aid* - Peter Kammerer, Asia Intelligence Wire, 3 June 2002, www.unhcr.ch

²⁵ D-Day plus 140 means 140 days after 22 February 2002, the day of the signing of the ceasefire agreement.

The Army commanders in Jaffna have informed the Ministry of Education that they would not be moving out of 32 schools, which lie within or just outside high security zones. These schools have not been functioning for more than ten years. CTTA says over 74 schools in the north-east are occupied by the security forces and of these only 11 have been handed back to the school authorities up to 10 June 2002. A further 160 schools, including 130 primary schools are unable to function because they are near military installations or lie within security zones. In Jaffna District, 50 schools are unable to function, 36 of which are occupied by the Army. Twenty two of these schools are within military high security zones.²⁶ In Batticaloa District, the Army is occupying four schools for the past 12 years. Six schools are within the perimeter of Army camps and 29 others lie within 400 metres of military bases.

The health sector was badly affected by the government blockade. The hospitals have always suffered because of the shortage of doctors, nurses and other hospital staff. A large number of doctors in the north-east have emigrated. Hospitals have also been damaged in the war. Many people, including children, have suffered physical disability and a vast number of people also suffer from psychological conditions brought about by war. According to local agencies, adequate facilities and trained personnel to treat psychological problems are lacking. Some 900,000 children in the north-east were affected by war, 250,000 of whom were internally displaced. An estimated 50,000 women are widowed, lacking adequate support or income, and a large number of children have been orphaned.

13.4 Communication

Many roads are damaged or cannot be used because of military restrictions, making it difficult to contact some areas. Telephone communications have not been fully restored to large parts of the north-east and electronic communication facilities remain extremely poor, as a result of earlier restrictions on computer equipment.

Because of damage to roads postal services have been disrupted in some areas and in others they are irregular. Since the A9 Vavuniya-Jaffna road has not been fully opened for traffic directly from the south, postal bags to Jaffna are still brought in and taken out by an ICRC ship.

13.5 Agriculture and industries

Twenty per cent of the agricultural production of Sri Lanka between 1981-1985 was from the north-east region. During this period, of the total production in Sri Lanka, 35% of rice, 45% chillies, 85% red onions and 30% of lentils were from the north-east. Two decades of war and the government blockade have considerably affected agriculture. Displacement, loss of income, lack of capital, opportunities of marketing or development, transport, training and research have had their impact on agriculture. Government restrictions on agricultural implements, fertiliser and vehicles and military operations had made it almost impossible for farmers to carry on agricultural activities. According to current estimates only 60% of the cultivable land of 1,764,000 acres is being cultivated.²⁷

²⁶ *Virakesari*, 21 May 2002

²⁷ Kumarasamy Thatchanmurthy, senior lecturer, Eastern University – *Virakesari*, 9 April 2002

In 1982, coconut trees in the north-east were planted in 54,000 acres, but in 1993 it fell to 33,000. Palmyrah trees were grown on 82,000 acres in 1982. Thereafter the trees were cut down for building bunkers and other military installations and a large number were destroyed in military operations. These trees were vital to the local economy and a large number of families depended on income derived from their products. A family can earn Rs 5,000 every year from a palmyrah tree for a period of 60 years. According to reports, 2.5 million palmyrah trees (around 500,000 in Jaffna alone) and 600,000 coconut trees have been either cut down or destroyed. Replanting and re-establishment of the groves will take around 15 years. Hindu Culture minister T Maheswaran said in a letter to the Prime Minister in early May 2002 that the Army are cutting down 300-500 trees daily in Mannar District.²⁸

Many industries have been destroyed and others had been unable to function because of the blockade. The lack of electricity has also disrupted industries. The government says that electricity will not be restored to the whole of the Jaffna peninsula until July 2002. Industries need to be re-established and assisted for the rejuvenation of the economy.

Fishing in the north-east, one of the main industries in the region, has been severely affected by restrictions imposed by the government. A number of regulations under ER and the PTA prevented fishermen carrying on their occupation and adversely affected some 40,000 fishermen and their families. Since the ceasefire, many demonstrations have been held by fishermen in the north-east. Restrictions on fishing were expected to be lifted progressively under the ceasefire agreement. But new regulations under the PTA on 23 May 2002 by the Defence Minister have re-iterated the earlier restrictions.²⁹ Under the regulations, fishing is restricted in Trincomalee, Mullaitivu, Jaffna, Kilinochchi and Mannar districts.

14. Civil society

All parties to the conflict have resorted to destroying or undermining local level civil society institutions. This has been carried out by threats, abductions and assassinations. Other methods such as blocking funds or other means for functioning have also been used. Over the years, civil society organisations have been completely destroyed in many areas and in others have become thoroughly weakened. Even after the ceasefire, there are indications that civil society organisations may not be able to function freely. Without encouraging, rebuilding and safeguarding civil society, rehabilitation and other programmes may not succeed and benefit the people.

15. Internally displaced people

15.1 General

The government currently provides dry rations to 726,000 internally displaced people (IDP), 88% of them Tamils. Some 185,000 of the IDPs are accommodated in government welfare centres and others live with friends or relatives. As there is some doubt over the data relating to the refugees, the Sri Lankan government and UN refugee agency UNHCR signed an agreement in February 2002 and launched a survey to determine the number of IDPs in Sri Lanka.³⁰

²⁸ *Virakesari*, 10 May 2002

²⁹ Prevention of Terrorism Act (Restricted Zones) Regulation No. 1 of 2002 dated 23 May 2002

³⁰ *Sri Lanka Monitor*, February 2002

The European Commission will provide €3.35 million to finance projects for the IDPs, which will be implemented by UNHCR and CARE Germany. The objectives of the projects are said to be to minimise internal displacement, facilitate voluntary return and re-integration and to help IDPs to find solutions as well as to improve living conditions and rights for victims of conflicts. The Commission has, however, stated that in spite of the significant step forward, 'it is likely that a high number of persons will have to stay at the present centres for displaced people before new measures are implemented'.

UNHCR reported in May that 71,000 IDPs have returned to their home areas, many of them to the LTTE-controlled Kilinochchi which has sustained heavy destruction and has a large number of landmines. Despite the peace process, many IDPs have expressed fear to return. The SLMM has informed the people that they would receive complaints relating to ceasefire violations only, and other problems should be taken up with the police. This is possible only in the cleared areas (Army-controlled areas), where there is the presence of the police. The people in un-cleared areas (LTTE-controlled areas) have no official authority to make complaints about difficulties they face. The people are also fearful of the Army and are concerned about the activities of the security forces in cleared areas. For example, the Navy is clearing jungles up to 50 yards on either side of the Mannar road from Talaimannar pier. The purpose of this is unclear.

There is uncertainty whether the IDPs will be supported until they become self-sufficient. In December 2001, as general elections took place and a new government was being formed, dry food rations³¹ to IDPs were suspended, pushing them to starvation. The reason is said to be the lack of government funds. In April 2002, assurance was made by the Rehabilitation Ministry that dry rations will be issued for another six months. However, a circular letter to all *Grama Sevakas* (Village Headman) from the Ministry in early May says that dry rations will not be issued to certain categories of IDPs, including those earning Rs 750 or more.

It is reasonable to expect, before refugee returns from abroad are considered, that the Sri Lankan government ensures that IDPs are able to return to their home areas in safety and dignity and are able to resettle without fear of persecution in an economically sustainable environment. This is important in light of the fact that many IDPs have been displaced several times, some forced to move on seven or eight occasions.

15.2 Muslim IDPs

An estimated 100,000 Muslim people were displaced from the north, after an LTTE ultimatum in October 1990, ordering them to leave the region. Most of them now reside in refugee camps in Puttalam and Anuradhapura districts. In December 2001, dry food rations issued to these refugees were stopped. Following a meeting chaired by Rehabilitation minister Jayalath Jayawardena at the Puttalam *Kachcheri* (Government administration office), assurance was given that dry rations for the months of January and February will be issued in April. Refugees say that no dry rations had been issued by the end of May 2002.

Under an agreement between the LTTE chief V Prabhakaran and Sri Lanka Muslim Congress (SLMC) leader Rauf Hakeem on 15 April 2002, Muslims will be encouraged to

³¹ Dry food rations usually consist of rice, lentils, sugar and milk food.

return. The LTTE have assured that the Muslim people will not be harassed. Earlier attempts of Muslims to return to their home areas were not successful, because of continuing fears for safety. Muslim IDPs have welcomed the agreement, but many remain sceptical, pointing to an agreement between the LTTE and Muslim leaders in 1988 regarding safety of the Muslim community, which was not implemented. Seventy two Muslim families which returned to Jaffna after the ceasefire agreement this year, faced severe restrictions from the LTTE in carrying on their trades. As a result, 55 families have gone back to Puttalam.

After an absence of more than eleven years, Muslims seem to prefer group returns rather than individual returns, for reasons of safety and integrity of the community and on guarantees of social and economic sustainability. The living and economic environment in the original settlements of Muslim IDPs have suffered a state of natural destruction. Muslims are waiting for the root causes of displacement to be addressed: to allow them to begin a fresh life in an atmosphere of peace and stability without the uncertainty over the peace process.³²

Land and buildings, such as houses and shops, owned by Muslims in several areas of the north are occupied by internally displaced Tamils. Some people are in occupation for more than ten years and may have acquired title to land and buildings under the laws of prescription. It has been suggested that prescription laws should be amended so that the Muslims and other IDPs have title to their property when they return to their home areas.

15.3 Sinhalese IDPs

According to the Rehabilitation Ministry, there are some 25,000 Sinhalese IDPs mainly living in Polonnaruwa, Anuradhapura and Amparai districts. In December 2001, dry food rations to Sinhalese IDPs were also stopped, but restored later for a period of six months. The displacement of the Sinhalese took place after the LTTE carried out many attacks on Sinhalese villages on the border of the north-east region.

There has been no official statement by the LTTE similar to that relating to Muslim refugees, encouraging return to their home areas and guaranteeing their safety, although press reports say that the Tiger leader V Prabhakaran has welcomed the Sinhalese refugees. Without a successful peace agreement between the government and the LTTE on substantive political issues, which incorporates safety elements for all communities, it is hard to envisage the return of Sinhalese IDPs to their home areas, particularly those which lie within the north-east and may come under the control of the LTTE in an interim administration.

16. Refugees and asylum seekers

16.1 Refugees in Tamil Nadu

There are an estimated 120,000 refugees in the southern Indian state of Tamil Nadu, including 65,000 in 107 government camps. Sri Lankan Rehabilitation minister Jayalath Jayawardena visited India in late June for discussions with Tamil Nadu Chief Minister J

³² *Return of long displaced communities to their homes areas: Is it viable?* – Dr SH Hasbullah, Department of Geography, University of Peradeniya, February 2000

Jayalalitha, to discuss the return of refugees to Sri Lanka.³³ A few families have expressed the desire to return. UNHCR has interviewed 17 families who are categorised as 'vulnerable', for return to Sri Lanka. According to the refugee agency, Organisation for Eelam Refugees Rehabilitation (OFERR), the vast majority of refugees do not wish to return without guarantees of peace to the conflict in Sri Lanka. A refugee from Mullaitivu in a Tamil Nadu refugee camp says:

"We have been struggling here for the past 12 years for basic amenities....Still, we could lead a peaceful life. There is no guarantee of peace in Sri Lanka now. When we contacted our relatives, they have informed us that our houses were destroyed in shelling."³⁴

Between 1992 and 1996, refugees were returned to Sri Lanka from India under a programme assisted by UNHCR. The programme was implemented while violence continued in Sri Lanka and despite the protests of international agencies expressing concerns over safety and the voluntary nature of the returns. The programme was suspended in 1996 with the escalation in fighting, but by then over 54,000 refugees had been returned. Some of those returned under the programme still live in refugee camps in Sri Lanka. In fact, there are people in camps in Tamil Nadu who have returned as refugees for the second or third time from Sri Lanka. The lack of proper information about conditions in home areas has resulted in some refugees attempting to return to Sri Lanka in small boats across the Palk Strait. According to reports received by Mannar Assistant Government Agent, four refugees who attempted to return to Sri Lanka by boat on 22 May, drowned between Dhanushkodi and Talaimannar.

OFERR has raised concern over some of the problems that returning refugees may face, one of which is the issue of the birth certificate. Many children born in refugee camps in Tamil Nadu are without birth certificates as a result of the cumbersome and bureaucratic procedure that has been introduced to obtain the document.

Applications for the birth certificate has to be made to the Sri Lankan Deputy High Commission in Chennai along with the recommendations of the Foreigner's Division of the Public Department, the *Thasildar* (District Revenue Inspector) and the Collector (senior administrative officer of the district). Refugees are often unable to travel to Chennai, because of the delays, distances and the costs involved. The birth certificate is an important document in Sri Lanka and it may be demanded by government agencies in order to issue other certificates, licences or other documents.

16.2 Asylum seekers in other countries

Refugee agencies, including the British Refugee Council (BRC) and refugee community organisations are concerned about Sri Lankans who have sought asylum in other countries. UNHCR has estimated that there are 917,000 Sri Lankan refugees in other countries, including 120,000 in India. Around 37% of the asylum seekers, excluding those in India, have been granted either UN Convention refugee status or humanitarian leave to remain. This means that the applications of some 500,000 Sri Lankans are either pending or have been rejected.

³³ *The Daily News* (Sri Lankan newspaper), 4 July 2002

³⁴ *The Hindu* (Indian newspaper), 8 February 2002

Governments may be encouraged by the peace process and attempt to return these persons on a large scale. There are indications that some governments are making such preparations. In Britain, government ministers have recently stated publicly that refugees could be returned to Sri Lanka. The European Union has negotiated a re-admission agreement with the Sri Lankan government, while pledging €3.35 million for rehabilitation. In view of attempts by several EU nations to link economic aid to refugee returns, concern has been expressed that pressure may have been brought on the Sri Lankan government to agree to the EU's terms without proper long-term plans for the reception and resettlement of returning refugees. An EU document states as follows:

“.....a second round of negotiations took place in Colombo on 18 and 19 March 2002. The negotiations were quite successful and, with the exception of some outstanding issues, broad agreement was reached on the draft re-admission agreement.....a third round of negotiations is scheduled for the end of May.”³⁵

These negotiations are underway, although the objectives of the EU High Level Working Group on Sri Lanka (HLWG) have not been fulfilled and there is concern over the human rights situation.³⁶

Some Sri Lankans are keen to return and may welcome a voluntary return programme, including the offer of an assistance package. But in light of what has been stated in this report, the BRC believes that it is injudicious to return rejected asylum seekers to the island. Governments have a continuing duty to adhere to the fundamental principle that people returning home should do so in dignity and safety. Sri Lanka is in dire need of economic improvement if the ethnic conflict is brought to an end successfully. Refugees abroad support their families in Sri Lanka and if this is cut off, then the families would become destitute. Refugees also contribute to a vast number of projects in Sri Lanka, particularly towards health, education, care for widows and orphans and small-scale industries. Sri Lankan Tamil MPs have informed foreign missions in Colombo that large-scale returns of refugees in these uncertain times may affect the peace process.

UNHCR declared on 16 April 2002 that conditions were still not right for large-scale repatriation of Sri Lankan refugees from abroad. UNHCR said that the ceasefire agreement between the government and the Liberation Tigers of Tamil Eelam (LTTE) improved prospects of a negotiated settlement, but acknowledged that the situation remained too fragile for the refugee agency to actively promote repatriation on a large scale.³⁷

In letters to UK solicitors, UNHCR has stated as follows:

“Although steps towards peace have been taken in Sri Lanka recently, it is still premature to advocate that the situation has reached a satisfactory level of safety to warrant the return of all unsuccessful asylum applicants to Sri Lanka. In this regard, UNHCR has been aware that returning Tamils are potentially open to risk of serious

³⁵ Council of European Union – Outcome of proceedings of the Working Party on Migration and Expulsion on 20 March 2002 – 6 May 2002

³⁶ The HLWG was appointed to develop action plans on freedom, security and asylum, including safety of returning refugees and internal settlement alternatives. The HLWG has produced action plans for Sri Lanka, Morocco, Afghanistan, Somalia, Iraq and Albania and neighbouring countries. The action plan for Sri Lanka and the lack of progress in the human rights area are discussed in the Refugee Council report titled *Sri Lanka: Human rights and return of refugees*.

³⁷ www.unhcr.ch

harm similar to those generally encountered by young male Tamils in certain circumstances. This risk may be triggered by suspicion (on the part of the security forces) founded on various factual elements relating to the individual concerned, including the lack of identity documents, the lack of proper authorisation for residence and travel, the fact that the individual concerned is a young Tamil male from an 'uncleared' area or the fact that the person has close family members who are or have been involved with the LTTE.

"In UNHCR's view, the presence of torture related scars on the body of a returnee should be a relevant consideration in assessing likelihood of danger upon the return of Sri Lankan Tamil asylum seekers. Where such scars are related to human rights abuses, they would likely be seen as evidence of the security forces' previous interest in the particular individual. This could in turn serve to trigger further adverse attention to that individual. While every case should be addressed on its own merits, UNHCR would reiterate the view that special care must be taken in relation to the return of failed asylum seekers to Sri Lanka."

17. Refugee Council observations and recommendations

17.1 Human rights

17.1.1 If Sri Lanka is to enjoy sustainable peace and democracy, it is inevitable that the promotion and protection of human rights must command the attention of all interested parties. Following the signing of the ceasefire agreement, large-scale killings and destruction have stopped. However, many of the concerns raised by the Refugee Council in the December 2001 report titled *Sri Lanka: Human rights and return of refugees*, remain. Following a visit to Sri Lanka in June 2002, Amnesty International emphasizes that the reduction in killing, torture and abductions seen since the ceasefire will only last if practical measures to protect human rights are discussed, negotiated and promoted. Amnesty also says that the situation will remain vulnerable until the government and the LTTE take practical steps to guarantee a human rights framework for the peace process.³⁸

The Sri Lankan government has not taken tangible steps to punish the perpetrators and to end impunity among the security forces. Since the ceasefire agreement, incidence of torture has increased in southern Sri Lanka, particularly in police stations. There are reports of increasing involvement of the police in other crime.³⁹ According to the Defence Ministry, 50,000 Army deserters are responsible for the rise in crime in southern Sri Lanka, including contract killings.⁴⁰

17.1.2 In late June, the EU called on all parties in Sri Lanka to respect the principles of pluralism and human rights.⁴¹ The EU has had little success in its objectives as set out in the High Level Working Group Action Plan for Sri Lanka. EU governments have consistently failed to link human rights with economic and foreign policies but attempts have been made to link economic aid with refugee returns. The EU needs to ensure that Sri Lanka implements the recommendations of the UN Treaty Monitoring Bodies and international human rights agencies such as Amnesty International and Human Rights Watch.

17.1.3 The Sri Lankan government ministers have indicated that the Prevention of Terrorism Act, which facilitates human rights abuses, will not be amended or repealed. The government must be persuaded to repeal this draconian legislation or bring it in to line with internationally accepted standards.

17.2 Asylum

17.2.1 Despite the peace process in Sri Lanka, many people may still be in need of international protection. Britain must continue to examine asylum applications from Sri Lankans individually, while improving procedures for asylum determination. In asylum determination, proper weight must be given to

³⁸ Amnesty International Press Release - *Sri Lanka: Amnesty International proposes new approach to peace process*, 29 June 2002

³⁹ *The Sunday Times* (Sri Lankan newspaper), 16 June 2002

⁴⁰ *The Sunday Leader* (Sri Lankan newspaper), 16 June 2002

⁴¹ EU: Declaration by the Presidency on behalf of the European Union on the peace process in Sri Lanka, 26 June 2002 - <http://ue.eu.int/Newsroom>

concerns of international human rights agencies and the human rights elements of the Home Office Sri Lanka Country Assessments.

17.3 Refugee returns

- 17.3.1 International agencies, including UNHCR, say large-scale returns of refugees to Sri Lanka at this stage are injudicious. EU nations, including Britain should adhere to the fundamental principles underlying international law that holds that people returning home should do so in dignity and safety. There should be no large-scale returns until both parties to the conflict enter into an agreement that will guarantee the safety of the returnees and the actual situation in Sri Lanka is safe for returns.
- 17.3.2 Mass returns from host countries will have the additional impact of cutting off a major source of income from remittances and affect families and projects supported by asylum seekers and refugees.
- 17.3.3 Some Sri Lankans may wish to return. EU nations should look at offering a package of assisted voluntary returns to such persons.
- 17.3.4 If detention or return of asylum seekers is envisaged, EU nations must observe the 16 principles set out in the Refugee Council paper on refugee returns. (Annex III)

17.4 IDPs and infrastructure

- 17.4.1 There is evidence that large-scale unco-ordinated returns will be de-stabilising and damage the process of peace building and re-construction. It is clear that current structures cannot support the returnees.
- 17.4.2 EU governments must lay greater emphasis on adequate support for all IDPs and their re-settlement. Although the Sri Lankan government has restored food aid to IDPs suspended in December 2001, current indications are that dry rations may be provided only up to the end of July. IDPs must be assisted until they are resettled and also provided guidance and help to resume vocations and trades.

17.5 Peace process and civil society

- 17.5.1 The role of the international community in the Sri Lankan conflict is welcome. While playing a part in uniting the Sri Lankan government and the LTTE, EU governments must be involved in bringing the government and the opposition together for bi-partisan approach to the resolution of the conflict. This is a vital area which needs more attention, particularly in view of indications that political war between the two parties has already begun. In the last fifty years, the lack of cooperation between the two major parties has been the biggest stumbling block towards a solution.
- 17.5.2 EU nations must endeavour to ensure that practical measures are taken for good governance, transparency and the promotion of democratic institutions and provide more support to the re-establishment and promotion of civil society and local institutions destroyed in the conflict.

Annex I

Abbreviations

BRC	British Refugee Council
CTTA	Ceylon Tamil Teachers Association
EPDP	Eelam People's Democratic Party
EPRLF	Eelam People's Revolutionary Liberation Front
ER	Emergency regulations
EU	European Union
HDB	Humanitarian De-mining Bureau
HRC	Human Rights Commission
ICRC	International Committee of the Red Cross
IDP	Internally displaced people
IWG	International Working Group on Sri Lanka
JVP	People's Liberation Front (Janatha Vimukthi Peramuna)
LTTE	Liberation Tigers of Tamil Eelam
MOU	Memorandum of Understanding
MP	Member of Parliament
OFERR	Organisation for Eelam Refugees Rehabilitation
PA	People's Alliance
PSD	Presidential Security Division
PTA	Prevention of Terrorism Act
QRDF	Quick Reaction De-mining Force
SLMC	Sri Lanka Muslim Congress
SLMM	Sri Lanka Monitoring Mission
STF	Special Task Force (Police)
TNA	Tamil National Alliance
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNF	United National Front
UNP	United National Party
US	United States of America

Annex II

Refugee Council report titled *Sri Lanka: Human Rights and return of refugees*, December 2001

14. Refugee Council observations and conclusions

14.1 It is clear that the human rights situation in Sri Lanka has not improved despite the claims of some governments. It is also evident that EU nations cannot guarantee that asylum seekers could be returned to Sri Lanka in safety and dignity. The EU has had no success in its objectives as set out in the High Level Working Group Action Plan for Sri Lanka. EU governments have consistently failed to link human rights with economic and foreign policies. If there is to be any improvement in the situation, the EU needs to ensure that Sri Lanka makes some headway in implementing the recommendations of the UN Treaty Monitoring Bodies and international human rights agencies such as Amnesty International and Human Rights Watch.

14.2 In light of grave violations of human rights, particularly non-derogable rights such as freedom from torture and the right to life, EU nations should refrain from contributing to the escalation of the conflict. They should review arms supply to Sri Lanka, particularly dangerous weapons that have been the cause of international concern.

14.3 The objectives set out in the HLWG Action Plan are inter-linked and the EU nations must work harder to achieve important objectives and ensure an end to persecution. Special attention must be paid to the question of impunity, as pointed out by Amnesty International.⁴²

14.4 Attention must also be paid to draconian legislation that is in force for more than twenty years, which fall short of international standards. It is an appalling state of affairs that EU nations have been behind the introduction of the 1998 amendment to the Immigrants and Emigrants Act, which also falls below international standards. Sri Lanka must be persuaded to repeal these laws or bring them in line with international standards as urged by the UN Human Rights Committee.

14.5 The EU nations must endeavour to ensure that practical measures are taken for good governance, transparency and the promotion of democratic institutions and provide more support to the re-establishment and promotion of the civil society and local institutions destroyed in the conflict.

⁴² Amnesty International - *Sri Lanka: A human rights agenda for the new Prime Minister*, 18 December 2001 ASA 37/015/2001

14.6 It is difficult to imagine how refugees can be returned to a country during internal armed conflict, turmoil, grave violations of human rights and continuing persecution. If detention or return of asylum seekers is envisaged, EU nations must observe the 16 principles set out in the Refugee Council paper on refugee returns.

14.7 The war may not be brought to an end without greater international involvement. The election of a new government in December 2001, may provide an opportunity for a negotiated peace. The recommendation made by the Refugee Council in 1997 is still relevant not only to Britain but to other nations as well:

“Should the UK government wish to affect the numbers of applications from Sri Lankan nationals, it should put its resources into aiding the facilitation of a ceasefire and talks between the Sri Lankan government and the LTTE. The only way of ensuring that asylum applications will decrease is to end the civil war and human rights violations - the cause of flight for over half a million Tamil refugees.”⁴³

14.8 Concerns over movement are currently high on the international agenda and it is imperative that governments look at refugee situations holistically. In this light, the links between domestic refugee policy and international development are crucial. It is often the case that different departments of government follow incompatible agendas, in some instances even helping to exacerbate refugee-producing situations. The trend is for industrialised countries to seek to transfer responsibility of protection to developing nations. These need to be addressed, as those same countries are already hosting large number of refugees and many countries are crippled by debt payments, HIV/AIDS and terms of trade that do not enable them to diversify their economies.

14.9 The British government should give urgent consideration to establishing an independent body to produce country assessments, on the Canadian model. In the run-up to the 1999 legislation, there were many discussions between the Home Office and voluntary organisations with the view to establishing such a body. Unfortunately, no concrete proposals have been put forward by the government up to now.

⁴³ British Refugee Council - *Protection denied: Sri Lankan Tamils, the Home Office and the forgotten civil war*, February 1997

Annex III

Refugee Council Paper on *Returns Policy* February 2002

The Principles to be observed when considering detention or removal of asylum seekers

- 1 There must be an absolute commitment to *non-refoulement*
- 2 In addition to the above, nobody should be returned to situations of generalised violence.
- 3 The rights of any child must be paramount - the UK should end its derogation from the Convention on the Rights of the Child.
- 4 Removal should only be carried out where the individual has been through a full asylum and human rights procedure, which is case specific and includes consideration of all compelling and compassionate circumstances.
- 5 People have had access to a full decision making process, including suspensive rights of appeal, with the benefit of quality legal advice and representation and with adequate interpreting.
- 6 People should not be removed following long periods of residence and employment.
- 7 People should not be returned with long term mental health problems, who are pregnant or for whom long-term medical care is not available in the country of origin.
- 8 Arrest and detention should only be used as a last resort, for the shortest possible time and immediately prior to removal. All other options such as reporting arrangements should be used in preference.
- 9 Children should never be detained.
- 10 If the government does decide to detain children with their families, they should never be placed in cells or other confined areas. Facilities should be available for their care and protection.
- 11 The Government is aware of a number of countries with whom re-admission agreements have not proved possible. In such cases special rules should be enacted to ensure that detention does not take place.

- 12 The government should enact Part III of the 1999 Asylum and Immigration Act to ensure that detainees (including those pending removal) have a right to bail with a presumption of liberty. They should ensure that detainees have access to quality legal advice and interpretation so that access to bail will be meaningful.
- 13 Voluntary repatriation programmes should be pursued only in the context of durable, humane and cost effective solutions. They should always offer the opportunity to "try and see" with the option of return to the UK.
- 14 All removals should respect the rights of individuals and be carried out in dignity and safety. They should also ensure confidentiality to the individual concerned and not draw attention to the fact that they are a returning asylum seeker.
- 15 All removals should allow the person time to gather their effects and settle their affairs.
- 16 High profile attempts to remove significant numbers of people en masse are not appropriate strategies.