

Hotham Mission field trip to Sri Lanka

October 2006

Security, protection and humanitarian concerns and implications for Sri Lankan asylum seekers in Australia

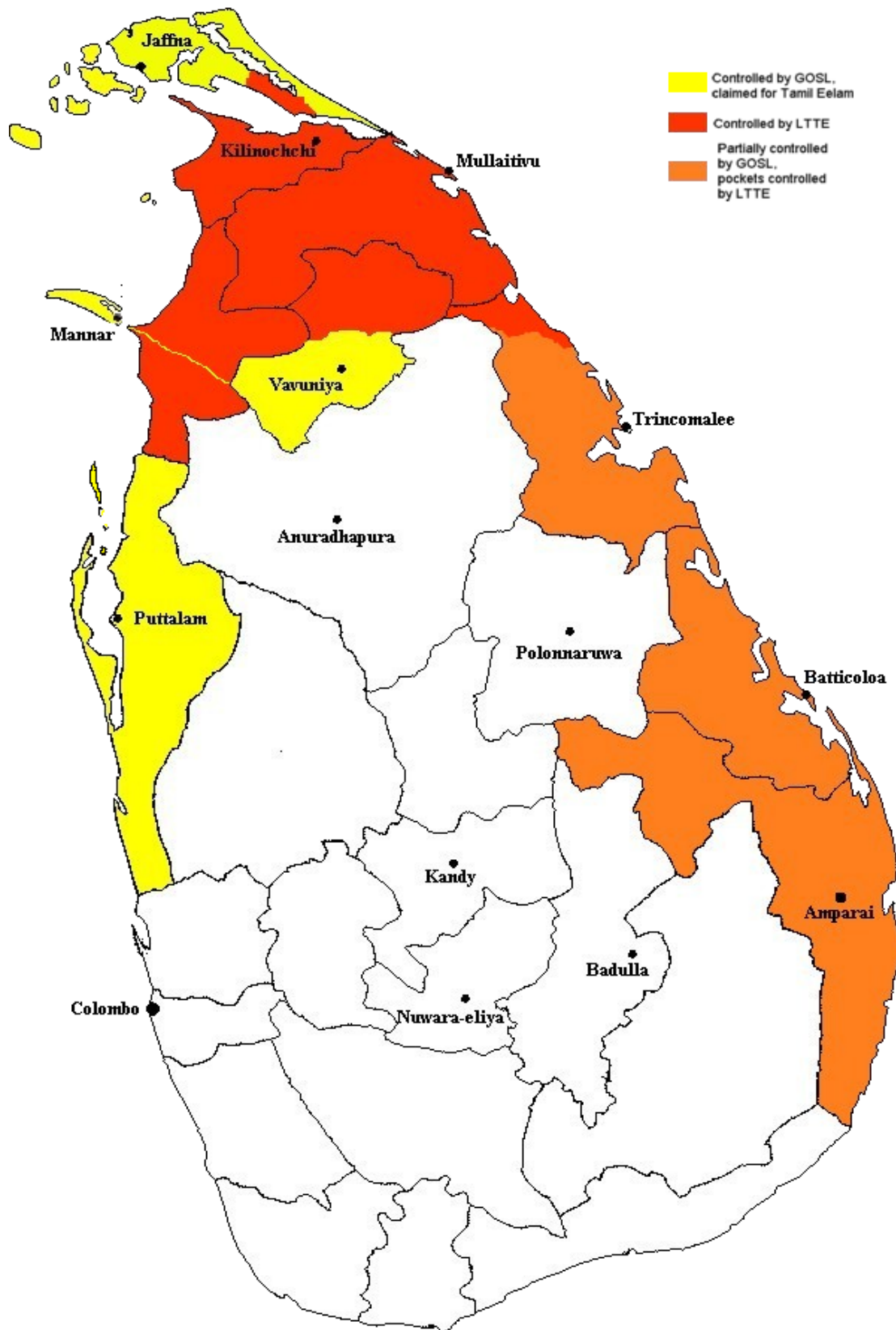


A Tamil boy from Trincomalee in the Anaikuttam Refugee Camp. Tamil Nadu, India.
One of the more than 16,000 newly arrived refugees from Sri Lanka since January 2006.
(Photo: Hotham Mission, October 11, 2006)

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Map of Sri Lanka



Source: Areas under control of LTTE in 2005 - http://en.wikipedia.org/wiki/Maps_of_Sri_Lanka

Key Findings

The situation in Sri Lanka

- Sri Lanka is again in a state of civil war. The ceasefire agreement signed in 2002 by the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) has effectively broken down, with extensive fighting evident, particularly since April 2006.
- The recent escalation of violence has included widespread conflict in the north and east and an increased number of terrorist attacks in various parts of the country, with the state of emergency continuing.
- There have been increased incidents of militia- and state-sanctioned torture, abduction, extrajudicial killings, rape, disappearances, and death of civilians.
- There is a high level of fear of persecution and violence, which has led to the witnesses of killings being forced into hiding, and to the flight of more than 16,000 refugees (Tamils and some Muslims) into India since the beginning of 2006.
- The closure of all routes into and out of the north of Sri Lanka has had a devastating protection and humanitarian impact of the civilian population in that region.
- There has been a general removal of civil rights from much of the population in Colombo and elsewhere since August this year relating to the ongoing state of emergency, including constant checkpoints, household registration requirements, raids and in some cases forced relocation by the state.
- A lack of protection exists for Tamils throughout the country who are experiencing persecution based on their ethnicity.

Implications for Sri Lankan asylum seekers in Australia

- Asylum seekers returning to Sri Lanka face significant risks and concerns. There are reports of returned asylum seekers and refugees going into hiding after receiving death threats, being arrested on arrival, and reported deaths both in police custody and by the army.
- There are serious protection concerns for particular individuals with a history of arrest or perceived past affiliations with the LTTE or certain political groups or individuals.
- The protection needs of Tamils are extremely high, with no ability to reside even in the comparatively safer areas such as Colombo and Kandy, due to the risks of harassment and persecution.
- There are significant concerns that directly affect the safety of all refused asylum seekers being returned to Sri Lanka at present, including the risk of human rights violations routinely occurring on innocent civilians throughout the country.
- There are also fundamental welfare issues such as access to housing, healthcare, food, services, and education, connected risks of internal displacement, and particular concerns regarding children, women, the elderly, and those with physical and mental health problems.
- In light of the clear deterioration of the situation in Sri Lanka and recently drafted recommendations of the UNHCR Regional Office in Colombo, Hotham Mission urge the Australian Government to reconsider Sri Lankan asylum seeker cases.
- We recommend that removals to Sri Lanka be suspended at this time due to the current state of emergency, as reflected in DFAT travel advice.
- We further recommend that, if there is improvement to the current state of emergency in Sri Lanka in the future and clients are assessed as not having protection or humanitarian intervention needs, that appropriate repatriation support mechanisms are put in place for individuals returning.

Executive Summary

Research Background:

Hotham Mission's Asylum Seeker Project (ASP) has a long history working with Sri Lankan asylum seekers, currently working with more than 100 Sri Lankans, making up more than 30% of total clients. The Mission works with a diverse mix of Tamils, Sinhalese, Muslims and Burghers from across the country, including the north and east, of Muslim, Buddhist, Christian and Hindu backgrounds.

Hotham Mission has conducted considerable research into the humanitarian and protection needs of this group, noting the vulnerabilities of many who have been long-term dependent on charity following restrictions under the current Bridging Visa regime, including women, elderly and children with health and welfare concerns and who have been in Australia up to 10 years or more.¹ Concerns for this group have however grown significantly following reports of the breakdown of the 2002 ceasefire agreement, the increase in general conflict and violence, targeted human rights violations and an escalating humanitarian crisis. This is of particular concern given that a sizeable number of asylum seekers in Australia, including a number of Hotham Mission clients, face possible return to precarious circumstances in Sri Lanka.

Following these concerns, Hotham Mission conducted a field trip to Sri Lanka and refugee camps in Tamil Nadu, India in October 2006, which aimed to evidence and prepare a report for community and government on regional and situational concerns facing returnees on specific issues related to:

- Protection and security
- Governance and the peace process
- Welfare and Humanitarian concerns
- Return and Repatriation

Hotham Mission consulted with more than 50 organisations and individuals in Australia on the scope and methods for the research, and met with 35 groups over the course of the field trip, including the Norwegian monitors, international non government organisations, medical practitioners, lawyers, human rights and welfare groups, as well as internally displaced people and refugees affected by the conflict. The field trip was hosted by the National Christian Council of Sri Lanka (NCCSL) and funded by the Lonely Planet Foundation.

Findings and conclusions

Hotham Mission's concerns for the security in the region were confirmed, particularly:

- The breakdown of the ceasefire agreement and general rule of law and escalation of violence, including increased incidents of militia and state sanctioned torture, abduction, extrajudicial killings, rape and disappearances.
- Extensive fighting in the north and east over State and Liberation Tigers of Tamil Eelam (LTTE) controlled areas, leading to death of civilians, and increased number of terrorist attacks in various parts of the country.
- The devastating impact of the closure of all routes into and out of the north of Sri Lanka on the local population.
- The general removal of civil rights of much of the population in Colombo and elsewhere since August this year, including the ongoing state of emergency, constant checkpoints, household registration requirements, raids and in some cases forced relocation by the state.
- A lack of protection exists for Tamils throughout the country who are experiencing persecution based on their ethnicity.

¹ Briefing Papers- Hotham Mission's work with tsunami affected Sri Lankan asylum seekers, and Bridging Visa Review Submission March 2006.

Lack of state protection and implications for asylum seekers

The Norwegian and Icelandic Government monitors, the Sri Lankan Monitoring Mission (SLMM), and the United Nations High Commission for Refugees (UNHCR), as well as all other groups we met, outlined a range of serious protection concerns that directly affect the safety of refused asylum seekers being returned at this time, including the high likelihood of targeting of individuals with certain past affiliations or histories of arrest, the lack of effective state protection, particularly for Tamils, as well as a large range of human rights and humanitarian concerns affecting return. A lack of protection exists for Tamils throughout the country who are experiencing persecution based on their ethnicity. The SLMM clearly stated, *'There are absolute protection needs. People are trying to get out, not in.'*

This has been noted in the high number of Tamils and some Muslims fleeing the country into India, now reaching more than 16,000 since the beginning of 2006. All groups interviewed stated the protection needs of Tamils are extremely high, with no ability to live in the safer areas of Colombo, Kandy or elsewhere, highlighted throughout the paper. As one human rights worker stated, *'If people can live in Colombo, why are they crossing the border into India, travelling through hostile terrain and risking their lives on a boat to live in restricted camp environments?'*

The Hotham Mission team met the sole witnesses to the aftermath of the massacre of the local staff of French NGO (Action Contre la Faim- ACF) in August and the Trincomalee extrajudicial killings of 5 Tamil youths in January. These witnesses were in hiding, with both the SLMM and UNHCR indicating that there was no effective protection available to them in Sri Lanka at this time.

The risk to returnees was noted in four cases disclosed to Hotham Mission. In the first, it was found that a recently refused Tamil asylum seeker, returning from the UK, died in custody in September following arrest at the airport. In the second, a refugee Tamil family were killed by the army following their return from India to Mannar. The Mission also met with a number of refused asylum seekers returned from Australia. One Sinhalese man was in hiding after receiving death threats, while a Muslim returnee stated he was detained on arrival under suspicion as he was removed from Australia using an emergency Sri Lankan passport.

While the Mission found specific protection concerns for the Tamil population, protection implications for other groups were also noted, which we believe add to the broader humanitarian concerns facing returnees at this time. This includes regional and welfare concerns relating to access to healthcare, food, services, education and connected risks of internal displacement and concerns regarding children, women and the elderly.

Recent developments

Since the Mission's return to Australia, the situation in Sri Lanka has continued to be marred with ongoing and escalating violence. Of major concern are a number of incidents, which have cost hundreds of lives including an LTTE suicide attack on a bus convoy in Habarana on October 16 2006, which killed at least 94 and wounded more than 100.² A further attack on a navy base in Galle killed at least one sailor and injured 11 more. A number of LTTE cadres were also killed. At least 50 people have died and over 100 have been injured after an attack on a camp for internally displaced people in Petticoat, Eastern Sri Lanka, and ceasefire monitors have also reported almost being fired upon by government forces. Fierce fighting is ongoing in the north and east and in Jaffna people are continuing to survive on minimal supplies, as the A9 highway remains closed to the rest of the country. Political killings such as that of Tamil National Alliance (TNA) Jaffna District parliamentarian Mr. Nadarajah Raviraj on 9 November 2006 continue unabated.³

² *Daily Mirror*, pg. 1, 17 October 2006

³ Amnesty International Press Release AI Index ASA 37/032/2006, sourced on 9 November 2006 at <http://www.amnestyusa.org/news/document.do?id=ENGASA370322006>

The peace talks (which took place in Geneva, Switzerland, 28-29 October 2006) between the Government of Sri Lanka (GoSL) and the LTTE broke down with the GoSL clearly stating it refused to open the A9 as the LTTE had requested. Australia's Department of Foreign Affairs & Trade (DFAT) has now placed Sri Lanka on its 'Reconsider' and 'Do not travel' lists. A number of NGO's are reluctant to remain in the country, particularly in the north and east, given the danger involved.

Recommendations

Hotham Mission is deeply concerned about the impact of the breakdown of the ceasefire agreement, the rule of law and the escalation of the conflict and human rights violations on innocent civilians throughout the country. In line with current DFAT travel advice, there has been a clear change in country circumstances since mid 2006, which we believe has direct implications on the safety and wellbeing of people facing return to Sri Lanka.

While Hotham Mission's Asylum Seeker Project has in its 9-year history only raised a small number of humanitarian requests in relation to our broader caseload, we believe the situation in Sri Lanka has deteriorated to the point that it warrants an urgent 48b or subsequent 417 consideration by the Minister of Immigration of the entire Sri Lankan caseload.

Hotham Mission thus strongly endorses the recommendations drafted by UNHCR Colombo in October 2006 in relation to Sri Lankan refused asylum seekers and the determination process:

- 1) Any asylum seeker with a fear of persecution from either the LTTE or GoSL should be reconsidered under the 1951 Convention.
- 2) That states should favourably consider under the 1951 Geneva Convention the refugee claims of Tamils from the North and East
- 3) That there should be a stay on removals of Tamils refused from the North and the East
- 4) That there are other groups for whom the situation is more complicated, and who may require complementary protection due to the current situation, and others with humanitarian considerations.

In addition, Hotham Mission strongly recommends the Australian Government ensure the following:

- 5) Assisted or forced removals not be used due to the current state of emergency, and that emergency passports or one-way travel documents should not be used for return purposes, due to the high likelihood of arrest and interrogation on arrival
- 6) If there is improvement to the current state of emergency in Sri Lanka in the future and clients are assessed as not having protection or humanitarian intervention needs, repatriation support mechanisms be made available through the International Organisation for Migration to minimize the likelihood of internal displacement and reintegration concerns.

Given further breakdowns in the peace process since our return and in line with most international observers, Hotham Mission does not see a short or mid-term solution to the current conflict. In light of this, we urge the Australian Government to provide a permanent solution to this caseload, particularly given the length of time and pressing humanitarian issues for many. We note that Australia is currently funding and supporting victims of the recent conflict through a range of AusAid programs, such as recently fled refugees in India and internally displaced person's (IDP) in Sri Lanka. We therefore request that the Australian Government equally assists those Sri Lankans seeking protection in Australia at this time.

Hotham Mission hopes this research may provide important further background information on the humanitarian and protection needs of vulnerable Sri Lankan cases approaching the Minister of Immigration under Section 417 or 48(b) of the Migration Act. We urge the Minister's full consideration of these concerns given the possible ramifications for returnees at this time.

1. Research Background

Hotham Mission's Asylum Seeker Project has since 1997 provided a comprehensive range of supports for people seeking Australia's protection who have been denied the right to work, Medicare and welfare benefits. These supports include housing, casework, advocacy, financial assistance and support programs. The Mission has been commended for its consistently high standard of programs and services both nationally and internationally, and works closely with the Department of Immigration (DIMA), both on case and policy issues.

Sri Lankan asylum seekers

The Mission has a long history working with Sri Lankan asylum seekers of diverse backgrounds, including Tamils, Sinhalese, Muslims, Burghers and other minorities from across the country, of Muslim, Buddhist, Christian and Hindu backgrounds. Currently the Mission works with more than 100 Sri Lankan clients, making up more than 30% of total clients. Hotham Mission is in contact with a larger number of Sri Lankan asylum seekers who are not formally clients of the project, as the Mission works only with asylum seekers that have no other source of income support, including family members or close relatives. We are aware that the number of Sri Lankan asylum seekers in Australia constitutes one of the largest in Australia, both in the community and detention environments.

Hotham Mission's initial concern for this group stemmed primarily from the presenting welfare needs of the group over many years, including families initially in Australia on the 435 Temporary Humanitarian Visa from as early as 1995, with some having been without any source of income or healthcare provision since as early as 1999. Hotham Mission has conducted considerable research into the humanitarian and protection needs of this group, noting the vulnerabilities of many who have been long-term dependant on charity following restrictions under the current Bridging visa regime, including women, elderly and children with health and welfare concerns who have been in Australia up to 10 years or more. The research clearly outlined the impact of long-term poverty and destitution, such as homelessness, health and welfare, as well as the impact on client's immigration outcomes.⁴

Sri Lankan asylum seekers and judicial appeal

Hotham Mission does note that large numbers of Sri Lankans have entered high court class actions and other judicial avenues, thereby prolonging the length of their cases for some years. However, the Mission is of the firm opinion, having followed our clients' claims, that in many instances there were legitimate reasons to do so. In particular:

- Clients not properly represented when first arriving in Australia, thus needing to rectify mistakes made by migration agents
- Evidence and further information about their case available after the primary and secondary decision
- The lack of a complementary protection system and lack of confidence and transparency in the Section 417 process
- The constantly changing security situation in various parts of Sri Lanka over the past 15 years and concerns that change of country information may not have been taken into account
- To address the attacks on the credibility on the client's claim by the RRT, where in some cases client trauma has impacted on the ability to give a clear account.

RRT and credibility issues

Hotham Mission has worked with a number of Sri Lankans, including women, who, following experiences of torture, rape or prolonged interrogation and detention, have suffered Post Traumatic Stress Disorder (PTSD) and other mental health conditions. This has affected their

⁴ Briefing Papers- Hotham Mission's work with tsunami affected Sri Lankan asylum seekers, and Bridging Visa Review Submission March 2006.

ability to disclose or recall events in a clear chronological order, which in turn has affected the perceived credibility of the claimant.

In research conducted into Sri Lankan sufferers of conflict-based Post Traumatic Stress Disorder, Dr Ruwan M. Jayatunge found,

'Most of the patients who suffer from PTSD have memory impairments....The hippocampus is important in learning and memory... The autopsy reports of PTSD sufferers reveal that shrinking of the hippocampus is evident. This indicates that memory function impairs due to organic changes. Motivational forgetting also cannot be excluded in PTSD. Repression or motivational forgetting is a process of forgetting something that is anxiety arousing'.⁵

Hotham Mission has been disturbed at the number of survivors of torture and trauma that have presented to the agency after a number of years, unaware of the Asylum Seeker Assistance Scheme (ASAS) program or trauma counselling services, such as the Victorian Foundation for Survivors of Torture (VFST). Clients were often not informed of these services and were left to their own devices in the community, not having Medicare and not having received any counselling or other support. In many cases these individuals have not coped with their previous experiences, affecting their health and wellbeing, their family environment, and also their ability to disclose their claim.⁶ In some cases, discredited Sri Lankan clients have had their case re-examined and subsequently been approved, either through a s48b request or the case being remitted to the RRT through judicial means. However many clients in this situation remain in the judicial or s417 process with no redress of the discrediting of their case.

Many Sri Lankan asylum seeker clients have reported that despite being through prolonged determination processes and mindful of their overuse of the judicial system, they have done so out of the anxiety felt regarding return to an unstable Sri Lanka, and not for economic or other means. Many have stated that they had not felt their entire case has been heard, their disappointment in how their migration agents have presented the case, and the devastating impact of not just being disbelieved but also discredited. Hotham Mission is pleased however with the recently drafted RRT Credibility Guidelines, which we hope will assist members in their complex decision-making responsibilities.

Refolement, return and repatriation issues

Hotham Mission believes there are clear governmental responsibilities in relation to non-refoulement and protection obligations to persons at risk seeking Australia's refugee or non-refugee protection. In this regard, if any question at all remains about a person's claim we believe a reconsideration under Section 417 or 48(b) of the Migration Act is warranted.

In addition, we believe the government has a humanitarian responsibility for refused asylum seekers facing return in relation to appropriate repatriation assistance for vulnerable returnees. Hotham Mission has noted for some years our concern that asylum seekers on a Bridging Visa E have been left in vulnerable welfare situations affecting their ability to cope with and make preparations for departure from Australia. This has been particularly noted in the Sri Lankan community where due to the complex civil war history many clients have chosen not to have contact with their local community. As a result issues of isolation and limited supports, are highly prevalent for the majority of Hotham Mission clients who have few family members in Australia. In addition, the repatriation needs of the Sri Lankan caseload increased dramatically following the Boxing Day tsunami of 2004, which devastated much of the east and southern coastline. Following a survey of our clients, more than 78% were affected through loss of family members, property or internal displacement affecting

⁵ Dr Ruwan M. Jayatunge, 'Sri Lankan Experience of PTSD', 1994, Page 58.

⁶ Hotham Mission, Bridging Visa Review Submission March 2006.

their family or access to good and services.⁷ Hotham Mission has proposed that refused asylum seekers require funded repatriation and reintegration assistance, similar to that provided by the European Union through the International Organisation for Migration (IOM) to Sri Lankan returnees.

Current protection and humanitarian concerns

Concerns for the Sri Lankan caseload have grown significantly in the past 12 months following reports of the breakdown of the 2002 ceasefire agreement, the increase in general conflict and violence, targeted human rights violations and escalating humanitarian crisis. This is of particular concern given that a sizeable number of asylum seekers in Australia, including a number of Hotham Mission clients, face possible return to precarious circumstances in Sri Lanka.

Following these concerns, Hotham Mission conducted a field trip to Sri Lanka and refugee camps in Tamil Nadu, India in October 2006, which aimed to evidence and prepare a report on specific issues related to:

- Protection and Security
- Governance and the Peace process
- Humanitarian and Welfare concerns
- Return and Repatriation

The two key objectives for the field trip conducted by the Mission was:

- 1) Evidence and prepare a report for community and government on regional and situational concerns facing returnees
- 2) Explore the repatriation needs of returnees to Sri Lanka at this time

2. Research Methodology

Research Scope and Design

Hotham Mission consulted with more than 30 organisations for assistance with research scope, methods, consent, objectives and working through challenges and limitations (See Appendix 2). We received overwhelmingly positive feedback from a range of groups and individuals, and advice on refining and developing the research framework. In particular, Catherine Joyce, Dave Corlett and Robyn Sampson have been instrumental in assisting the team to develop the research framework.

The Mission worked very hard to carefully manage client expectation through our client communiqué and casework intervention, however we aimed to balance this with clear client engagement and consultation. More than 25 clients responded with suggestions and ideas, and all were positive about the research, if somewhat hesitant about our safety.

Method:

The research conducted is qualitative, focusing on key informant sampling, where individuals who possess special knowledge and who were willing to share their knowledge were engaged using thematically structured questions (i.e. interviews which follow a thematic topic list), as well as unstructured observation (taking on the role of an observer). Questions were drawn from an analysis of the key areas of concern, both protection and humanitarian, regarding the non-identifiable claims of more than 30 Sri Lankan asylum seekers.

The intention was not for returned asylum seekers to be interviewed, instead, recently fled Tamils in refugee camps in Tamil Nadu, thus in relative safety, were interviewed. The Mission did however meet with 14 former clients, returned asylum seekers, over the course of the

⁷ Hotham Mission's work with tsunami affected Sri Lankan asylum seekers; BV Review Submission March 2006.

field trip in neutral locations. A number of IDP's were also interviewed in Sri Lanka as deemed appropriate.

It was also not the intention for political or government groups to be interviewed. Instead their positions on a range of issues were taken from their 'official' statements and policies, issued regularly on their website or in the media. The goal instead was to interview established, well known and respected groups, ideally non-partisan, including:

- International organisations
- Health/welfare groups and workers
- Human Rights groups and workers
- IDP meetings (Tamils, Muslims, other groups)
- General meetings (churches, community groups etc)

Tertiary information, (literary, research, reports, website 'statements') was acquired wherever possible to compare, further evidence or check discrepancies.

Information was written in note form, and typed up later. Interviews were not recorded given the sensitive nature of the interview material and concerns for confidentiality. The full list of interview questions was not taken into Sri Lanka following advice given. An abbreviated form of questions was developed for our own understanding instead. Given the security sensitivities in Sri Lanka, we envisaged most interviewees would choose to be anonymous, however only a small number requested this. Hotham Mission will keep a record of the interviewee details in our files, this information will not be made public. In other cases, we have listed all consented interviewed groups in the back of the research document. We have not listed individual names and not attributed individual names to quotes.

Consent

Given the practicalities of on-the-ground research in South Asia, informed consent consisted of all persons interviewed being given a verbal outline of the project, the key objectives and target audience, with the clear option of being anonymous or for their organisation name to be listed only. A written outline of the research was available for those requesting it. We took the advice of our hosts and interviewees in relation to where to meet, who attends each meeting and were sensitive to the types of questions raised.

Limitations

There is no professionally accredited interpreting body in Sri Lanka. Instead we relied on interpreters provided to us by our hosts. Where possible we requested interpreters with experience, with appropriate consideration for gender, age, religion, ethnicity and confidentiality.

Given the polarised, divided nature of Sri Lanka along ethnic, political, religious, ideological, class and caste lines, there was a high likelihood of conflicting information being provided. The team aimed thus to wherever possible focus on receiving 'factual' information, either based on empirical or first hand experience of the individuals interviewed. We avoided 'attitudinal' responses where possible, thus ensuring questions were more along the lines of, 'what has been your experience in relation to', or 'what evidence are you aware of in relation to', rather than 'what do you think about...'. A clear limit of the research however is that it is almost impossible in Sri Lanka to find individuals completely non-partisan or non-subjective in their responses to the current situation in Sri Lanka, apart from possibly international organisations.

We note that our host for this visit is a Sinhalese church community leader representing the NCCSL. We note however that the National Christian Council of Sri Lanka is a very well respected organisation, known for its interfaith and interethnic dialogue and practice and non-partisan stance throughout its work in Sri Lanka.

Although the motive for the research was clearly due to concern for existing Hotham Mission Sri Lankan clients and the perceived return issues facing many of this group, the Mission has aimed to present an open and honest research document that states information as discovered. We have aimed to convey a clear account of information discovered that is clearly evidenced through documented interviews or literary material acquired. Where conflicting evidence is given we have aimed, where possible, to establish correlating or corroborating evidence. While conflicting information provided by multiple sources may be inconclusive, we have aimed to convey the conflicting information to demonstrate the nuances in the current situation in Sri Lanka.

Interview Sample and Data Sources

The findings of the report refer to the information obtained by Hotham Mission through either first hand observation or information obtained through key informant sampling using the thematic questions developed. These questions related to the security, protection and humanitarian concerns for civilians in Sri Lanka and the risks presenting for people facing return to various parts of the country at this time.

Most individuals interviewed were well known and respected direct practitioners, with first hand knowledge or experience of the conflict and human rights violations, including:

- Sri Lankan Monitoring Mission (Norwegian and Icelandic Governments)
- Human Rights Commission and the Commission for Inquiry into Human Rights (Sri Lankan Government appointed human rights bodies)
- International NGOs (Including UNHCR, ICRC, IOM, World Vision, Action Contre Lafaim (ACF), Canadian International Development Agency(CIDA))
- Human rights and welfare groups (Sri Lankan NGOs and religious groups)
Medical practitioners, lawyers, former policeman, clergy, torture counsellors.⁸

Further empirical data was collected through field visits to the militarised zones, conflict and tsunami affected areas and internal displacement camps in the east of the island and refugee camps in Tamil Nadu, where the team met with more than 60 recently fled refugees in individual meetings and workshops run by our local hosts.

Initial observations

Hotham Mission noted throughout the course of the fieldtrip a surprisingly high degree of consistency in responses from non-connected sources related to experiences of human rights violations and impact of the recent conflict. Almost all 'findings' referred to in this document are denoted to responses from multiple sources, in many cases first hand experience or observation. Where there was inconsistency or discrepancy in response, this has been noted. The research findings have then been integrated into the document and conclusions drawn.

We noted a high degree of self-censorship throughout the country in a range of settings, including within the family unit, place of worship and work. The conflict, political issues and other human rights concerns are not discussed openly in Sri Lankan society due to the high level of fear and mistrust across the various sections of society; ethnic, political, religion, class, caste or affiliation. This situation was markedly different for conflict -affected refugees in India, where disclosure amongst peers was more common, indicating the relative safety of the individuals. In both of these environments we noted a higher degree of willingness to discuss and disclose experiences and concerns with foreigners, particularly where meetings, questions and security concerns were dealt with sensitively.

⁸ See Appendix 1 for full list

3. Background to Sri Lanka

3.1 Background to the conflict

Sri Lanka's history is one of unresolved nationalism and ethnic rivalry dating back to the nineteenth century and the time of British rule. These divisions became even more apparent when competition for power, resources and identity surfaced and in the implementation of discriminatory policies. Some of these policies were introduced whilst Sri Lanka was under the British, other policies were introduced when independence occurred and many favoured the ethnic majority. It was these feelings of ethnic inequality, which became the root of a protracted conflict lasting from the 1970's until the present day and ethnic division has also come to dominate Sri Lankan politics.

Ethnic tension became starkly obvious as a dangerous factor underlying Sri Lankan society when in May 1983 serious communal unrest erupted in Colombo. Tamil civilians were indiscriminately targeted and many fled to northern Sri Lanka from the capital. A state of emergency was declared and this was routinely extended in order to contend with a mounting security threat posed by Tamil guerrillas fighting for a separate Tamil state (Eelam) in the north and east of the island.

By 1987, militant Tamil groups, the most important of which is the Liberation Tigers of Tamil Eelam (LTTE or Tamil Tigers), had brought the Sri Lankan armed forces to a standstill costing thousands of lives, many of them innocent civilians. The use of child soldiers by the LTTE was also well documented and continues to be an issue, as are kidnapping, disappearances and political killings. During May Day celebrations in 1993 a suicide bomber killed the Sri Lankan President, President Premadasa. Fighting continued throughout the late nineties with many atrocities occurring from both warring sides including the government of Sri Lanka.

In total the civil war left approximately 347,475 persons displaced (some NGOs quote this figure as much higher, even close to a million) and approximately 64,000 people dead. As a result of Sri Lanka's 20-year war there is a lack of adequate health services, accommodation, livelihoods and infrastructure in many parts of the country. Between 600,000 and one million land mines (marked and unmarked) remain scattered across conflict areas.

3.2 Background to the signing of the 2002 ceasefire

In 2001, the GoSL and the LTTE announced separate unilateral ceasefires and in 2002, following Norwegian led negotiations between the GoSL and the LTTE, the parties came together to sign a formal but fragile Ceasefire Accord. The Accord outlined a series of regulations to which each party had agreed upon, including that neither would take offensive action against the other. The objective was to find a negotiated solution to the ongoing ethnic conflict in Sri Lanka that had already claimed so many lives.⁹

The Sri Lankan Monitoring Mission was also introduced, led by five Scandinavian countries. SLMM was given a mandate to investigate all reports of breaches against the ceasefire agreement and to make recommendations. The Monitoring Mission has no mandate however to enforce these recommendations. It is still maintained by all parties that the Ceasefire Agreement remains in place even though the country is experiencing violence amounting to ceasefire violations on a daily basis.

3.3 Security, human rights and humanitarian situation since ceasefire agreement (2002-2006)

Since the Ceasefire Agreement was signed in 2002 and before the recent re-emergence of full-scale conflict, a silent war has been waged in Sri Lanka. The Ceasefire has been in place

⁹ BBC News, Text of Sri Lanka truce deal, Friday 22 February 2002, accessed on 12 November 2006 at http://news.bbc.co.uk/1/hi/world/south_asia/1836198.stm

for four years yet peace has not been forthcoming. In March 2003, less than a year after the Ceasefire Accord had been signed 120 LTTE cadres and civilians died in faction fighting when the eastern military LTTE leader Colonel Karuna split from the northern Vanni LTTE. Other sporadic fighting occurred during this time between the GoSL and rebels.

Current and former anti-LTTE Tamil political parties have been targeted by the LTTE for revenge killings¹⁰ and other killings of a political nature have frequently taken place in Sri Lanka. More than 200 people, mostly Tamils have been killed for political reasons. According to the Asian Human Rights Commission (AHRC), an average of one person was shot dead by police every ten days in the first 70 days of 2004. All victims were civilians and the situations were not life-threatening to take such drastic action.¹¹ The rate of violent attacks escalated since April 2005, with credible reports estimating the rate of killings at one a day by June 2005.¹²

The LTTE has continued to commit serious human rights abuses, and has been responsible for politically motivated killings, torture, harassment, abduction, disappearances, extortion and detention. The assassination of Sri Lanka's Foreign Minister, the Hon. Lakshman Kadirgamar in mid 2005, also allegedly by LTTE cadres, led to a State of Emergency being implemented in mid-August 2005. This is still in place. A State of Emergency allows authorities, among other things, greater powers of arrest, to detain prisoners for long periods and to conduct searches. In the past this has also meant the indiscriminate arrest of groups of Tamils. In mid 2005 the Tamil Tigers also spoke of the possibility of returning to war if the GoSL did not do more to uphold the Ceasefire Agreement.

The Government, as well as the LTTE has committed atrocities in Sri Lanka, therefore violating the ceasefire agreement. Torture in police custody has been widely reported.¹³ The Asian Legal Resource Centre (ALRC) writes that 'torture in police stations in the island continues to be endemic.'¹⁴ Jehan Perera of the National Peace Council in Sri Lanka stated in 2005 that 'the intolerable three and a half years of blatant ceasefire violations, including killings, abductions, child recruitment and restrictions on civil society activities must be ended if the Norwegian-facilitated peace process is to have the meaning it is meant to have.' Many aid workers and NGO's have left Sri Lanka given the escalating violence. In short, evidence shows that the Ceasefire has done little to stem the conflict in Sri Lanka with violence continuing.

In addition to the ongoing conflict in Sri Lanka another major humanitarian concern is the impact of the 2004 Boxing Day tsunami which killed approximately 38,000 people, injured 15,500, left over 6,300 people missing and 443, 000 displaced.¹⁵ Overall damage to Sri Lanka was estimated at approximately \$1 billion by the Asian Development Bank. Huge numbers of houses were destroyed as a result of the tsunami as well as infrastructure, roads, buildings and schools. Flooding caused by the tsunami has moved land mines leftover from the civil war, creating a dangerous environment in which civilians must live. The United Nations (UN) Secretary General Kofi Annan said, after visiting southern coastal areas of Sri Lanka in January 2005, that it could take as much as ten years to fully restore the housing, infrastructure and support needed to resume normal life. Foreign aid in response to the tsunami has still not reached those who need it most and people remain deeply traumatized psychologically by this event. The concern is that people who are already suffering the affect

¹⁰ Accessed on 13 September, 2005 from the US Department of State, *Sri Lanka Country report 2004*, at <http://www.state.gov/q/drl/rls/hrrpt/2004/41744.htm>

¹¹ Accessed on 13 September, 2005 from *Sri Lanka Monitor* January-March 2004, British Refugee Council, at <http://www.brcslproject.gn.apc.org/slmonitor/JanMar04/threat.html>

¹² Accessed on 12 September, 2005 from Human Rights Watch, at <http://www.hrw.org>

¹³ Accessed on 12 September 2005 at Amnesty International *Sri Lanka Country Report 2004*, at <http://www.amnesty.org/>

¹⁴ Accessed on 9 September, 2005 at <http://brcslproject.gn.apc.org/slmonitor/JanMar04/threat.html>

¹⁵ According to the Asia Development Bank (ADB), last updated 24 June 2005 at http://www.asiadevbank.org/media/Articles/2005/6619_tsunami_impact_Sri_Lanka/

of a protracted conflict and the impact of the tsunami will now also struggle to cope with a return to war. In addition to this the Asian Human Rights Commission (AHRC) has stated,

'The entire country has been deeply transformed by this conflict. All law enforcement agencies have collapsed throughout the country making it one of the most dangerous lands to live in, or to invest in. Throughout the country the Sri Lankan police have proven to be an internally degenerated institution that the people have lost their confidence in. Assassinations have become something quite normal and threats of assassination are used in every form of social transaction...'¹⁶

In 2006 the situation in Sri Lanka has reached new levels. Political killings and tit-for-tat violence erupted over a series of months with a number of incidents bringing this violence to the forefront. On 25 April 2006 a suicide bomber killed 8 people in a carefully planned attack on Colombo's heavily guarded military headquarters in Colombo. The Sri Lankan military retaliated with air raids of targets in the LTTE controlled Sampur area near Trincomalee. At least 11 people were killed as a result of these attacks.

In June at least 64 people were killed in a landmine attack on a packed civilian bus near Anuradhapura in the north of the country. Since this time there has been ongoing fighting around Trincomalee and in the north and east, particularly around the Jaffna peninsula. Heavy fighting broke out in Muttur and the surrounding north-eastern district of Trincomalee in July after the Sri Lanka government accused the LTTE of blocking a key waterway.

On the 8 August a car bomb attack on S. Sivathasan, a senior member of the Eelam People's Democratic Party (EPDP) and former Member of Parliament, killed the politician's bodyguard and a three year old child who happened to be standing near the roadside. S.Sivathasan and five other civilians were injured in the blast.

On the 12 August Deputy Secretary General of the Secretariat for Coordinating the Peace Process (SCOPP) and former director of the Colombo-based Centre for Policy Alternatives, Mr Kethesh Loganathan was assassinated, assumedly by LTTE cadres. Two days later, on August 14 an air raid allegedly killed 61 Tamil girls in the rebel stronghold Mullaitivu. At the time the government said it had proof that the site was a rebel base, although rebels said the victims were schoolgirls undergoing first aid training.¹⁷ In mid August LTTE members also targeted Pakistan's outgoing High Commissioner Colonel Bashir Wali Mohmand however the assassination was unsuccessful. A number of security personnel were killed in the foiled assassination attempt.

While many of these ceasefire violations were occurring negotiators were trying to bring the GoSL and the LTTE back to the negotiating table. Further talks in 2003 were suspended and since that time, there have been many violations and both sides have failed to come together. In August 2005 there were renewed hopes after the assassination of the Sri Lankan Foreign Minister that both parties would come to talks however this was once again stalled. The latest negotiations were held in Geneva in late October, however the talks were unsuccessful and failed to achieve any resolution for the conflict.

The violence, which has spread and escalated throughout Sri Lanka since early 2006 is essentially two pronged. The conflict remains as a result of disputed territory but also is based on human rights violations such as the killing in April 2006 of five young men in Trincomalee and the 17 NGO workers who were apparently massacred by government forces as the SLMM has concurred in Muttur.

¹⁶ Accessed from the Asian Human Rights Commission (AS 190 2006), "The ongoing carnage that no-one seems to worry about." dated August 14 2006, sourced from <http://www.ahrchk.net/statements/mainfile.php/2006statements/687/>

¹⁷ Rebel: Sri Lanka Army Kills 45 Civilians (AP), Colombo, Sri Lanka, Nov.8 2006, sourced from CBS News at <http://www.cbsnews.com/stories/2006/11/08/world/printable2162120.shtml>

In the following pages Hotham Mission hopes to outline our findings from our recent Fieldtrip which evidences the persecution and violence which continues to occur in Sri Lanka and what this means most importantly for Sri Lankan asylum seekers in Australia.

4. Field trip findings and conclusions

4.1 Security Concerns

The Ceasefire agreement and the return to war

Sri Lanka is again in a state of civil war. The 2002 ceasefire agreement is essentially defunct, with the country having returned to war since April, 2006. The Human Rights Commission, a government appointed body, noting the impact of the conflict on civilians and the increase in human rights violations, clearly stated, *'the war has already started. This is bad for every citizen of the country.'*

While it is arguable that during the period of the signing of the ceasefire until April 2006 there were a number of defensive attacks between both parties and continual human rights concerns, since April the low-level conflict has developed into an offensive, with the GoSL waging a concerted war against LTTE insurgency on a number of fronts. The restart of the civil war may be traced to aerial strikes by the GoSL in the Sampur area on the 25th of April, 2006, following a suicide bomb attack in Colombo earlier that day on the Sri Lankan Army Headquarters, which in turn followed growing ethnic tension and sporadic ceasefire violations across the north and east.

The Sri Lankan Monitoring Mission, the mandated Norwegian and Icelandic Government monitors, stated that both parties, the LTTE and the GoSL, have been violating the ceasefire agreement, to the point that since mid 2006 SLMM have been unable to effectively monitor the breaches to the ceasefire agreement, as they are far too numerous. They have limited staff and capacity, however the key issue is that the escalation of the conflict has meant they are now unable to fulfill the task assigned to them. They were mandated to monitor peace, not war. UNHCR also stated that SLMM are unable to monitor the current violations, stating, *'The SLMM have given up recording of incidents – there are too many. They were not set up for open war, it was set up to monitor peace time ceasefire violations'*. To date, the officially ruled tally of ceasefire breaches totals 4125¹⁸.

SLMM however are unwilling to officially state the ceasefire is null and void, as they are committed to keeping dialogue open between both parties. There has been a strong criticism within Sri Lanka, including many groups we met, that a conflict of interest exists within the SLMM. That is, Norway is acting as both the negotiators of peace and the monitors of that peace. Criticisms have included that they are not willing to jeopardize the ceasefire agreement they worked hard to develop and thus do not speak out forthrightly enough on gross violations, as well as a perception from some quarters of bias towards the LTTE. The National Christian Council of Sri Lanka stated they when the heads of churches requested the SLMM to go public and expose the recent harassment and ceasefire violations they refused. Others have concerns that the SLMM can only investigate the dealings of the GoSL and the LTTE, and not the role of the various paramilitary and other militia groups involved in the conflict, such as Karuna, and that recommendations by the SLMM are not enforceable. The Centre for Policy Alternatives stated that the ceasefire agreement itself was flawed, and not particularly strong on human rights principles, particularly when one notes the allowance for defensive attacks, which both sides continues to hide behind and justify its offensive strikes.

A Tamil refugee girl from Mannar, now in a refugee camp in India, disclosed her experience to a member of the Hotham Mission team in detail:

¹⁸ CFA Violations at a Glance, February 22, 2002- October 31, 2006. (www.peaceinsrilanka.org)

I lived in Pesalai, a seaside village of Mannar. We were fisherpeople, our livelihood came from fishing. On June 17 this year at 6am we noticed that there were LTTE boats landing in the village. After seeing the boats those of us that had not already left to go fishing did not go to the sea that day, we were scared. By 6:45am two Sri Lankan navy boats went to the LTTE boats – there was a lot of fighting.

After hearing and seeing the fighting we ran to the Pesalai church for protection. There was over a thousand, I think three thousand Tamil villagers hiding in the church, listening to the fighting. The church doors were locked, so were all the windows other than one that was broken. The fighting on the water seemed to stop, but then the gunshots came closer to the church. We lay in the church on the ground terrified.

Soon, gunshots came in from under the heavy church doors – the Sri Lankan navy were shooting at us, we could see them. They threw a grenade in through the broken window. 49 people inside – men, women and children – were seriously injured from the gunshots and the grenade. One woman was bleeding profusely from the head, there was so much blood, however we couldn't take her for medical care because of the fighting outside. They kept fighting for three more hours, and the woman died from her wounds as we sat helplessly.

After three hours SLMM came to the church, but it was too late. We had seen the navy set fire to many fishing boats and fishing equipment. Four of our fishing boats had left early in the morning before the LTTE came and the fighting started. They returned after 9am, they did not know the fighting had happened. The navy made four of these men kneel beside the sea, then they shot them all in the head and killed them. There were two fish sellers with them – the navy threw them alive into the burning boats. 7 people died that day. We used to trust that we would be safe in the church, however now we know that we are not safe anywhere. That is why we came to India, otherwise we would not have come.

While the SLMM is reluctant to publicly state the ceasefire is over, when outlining the range of violations and concerns, such as the example above, they stated to Hotham Mission, '*in war time brutality increases*'. The SLMM has however since August, increasingly made strong public statements about the growing atrocities, including incidents of extrajudicial killings occurring in Vavuniya by masked individuals in white vans, and naming the government as responsible for the killings of the 17 NGO workers in Muttur in April, detailed later.

The main ceasefire breaches highlighted by the SLMM include:

- Offensive strikes by both GoSL and LTTE in the north and the east of the country
- Naval attacks
- Death and injury to civilians
- Child recruitment by the LTTE, and
- The closing of the A9, the main road connecting the north and south of the country.

SLMM clearly stated that the A9 was a key component of the ceasefire agreement and the GoSL closing it sends a strong message to the LTTE of the intention to inflict as much pain on the LTTE before it knows it will be forced to sit down and negotiate. SLMM further clarified that '*the Government can never be seen as not wanting to negotiate*'. This equally relates to the LTTE, who continually state all their attacks are defensive. Thus while the reality of war is ever present, neither the LTTE, GoSL nor the SLMM, see it in their interest to publicly make a public declaration as such. The general consensus of most groups we met was that there was no ceasefire and there seems no genuine will to forge one. This has now been observed in the failure of the October 31 peace talks, primarily due to disputes over the opening of the A9 despite it being a major part of the 2002 agreement.

Escalating conflict

Many groups interviewed argued that the ceasefire period was not a time of peace, but an opportunity to re-arm and re-strategise. This was noted particularly in relation to the newly elected government and the militarization of its response to LTTE insurgency and the increased number of terrorist attacks in various parts of the country. A number of groups stated that there is a general perception by the GoSL that the LTTE is the weakest it has been since its inception, and the military is seeing this as an opportunity to reclaim LTTE controlled areas. The weakness relates in part to incidents of desertion, sizeable loss of cadres in attacks throughout the year and the impact of the Karuna faction. This has been further fueled by the GoSL's recent reclaiming of LTTE controlled land in the Ralkuli area and the town of Sampur.

The escalation of conflict to reclaim land began on August 11, following the LTTE initial advance on the GoSL controlled area in Jaffna. The GoSL on a number of fronts moved within the accepted areas defined in the ceasefire agreement. This included the LTTE controlled area east of Muhamalai and areas in the east in the Batticaloa area. The GoSL closed the A9 on the same day. The attacks also came at a time when SLMM was at its weakest, with the Swedish, Finnish and Danes being forced to pull out, following the European Union ruling that LTTE is a terrorist organization. Neither Norway nor Iceland are members of the EU.

Bombings since that time have been felt in the Jaffna, Kilinochchi and Mullaittivu areas in the north and the Trincomalee, Batticaloa and Ampara districts in the east. The LTTE has countered this in other areas leading to a high level of military and terrorist attacks. The attacks have included aerial strikes, shelling, hand grenades, small arms and claymore mine and bomb attacks. When civilian casualties have occurred both sides are claiming the other is responsible, and that all moves are defensive. These offensive moves to attack and weaken the LTTE are both counter to the ceasefire agreement, but also having devastating and deadly impact on Sri Lankan civilians, outlined in detail in the regional, ethnic and humanitarian concerns sections.

Naval attacks

After a number of sporadic incidents since the ceasefire, naval operations have dramatically increased since May 2006. The sea surrounding Sri Lanka is Government Controlled Area, and explicitly ruled so by the SLMM in line with international law. However the LTTE has continued to use its 'Sea Tiger' operations, particularly in the surrounding LTTE controlled areas. Following threats to SLMM naval monitors by the LTTE in May, the SLMM suspended its naval operations, stating they would restart shortly. However SLMM have now stated they can no longer monitor naval operations as it simply became too dangerous. Since that time a dramatic increase in naval operations and attacks have occurred, particularly since August.

Other parties involved in the conflict

The escalating conflict is further complicated in that fighting is occurring both between the GoSL and LTTE in the north and east, but also between the LTTE and Karuna faction in the east. A number of groups stated that Karuna is important to the GoSL because at the time of the split Karuna took an inside perspective on all LTTE secrets, numbers of cadres and skills developed by the LTTE. As a result Karuna are widely believed to be supported by the GoSL. A number of Tamil refugees we met from the Batticaloa area indicated they had fled fighting between the two groups.

SLMM indicated that the Government is not attempting to stop Karuna, which seems to be growing in size, particularly as it weakens the LTTE. This was noted by the Government's allowance for the militia to open an office in Colombo, which closed the same day following protests. An office in Batticaloa remains open. There were also reports of the Government arming Karuna. SLMM were concerned at these developments, particularly of the high level of abductions, child recruitment and death threats being conducted by Karuna, including to SLMM staff with a bomb being found in their parking lot earlier this year.

In addition, the army and police have been increasingly supporting paramilitary operations to check the movement of people in the east, looking for LTTE activities. This was observed by the team on the checkpoints between Habarana and Trincomalee, where we were checked by armed village security, called Gramarashaka. They were often poor Sinhalese, from other areas, having moved into abandoned villages and then been armed and funded to work with the army and police. A number of groups and refugees also reported the use of underworld criminal elements, 'armed thugs' and a number of extremist parties, acting as paramilitary groups, not in uniform.

Human Rights Violations

Coupled with the escalation in conflict has been the further breakdown of the general rule of law across much of the country, particularly after the introduction of the state of emergency in August 2005, which gives much more power to security forces and has continued to be renewed monthly since that time. All groups, including SLMM and the Human Rights Commission noted the escalation of violence, including increased incidents of militia and state sanctioned torture, abduction, extrajudicial killings, rape and disappearances. These concerns have escalated dramatically from January in the east, and since May in the north. CIDA stated,

'Human Rights abuses are going on – we are going back to the dark ages of the early 1990's – killings, disappearances – the current climate is similar'.

A number of key factors were noted by the groups interviewed:

- The GoSL and LTTE's disregard for the rule of law and human rights policies in place
- The increasing perpetration of violations by the police and armed forces, impacted by the continued state of emergency
- The Supreme Courts recent ruling that constitutionally, Sri Lanka is not bound to adhere to it's international human right convention obligations
- The further breakdown of the judiciary in response to human rights violations, particularly in cases of extrajudicial killings and abductions.
- Lack of a legitimate enforceable human rights monitor in Sri Lanka.

Human Rights Commission

The primary body established to monitor human rights violations in Sri Lanka is the Human Rights Commission, which receives complaints related to actions of the police and armed forces and has the authority to enter police stations unannounced. Complaints relate mainly to arrest, detention, torture and more recently abductions. They have no mandate to deal with LTTE or factional violations, and in fact only function in the Government controlled areas. Similar to the SLMM, the Human Rights Commission can recommend but cannot enforce disciplinary action.

Most groups were highly critical of the HRC, namely that the President unconstitutionally appointed the Commissioner, an ex Supreme Court judge, and that no member has a background in human rights. The Centre for Policy Alternatives stated,

'If the observers don't have much say and are politically appointed, how many people would actually come forward? It is a lost opportunity'.

Others were equally disappointed noting that the Commissioner *'cannot do anything to act on human rights abuses, who won't do anything or say anything that would embarrass the government'.*

Identified current human rights violations

The Human Rights Commission was however forthcoming in our meeting with them and disclosed that they received between 400- 500 complaints each month, averaging 10-15 complaints per day.

The current HRC figures for January–October 2006, are:

- 34 - Disappearance related complaints

- 400- Torture complaints
- 306 – Arrest and detention complaints

They indicated that abductions were their greatest pressure point, which was extremely difficult to follow up because the perpetrator is unknown. The Commission indicated that they are very understaffed with only 15 field workers to visit the 143 police stations around Sri Lanka. Thus not all complaints can be followed up. They also noted regularly receiving complaints from the north and east of the country, which they are unable to follow up due to their mandate to only investigate in Government controlled areas.

Other human rights mechanisms

In addition, the President has the authority to institute inquiries through a number of commissions. There has not been a human rights-based inquiry commission in the 3 years, however Hotham Mission did meet with a high level public official and a member of the most recent Advisory Committee for Department of Human Rights Subcommittee in 2003. The committee was developed to follow up reports of disappearances, noting that its establishment was due to the consistent advocacy of one liberal Minister who pushed the Government for an inquiry into the atrocities that have taken place.

The Inquiry investigated 330 disappearances in Jaffna of 300 Tamils and 30 Muslims. The inquiry found that the Sri Lankan army was responsible for almost all Tamil disappearances and the LTTE responsible for all 30 Muslim disappearances. In the case of Tamils, the evidence of the responsibility of the army was based on their arrest prior to their disappearance, however not one person was located. He noted, *'there is complete impunity of killings in both Government and LTTE controlled areas, these are akin to assassination missions.'*

While the committee reported to the GoSL on its findings, none of its recommendations were taken up and the committee was disbanded shortly afterwards. He noted the GoSL has no plans for a new commission of inquiry despite the atrocities. He noted that on March 31 2006 a Special Rapporteur on Human Rights was appointed. A damning report was then written regarding the army, navy, govt and LTTE with the Government abolishing the office the day after the report was released. He stated, *'Injustices are openly done by the government – don't need to worry about others opinions.'*

Arrest and Detention

The widespread incidence of arrest and interrogation was noted throughout our visit particularly at checkpoints and in household raids, with many noting the lawful procedures to arrest and detain were often not properly implemented. The most common arrests currently being undertaken relate to questions regarding the person's identification and affiliation with the LTTE, which has been heightened following the April 25 terrorist attack on Colombo.

The ongoing State of Emergency allows a range of greater powers for security forces to detain for longer periods, and that individuals do not need to be charged at the time of arrest. According the Presidential Directives, individuals arrested should receive a Detention Order (DO) and an attempt made to gain security clearance from National Intelligence Bureau (NIB) and District Terrorist Prevention Bureau immediately. Individuals arrested must be released within 24 hours, however if no clearance from NIB and DTPB occurs then the person should go before a magistrate. Access to a lawyer is not a right at the point of arrest in Sri Lanka, only once the person is accused of a crime and is to be taken before a magistrate. A recently introduced regulations states a receipt of arrest must be given to the next of kin and a phone call allowed to all individuals facing arrest in Sri Lanka.

However the human rights and legal provider groups interviewed indicated that their direct contact and work with individuals recently arrested evidenced that this was not occurring, and that in practice:

- People are increasingly being detained under the Prevention of Terrorism Act (PTA), which allows detention for up to one month before seeing a magistrate
- People are often not officially 'arrested', rather coercively 'invited' to the station, with no record of their arrest
- A person should be told why they are being arrested, however this usually does not happen, and people are scared to question why at time of arrest
- People are often arrested after hours, or on Friday afternoons or weekends, when neither the NIB or DTPB can undertake security checks
- Magistrates are supposed to be on call 24 hours, however even if the magistrate releases a person on bail the court office will not be open until Monday so the person is remanded until then anyway
- Once a person has been before a magistrate they can be held for two weeks. Strictly speaking they may be released or released on bail by the magistrate, *'but this never happens – the magistrate always chooses to remand for two weeks.'*
- When a person is arrested their statement is taken in Sinhalese regardless of whether they are Tamil speaking and understand Sinhalese or not, *'they will be forced to sign the statement.'*
- Once a person is arrested the next of kin can complain to the HRC. *'The HRC can send an investigating officer to the relevant police station – just to observe the conditions of arrest and detention, not to influence the police. However when bulk arrests are made at once, they are not able to do this – because either kin not informed or too many to follow up.'*
- Many groups stated that civilians do not know the language of nor meaning of rights, so do not always know when these rights are being violated or what avenues of redress exist
- Under the current environment having a lawyer or attempting to bribe oneself out of detention rarely assists
- The primary assistance for Tamils and Muslims detained related to their ability to speak Sinhalese, a related class factor, and if a Sinhalese would verify their identity and community standing. But even this did not assist in many cases, particularly detained Tamils from the north and east.

It was noted by the member of the Advisory Subcommittee on Human Rights that part of its investigation included visiting police stations in various parts of the country, to investigate the disappearances, but also to see whether arrests were following the Presidential Directives. He stated,

In general (we) find that none of the rules regarding arrests have been followed. Many arrests are made 'on suspicion' – that is, no particular reason for arrest other than:

- 1) *To be Tamil is enough reason to be 'of suspicion'*
- 2) *To have a home address or place of birth in a LTTE area or North or East is enough.*
- 3) *If caught with no ID card – the person will be detained.*

This was noted by the team when during a meeting with our hosts, the NCCSL, they received a call from the family of two young Tamil church members arrested for not having their ID cards with them. Both were from Vavuniya. The family had produced the ID cards to the police to no avail. The NCCSL indicated that they receive such a call about once a fortnight and that at least one in 4 cases involves torture.

Arrests and detention were also noted for anyone being under suspicion as having knowledge or details of the LTTE, including Muslims and Sinhalese. This included people entering the country under suspicious circumstances, particularly under the current state of emergency, including those arriving in Sri Lanka on emergency passports or who had been away from the country for prolonged periods.

The Mission met with one refused asylum seeker from Australia, a Muslim man, who was removed from Melbourne airport using an Emergency Sri Lankan passport. The man stated that he was detained under suspicion for more than 5 hours in the airport detention centre in August while his family waiting in the arrivals area, terrified for what might happen to him. The initial suspicion by the authorities related to his entering the country on an emergency passport, and was subsequently questioned and interrogated on his whereabouts, involvement and knowledge of the LTTE. The man stated that he had been outside of Sri Lanka living in Australia for the past 11 years and had no contacts with the LTTE. They however threatened to arrest him and further interrogated him, after which he was able to use the money he had with him and bribe his way out of the airport. He has kept a low profile since, rarely leaving his home.

Torture

The ongoing use of torture by the military and police was noted by the HRC, as indicated in the official figure of 400 cases investigated for 2006. Most human rights organisations interviewed indicated that the majority of torture victims they had worked with did not complain to the HRC. A number of lawyers working with victims of torture noted that if people make a complaint after experiencing torture they become a threat to the policeman who carried out the abuse – so the victim is again threatened or killed. If this is the case, then one can assume the rate of torture is markedly higher.

The Commission for Justice, Peace and Human Development in Kandy indicated that torture following arrest was their greatest concern. 28 cases so far have contacted their organisation directly regarding police torture. A Mixture of Tamil, Muslims and Sinhalese, with young Tamils the most common. The main reason for torture is to gain information, particularly where there is suspected LTTE involvement.

One former police officer we met confirmed the use of torture for this purpose. He had witnessed the use of electrocution and people being tied up for prolonged periods.

One organisation stated that there is no sufficient police training and not enough staff.
'The quickest way to deal with people is torture to get information.'

Another stated,

Torture is endemic here – for the last 20 years or more – it is the norm. It is habitually and widely accepted in society – as long as it doesn't affect you or your race. It is an accepted means of taking information.

The Australian Government funded in 2002 the establishment of the Torture Monitoring and Prevention Program run by the HRC, which the Commission indicated is still actively in use, and now funded by the Swedish Government. Despite these programs, there is no avenue to enforce disciplinary action on perpetrators, with one group stating, *'There is no justice on a practical level for those affected by torture...'*

In addition, there are serious gaps in relation to the monitoring of torture related to ceasefire breaches. SLMM stated that torture is a breach of the ceasefire agreement and if they find a torture case and the person is still in prison, they refer this to the HRC. However the issue is not followed up further, and the complaint made to the SLMM is simply handed to the HRC. As such, the official tally of ceasefire breaches until October 30 does not state a single incident of torture committed by the armed forces¹⁹. This is in spite the SLMM noting incidents of Tamil houses in villages being taken by army intelligence, with occupants harassed, arrested and tortured. SLMM stated in these situations they will increase their patrol and observations on the area, which in some cases reduces the violations.

The impact of torture was noted in the experience of a 19-year-old Tamil boy from

¹⁹ CFA Violations at a Glance, February 22, 2002- October 31, 2006. (www.peaceinsrilanka.org)

Trincomalee the team met in the Anaikuttam Refugee Camp in India.

Radha (name changed) was born in 1986. His family lived in Jaffna when he was a small child. At the age of 7 he was studying in a school when a bomb was dropped by the SL Air force. 11 students died and 2 were injured. He was one. His left leg was amputated and he spent a lot of time in the hospital. The family then moved to Kilinochchi from 1993-2002, however financial instability led the family to move to their place of origin, Trincomalee.

In 2004 the tsunami hit their home, which was close to the beach. Their house was destroyed and he was caught up in the water, almost drowning and his prosthetic leg was lost in the water. He had no crutches for some time and could not move anywhere until the ICRC helped him get a new prosthetic leg.

In late 2005 he was studying in Trincomalee when he was pulled over at an army checkpoint. They noticed his prosthetic leg and began questioning if he was an LTTE cadre, often young Tamil men with injuries. He told them he lost his leg as a boy in a bomb blast. They demanded he remove his leg. He requested a chair, as he cannot stand without assistance. They refused and removed his leg and his clothes, humiliating and taunting him in his underwear. They then loaded a gun and hit his only leg with the gun causing him to fall.

He was then arrested, suspected of being an LTTE cadre. During the arrest he was brutally tortured. They deliberately tortured his good leg, and further mutilated his remaining left leg. The beatings on his right leg were severe leaving him with deformed, injured tissue. They also burned his body, back and legs, his back now scarred.

After a week, his relatives approached the police and on receipt of a gold chain from the family, he was released. His father, sister and 3 brothers spent some months hiding in various places. With the tension and conflict increasing in the Trincomalee area, the family fled to Mannar and then made the journey to India with local fisherman. During the journey his prosthetic leg broke in two. He urgently needed ongoing treatment on both legs.

On his arrival in India, he was again suspected of being an LTTE cadre and was jailed for one day before being released into the Tirivonelli camp, arriving September 20th, 2006.

As of October 11th he had not received any medical attention for his legs. He was in constant pain, with inflammation in his right leg and his prosthetic leg pathetically stapled together, causing further pain to his joints. Because of his injuries he is unable to work, and must live on the 400 rupees (A\$13) in dole he receives each month. He lives in an open decrepit hall with more than 40 other people.

He remains scared but despite his current difficulties he feels safer than in Sri Lanka and is glad to be in India.

Deaths in custody, Disappearances and Abductions

Deaths in custody were widely noted, with human rights groups complaining that coronial inquests did not always occur, or were inconclusive, with 'died of weak heart' a common finding. 'It is an ordinary thing that is going on – there are at least one or two every month, and this is a conservative estimate.'

The team were informed by the UNHCR of a failed asylum seeker from the UK who in September was arrested on return to Sri Lanka. He apparently returned without proper documentation and was held in the airport detention centre for 3 weeks before dying in

custody. UNHCR had been informed by the authorities that he committed suicide. This was refuted by 3 other groups we met, in particular a doctor who had been personally informed by a friend of the deceased that he was killed and that his death followed an incident of torture. Thus far there has been no inquest.

On interviewee who had investigated many police stations stated,
'if it is too inconvenient to keep him, he will be killed... if the police or army believe that it is possible he has destroyed the ID deliberately, when in doubt, kill him. This happens at every police station.'

However in many cases the bodies are never recovered and people are listed as disappeared. This was outlined by the 34 reported disappearance related cases by the HRC and 27 cases reported to the Commission for Justice, Peace and Human Development in Kandy for the year to date. As noted by the member of the Advisory Subcommittee on Human Rights, even when arrest warrants have been located, most bodies are never recovered.

Abductions are also a growing phenomenon, with both the military, police, the LTTE and Karuna being blamed. The SLMM have identified Karuna and the LTTE as being involved in child recruitment abductions, as well as involving ransom and extortion to raise money for arms, often targeting Tamil businessman. The police and armed forces have also been targeting media, journalists and others critical of the government. The SLMM have reported three cases of breaching of the ceasefire agreement by the GoSL involving the abduction of children and 16 cases of adults. A number of groups stated the army and police often fund paramilitary and underworld groups to do the abducting.

Groups reported that most witnesses to abductions noted the use of *'the white van'*, with each side blaming the other for the incident. The most known recent cases being Catholic Priest, Father Jim Brown who disappeared in August 2006, and the Dean of the Faculty of Fine Arts of the Eastern University who has been missing since Saturday 30th September. One group we met had interviewed a Tamil man who was abducted outside a goldsmith area, where a ransom of 2 million rupees was demanded. He said he had only 1.2 million and was eventually released on this. He then came to meet the organisation for support, however he decided not to make a complaint, as he was too scared.

Abductions were reported throughout the country, including in Colombo, Negombo and in Kandy. HRC outlined their staff do not have sufficient training or resources to deal with the growing number of abductions. As one lawyer stated, *'the country is in complete chaos. The state is either unable to abate the spate of killings and abductions that goes on all over the country or have complicity with them.'*

Extrajudicial killings and the breakdown of the judiciary

An issue of utmost concern is the extremely high level of extrajudicial killings occurring across the country and the impunity for those involved in the killings. Particular concern has been noted for the Special Taskforce and their direct role in the killing of many innocent civilians. SLMM stated that *'the Special Taskforce are taking over everything, it is like a chieftom, with many killings happening'*. The member of the Advisory Subcommittee on Human Rights reported that while the LTTE has killed hundreds of Tamils, often for collaboration or suspected collaboration with the army, the Sri Lankan Army remains the biggest killer of Tamils. The Centre for Policy Alternatives stated, *'In LTTE areas there is no recourse for extra judicial killings; in government areas there is no recourse for extra judicial killings either.'*

Where witnesses or family members chose to make a formal complaint or take the matter to court there can be great risk to their personal safety, particularly as there is no witness protection program in Sri Lanka. One NGO has in fact taken the protection role upon itself, the *'Non-violent Peace Keeping Force'*, which hides people and accompanies them to court, albeit at great risk to their volunteers, many who have been killed.

This was evidenced by the team who met 4 witnesses to extrajudicial killings, all of whom were in hiding from the authorities following death threats. One man was the only witness to the killing of 5 Tamil young men on January 2nd in the town square of Trincomalee. The witness saw his son, described as a well-liked 20-year-old local chess champion, shot execution style as he was forced on his knees and begged for his life. The Special Task Force of the Sri Lankan police are the main suspects of killings, and at first harassed the witness, then later he received death threats, threatening to kill him if he proceeded to take the case public. The father took the story to the editor of the Sudar Ali National Tamil newspaper which published photos on Jan 4 showing the 5 dead boys with gun shot wounds to the head to disprove the Government story of why and how the boys were killed. The editor, Subramaniam Suhirtharajan, was killed three weeks later. A number of human rights groups have condemned the GoSL for these killings but a court hearing against the STF remains unlikely.

The father has been in hiding since and is desperate to leave the country, saying there is no protection for him in Sri Lanka. His lawyer stated, *'What has happened to his family is nothing new to the Tamil people in this country...in fact it is getting worse. But he is one of the few who have stood up to the Government.'*

The killing of the 17 NGO workers in Muttur

The team also met 3 of the 8 witnesses of the aftermath of the August massacre of the 17 local staff of the French NGO, Action Contre la Faim (ACF), in Muttur. The 8 men were staff of the Trincomalee ACF team, who travelled to Muttur following the massacre to both identify and bring the bodies to a Trincomalee hospital. This occurred some 3 days after the massacre due to the army and Gramarashaka not allowing them to travel into Muttur. One of the men described his experience:

'We were told (by the police) that ACF is helping only for Tamils and LTTE, they would not let us go to Muttur town. They try to hit us in front of ICRC expats. Because of this reason we could not collect the bodies up to August 7th.'

They later issued statements to the police and magistrate regarding what they had witnessed at the scene, which contradicted the official police statements. They stated that the victims were lined up and shot execution style, except two who tried to escape. Following their statement the men were photographed by the police, harassed and threatened with arrest.

Following the SLMM statement explicitly naming the Government security forces as being the perpetrators of the Muttur massacre, the lives of the men were in danger, as they are the only witnesses. Since that time they and their families have experienced death threats. The men stated that 5 of their friends have since been killed, one of their brother's has been abducted and Uncle shot looking for them. He is currently in hospital.

The men were visibly traumatised and absolutely petrified for their lives. Neither the French Embassy, nor other embassies contacted have been willing to offer protection to the men. With no witness protection program, and with the UNHCR having no means to offer protection within Sri Lanka, the safety of the men is of great concern.

Many international human rights groups have criticised the GoSL for its hindrance and, what many believe to be, interference in the investigation of the massacre. One group we met, involved in investigations of police conduct, stated that all of the forensic evidence was transported by the police and appears to have been tampered with, for example, bullets were removed from the bodies and were missing, and it was noted with concern that the Inspector General of Police was directly in charge of the handling of the bodies. Another group stated, *'The Government doesn't worry about repercussions because it has a one party dominance... It no longer needs to be careful...it takes action openly.'*

The impartiality of judiciary is also in question. The case was first to be held in Trincomalee because killings took place in that area. However it was then transferred to Andrahapur

(another area) by the Secretary to the Minister of Justice. This has been strongly criticised as he did not have the power to make such a decision, but it happened anyway. After much protest the case was then transferred to the Kantale area but will in any case be heard by the Andrahapur judge. As a result of incidents such as this there is a lack of confidence in legal structures and judicial system in Sri Lanka.

Rape and child recruitment

Despite international outcry child abduction and recruitment continues to occur at alarmingly high levels in the north and east of the country by both the LTTE and increasingly by Karuna also. SLMM stated that currently in Sri Lanka most abductions are related to child recruitment or have a criminal side involving extortion.

Refugees reported having to hide their children from the LTTE, and groups reported children in LTTE areas often not attending school and being kept at home after the age of 12 due to the risk of abduction. SLMM have confirmed 1743 cases of forced child recruitment by the LTTE since the ceasefire.²⁰ On June 10 2006 there were mass-street protests held against the LTTE regarding the groups practice of abductions and forced recruitment. An official apology was later issued by the LTTE, however many question how genuine this apology was and remain fearful.

Rape was also widely raised as a major concern, with one group stating, '*there are so many cases of rape now that the war is going on*'. Rape is a problem particularly in the North and East, with many incidences of rape reported by the Tamil refugee women now in India. Most women were in their homes alone because their husband was away fighting or working or had been killed or was in hiding.

In other cases rape occurs in situations where it is unlikely to ever be made known. One agency described a recent case involving a woman who secured a job in the Middle East via an agency – as housemaid. She mortgaged the small piece of land that she and husband owned in order to fund ticket and fees. At the airport she was requested to report to security – once in the security office four security officers raped her at knifepoint. She was left naked, vomiting blood, unconscious for some time, before being taken to the plane and put on plane in this state – threatened not to tell anyone. The woman was in a state of confusion and very unwell.

The leading psychiatrist noted the high prevalence of rape of single females with mental health issues, '*crime, rape and sexual abuse are very common, with no recourse*'.

A recent case was reported in Colombo involving a Tamil woman being raped inside the separate searching section for women at a checkpoint. However as noted by the HRC many incidents are not reported, due to shame and culture preventing people from reporting, '*a culture of not reporting exists*'. Groups interviewed suspected the number of unreported rape cases was extremely high, '*very few will come out and report rape because of the social stigma*'.

One female welfare and human rights worker suggested that the culture of not reporting rape is a direct result of the rape survivor being scared that others will hear of the incident and consider her a 'loose woman', therefore putting her at risk of being raped again. It was also suggested that parents are scared to report the rape of a daughter for fear they will not be able to marry their daughter due to attached social stigma.

The other reason for not reporting relates to the lack of faith in the judiciary. A number of refugees reported a case of 2 Tamil women from Mannar raped by police officers. They reported the case and attempted to take the perpetrators to court. The case was transferred to an area and never reached the court with no repercussion for the perpetrators.

²⁰ CFA Violations at a Glance, February 22, 2002- October 31, 2006. (www.peaceinsrilanka.org)

Restrictions on rights of the population

There has been a general reduction of the rights of much of the population following the state of emergency, which has reduced dramatically between April and August, and continuing to the present. This has included a range of previously unseen restrictions being placed on the community, targeting Tamils in particular, including enforced house occupant registrations with the police and the marking of Tamil homes by the Navy in Trincomalee.

Groups and refugees we met with noted the following concerns:

- Increased use of security roundups, checkpoints, roadblocks, random household searches, mass arrests, forcible removals and forced road closures,
- Restrictions of movement of people, information and access to essential goods and services in the north and east

Checkpoints

While the use of checkpoints decreased significantly following the ceasefire in 2002, this has dramatically increased since the April 25th terrorist attack in Colombo. For the first time since the early 90s, checkpoints are not just on the outskirts of the city, but continue into the city centre. Checkpoints seem to alternate between army, police, STF and occasionally the air force. In the north and east checkpoints may be manned by Gramarashaka. Checkpoints exist throughout the country, however the military presence in Colombo, Jaffna, Trincomalee, Ampara and Batticaloa is particularly visible.

The key concern for individuals at checkpoints relates:

- Ethnicity
- Place of birth
- Suspicion of being connected to the LTTE
- Not having an ID card
- Address
- Not speaking Sinhalese

One group stated, '*at checkpoints it is deadly to have a address in a Tamil area*'. Another group stated, '*at checkpoints it is deadly to be a Jaffna Tamil*.' This concern was noted for all Tamils, but particularly those from the north and east, as well as any other group or individual perceived of having LTTE sympathy or connections. There were also reports of people at checkpoints experiencing extortion, robbery and as highlighted earlier, incidents of rape of women.

Checkpoints are the central point of restriction on the general populations, affecting not just freedom movement and general travel, but also the freedom of association. During a Save the Children forum in Colombo in October, a young girl from Andrapahur stood up and shared her experience. She studies in a mixed ethnicity school and one of the teachers recently invited two Sinhalese students and two Tamil students to the teacher's home. The students travelled there together and were stopped at checkpoint on the way. The two Tamil students were detained on suspicion of supporting the LTTE. The two Sinhalese students were subsequently detained for supporting the Tamil students.

Household registration requirements

A disturbing finding was the recently introduced requirement of the residence permit list. These newly introduced registration requirements state that each member of a household must be registered with the police. If a household has a guest, the guest must go to the police station with two authenticated photos of him/herself along with the chief householder and register. This is a requirement even for overnight guests. A permit with the person's photo on it will be given, which distinguishes permanent residents, temporary residents and

domestic servants. It is an offence if you do not produce the permit on demand once asked. If the resident and guest does not then carry this permit at all times, they risk arrest²¹.

Originally this was introduced and implemented for Tamils only, but the GoSL has now made the householders registration requirement a regulation for all citizens. After speaking to many groups and individuals about this requirement, it would seem that only the Tamils and some Muslims are being forced to comply. This is noted in that the GoSL recently placed banners on the road in the primarily Tamil area, Colombo 6, stating all in the area should register.

Other restrictions

Colombo maintains a general parking restriction on any main road in the city, following the April terrorist attack. Cars left will be removed and destroyed. Roadblocks occur at random intervals, including at 8.30am on the Hotham Mission team's second day in Colombo. All roads coming into Colombo were blocked and all vehicles stopped and checked and all occupants checked.

Also, during our time in Sri Lanka, the GoSL moved to revoke the visas of a number of NGOs working in the LTTE controlled areas; MCF, Medicos del Mundo and the Swedish Refugee Aid agency. The GoSL criticised the organisations for meddling in the affairs of the Government, however a number of the agencies have stated that the Government simply does not want vocal NGOs aware of the atrocities it is inflicting in the north and east. Both the UNHCR and SLMM themselves stated that have not been able to access conflict affected areas at various times and the GoSL does not want them to visit the frontlines. Many agencies desperate to continue their work in Sri Lanka have been silenced as a consequence, so as to not risk their own visas.

The human rights abuses, extrajudicial killings, abductions and restrictions on rights listed above are clearly perpetrated in a framework of impunity, under the guise of a state of emergency and with a perceived legitimacy to act beyond the rule of law to defeat the LTTE.

4.2 Regional Concerns

While the conflict is particularly affecting the north and east in relation to military attacks, the entire country is affected by the war in various ways. Terrorist attacks have been occurring in various parts of the country, including the south in October, and human rights abuses are rife throughout the country. As stated by one observer, *'the rules of traditional war zones don't exist – everywhere is a war zone.'*

The East

Unlike much of the north, which is primarily Tamil, the Eastern districts in many places are an equal mix of Tamil, Sinhalese and Muslim. The LTTE control a number of areas in the Trincomalee, Ampara and Batticaloa districts, with the Karuna faction also operating in the area. The major concerns for these areas relate to the ongoing conflict over what the GoSL describes as cleared and uncleared areas, the high level of ethnic tension and violence, and the growing incidents of abduction, extrajudicial killings and other targeting human rights abuses.

Trincomalee district

The team made a field visit to the Trincomalee district on the 5th of October witnessing conflict and tsunami affected areas, the militarised zones and visiting internal displacement camps and groups in Kantale, Kinniya and Trincomalee town. An attempt was made to travel to Muttur, but was aborted after being assessed as too dangerous, particularly relating to LTTE movements in the area and risk of landmines, terrorist attacks or sudden renewed shelling in the area.

Trincomalee area has become a highly militarized volatile and vulnerable area particularly due

²¹ Note: this is not a 'census', individuals must register with police and carry this at all times or can be fined.

to ethnic, resource and political reasons. The city is viewed as one of the most valuable assets to the country with its world-class harbour and port and is seen as the link between the north and the east. Trincomalee is a Government controlled area located between the LTTE controlled Mullaaittivu and the LTTE area south of Muttur. As such it has been under constant threat both from the LTTE and GoSL.

The city has had an almost equal distribution of Tamil, Sinhalese and Muslim residents leading to a range of serious political tensions. This has been particularly so since the December 2005 local elections when there was a landslide Tamil majority in the election, with not one Sinhalese winning a seat. This led to a number of riots and attacks on Tamils, culminating in the extrajudicial killing of the 5 Tamil boys listed in the previous section. The father who witnessed the killing in the town square said, *'my son was killed in public to create fear....'* Many groups and refugees interviewed stated that since that time there has been a concerted move to terrorise and force the fleeing of all Tamils from Trincomalee in order to regain a political majority, with killings and disappearances at very high levels. This was noted in the visits to the refugee camps in India, where the highest proportion of newly arrived refugees since the beginning of the year being those from the Trincomalee area. Of the 56 newly arrived refugees we met in Tamil Nadu, more than 50% were from the Trincomalee area. The key reasons they gave about why they were forced to flee involved army atrocities, such as rape and murder. A number of refugees stated it was believed a bomb was orchestrated by the army in April as within a few minutes of the bomb blast busloads of thugs appeared and rioted, driving out the Tamils from the area. A number of families we met fled at this time, making their way to Mannar and then to India by boat, leaving all their belongings behind.

Refugees and human rights groups clearly implicated the armed forces in the range of atrocities occurring to Tamil civilians in the area. This included the navy's use of white paint markers to identify Tamil homes in the town of Trincomalee. This was noted by a number of refugees from the area, who stated the easy identification of their homes made them visible targets. A number of refugees said they had received letters from the navy, encouraging them to go to Mannar and leave for India. Others outlined the army's introduction of an additional Trincomalee district ID card issued by the army, which clearly states a person's ethnicity. A number of groups claimed these actions are akin to ethnic cleansing, including the Indian based group, ProTeg, Organisation for protection of Tamil Eelam from Genocide and other Violations of Human Rights. During the time of the visit, the team were informed by a Trincomalee doctor that on the 3rd of October the navy went to Tamil houses in the St Mary Rd area, including to his family's home, and told them they must write their name, place of birth and ID number on a sheet of paper and place it on their front door. The team were unable to confirm these reports during our visit as the area was too heavily checked for Hotham Mission team to enter safely.

As such, many groups estimate that 10% of all Tamils have fled the area and while others, particularly young men, do not leave their homes. The team observed this, as unlike other areas there were virtually no cars or people on the street, only the occasional UN or ICRC vehicle. The high level of militarization meant that every street corner had a checkpoint. As we approached the Muttur ferry we were checked three times in 250 metres. In total we were checked a total of 12 times in less than one hour. This was of particular concern as we had two Tamil interpreters with us. At one point the team was checked by five army personnel, sniffer dogs and bags checked. We subsequently aborted the remaining meetings planned and left the city.

The consequences of the ethnic and military conflict have been devastating on the local population, leading to internal displacement and contributing to the high numbers fleeing to India, which has now reached 16,000 new arrivals since January this year.

Further concerns in the district

Conflict in the broader Trincomalee district has centred on two main areas, Sampur and

Muttur. Muttur, being a mainly Muslim Government controlled town, important in terms of water access and overland travel in the area, came under heavy military shelling in early August after the LTTE attempted to move into the Government controlled areas around the town. The harbour town of Sampur, south of Trincomalee was an LTTE controlled area at the time of the ceasefire, which it is believed the GoSL thought made Trincomalee harbour particularly vulnerable, as attacks have been launched from the Sampur bay. Sampur was the first place bombed following the April 25 terrorist attack in Colombo, leading to the GoSL capturing large sections of the area on August 25th, in what the SLMM called a '*military offensive*' and clearly in breach of the ceasefire agreement. Due to the widespread conflict, internal displacement continues to be a major concern in the area, for both Tamils, Muslims and some Sinhalese, particularly in Kantale and Kinniya, outlined in the IDP section, including findings regarding forced removal and multiple displacement.

Villages surrounding the LTTE controlled areas have also come under heavy shelling. In a visit to the Eachchantheevu IDP Camp in Kinniya, Tamils from the LTTE controlled seaside village of Ralkuli talked of the death of family members in the constant shelling and fear of both the navy and the LTTE. With the sea tigers using the area to launch suicide boat attacks on the Trincomalee harbour, the shelling in the area had been particularly fierce. With many villagers being fisherman there were large number of deaths at sea and boats destroyed.

We note that 2 days after our departure from the area the conflict in the area escalated dramatically²², with the Government now controlling the village of Ralkuli.

Batticaloa and Ampara districts

Fighting has been fierce in the areas close to the small pockets of LTTE controlled areas, connected to the northern controlled areas only via the sea and jungles. With much political dialogue occurring about whether to 'merge' or 'demerge' the north and eastern uncleared areas, the armed forces have escalated their attack on the LTTE in these areas, particular following the GoSL's success in reclaiming land in the Trincomalee area. This has been further complicated with fighting occurring between both the security forces and the LTTE and between the LTTE and Karuna. Karuna is strong in the areas between Batticaloa and Ampara, with an office still open in Batticaloa.

Many groups talked of the presence of the LTTE throughout Government controlled areas, particularly in relation to child recruitment. Others talked of the use white vans for abductions and ransom money, with Karuna cadres infiltrating even the LTTE controlled areas. One refugee women from Batticaloa talked of hiding her children due to the high risk of forced recruitment by both the LTTE and Karuna. Another Tamil refugee from Batticaloa told of how after her 2 sons had been killed in the conflict she was harassed and threatened by the army when she tried to get a copy of the death certificate.

North

The north of Sri Lanka is primarily Tamil, and includes the LTTE controlled areas north of Vavuniya in the Vanni and areas controlled in the east of the Mannar district and small pockets in Jaffna. The situation in the north of Sri Lanka involves a complex range of concerns, namely:

- The closure of the A9 road and restrictions on flights and boats into Jaffna, essentially cutting the north of the island off from the rest of the world, with very few NGOs or goods allowed access, leading to a range of humanitarian crises highlighted in a later section. (Page 36)
- Heavy conflict on the areas close to Mannar, Jaffna and Kilinochchi
- The breakdown of law and order and the extremely high levels of human rights abuses in Jaffna, Mannar and Vavuniya by the armed forces, and incidents of violations by the LTTE to civilians in the LTTE controlled areas.

²² New India Express, 11/10/06

LTTE controlled areas

The Vanni, Kilinochchi and Mullaattivu

Many groups expressed outrage and dismay regarding the impact of the GoSL's closure of the A9 on basic supplies, food and medicine for civilians in its attempt to strangulate the LTTE. Only the UN and ICRC have remained in the area, with UNHCR staff often remaining for extended periods in bunkers in Kilinochchi. There are virtually no international journalists reporting within the LTTE controlled areas. SLMM noted the range of ceasefire violations by both the GoSL and LTTE in the area numerous military offensives.

Our hosts, the NCCSL, were one of the only groups allowed entry into the area, together with the Bishop of Colombo, following extensive negotiations to seek approval by both the GoSL and the LTTE in late September. They indicated that the A9 runs from Kandy to Jaffna, with the GoSL having closed the road at Omantai (just North of Vavuniya) because this is LTTE controlled area. Special permission is needed to travel here from 1) Govt (Ministry of Defence) 2) LTTE clearance needed. Civilian Sinhalese are not allowed into this area.

The LTTE controlled areas do have some public servants in the area whose salary is paid by the GoSL, however the LTTE have their own police and army. There are a small number of GoSL and separate LTTE run hospitals. The LTTE, mainly through the TRO (Tamil Rehabilitation Organisation) have to work with Ministry of Health and other Ministries to gain supplies for all hospitals and other services in the area, through the local Government Agent and Divisional Secretariats active in Kilinochchi. Prior to August this system seemed to work, albeit with the LTTE collecting tax on all items brought into the area, including food and medicine. This included goods to be transported further north into Government controlled areas. The closure of the A9 was clearly to stop incoming funds, goods and arms into the area.

The NCCSL reported the following concerns from their visit to the area in September:

- Limited movement has severe repercussions for people living in area, including access to health, education, food, electricity. The few NGO's in the area have a limited role due to lack of resources and access to food and medicine, detailed in the Humanitarian regional section. (page 36)
- Day and night 'multi-barrel' fighting continued throughout the Vanni. They reported seeing unmanned small remote control planes seen in area – assumed taking photos because following day the army fired missiles into the area, focusing on LTTE camps, ammunition stores and hospitals, with the LTTE firing back. This has led people to be displaced after fleeing bombs and missiles.
- Freedom of thought/expression is curtailed. If someone is too critical of LTTE they could be killed. They noted people being harassed, sent warning messages, and killed.

One human rights worker stated, the approach to the LTTE controlled areas is backfiring.

'The Government is not realising that cutting the area off causing lack of teachers, medicine, food – people will be forced to come under the grips of the LTTE.'

One local World Vision project worker from Kilinochchi explained how he had been stuck in Colombo since the August 11 closure of the A9, while two of his colleagues have no way to get out of the area. They have informed him of ongoing bombing and aerial attacks causing grave damage in both suburbs and military areas. They reported large deaths of civilians and injured children unable to be evacuated by the ICRC to hospitals in the south. They also reported child recruitment as a continual problem despite the LTTE recently opening a Child Protection Office in Kilinochchi.

Government controlled areas

Jaffna and Mannar

By all accounts, the greatest single concern raised by groups we met was the current Jaffna crisis. Jaffna is currently the most militarized place in Sri Lanka, with 14,000 of the 50,000

army, almost 30%, located in Jaffna.

The military struggled for 15 years to regain Jaffna, which it achieved in 1995, however with some islands and other small areas still controlled by the LTTE. The security situation was tightened late last year following some claymore attacks on the army. This escalated dramatically in August 11, following the LTTE initial advance on the GoSL controlled area in Jaffna. A range of continuing military operations began, with the A9 closed that day. Curfews began, and for four days there was no movement in Jaffna. Shortly after the retaliations started which has led to fighting throughout the peninsula. This coupled with dramatically escalating human rights violations has had a devastating impact on civilians on a range of protection and humanitarian levels outlined in previous and later sections.

A range of explanations was given by groups interviewed regarding the GoSL's obsessive response to the Jaffna peninsula. Some stated that a strong perception exists that Jaffna remains the seat of the LTTE movement and that the LTTE continue to control the Tamil Jaffna population. This was noted in the lead up to the November 2005 federal elections. A journalist visiting the area reported on the high degree of enthusiasm at the time by many Tamils for the election and indications that many intended to vote for the UNP. However just prior to the election day, the LTTE made a very strong statement that Jaffna Tamils should boycott the election, which led to very few people voting and a defeat for the UNP. This clearly evidenced the combination of power and fear the LTTE continue to have on the people of Jaffna. This perception in turn has led the GoSL to be highly paranoid about all Tamils from the region, and highlighted in the regular extrajudicial killings and other human rights abuses reported in Jaffna and the treatment of Jaffna Tamils located in Colombo and elsewhere. Other groups were harsher, saying that Jaffna is the cultural centre of the Tamil people, and the GoSL's current response shows their desire to destroy that culture and the people.

However confirming these concerns are very difficult, with virtually no entry into or out of the region, few groups allowed access and information limited to phone conversations. While the NCCSL had been given permission to enter the LTTE controlled area, such approval was not given to enter Jaffna, this included the prolonged attempt to get permission to ship food items to the peninsula. This was also noted in that there has been almost no recently fled refugees from Jaffna to India despite the atrocities, due to the high naval presence and interception and in some cases, attacks on individuals trying to flee. The people of Jaffna are essentially trapped.

Hotham Mission also met with ICRC staff who been unable to re-enter Jaffna to continue its humanitarian work, as is the case for many other NGOs, currently stuck in Colombo. The ICRC noted a hand grenade that exploded outside their office in Jaffna during the time of our visit. At the NCCSL national conference during the time of our visit, for the first time in its history, no clergy member from Jaffna was able to travel to Colombo to participate. Many groups stated the GoSL is attempting to stop people being witnesses to the atrocities. We were also informed of a journalist who had directly interviewed the Jaffna Tamils affected by the conflict in August, who was shortly afterwards abducted and released later with a threat to stop or be killed. He has subsequently sought asylum in western country.

Gross human rights violations have occurred in other Government controlled areas by the police and armed forces, particularly in Mannar. Incidences of rape and the army shooting civilians inside the Catholic church in Pesalai led to widespread displacement and fleeing of the some of the Tamil population to India in July and August.

One refugee women from Mannar told us,

'it is not safe for women. Before I left, two young children I knew were killed by the police – speared in the head – a young boy aged 7 years and a young girl aged 9 years. Police come looking for women with no man to protect her – they return at night and rape her.'

Another woman from Mannar returned with her family to Sri Lanka from camp in Tamil Nadu, believing the situation had improved and that it was safe. On return to Sri Lanka, her mother, father, sister and brother were killed by the army. She described how the women were raped and hung from the roof of the house. She survived and fled back to India on her own. This case noted by a number of organisations and other refugee witnesses.

Colombo

Since the assassination of the Foreign Minister last August, the introduction of the ongoing state of emergency the same month and the April 25 terrorist attack, the city has returned to previous experiences of random checkpoints and house searches and the general removal of civil rights of much of the population in Colombo. Groups indicated that Colombo was seeing the highest level of civil restrictions since the late 80s, including checkpoints not only in the outer suburbs but throughout the city, manned by both STF, police, army, navy and air force. As highlighted earlier, previously unseen restrictions now exist relating the household registration, particularly targeted in Tamil suburbs.

The city remains on high alert for terrorist attacks, with a bomb found on a railway line in the city during our visit. The team had visited the popular site near the seafront the day before. In this atmosphere of fear and paranoia about the possibility of terrorist attacks, mass arrests and torture are widespread as highlighted previously. The SLMM noted that *'people taken into custody in the district, no matter if it is a petty crime, are sent to Colombo. They can then be in custody for many months – and will most likely be beaten or more.'*

One human rights group reported the case of a Tamil woman who had moved to Colombo 10 years ago, and bought her own home, living as a permanent resident there. However her ID card said that she is from Jaffna. She was caught in a generalised round up and taken to station with many others. All were scrutinised person by person. Eventually all of the Tamils caught were kept in custody, the others released. The woman's family (including children) did not know where she was when she did not return home as expected, as they were not informed by police of her arrest as is the regulation. The woman's sister, brother and children went looking for her at a number of police stations, asking if Tamil people had been rounded up there. The brother explained that the woman was a permanent resident. The police continued to suspect her because she was from an LTTE area.

The UNHCR and other human rights groups were quite clear to state that Colombo was not a viable safe relocation options for Tamils fleeing the conflict in the north or east, explored in more detail in the Protection Implications section (page 47).

Other areas, including Kandy, Puttalam, Anuradhapura and the south

The conflict is affecting most of the country in relation to increased checkpoints and reduction of rights, such as enforced household registration requirements. The conflict is also impacting non-affected areas in terms of the large numbers of internally displaced people moving to areas including Puttalam, Kandy, Anuradhapura and elsewhere. This in turn has led to heightened vigilance by security forces, with human rights groups highlighting the general increase in torture, arrest and other human rights violations. The Human Rights Commission noted abductions as being a problem throughout the country. While there are noted risks of terrorist attacks throughout the country, particularly following the October terrorist attack in Galle in the south. As one human rights worker stated, *'nowhere is safe now' – the conflict has impacted on all parts of Sri Lanka'.*

Kandy

Growing concerns were particularly noted in Kandy, which traditionally has had a reputation for being a peaceful place and as such people from all parts of Sri Lanka come to Kandy to try and settle there, leading to it being one of the fastest growing towns in Sri Lanka. This has led to growing problems in the area. As the Buddhist spiritual capital of Sri Lanka and the home of a number of extremist groups, where both serious ethnic clashes and multiple

arrests have occurred. The Commission for Justice, Peace and Human Development highlighted a range of recent examples, including Plantation Tamils, who in the past have been viewed and identified as separate from the broader Tamil community, have now started experiencing cases of arrest and abduction. A number of cases of people from Batticaloa and Trincomalee who came to Kandy have been arrested or placed under surveillance.

4.2 Ethnic concerns

Sri Lanka has a complex and ultimately tragic ethnic relations history. While the Sri Lankan civil war has been influenced by a range of factors, including politics, religion, class and ideology, it is ethnic tension and its interplay with these factors that has underlain much of the conflict. A full analysis of the causes of this tension is beyond the scope of this paper, however a number of conclusions can be drawn in relation to the current state of ethnic relations and its impact on the human rights situation for different groups in the country. This includes:

- There has been a consistent move over the past 20 years to separate along ethnic lines²³. While no formal discrimination policies exist, there have been no Tamils employed in the military or police for last 20 years, with not enough Tamil speaking police officers. Only 3% of public servants are Tamil speaking. The majority of schools are divided on ethnic lines. People are increasingly afraid to employ or rent property to people of a different ethnicity. As stated by one observer, *'Tamils and Sinhalese do not organically meet.'*
- This division heightened suspicion, rumours and racism, propagated by various political and religious groups and what many stated was a biased media, with ethnic and religious labels being used politically to further divide the community. This includes the Government's increasing use of the media, TV ads and dob-in lines to create a climate of fear against terrorism, and indirectly, the Tamil people
- Suspicions are further exacerbated in that Tamils and Muslims have been afraid to express their fear and disdain of LTTE actions, which in turn leads to further suspicion. With non-violent Tamil leaders being killed by the LTTE, no alternate public image exists to represent the Tamil community.
- With the LTTE issue dominating the political landscape, many Muslims feel disenfranchised, and do not have a seat at the peace table.
- Historical experiences of conflict, mistrust, dislocation or forced relocation have added to ethnic tensions between groups.
- The changing political environment along ethnic lines in the mixed eastern districts, which have lead to violent clashes and human rights violations, and
- The impact of current military policies, particularly in the north, which many argue is pushing Tamils towards the LTTE for their survival, which in turn is being played out in the media.

4.2 (a) Tamils

As a consequence of the above, Tamils have been consistently vilified as a potential risk to the community across all sections of the country, from the school system, the health system, the labour market, to the relationships within neighbourhoods and beyond. In various capacities a range of assumptions is made relating to Tamils as not only supporting the LTTE, but as potential terrorists. This was consistently stated by both Muslim, Sinhalese and Tamil groups we met, including:

- *'There is a State perception of the Tamils as the enemy within'*
- *'Every Tamil is suspected (as an LTTE supporter)...the media have done a lot of damage'*
- *'These ads are strong, persistent, racist brainwashing – where does it end? Its aim is to mobilise the whole nation against terrorism. Every Tamil is a suspect and viewed as a danger.'*

²³ We note that in terms of Sri Lankan discourse, Muslims tend to identify as a separate ethnic group from the broader Tamil community.

- *'The anti- terrorism argument is blinding and justifying the injustice being done by the authorities to the Tamils of all backgrounds'.*

These messages are most strongly felt by the Tamils at the point of interaction with the authorities, particularly the police and armed forces. Consistently the team were told of experiences and incidents, such as:

- *'Things have really tightened up...there are cases where even if a Tamil person is able to produce his ID card when stopped, if the ID card says he is from Batticaloa , Jaffna, Mannar, he can be taken into custody.'*
- *'There is an attitude that if you are a Tamil from the North or East you have no right to be in Colombo – they can live as suspects!'*
- *'Tamils with an ID card showing that they are from the North or East, and who can't speak Sinhalese, they have big problems... they are immediately suspected'*
- *'At checkpoints it is deadly to be a Jaffna Tamil. They will be interrogated, beaten, kept, and sometimes will disappear'.*

As highlighted in the Human Rights Violation section of this document, Tamils are targeted in a range of ways from house searches, forced registration, arrest and torture. One person we interviewed saw a young Tamil man shot at the checkpoint, after not being able to explain his presence in the area in Sinhalese. The fear of association with Tamils is such that the UNCHR stated that throughout the country, Tamil residents of Colombo, Puttalam and other relatively safe places, are unwilling even to take in relatives from the North or East because there is a perception that it will bring trouble for them.

Every group, refugee and IDP we met, highlighted the fact that the low-intensity conflict has now escalated into a targeted war against not just the LTTE, but against the broader Tamil community, seen as not just supporters, but actively involved in terrorist activities.

A finding of the research by Hotham Mission was thus that a lack of protection exists for Tamils throughout the country who are experiencing persecution as a social group, based on their ethnicity.

4.2 (b) Muslims

The perception of risk to the community however extends to anyone viewed as being complicit with not just the LTTE, but in some cases with the Tamil people. One man stated, *'Sri Lanka is in a state of war with the LTTE – many people believe that this is also waged against the ordinary peace loving Tamils, some Muslims and also some Sinhalese '.*

The security situation for Muslims remains complex with the perception of the community in some cases as being Tamil and pro-LTTE, while in other cases being pro-government. The impact of this will differ greatly dependant on where the person is located. With a history of forced relocation by the LTTE now extending to recent experiences by the GoSL, many Muslims feel vulnerable. Examples were reported of Muslims being arrested on suspicion of LTTE involvement, such as the returned Muslim asylum seeker from Australia. While others relayed experiences of persecution at the hands of the LTTE. It was noted that some of the older leading Commanders in the army are Muslim, and a perception has developed that the Muslim community is leaking information to the authorities and the armed forces. As one man stated, *'when something is leaked the Muslims are always blamed by either party.'* The SLMM stated *'the Muslims and the LTTE don't have a very happy relationship – Ampara is a problem,'* while also noting growing problems between the Muslim community and the Special Taskforce.

There are serious concerns for the Muslim community in the East, innocently caught up in the conflict, and as outlined in the IDP section, in some cases being forced into potentially dangerous environments by the state. While one group stated,

'the persecution of Muslims is limited to those of the east. Internal relocation may be possible for these people if they have a relative elsewhere – although they have to register with the police. It is not likely to be a problem for individuals, but where

there is mass movement (eg Muttur), that is different...'

This was refuted by other groups who stated Muslims have clearly been targeted by both the LTTE and GoSL in many instances, particularly individuals with previous histories of arrest or interrogation or individuals outside of their place of birth. One group simply stated, '*Muslims, they are the nut between the cracker*'.

4.2 (c) Sinhalese

In regards to the Sinhalese community, we were told of numerous cases of arrests made of individuals who had employed, rented property or simply been in the company of Tamils suspected of LTTE involvement. One group told of a number of Tamils from Batticaloa who recently arrived in Kandy. They had nowhere to stay so they stayed in a lodge, near the organisation's office. The neighbours were suspicious and reported the people to the police. The army and police then cut off the entire area and arrested all the Tamils, as well as the Sinhalese house owner. Two of the group were released, two people remain in jail two months later.

An additional concern noted involved incidents of extremist Buddhist groups targeting evangelical Christian places of worship, often attacking Sinhalese convertees, particularly in the south of the country. The primary concern noted however in relation to the Sinhalese community related to those with political affiliations, particularly individuals who had opposed the JVP during previous election periods. While the team received some contradictory responses to questions about whether this remained a concern, we noted in a meeting with one returned Sinhalese asylum seeker from Australia to Colombo that he had reported receiving death threats on his return from the JVP. He stated that this occurred within one week of his return, in numerous calls to his family home, and subsequently has remained in hiding.

5. Humanitarian Concerns

Previous Hotham Mission research has found that there are large numbers of Sri Lankan asylum seekers in Australia. The majority on a Bridging Visa E, without work rights or access to income, have limited family and community support, and are reliant upon charitable organisations to provide housing and emergency relief for basic living necessities. Furthermore, many are experiencing mental and or physical health difficulties, and many have been living under these conditions, reliant on charity, for between five and twelve years²⁴. Hotham Mission has noted the welfare concerns for these Sri Lankans in Australia, and has speculated on the potential difficulties these people may face when returned to Sri Lanka after so many years destitute, with little or no resources and support.

As such, the current humanitarian and welfare concerns for Sri Lankans were a crucial point of interest during the field visit. Detailed humanitarian and welfare questions were asked during each interview to ascertain the current state of welfare in Sri Lanka, as well as to provide a sense of the issues likely to face returning Sri Lankan asylum seekers in the current environment.

Humanitarian and welfare concerns are broken into a number of key areas, including general welfare concerns, specific regional concerns, and implications for return to Sri Lanka and repatriation.

5.1 General welfare concerns

Internal displacement and relocation

There are currently 250 000 internally displaced people in Sri Lanka. Sinhalese, Tamil and

²⁴ Hotham Mission, Bridging Visa Review Submission March 2006

Muslim people are represented in this number. The International Organisation for Migration acknowledged that *'the IPD situation in Sri Lanka is one of multiple displacement – there are many incidents of displacement for some people, and sometimes a refugee returning can become an IDP as well'*.

Other groups and individuals consistently reported this sentiment also, suggesting that ongoing war, security issues, lack of services or the Tsunami were the cause of much internal displacement and relocation. Currently it is people from areas such as Trincomalee and Batticaloa who are most likely to become internally displaced, according to the welfare organisations working with the population. Furthermore, forced domestic relocation of civilians by the Government or LTTE forces is a major issue in some areas, as in Muttur for example.

The UNHCR Colombo has a lead role in provision and oversight of protection, shelter and camp management for IDPs. Additionally, the UNHCR facilitates an IDP protection working group monthly to strategise the response to the protection concerns of IDPs. This group was developed as a result of the Sri Lankan Government's fragmented response and sense of diffused responsibility which has arguably led to a substandard of care and protection being provided to those in IPD camps.

Many IDPs have fled quickly without warning as the situation in their area deteriorates, leaving behind all belongings. Women interviewed in a Tamil IDP camp, Eachchantheevu, near Kinniya on the East coast, described their experiences:

We left two months ago – there was too much shelling and bombing in our area. We are fisherpeople, but we have been forced off the water by the fighting. We left everything behind, we couldn't carry it with us.

It was very difficult, we walked through lagoons because we were afraid to walk on the roads. I had to carry my 11-day-old baby over my head through the water. It took many days.

Access to health care is a problem in some IDP camps, particularly those in Tsunami affected areas such as the camp in which these women were staying. The local host community was generally supportive of the IDPs, and they were able to access the local hospital for essential health services, including maternal health services. However, the local hospital was destroyed by the Tsunami and the emergency hospital was severely overstretched servicing the local area even before the influx of IDPs. .

Living in an IDP camp places people in an extremely vulnerable situation. Most no longer have an income as they have lost their means of employment or livelihood. Often the IDPs are too scared to leave the camp to search for employment in the host community, fearing local hostility, abduction or LTTE forced recruitment. As a result access to adequate food and water is a major issue in IPD camps. The GoSL will generally provide dry rations to IDP camps. The UNHCR supplement this assistance through provision of a water source (often installing a water pump) and shelter.

However, newspaper reports and welfare organisations state that the Government has cut the supply of dry rations to camps that it wishes to close, effectively then forcing the inhabitants to relocate and return to where they have come from. This method of discouraging long term establishment of IPD camps and coercing people to remain in conflict areas has not been acknowledged by the Government however was witnessed by many of the groups interviewed by Hotham Mission. An example given was the situation of Muslim IDPs who fled Muttur during a period of heavy shelling and a warning from the LTTE that they were planning to intensify the fighting in a bid to capture Muttur. The Government were concerned that with the mass fleeing of civilians Muttur was at risk of falling to the LTTE, and

as a result cut off supplies to the Muslim IDPs and used the army to pressure them to return to Muttur. One week later Muttur was captured by the LTTE, and 140 people died.

The day prior to the arrival of the Hotham Mission team in Kinniya two Muslim IDP camps accommodating approximately 180 IDPs had been closed suddenly, with reports of buses provided by the Government arriving and people being forced back to their homes in Muttur. Guns and weapons were not used; rather food and water supplies were cut off at the direction of the local district secretary. An ICRC field worker accompanied the Hotham Mission team on the Kinniya visit as a translator, himself a Muslim who fled Muttur three years ago. He indicated that the previous day the Muslim IDPs had expressed to him a fear of return, indicating that they felt it remained too unsafe to return to their homes, that they believed the recent leaflet's distributed by the LTTE that an assault on Muttur was imminent. The fact that these same people had all left the camp for Muttur within 24 hours of making these strong and fearful statements indicate the evidence of forced relocation.

Despite the presence of police or military, security in IDP camps is an issue. Welfare groups described the high incidence of rape and violence against women, often as a result of poor camp infrastructure or planning. Women often had to walk long distances to access water, and insecure, poorly lit or nonexistent toilet facilities left women vulnerable in isolated locations and at risk. Furthermore, camps have been targeted for recruitment by LTTE for example. This meant that parents were often too scared to allow children to leave the camp to attend local schools, and as a result schooling is further disrupted.

SLMM described recent events in an IDP camp near Vavuniya, wherein a white van was seen to be patrolling the camp, and people were being assassinated. The security forces present refused to acknowledge the deaths and disappearances relating to the white van despite witness reports. In the final incident a girl was shot dead 100m from an army checkpoint near the camp, and the soldiers said they had seen nothing. There was no safety. It took an international journalist to report on the events before any action was taken and the deaths were stopped.

Hotham Mission discovered that some groups of Tamil people live a transient existence, travelling large distances across the country, continuously relocating, in a bid to remain clear of conflict areas. They do not class themselves as being internally displaced. For example, in the East, it is not uncommon for people to move even as far as Jaffna or the Vanni when conflict begins, before returning. This transient movement is fraught with danger, as people are suspicious of Tamil movement and reports that the police Special Taskforce are more active in Tamil areas meaning there is more chance for a person to be stopped and detained. Despite many Tamil people interviewed by Hotham Mission stating that they feel safer in all Tamil areas rather in areas of mixed ethnicity, even this is not a guarantee of safety. One woman relayed that her husband had fled their village to the Vanni in an attempt to find work and security. He was killed in an attack on the area three months ago. She now relies on the village people to support her. One family interviewed in the same Tamil village located near Kantale, Pudurinukum, testified to this transient lifestyle:

Living in this area is tense, we would prefer to be in a 100% Tamil area. When hostilities come we live in fear and so we can't go anywhere – we don't even go to the temple to worship because we are so scared. This is our birthplace, we prefer to be here. But we will think of leaving again if there are civil problems. With the Muttur problems some people from around here have gone to the Vanni or even all the way to India. There are about three families from this village that have gone, and in the next village there is a fairly large number that has gone.

Housing and Homelessness

Housing is becoming an increasing problem across Sri Lanka for varied reasons, largely as direct or indirect consequence of the long-term conflict and ethnic tension.

Over the last twenty odd years people have fled their homes at various times as fighting intensified, particularly in the North and the East, or were displaced in the aftermath of the 2004 Tsunami. The abandoned houses are often taken over by someone else requiring housing or in some instances by the army or LTTE. Thus when the rightful owner returns, they find their home is occupied. This leads to further problems of land dispute, as described by a member of the human rights sub-committee:

Muslims are returning to houses fled to find Tamils occupying the house...Tamil houses are occupied by the army...this is a loss of property, and some killings are then based on land dispute

Laws regarding home ownership and occupancy further complicate the situation. As described by a lawyer interviewed in Colombo:

'To evict someone who occupies your house can take three to four years and lots of money. The dynamics are very difficult. Often the person squatting has nowhere else to go or their house may be in high security zone. On top of this there is a ten-year rule regarding a person occupying a property without challenge by the rightful owner. The ownership of the property will be handed over to the occupant after ten years unless the owner can prove that he was kept away and unable to challenge squatter'

Increasingly renting a property has become difficult. In the first instance financial pressures make renting difficult for many people, for example those relocating to find employment or students. To combat this it is common for people to enter into shared housing arrangements, although this itself has its own risks and disadvantages. One Tamil man in Colombo explained that shared housing was problematic as a result of the new household registration requirements.

'Chances are you wont find a job and then you can't get housing – so you have to try and find shared housing...this is a problem in the round ups.'

In some areas there is community pressure on landlords not to lease properties to people of Tamil ethnicity at all. This is particularly so in areas where the authorities seem to be applying indirect pressure on Tamil people to leave. Local residents will be immediately suspicious of a new Tamil neighbour, as media depiction and scare tactics, as well as past experiences of terrorist activities, has led to a widespread belief amongst the majority that *'every Tamil is suspected as an LTTE supporter'*.

Numerous incidents of police raiding the homes of innocent families, students or workers as a result of neighbourhood suspicion were described in detail to Hotham Mission. For example, recently a group of 6 Tamil students came from Muttur to study in Colombo. They had little money and thus lived in a boarding house arrangement together. The neighbours (Sinhalese) became suspicious and informed the police that a group of Tamils were living together and acting suspiciously. The house was raided and all six students were arrested. Whilst all held ID cards, none of them had registered with the local police, and thus found themselves in major trouble. The NCCSL were able to intervene and vouch that the six were genuine students, advocating for their release. However the landlord of the property, a Sinhalese man, was then harassed by the police who questioned him as to why he had rented the house to Tamils, an example of the indirect pressure for Tamils to leave Sinhalese areas.

If these students had registered with the police they may have faced less difficulties when the police raided the house. However, many Tamil people fear any involvement with the police and as such as frightened to register. Compounding this is the language barrier. There is no official interpreting service available in Sri Lanka, and only a handful of police can speak Tamil. So a Tamil person who cannot speak Sinhalese will have great difficulty explaining their situation and registering with the police. Given the current state of emergency and high level of suspicion, Tamils from the North and East or other contested areas are at high risk of

detention or arrest, and thus many choose not to register or engage with police where possible. Furthermore, if when a person is arrested their statement is taken in Sinhalese regardless whether they are Tamil speaking and understand or not.

Physical Health

Sri Lanka has a national public health system as well as a private health system. However, as provisional governments run the health system, it was found that the standard, availability, cost and access to health cares vary dramatically across the country. It was widely accepted by the health and welfare professionals interviewed that there is a fairly good hospital network across Sri Lanka, other than in the North, the East and LTTE controlled areas. Despite producing approximately 1000 doctors each year, the government has difficulty resourcing regional areas with adequate medical staff and supplies. It seems that many qualified doctors look abroad for skilled migration opportunities rather than remaining in the conflict situation.

In the LTTE areas there are no certified medical training colleges, and as a result the number of certified doctors *'could be counted on one hand'*. Instead *'medical officers'* are trained, though are not qualified doctors, and staff the LTTE-run hospitals. These hospitals have as a result relied on International Aid organisations to provide training, medical staff and resources in order to operate. It was suggested on a number of occasions that the LTTE hospitals were run largely for injured LTTE cadres rather than civilians. One medical practitioner stated that he believed there are as many as 40 000 *'quacks'*, or people practicing medicine without qualification operating throughout the country.

Medication is a further source of concern throughout Sri Lanka. Most standard medications, ranging from the extensive immunisation schedule to medication for specific ailments, are provided free or at subsidised cost via the public health care system. However, some crucial medications, including some cardiovascular and cancer medications, are only provided on a limited basis free of charge, and the demand outstrips the supply. As a result the medications remain extremely expensive and unobtainable for many meaning that treatment is often broken, sporadic or inadequate. It was only last year the Government began providing HIV/AIDS medication free of charge, as the rate of infection begins to rise.

Maternal health services also vary throughout Sri Lanka. The paediatrician interviewed was proud to report that infant mortality rates in Sri Lanka are only behind that of Singapore and Malaysia in Asia, with 14 deaths for every 1000 births in Sri Lanka, as compared to 38 for every 1000 in India. Furthermore, 95% of women deliver in hospital. However, the doctor went on to say that in *'uncleared'* areas, or LTTE controlled areas, birth by caesarean section is a problem and the mortality rate is high. There are not enough midwives throughout the country, and specialist equipment for breathing and infant life support following birth difficulties is not widely available. Another welfare organisation working with large numbers of internally displaced women and refugees returned from India reported that maternal and infant mortality rates have increased in recent times as women are unable to access adequate antenatal care, or suffer from malnutrition resulting in babies being born often at just 2.2kg.

As a result of the inadequate regional health care services, patients with a serious condition, such as cancer or heart problems, who are living in the North, East or LTTE area will be forced to travel to a major city in order to access the treatment required. In the past many people have travelled from the North, East or South to Colombo or Kandy for specialised treatment. The necessity of travel for health care is likely to increase, as the current increased conflict situation has caused the decline of services in various regions; most particularly the North and the East, and LTTE controlled areas. The teaching hospital in Jaffna once thought to be a provider of high quality health care has been debilitated by lack of staff and resources, and medication. However, the increased conflict has also led to an increase on the restriction of movement within the country meaning that the sick are not able to travel to access health care, and aid organisations are struggling to provide medical relief to the

conflict areas. There is now a long wait for patients to be evacuated by ship from Jaffna to Colombo for treatment. Even for those who are able to reach the required health care centre, it is likely that difficulties with local police and authorities will be faced. A common scenario was described by a human rights organisation who receive many such complaints:

A Tamil patient will travel to hospital in Kandy for treatment, perhaps they are an outpatient for a week. They will have problems with police during their stay, as the police are suspicious of everyone not from Kandy, especially Tamil people. They will harass the person and his family, make inquiries regardless of fact that person in Kandy for medical treatment.

Medication distribution is inequitable. Availability has dwindled in the North and LTTE areas as the Government refuses to send in medication which may fall into the hands of the LTTE rather than civilians. Heavy taxing and Government censorship restrict aid organisations providing medication, and lack of fuel and equipment means that proper storage of medication is a problem.

There was a case recently of a child in the Vanni requiring Thyroxine – there was no medication available. The child was landlocked, unable to travel out of the Vanni to access the medication. Eventually an agreement was made between the Government and the LTTE for the child to travel to Jaffna for treatment.

Lastly, consistently respondents noted that in addition to an imbalanced health care system, basic knowledge of health care and hygiene is low, particularly in rural areas, and that a better health promotion system is required

Mental Health

It is indisputable that Sri Lanka has a long history of war, low-level conflict, and trauma, as well as experience of natural disasters such as the 2004 Tsunami, which have affected a vast majority of the country in some way. However, despite the link between trauma and mental health conditions such as Post Traumatic Stress Disorder and depression, the current mental health system in Sri Lanka is largely under developed, under resourced, and stories of corruption are rife. In practice this means that there is no protection of the rights of those with mental health issues. They have no property rights, and it is reported to be common for relatives to remove the property of those mental health patients in hospital. There remains widespread stigma and little community knowledge of mental illness, and existing services are extremely limited. This means that early warning signs of mental illness are not recognised and as a result opportunities for treatment, management and recovery are reduced. It should be noted that awareness of mental health issues has increased somewhat following the 2004 tsunami and devastating grief and loss impact felt by the entire country.

Currently there are only 35 psychiatrists in Sri Lanka, only one clinical psychologist, and no psychiatric nurses. Education and training facilities, as well as loss of graduates and practitioners to skilled migration schemes, appears to be contributing to the lack of mental health practitioners. As a result the current mental health system relies on mental health social workers to function as the backbone of support, with only limited infrastructure and other resources. Counsellors working with survivors of torture in the Kandy region reflected that despite counselling and psychological support of survivors being their ultimate role, it was imperative that they deal with an individual or community's practical and basic survival needs first - such as water, hygiene and sanitation, housing and food. As such a community development rather than therapeutic model was widely used.

The distribution of psychiatrists and mental health workers is unbalanced, with the majority based away from conflict areas in Colombo and Kandy. Presently there is only one psychiatrist in Jaffna, one in Galle, one in Batticaloa and one in Trincomalee. It has been noted that access to mental health services is discriminatory, for example we were told the

psychiatrist in Batticaloa is Tamil and notorious for refusing to see Muslim patients. Furthermore, the mental health system was completely overstretched in the aftermath of the tsunami. One prominent INGO stated, regarding asylum seekers with mental health concerns returning to Sri Lanka, that *'there is an imbalance in health services...there is no point in sending them back to Sri Lanka because there are no services for them'*.

It is reported that there are only limited facilities for mental health inpatients, and these are not distributed equitably across all districts. Whilst the Angoda Mental Hospital in Colombo is a leading service provider, offering a comprehensive range of psychiatric and psychosocial support services to patients, many centres operate on archaic models overlooking the basic human rights of patients. It is reported that there is a high prevalence of rape of females with mental health issues, without recourse for perpetrators. Other than the tsunami-specific crisis response, there is no mental health outreach service to regional areas.

Disability

It was found that there are few disability services or supports for those with physical and intellectual disabilities in Colombo, let alone throughout Sri Lanka. A paediatrician interviewed suggested that *'there are not enough services for disabled children – this is not a priority for the Ministry of Health'*. In fact it is estimated that there are between 10-15 proper facilities catering for those with disability in Colombo, and a few basic facilities in regional areas, such as homes for disabled children. Criticisms of these services and facilities included that the services are not specialised, and for example in one centre you may find a child with autism, someone with a severe physical disability, a child with down syndrome and a child with behavioural difficulties or an intellectual disability. It was suggested that staff training is inadequate. One prominent INGO remarked that *'some centres are like vegetable dumping places'*.

The lack of services may become an increasing concern as medical practitioners report a growth in number of children with disabilities resulting from birth complications. It appears that technology and knowledge in neonatal care is developing, however at this stage has only developed to the point that care available results in survival, rather than survival with quality of life. It should be noted that a similar situation arose in western nations as technology for neonatal care developed. Furthermore, in LTTE areas disability following birth complications is rarer, as treatment is not available and thus babies in many cases die.

One father interviewed spoke of his anguish and guilt over the care provided his son, now twelve years old. His son, Nihal, has an intellectual disability that was misdiagnosed as a child. As a result of the misdiagnosis Nihal was prescribed extremely strong medication to suppress his hyperactivity and reduce the fits he was experiencing. Nihal's parents later discovered from doctors abroad that this medication is not fit for children, and in fact not even given to adults in some countries due to the immense risks and potential for complications. Sadly Nihal developed Hepatitis B as a result of this medication. For much of his early childhood Nihal was ostracised from other children and even his extended family. He was unable to attend school as no special services were in existence. His lack of ability to communicate led him to throw things and yell and scream in frustration. However Nihal now lives abroad with his mother and attends a special development school. He has learnt to talk, understand his surroundings better and communicate.

Aged Persons

Traditionally in Sri Lankan society and culture it is widely accepted that it is the responsibility of the family to support and care for its elderly members. However, in today's society 'with the breaking up of the traditional joint or extended family into nuclear units, the traditional support base of the elderly in Sri Lanka is gradually diminishing'²⁵.

²⁵ Indralal De Silva (1994) How serious is ageing in Sri Lanka and what can be done about it? www.unescap.org/ESID/psis/population/journal/1994/v091a2.htm

Traditional family support role may have contributed to the current situation wherein the State plays little role in support of and care for the elderly. There is no social security system and as such the elderly receive just 100 Sri Lankan Rupees per month. Reports regarding the existence of aged care facilities varied slightly amongst interview respondents, possibly reflecting lack of community priority or interest in the issue. Generally it was agreed that there are very few aged care facilities, particularly outside of Colombo and Kandy. It was suggested that in Jaffna, Batticaloa and Trincomalee there is only one centre in each. Generally, the standard of State owned facilities was thought to be low, and whilst a small number of privately owned homes exist, these are very expensive and out of reach for many Sri Lankans.

As a result of the limited public facilities and low standards, the breakdown of traditional family support leaves the elderly Sri Lankan population in a vulnerable situation. Community workers in Kandy described an increasing role for mediation between family and an elderly member who may be struggling to access basic living necessities or sustain accommodation due to lack of income and support.

Employment

The lack of a social security system means that employment is crucial for income generation and survival. Without employment a person has only extended family to rely upon for assistance. However access to employment in Sri Lanka appears to be dependent somewhat upon class, ethnicity and location. The military and police forces are large employers, however really only an option for Sinhalese men. Furthermore as previously noted it was suggested that only three percent of Sri Lanka's public servants are Tamil speaking, when if the total number of Tamil and Muslim people is taken into account this number should be much higher at around twenty five percent. This suggests that Tamil people are excluded from a major source of employment.

Hotham Mission was informed of entire villages losing their main source of employment, income or livelihood as a result of conflict or restricted movement. For instance, fisherman in some parts of the East or in the Mannar district had lost access to the water, either out of fear of being mistaken for an LTTE boat by the Navy or direct threats. In other areas, Jaffna for instance, farmers are no longer able to access fuel, machinery other resources needed to run their farms. Those who have been able to produce goods are unable to sell their products due to lack of money in the local community and lack of opportunity or method to transport goods to other parts of the country due to road closure.

The chances of moving to another area to seek alternative employment were inhibited by security concerns, registration requirements, and for Tamils from the North and East particularly, the threat of being stopped at the increasing numbers of police and army checkpoints. Moreover, for those who tried to relocate despite all of these risks, the chances of securing employment were hindered by discrimination based upon ethnicity and religion. As one interviewee stated, *'people are scared to employ you if you are of different ethnicity – they think you have a different agenda'*. Furthermore, in some areas of Colombo Hotham Mission were told that Muslim businesses were being targeted by local thugs, with shop windows and dressings being smashed by mobs, the goods looted, with no intervention by local police.

Gender

Women are particularly affected by the increased conflict situation. Repeatedly welfare groups, human rights groups and individuals spoke of the high level of rape and assault against women in Sri Lanka as noted in the Human Rights Violation section (Page 26).

Some women are at increased risk of exploitation or assault, including those from low socioeconomic backgrounds, those with a mental health, and those in living in an IDP camp or similar setting. Many women unable to find employment are travelling abroad, particularly in the Middle East, to work in exploitative arrangements as domestic servants. The IOM are

currently working with this group, as many face sexual and physical abuse as well as exploitative financial situations. These women also face long term separation from family as they work to pay off debts to agents who placed them abroad, leaving their children to be raised by extended family.

Child welfare

At the crux of child welfare concerns in Sri Lanka today remains the threat of child recruitment detailed in the Human Rights Violation section (page 26). Traditionally the LTTE have been the main perpetrators of forced conscription of children to armed service. In LTTE areas it is expected that each family should provide at least one family member to fight for the LTTE. As a result, parents are often too afraid to let children attend school past the age of about thirteen, fearing their child may be abducted. As a result schooling is disrupted or prematurely ended, thereby limiting the child's future opportunities for further education and employment.

The HRC noted that child abuse also occurs at hands of authorities however is underreported. Another group noted concern for children in the LTTE controlled areas, where criminal and paedophile elements are allegedly thriving. With the LTTE having their own police force, the SL police and army are not permitted to enter. Recently two policemen moved into the LTTE area to search for a known paedophile who had moved there, however the LTTE arrested the 2 policemen before an arrest could be made. A number of groups reported criminals hiding in LTTE areas, particularly where there may be a financial benefit for the militia.

Children of single parents face further difficulties, particularly if there is no extended family or community support of the family. Their education, nutrition, health and basic living requirements will be at risk. A social worker described a common situation:

A single woman with a young child and no family will have big problems because she can't work. The eldest child will be stopped from going to school in order to care for siblings so that the mother can work.

Education

Generally the public education system, particularly regarding primary and secondary education, is of a good standard and the country enjoys high literacy rates. However the increase in ethnic tension, hostilities and conflict has contributed to a number of school closures and general education disruption. For example, the recent A9 road closure led to a number of teachers from the Vanni being stranded in Jaffna. This has had a major impact on their students who now find themselves without teachers and with no foreseeable alternative. On the East Coast in villages such as Kinniya, teachers are increasingly unable to make the short trip to school from their home in Trincomalee due to threat of or actual violence restricting movement. Similarly, in some areas parents are reluctant to allow children to attend school due to fear of violence, abduction or child recruitment.

Financial difficulties also contribute to difficulty in accessing education for children. For families who have lost their main source of income, or find themselves relocated or in an IDP camp, there is no money to spare for children's school uniforms and books. The stigma attached to children attending school without these basic items leads to many children simply not attending school until money is available, if at all.

In most cases schools are divided upon ethnic lines as students choose to attend a school in either Sinhala or Tamil medium. Private schools also offer English medium. Unfortunately this divide in language means that students have little opportunity to mix with children of different ethnicity or to learn both of the national languages, Sinhala and Tamil.

Access to schooling for those with special needs is limited. For example, the language divide also presents a major difficulty for children who are unable to speak or are illiterate in Sinhala and Tamil, such as the case for children who may have been raised abroad. There is no

special support for those students learning Sinhala or Tamil, no equivalent to the English as a Second Language programs existent in Australian schools. Hotham Mission met with two adolescent boys who had spent much of their childhood in Australia as asylum seekers. When their families lost their appeal for protection and returned to Sri Lanka, each boy faced extreme difficulty in integrating to the Sri Lankan school system. One boy, now aged 16 years, spent six months in Sri Lanka without attending school. This was partly a result of language difficulties, as he could not read or write Sinhalese, and partly as a result of a corrupt principal, who expected a payment to accept the boy into the school, believing the family to be returned migrants.

The second boy came from a Muslim family and had started school in Australia, leaving for Sri Lanka during his 2nd year at high school. He could not read or write and had extremely limited spoken Tamil language skills, his family communicating in English in the home. His only option to continue schooling was to attend a private international school with teaching conducted in the English language. Unfortunately the fees were prohibitive for the family who had spent so many years in Australia without work rights or income. This boy was lucky to have a strong support base remaining in the Australian community who have pledged to fundraise for him to attend the English school, if not for this generosity it is thought he would have dropped out.

Children with physical or intellectual disability face extreme difficulty accessing education. There is a stigma attached to such children, and as a result some parents choose not to send the children out of the family home. Specialist support programs in public schools do not exist so affected children have extreme difficulty coping if sent to a mainstream school. Specialist schools for children with disability are extremely limited, expensive and of comparatively poor standard due to lack of teacher training and combination of disabilities. Such schools often combine intellectual with physical disability meaning that supports are often not targeted or appropriate for the needs of the children.

Access to tertiary education is a contentious issue, following the introduction in 1970 of a new tertiary entrance selection system resulting from the comparatively high representation of Tamil students in the nation's universities. The system was based upon:

*'...standardisation of marks by language medium at the university entrance examination. The effect of this was to place the Tamil students at a disadvantage in that they had to obtain a higher aggregate of marks to enter the university-in the medical, science and engineering faculties-than the . Thereafter, a district quota system was also introduced which gave weightage to students in rural areas and from backward communities. All this represented a departure from the traditional practice of selecting students on the basis of actual marks obtained at an open competitive examination.'*²⁶

Whilst this system has since been changed again to an ostensibly more equitable method of university entrance selection regardless of language, the Tamil people continue to feel unfairly discriminated against creating yet another source of tension.

5.1 Regional Concerns

In addition to the general welfare concerns discussed above, there are a number of more specific regional concerns with dramatic welfare implications. These largely relate to the closure of the A9 just north of Vavuniya. The A9 is the main highway running from Jaffna to Kandy down the centre of the country. The A9 closure has meant that no-one is able to travel into or out of Jaffna or the LTTE controlled Vanni area. This has caused major problems and life threatening situations for the inhabitants of Jaffna and the LTTE area to the south, causing outcry from humanitarian and human rights groups:

'The A9 should never have been closed – it causes suffering in the Vanni and Jaffna.

²⁶ <http://www.peaceinsrilanka.com/peace2005/Insidepage/Background/Background.asp>

The government have a responsibility to people there. By closing the A9 they have violated the ceasefire agreement...the government are not providing the relief needed as part of their international obligation which was included in the ceasefire agreement'.

Aid going into the isolated regions is limited. Partially due to GoSL and LTTE censorship and taxing of all goods, and partly due to lack of community awareness about the situation by people in the south. Repeatedly Hotham Mission heard that people in Colombo aren't aware of all of the difficulties in the trouble zones, as food and medical shortages did not directly affect them, and few reports were hitting the mainstream Sinhala media outlets. Furthermore, as the situation in the cut off areas becomes increasingly difficult, dissent grows.

'The government is not realising that by cutting the area off, causing a lack of teachers, medicine, and food – people will be forced to come under the grips of the LTTE.'

Jaffna

The A9 road closure has meant that food, medicine, fuel and other resources are all in limited supply in Jaffna. Economic activity has effectively been paralysed in Jaffna. All engines, motorbikes, and machinery have been confiscated by the army. Farmers are unable to work as a result meaning that little food is being produced. Money is running out as banks are closed, and as such people can not access funds to purchase the little food there is for sale. The entire region is now reliant on aid coming in by ships.

New supplies are unable to be brought in by road, and only in a limited capacity by air. From August 11, the date of the road closure, it took more than five weeks for UN charter flights to commence. There have been only five or so since August. The flights are able to take in food for the World Food Program, as well as some medicine and other items. Ship is the main source of transport into the region, and this is also limited.

Churches and aid groups complain that there are deliberate delays and complications in sending food and other relief to the Jaffna region, partially due to GoSL fear that it will be made available to the LTTE. Freight is expensive, and the Office of the Commissioner General of Essential Services must approve all items being sent. Thus despite the recent increase in boats moving to Jaffna, access to goods remains low. The ICRC reported that the people in Jaffna are rationed only 200grams of dry rations per day, not even enough for one full meal per day. Furthermore a person must hold a Jaffna ID card to receive rations, posing a problem for anyone not born in the region however living there now, or for those who were stranded in Jaffna when the road was closed.

LTTE Area

The situation is similar in the LTTE area affected by the A9 closure. Food is limited in availability due to the road closure, and even NGOs such as the ICRC are unable to send in food and other aid to be distributed as a result of the high tax placed by the LTTE on all goods going into and out of the area. The small amount of aid that has reached the area, often via church clergymen, has been totally inadequate. As one human rights worker stated,

Maybe the LTTE want a few people to starve – this becomes powerful propaganda to them...maybe the Govt are doing the same thing

As described earlier, transporting medication into the area is complicated by lack of appropriate storage facilities and the GoSL fear that it will be used for wounded LTTE cadres rather than civilians. Compounding this situation is the lack of qualified medical practitioners in the area and the poor standard of health care facilities. It was reported to Hotham Mission that there is a range of surgeons stuck in Colombo, unable to get approval to enter Kilinochchi where civilians have been affected by the recent bombings. Ministry of Relief

services, including compensation, resettlement, shelters and dry rations not provided to LTTE areas and the UN is the only humanitarian relief agency granted access.

The NCCSL, one of the few groups who have visited the area reported restrictions and delays on medical evacuations. If there is a health emergency there is only limited access to hospitals near Vavuniya for those in North. Delays in getting one of the survivors of the 61 girls killed at the orphanage in Mullaaitivu to a hospital in Kandy lead to her death. NCCSL have requested an inquiry on this incident. They also stated medicine is very difficult to send/take in. The NCCSL brought in some paracetamol, but stronger medicine (eg injection etc) is difficult as requires refrigeration, with most places having no way of storing appropriately. Also the GoSL has concerns that medical supplies are going to LTTE.- i.e. to injured cadres. Also medicine with aluminium wrapping is not allowed, as can be used to make bombs.

6. Protection, Return and Repatriation Implications

The primary motivation for the field trip related to the perceived protection and humanitarian concerns of refused asylum seekers facing return to Sri Lanka. This section aims to outline the core protection and humanitarian findings that relate to Sri Lankan asylum seekers currently in Australia.

Protection implications for returnees

Protection relates to the provision of state protection as defined by the 1951 Refugee Convention and human rights related obligations. The Norwegian and Icelandic Government monitors, the Sri Lankan Monitoring Mission, and the UNHCR, as well as all other groups we met, outlined a range of serious protection concerns that directly affect the safety of returnees at this time.

Previous affiliation

In relation to returning asylum seekers, the SLMM stated, *'If a person has had any affiliation in the past and returns they will face danger'*. This was mentioned in relation to both perceived connections with the LTTE, thus concerns about being targeted by the police or armed forces, and also affiliations to certain parties or individuals which may make a person a target of the LTTE. They mentioned for example that PLOTE members 10 years ago are still targeted today. *'People returning from overseas may be a target'*. They also mentioned widows in Vavuniya whose husbands were in the army 9 years ago and long dead being hunted down. This was also noted in that one Sinhalese refused asylum seeker returned was in hiding after receiving death threats one week after his return to Sri Lanka in relation his past political connections, as highlighted earlier.

People with previous problems with the GoSL or LTTE

The team were told by multiple sources that the National Intelligence Bureau has records dating back 10 years and earlier, with a national computer database being used for the past 2 years. People with a previous incident of arrest or questioning are likely to be arrested and under the state of emergency and level of conflict, may face further human rights violations such as torture. One group stated, *'They will know people's history.'* Another stated, *'The NIB will have a record of past interrogations, and can cause further charges if returned.'*

Unlawful departure or suspicious entry

One group stated, *'How a person has left Sri Lanka will impact on their return experience – they could be charged under immigration law...If he is a Tamil chances are he will be immediately detained, suspected'- (particularly) if he used fake documents or bribed- in Sri Lanka you can be charged for leaving the country on a fake passport'*.

We also noted that people entering the country under any irregular circumstances are more likely to be identified, questioned and possibly targeted under the current state of emergency. This was identified in the case of the removed refused Muslim asylum seeker from Australia, who stated he was detained on arrival under suspicion as he arrived on an

emergency Sri Lankan passport.

Lack of state protection

SLMM were very clear in stating, *'There are absolute protection needs. People are trying to get out, not in.'* They went further SLMM, *"The north and east are lawless, no law and orders – people live in fear. Imagine anarchy on the ground, and imagine criminal elements can roam the streets freely as they want and no one, not the police, will stop them".*

A lack of protection exists for Tamils throughout the country who are experiencing persecution based on their ethnicity. UNHCR indicated that,

'No internal relocation for Tamils is possible – there is no safe place to find state protection. The LTTE reach is very far – they can find and track down anyone, not just high profile cases. The Government is not only unwilling to protect these people from the LTTE, it is in fact also persecuting people from certain areas.'

One group working with single mothers stated in relation to rape and extrajudicial killings, *stated, 'the custodians of protection are now the violators.'*

UNHCR indicated that people are approaching their office for protection, however they do not have a mandate to provide protection to those within Sri Lanka. During Hotham Mission's field trip to Sri Lanka, we met a number of individuals with significant protection needs, including the witnesses of the French NGO and Trincomalee massacres. The UNHCR was quite clear in stating, *'there is no recourse for their protection.'* All were in hiding, taking their protection into their own hands, as no police or state protection, or witness protection program is available. Many stated their only hope for protection was to somehow get to India.

This has been noted in the high number of Tamils and some Muslims fleeing the country into India. All groups interviewed stated the protection needs of Tamils is extremely high, with no ability to live in the safer areas of Colombo, Kandy and elsewhere, as highlighted throughout the paper. As one man stated, *'If people can live in Colombo, why are they crossing the border into India, travelling through hostile terrain and risking their lives on a boat to live in restricted camp environments?'*

The Hotham Mission team were informed of two cases of recent returnees being killed on return. One case raised by the UNHCR involved the case of the Tamil returnee from the UK in September, a refused asylum seeker who died in custody three weeks before our arrival, as previously stated with further details as yet unknown about the case. The other a Tamil refugee returnee family from India to Mannar, killed by the army on return.

UNHCR draft recommendations

During our visit, the UNHCR Regional Office in Colombo had drafted a number of recommendations to states outlining its protection concerns for asylum seekers in the determination process and those refused awaiting return or removal, currently being reviewed by the Geneva office. These included:

- 1) Any asylum seeker with a fear of persecution from either the LTTE or Government should be reconsidered under the 1951 Convention.
- 2) That governments should favourably consider under the 1951 Geneva Convention the refugee claims of Tamils from the North and East
- 3) That there should be a stay on removals for Tamils refused from the North and the East
- 4) That there are other groups for whom the situation is more complicated, who may require complementary protection due to the current situation, eg. Muslims who may generally speaking have state protection however for some, particularly from the East, protection remains a problem, and others with humanitarian considerations.

Such has been the concern for returnees that UNHCR in Geneva intervened to stop the removal of a Tamil person from the Netherlands the week before our arrival. UNHCR indicated its concern that it does not have data on how many people are being returned and cannot follow up their safety.

In relation to the risk to returned refused asylum seekers, groups stated the following:

- *'It is not safe to return anybody who has fled the country...either for economic or genuine reasons of fear until the situation here improves'*
- *'It is not safe for anybody to come back to Sri Lanka...look at the foreign travel advisories; do you only choose not apply that to Sri Lankans? Foreigners are not targeted here, Sri Lankans are'*
- *'If it is not safe for Australians to travel to Sri Lanka, then it is not safe for Australians to return Sri Lankan asylum seekers to Sri Lanka'*
- *'Generally in Sri Lanka presently I don't think anywhere is safe – especially if you are Tamil it is worse.'*

Humanitarian implications for returnees

The general and regional welfare concerns for Sri Lanka at present have strong implications for any asylum seeker returning to the country. These implications must be considered in light of the welfare situation faced by Sri Lankan asylum seekers in Australia without rights, as referred to earlier, as well as the perceptions of the Sri Lankan community regarding returned asylum seekers from the west.

Perception of the Sri Lankan Community of Returnees

Hotham Mission found that the asylum seeker issue is not discussed in the Sri Lankan media unless people trying to flee are caught. The implication of this is that there is no community understanding of the experiences had by asylum seekers abroad in countries such as Australia. Returned asylum seekers are presumed to be returning migrants, who have spent their time abroad making money and living well. They are assumed to be bringing back large amounts of money and assets, and may be looked to for support rather than being able to access any welfare support themselves. As one welfare organisation stated regarding the possibility of encountering returned asylum seekers,

'There is no time to think of their welfare...we have too many problems here already.'

In fact rather than being supported on return, returning asylum seekers may instead be vulnerable to corrupt immigration officials or criminals. Hotham Mission has heard of at least two incidences wherein people returning were cornered into paying bribe money to immigration officials in order to pass through the airport unhindered. Abductions for ransom of wealthy business people are occurring nationwide, so people returning from overseas may be a target, as it will be assumed that they have money.

Internal Displacement, Relocation and Regional Implications

There remain 250 000 internally displaced people in Sri Lanka. With the closure of the A9 road, it is currently impossible for any civilian to travel freely to Jaffna or the Vanni. This means that an asylum seeker from this area would not be able to return to their home once in Sri Lanka. Relocation to and finding housing in another area would be fraught with obstacles, and it is not unlikely that the returned asylum seeker may become an IDP.

The conditions in most IDP camps are deplorable, partly due to GoSL restrictions on NGO and INGO activity in the affected areas. Moreover, given the proven incidence of forced relocation of IDPs instigated by the GoSL there is no guarantee that IDPs are able to remain clear of conflict areas and danger.

Furthermore, presently there is a humanitarian and welfare crisis in these areas wherein there is not enough food, health care services, education or other resources to sustain those already there, let alone asylum seekers returning with nothing to support themselves.

Housing and homelessness

There is a clear housing problem in Sri Lanka as a result of the many years of conflict and the tsunami. It is likely that some asylum seekers abandoned their homes when they fled to Australia, and that these have since been occupied. If the asylum seeker has been away for more than ten years, the house ownership by law will be transferred to the inhabitant, as the occupation has been unchallenged. Even if loss of legal ownership is not a problem, the process of evicting a squatter is costly and time consuming.

The tsunami caused the loss of and damage to many homes in coastal areas. Not all of these have been rebuilt as yet, and there remain IDPs in Sri Lanka displaced as a result of the tsunami. Hotham Mission's Tsunami research paper found that many asylum seekers in Australia lost property in Sri Lanka as a result of the tsunami²⁷ and would thus face homelessness if returned to Sri Lanka without adequate resources to rebuild, repair or locate alternative housing.

Locating housing in Colombo is increasingly difficult due to registration requirements and indirect pressure on Tamil people not from Colombo originally to stay away, with landlords being pressured not to lease properties to unknown Tamil people.

Health

It is clear that the current health system in Sri Lanka is inadequate, particularly in conflict, regional and LTTE areas. Hotham Mission hold concerns that Sri Lankans with complicated physical or mental health problems would have difficulty accessing treatment under the public health system, particularly if returning to the North or East. It seems implausible to suggest that such a person would be able to remain in Colombo for treatment, particularly if they have no family no history in Colombo, given the new registration requirements, increased checkpoints and housing shortages.

Furthermore it seems likely that those requiring specialist medication for conditions such as cancer, blood pressure and heart disease would have difficulty covering the high cost of such medication, and thus risk treatment being broken.

Many Sri Lankan asylum seekers Hotham Mission have worked with are torture survivors and/or suffering Post Traumatic Stress Disorder requiring regular psychological intervention and support. Given that torture continues to be widespread and highly prevalent in Sri Lanka, there is a possibility that upon return these asylum seekers may regress due to the high potential of retraumatisation or exposure to increased tension, danger, violence and torture in Sri Lanka. The mental health system is limited in its capacity to support those suffering from mental ill health. This is particularly concerning given that the increased risk of suicide for untreated PTSD sufferers.²⁸

Education and Child Welfare

It is clear that language is a huge barrier to education. Asylum seeker children or adolescents returning to Sri Lanka illiterate or unable to communicate verbally in Sinhala or Tamil face immense difficulty and disadvantage. Unless parents are able to afford the high cost of private tuition at an international or English medium school, education is likely to be disrupted or discontinued.

Furthermore children requiring specialist assistance at school as a result of disability or behavioural problem will not be able to access this in Sri Lanka. Specialist schools are few, resources limited and tuition fees prohibitive for a family returning to the country after many years with no income. This calls into question whether the child's rights are being breached under the Convention for the Rights of the Child if Australia knowingly returns a child to such a situation.

²⁷ Tsunami affected asylum seekers, Hotham Mission Asylum Seeker Project, 2005

²⁸ Dr Ruwan M. Jayatunge (1994) PTSD – Sri Lankan Experience. ANL Publishers, Negombo, Sri Lanka

Employment

In areas of conflict many people have lost their traditional means of income and livelihood. In some areas entire villages are now dependent upon aid and dry rations for survival.

Many reports indicated that gaining employment was complicated by ethnicity and age. Returning asylum seekers would be confronted by these same discriminating factors and as such may have difficulty securing employment. Additionally many returning asylum seekers have been out of work for long periods, often years, as a result of Australia's Bridging Visa policy. This is likely to be a negative factor in job seeking, as it would be in most job seeking networks.

Gender

It seems clear that women are particularly vulnerable to rape, assault or exploitation in the current climate of conflict. Single women, those without extended family in Sri Lanka, those with mental health concerns will be particularly vulnerable and at risk.

It is often perceived that women have better prospects of earning an income abroad through unskilled labour. Women sent abroad for such work are at high risk of exploitation and their children are deprived the care of a mother. Asylum seeker women returning to Sri Lanka may have difficulty securing employment in Sri Lanka and thus be vulnerable to unscrupulous agents seeking women to send abroad into these risky situations.

Disability

Those with disability are likely to face discrimination and stigma in Sri Lanka. There are only extremely limited services available to assist individuals and families living with disability. It is likely that as a result of lack of support, quality of life and opportunity would be diminished for those returning to Sri Lanka with disability, particularly if they have been able to access services in Australia and come to rely upon these.

Aged Care

There is no social security program in Sri Lanka. The elderly receive just 100Rs per month from the State. Thus without income the elderly must rely on family or community for survival. However the breakdown of traditional family models has led to increased vulnerability of the aged population.

There are extremely limited aged care facilities or support services available, particularly services available free of charge. As a result, elderly asylum seekers returning without resources or to limited family support are at high risk of destitution.

Refugees in India

It is important to consider the high number of Sri Lankans fleeing to India to seek refugee protection and why this group chose not to seek protection elsewhere in Sri Lanka. The situation the refugees face in the camps, particularly for those newly arrived is difficult, with a relatively low standard of living. Due to the great influx of refugees this year the housing is overcrowded, with newly arrived families sharing floor space in open unsegregated halls and horse stables. In one camp visited by Hotham Mission there were 28 families crowded into one small hall. Cooking and cleaning facilities were extremely limited, and there was no form of privacy. The refugee organisation OfERR is supporting those newly arrived to build new housing, access education and establish income, however the refugees live without formal recognition or rights in India, arguably in a very precarious situation. The refugees in India uniformly stated that their ultimate goal was to prepare for return to Sri Lanka when the conflict was over to rebuild their motherland.

We are only here to safeguard our lives. This is like an open prison, we don't want to be here...I wish for there to be peace in Sri Lanka – if there is I will go back.

The refugees are aware of the conditions in India prior to arriving, making a clear decision to put up with a period of poverty to gain protection that they strongly believed was not

available for them anywhere in Sri Lanka, including in Colombo. Hotham Mission were told continually by the refugees that safety could not be found anywhere in Sri Lanka, and moving to Colombo from the north or east was simply not possible. For the refugees interviewed, the check-points, harassment, high risk of arrest, interrogation and torture, the suspicion of every Tamil to be a terrorist, as well as the blatant issues of poverty, homelessness and health issues that plague the IDP community were worse than the impoverished situation they found in the refugee camps of India.

Even if I go to Colombo from the North, immediately I will be checked. Where are you from? Why are you here? There will be harassment, inquiry, detention...people go missing, we don't know what happens. They take the young people, men and women.

IOM Support

Hotham Mission met with the IOM to learn about the support provided by IOM to asylum seekers returning from Europe. It was found that whilst there have not been large numbers of returnees, just 600 over the last three years, the support provided has been crucial and extensive.

A brief overview of the support provided by IOM includes smoothing the reentry process by liaising with Sri Lankan immigration and capacity building with airport officials and staff prior to the return, and provision of a comprehensive package of support for five years after arrival. This includes provision of five years shelter guaranteed (a reflection of and necessitated by the difficult housing situation in Sri Lanka), assessing capacity for livelihood, competency and vocational training, and provision of resources such as development of solar powered electricity in camp areas. IOM were aware of returnees not assisted by their program being arrested and harassed on or soon after arrival, particularly in cases where the returnee no longer holds a National Identity Card.

Hotham Mission strongly believes that repatriation assistance, such as that provided by the IOM, must be involved in assisting the return process and reintegration needs of any Sri Lankan asylum seeker found not to be owed protection.

7. Conclusion and recommendations

Hotham Mission has worked with Sri Lankan asylum seekers for the past 9 years, and has increasingly had a range of concerns for this group involving both protection and humanitarian issues. The Mission has now returned from a field trip to Sri Lanka, in which our concerns for the security in the region were confirmed, particularly:

- The breakdown of the ceasefire agreement and general rule of law and escalation of violence, including increased incidents of militia and state sanctioned torture, abduction, extrajudicial killings, rape and disappearances
- Extensive fighting in the north and east over State and LTTE controlled areas, leading to death of civilians, and increased number of terrorist attacks in various parts of the country
- The devastating impact of the closure of all routes into and out of the north of Sri Lanka on the local population, and lastly
- The general removal of civil rights of much of the population in Colombo and elsewhere since August this year, including the ongoing state of emergency, constant checkpoints, household registration requirements, raids and in some cases forced relocation by the state.
- A lack of protection exists for Tamils throughout the country who are experiencing persecution based on their ethnicity.

These concerns were noted throughout our meetings with 35 groups, including the Norwegian Government led, Sri Lankan Monitoring Mission, many human rights and welfare groups and visits to internal displacement and refugee camps in Sri Lanka and southern India where people have recently fled both general and targeted violence.

The Sri Lankan Monitoring Mission, and the UNHCR, as well as all other groups we met,

outlined a range of serious protection concerns that directly affect the safety of returnees at this time, including the high likelihood of targeting of individuals with past affiliations or histories of arrest, the lack of effective state protection, particularly for Tamils, as well as a large range of humanitarian concerns affecting return.

Recommendations

Hotham Mission is deeply concerned about the impact of the breakdown of the ceasefire agreement, the rule of law and the escalation of the conflict and human rights violations on innocent civilians throughout the country. In line with current DFAT travel advice, there has been a clear change in country circumstances since mid 2006, which we believe has direct implications on the safety and wellbeing of people facing return to Sri Lanka.

While Hotham Mission's Asylum Seeker Project has in its 9-year history only raised a small number of humanitarian requests in relation to our broader caseload, we believe the situation in Sri Lanka has deteriorated to the point that it warrants an urgent 48b or subsequent 417 consideration by the Minister of Immigration of the entire Sri Lankan caseload.

Hotham Mission thus strongly endorses the recommendations drafted by UNHCR Colombo in October 2006 in relation to Sri Lankan refused asylum seekers and the determination process:

- 1) Any asylum seeker with a fear of persecution from either the LTTE or GoSL should be reconsidered under the 1951 Convention.
- 2) That states should favourably consider under the 1951 Geneva Convention the refugee claims of Tamils from the North and East
- 3) That there should be a stay on removals of Tamils refused from the North and the East
- 4) That there are other groups for whom the situation is more complicated, and who may require complementary protection due to the current situation, and others with humanitarian considerations.

In addition, Hotham Mission strongly recommends the Australian Government ensure the following:

- 5) Assisted or forced removals not be used due to the current state of emergency, and that emergency passports or one-way travel documents should not be used for return purposes, due to the high likelihood of arrest and interrogation on arrival
- 6) If there is improvement to the current state of emergency in Sri Lanka in the future and clients are assessed as not having protection or humanitarian intervention needs, repatriation support mechanisms be made available through the International Organisation for Migration to minimize the likelihood of internal displacement and reintegration concerns.

Given further breakdowns in the peace process since our return and in line with most international observers, Hotham Mission does not see a short or mid-term solution to the current conflict. In light of this, we urge the Australian Government to provide a permanent solution to this caseload, particularly given the length of time and pressing humanitarian issues for many. We note that Australia is currently funding and supporting victims of the recent conflict through a range of AusAid programs, such as recently fled refugees in India and internally displaced person's (IDP) in Sri Lanka. We therefore request that the Australian Government equally assists those Sri Lankans seeking protection in Australia at this time.

Hotham Mission hopes this research may provide important further background information on the humanitarian and protection needs of vulnerable Sri Lankan cases approaching the Minister of Immigration under Section 417 or 48(b) of the Migration Act. We urge the Minister's full consideration of these concerns given the possible ramifications for returnees at this time.

Hotham Mission
Asylum Seeker Project
November 15, 2006

**8. Appendix 1: Hotham Mission Field Trip
Interview Sample and Data Sources**

October 2006

Date and Time	Organisation or Individual	Location
Sunday 1 October		
11am	National Christian Council of Sri Lanka (NCCSL)	Colombo
1pm	Counsellor/returned refugee	Colombo
2:30pm	Member of Complaints Commission	Colombo
Monday 2 October		
8:30 am	National Christian Council of Sri Lanka	Colombo
11:30am	International Organisation for Migration	Colombo
1:30pm	Centre for Policy Alternatives	Colombo
3pm	Canadian International Development Agency	Colombo
6pm	Two asylum seekers returned from Australia	Colombo
7:30pm	International Federation of the Red Cross	Colombo
Tuesday 3 October		
9:30am	Movement for the Defence of Democratic Rights	Colombo
12pm	United Nations High Commissioner for Refugees	Colombo
2:30pm	Organisation for Eelam Refugee Rehabilitation	Colombo
4pm	Asylum seeker family returned from Australia	Colombo
6pm	Lawyer and Doctor	Colombo
8pm	Lawyer	Colombo
Wednesday 4 October		
7:30am	Consultant Paediatrician Psychologist	Colombo
10am	Sri Lanka Monitoring Mission	Colombo
11:30am	Human Rights Commission	Colombo
1pm	Muslim Women's Relief Assistance Foundation	Colombo
Thursday 5 October		
9am	International Movement of all Forms of Discrimination (IMADR)	Habarana
11am	Eastern United Women's Organisation	Kantale
Afternoon	Tamil and Muslim IDP camps IFRC Social Worker Visit to tsunami and conflict affected areas and militarised zones	Kantale Kinniya Trincomalee
Friday 6 October		
Afternoon	Young asylum seeker returned from Australia	Kandy
Evening	Retired policeman	Kandy

Saturday 7 October		
9am	SETIC, Commission for Justice, Peace and Development	Kandy
11am	Asylum Seeker family returned from Australia	Kandy
Sunday 8 October		
10am	World Vision field worker	Colombo
12pm	AusAID Youth Ambassadors	Colombo
Monday 9 October		
11am	Organisation for Eelam Refugee Rehabilitation Head Office	Chennai, Tamil Nadu (India)
Tuesday 10 October		
All day	1) Vurudhu Nagar Refugee camp 2) Anaikuttam Refugee Camp - Thopathy	South of Tamil Nadu (India)
Wednesday 11 October		
All day	OfERR regional office Refugee workshop with 60 refugees	Tirunneveli, Tamil Nadu (India)
Thursday 12 October		
9am	OfERR Farm	South of Chennai, Tamil Nadu
2pm	OfERR Head Office	Chennai, Tamil Nadu (India)

Please note: 1 anonymous meeting and also the meeting with the ACF team members are not listed so as to not identify their location.

Appendix 2 Research Scope and Design Consultations (Respondents)

- Amnesty International
- Asylum Seeker Resource Centre
- Asylum Seeker Welcome Centre
- Asian Human Rights Commission
- Australian Red Cross
- Australian Youth Ambassador to Sri Lanka, Rasika Jayasuriya
- Bridgidine Asylum Seekers Project
- Dave Corlett
- Father Andrew Hamilton
- Harry Minas, Director, Centre for International Mental Health School of Population Health
- International Organisation for Migration- IOM
- Jeanette Shopland Senior Counsellor in the La Trobe Uni Counselling Service
- Liz Biok, NSW Legal Aid
- National Council of Churches in Australia
- Network of Asylum Seeker Agencies Victoria
- Oxfam International
- Professor Patrick McGorry, Executive Director, ORYGEN Youth Health
- Prof. Suresh Sundram, Mental Health Research Institute of Victoria, Assoc.
- Robyn Sampson, Latrobe University's Refugee Health Research Centre
- Refugee and Asylum Seeker Health Network
- Refugee and Immigration Legal Centre
- Refugee Council of Australia
- Victorian Foundation for Survivors of Torture
- United National High Commission for Refugees- UNHCR
- Uniting Church in Australia
- UnitingJustice
- Plus 25 anonymous asylum seeker clients from various backgrounds

Appendix 3

Official Statements

EU

EU Presidency statement on Sri Lanka

Press Release 299/2006

17 August 2006

The Presidency of the European Union is gravely concerned about the ongoing violence in Sri Lanka which seriously puts the Ceasefire Agreement and the peace process at risk.

The Presidency is deeply concerned about the growing humanitarian crisis in Sri Lanka and the suffering of innocent people.

Norway

Norway very troubled by the deteriorating situation in Sri Lanka

Press Release No.: 146/06

Date: 08.11.06

Minister of International Development Erik Solheim is very troubled by the deteriorating situation in Sri Lanka. In recent days there have been intensive military operations, some involving repeated aerial bombardment, which have particularly affected innocent civilians. "I am very troubled by the Government's onslaught today in Vakarai, in the eastern part of Sri Lanka. Yet again it is civilians who are being killed and made to suffer due to military operations. I am extremely disappointed that the parties are not honouring the promises they made in Geneva a week and a half ago to refrain from launching any military offensives and to abide by the Ceasefire Agreement," said Minister of International Development Erik Solheim. "It is very worrying that the civilian Sri Lanka Monitoring Mission, headed by Lars Sølberg, came close to being hit by grenades fired by the Sri Lankan army near Pooneryn, in northern Sri Lanka. We have asked the Sri Lankan Government for an immediate explanation," said Mr Solheim.²⁹

United Nations (UN)

United Nations condemns indiscriminate use of force in Sri Lanka

Press Release IHA/1240 (OCHA)

9 November 2006

"Yesterday's massive attack on civilians shows that force continues to be used indiscriminately in the conflict in Sri Lanka," said Jan Egeland, United Nations Under-Secretary-General for Humanitarian Affairs.

"...The time has come for all parties to respect the basic human rights of these people [displaced persons in the Vaharai area of Batticaloa a district], which are simply not being observed at the moment," [Allan Rock, Special Adviser on Sri Lanka to the United Nations Special Representative for Children and Armed Conflict] added. After his visit to the camp today, Mr Rock described it as a "shocking sight."³⁰

²⁹ Norway's Ministry of Foreign Affairs, Press Release No. 146/06, sourced from <http://www.dep.no/ud/english/news/news/032171-070937/dok-bu.html>

³⁰ UN Press Release IHA/1240, sourced on 10 November 2006 from <http://www.un.org/News/Press/docs/2006/oha1240.doc.htm>

Appendix 4

Glossary

ACF	Action Against Hunger
AHRC	Asian Human Rights Commission
CIDA	Canadian International Development Agency
CPA	Centre for Policy Alternatives
EPDP	Eelam People's Democratic Party
GoSL	Government of Sri Lanka
HRC	Human Rights Commission
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
IFRC	International Federation of the Red Cross
IOM	International Organisation for Migration
IMADR	International Movement of all Forms of Discrimination
JVP	People's Liberation Front (Janatha Vimuktasi Peramuna)
LTTE	Liberation Tigers of Tamil Eelam
MDDR	Movement for the Defense of Democratic Rights
MWRAF	Muslim Women's Relief Assistance Foundation
NCCSL	National Christian Council of Sri Lanka
OfERR	Organisation for Eelam Refugee Rehabilitation
PA	People's Alliance
PLOTE	People's Liberation Organization for Tamil Eelam
RRT	Refugee Review Tribunal
SciSL	Save the Children in Sri Lanka
SCOPP	Secretariat for Coordinating the Peace Process
SETIC	Commission for Justice, Peace and Development
SLA	Sri Lankan Army
SLAF	Sri Lankan Airforce
SLFP	Sri Lanka Freedom Party
SLMC	Sri Lanka Muslim Congress
SLMM	Sri Lanka Monitoring Mission
STF	Special taskforce
TEMVP	TamilEela Makkal Viduthalai Pulikal
TNA	Tamil National Alliance
TULF	Tamil United Liberation Front
UNHCR	United Nations High Commissioner for Refugees
UNP	United National Party

Definitions

Protection- Relates to the provision of state protection as defined by the 1951 Refugee Convention and human rights related obligations

Security- The overall situation relating to risk, danger or experience of conflict, violence or attack which affects the safety or protection of the individual.

Humanitarian- Issues related to human welfare, health and general wellbeing.

Repatriation – The voluntary return of individuals to their country of origin, including refugees and refused asylum seekers.

Return – The removal or voluntary repatriation of refused asylum seekers to their country of origin.

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