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ASIA

ETHNICITY AND NATIONALITY

CONTENTS

Preface i

Introduction 1

Causes of flight 2
A region with few rules 4
Refugee protection issues 6

1 Myanmar: ethnic repression 11
Targeted communities 12
Fate of the refugees 13

2 Sri Lanka: a fractured island 16
The internally displaced and restrictions
on movement 17
The Colombo situation 18
Flight to India 18

3 Bhutan: forcible exile 20
Reasons for flight 22
Life in exile 23
What hope for the future? 23

4 East Timor: a question of identity 25
No easy escape 27
Australia's closing doors 28

Recommendations 31

Endnotes 33

Preface

At least 40 million people around the world have made the agonizing decision to leave their homes, communities and countries because they are terrified. They have been forced to flee as a result of generalized violence, human rights violations and persecution. Some 15 million are refugees who have sought sanctuary abroad. Between 25 and 30 million people have not crossed an international border and remain internally displaced.

This report, one of five regional reports on refugees, is part of a worldwide Amnesty International campaign for refugees' human rights. The campaign, launched in March 1997, focuses on three issues which are increasingly threatened, undermined or ignored by governments around the world:

- * human rights protection in countries of origin — action to prevent human rights violations, so that people are not forced to leave their countries in search of safety;
- * human rights protection in countries of asylum — action to ensure that those who flee human rights violations are allowed to reach a place of safety, that they are not forcibly returned home before it is safe, and that their human rights are respected in the host country;
- * human rights protection at the international level — action to ensure that human rights considerations are paramount in refugee protection issues, such as the need to protect people internally displaced within their own countries.

Amnesty International opposes the forcible return (refoulement) of any person to a country where he or she would be at risk of falling victim to imprisonment as a prisoner of conscience, torture, “disappearance”, extrajudicial execution or the death penalty. This is an important element of human rights work — acting to prevent abuses, not just responding after they have occurred. The standard for Amnesty International's refugee work is based on its mandate, which is deliberately focused on specific human rights issues. This does not mean that only those at risk of these human rights abuses are refugees. The term “persecution”, as included in the United Nations (UN) 1951 Convention relating to the Status of Refugees, embodies a far wider range of concerns defining those who need international protection. In this report, the term refugees includes all asylum-seekers fleeing persecution and human rights violations, including those who have not been formally recognized as refugees.

Amnesty International calls on governments to provide asylum procedures that are fair, impartial and thorough. The organization demands that no asylum-seeker is forcibly expelled without having had his or her claim properly examined. It also calls on all states to ensure that they do not send anyone to a country which may itself forcibly return him or her to danger.

Much of Amnesty International's work on behalf of refugees is carried out by the movement's national sections based in the countries where people seek protection. Amnesty International members provide information about human rights violations in asylum-seekers' countries of origin to governments, to those who make decisions on asylum claims, and to lawyers and others working on behalf of asylum-seekers. Amnesty International's sections also monitor governments' asylum policies and practices to ensure they are adequate to identify and protect those at risk. In some cases, Amnesty International members intervene directly with the authorities to prevent a refoulement.

Human rights activists involved with refugees face a dual challenge at the international level. They must defend the protection provided by international refugee law in the face of growing government efforts to avoid and circumvent their obligations. They must also strive to ensure that as new human rights challenges arise, the system of international protection is extended to meet those challenges. Action is urgently needed to make sure that all refugees, whatever the causes or circumstances of their flight, are given the protection to which they are entitled.

Introduction

“Death to the Tamils” shouted a group of Sri Lankan soldiers, some drunk, as they entered Kumarapuram, Trincomalee district, on 11 February 1996. Villagers cowered in their houses, desperately hoping that they would not be seen. The soldiers broke open shutters and began firing

at the people hiding inside. A woman who survived begged them to spare her family. Her pleas were ignored: seven people were shot dead in her house, including a six-year-old child. In other houses, six more children and 18 adults were killed. One young woman, 17-year-old Arumaithurai Tharmaletchumi, was dragged from a shop in the village and raped before being shot. In terror, many of the survivors fled their village to seek sanctuary elsewhere.

Through no fault of their own, millions of people have been driven from their homes in Asian countries by conflicts and persecution. Most have escaped an immediate danger of human rights abuses, such as arbitrary arrest and torture, or the threat of political killings or “disappearances”. Some have fled generalized violence. Many have been targeted simply because of their ethnic origin. Around half have sought sanctuary abroad as refugees. The rest have been either unable or unwilling to cross an international border and are displaced within their own country.

Today, Asia shelters around 1.8 million refugees.² The overwhelming majority have fled from other countries in the region — most by road, some by boat, a few by air. A further 1.7 million people are internally displaced.³

The international system that is supposed to protect them is under intense pressure and is failing some of those most in need. The richer nations of the West are making it increasingly difficult for refugees to cross into their territories and seek asylum, particularly those refugees from the world’s poorest and most troubled countries. New visa requirements, fines on airlines and shipping companies for transporting people without travel documents or visas, interdiction on the high seas and pre-flight screening of passengers are just some examples of restrictive measures imposed by such nations. Some Western governments have also begun to impose a restrictive interpretation of who qualifies for protection as a refugee in order to discourage people from seeking asylum in their countries.

This trend can be seen within Asia as well, as the more affluent countries such as Australia and Japan adopt measures which have the effect (and sometimes even the intent) of obstructing asylum-seekers from gaining access to their frontiers and seeking protection. As a result, refugees have no choice but to flee to neighbouring countries which often suffer from the same economic, political or social difficulties as their countries of origin.

Many states in Asia have acted as host to large numbers of refugees — even if they often have lacked the means to provide much support. However, in recent years refugees have been finding it increasingly difficult to gain safety and protection even in these Asian countries of asylum. Some are being turned away. Some are being dumped in poverty-stricken camps that are vulnerable to attack. And some are being forced to return home before it is safe to do so. The world has agreed that certain people should be offered international protection in all circumstances. The 1951 UN Convention relating to the Status of Refugees (the UN Refugee Convention) defines a refugee as anyone who:

“...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country...”

This report focuses on refugee flows connected with human rights abuses suffered by people because of their ethnic or national identity. When governments or armed opposition groups target people for their ethnicity, everyone in the targeted community is threatened — and there is little they can do to protect themselves. Their very identity, often irrespective of their particular

political views or activities, is the reason that their lives are at risk. They have no choice but flight.

This report demonstrates that people usually only make the difficult decision to leave their homes under the most extreme circumstances — when they have been victims of human rights violations or are sure they will soon become victims. It also looks at what happens to refugees when they do flee and how issues of ethnicity and identity can affect their treatment.

Four countries are highlighted. Myanmar's many ethnic minorities have been persistently targeted by the military for gross human rights violations as the government tries to assert its political control and force the pace of development throughout the country. As a result, hundreds of thousands of Burmese people have been forced to flee abroad. Many have been forcibly returned home or continue to face risks in the country of asylum.

In Sri Lanka, internal conflict centred on the Sinhala-Tamil divide has involved widespread human rights abuses by all sides. Hundreds of thousands of people have abandoned their homes to escape the terror, the overwhelming majority of them Tamils. Most are internally displaced on the island, although there is a large Tamil refugee community in India and many Sri Lankans have sought safety further afield.

Around 90,000 Bhutanese people, all members of one ethnic group, have been forced to leave their country as a result of human rights violations and a policy of denying them citizenship. Most are living in refugee camps in Nepal, still waiting for news about whether they will ever be allowed to return home in safety.

East Timorese people face a double jeopardy in connection with their national identity. At home, Indonesian forces have used repression and intimidation for more than 20 years in an attempt to stamp out assertions of East Timorese identity and to combat an East Timorese independence movement. Some of those who manage to escape are being denied refugee status on the grounds that they have a claim to Portuguese citizenship because of East Timor's colonial links to Portugal.

Conflicts and repression connected with ethnic and national divisions are behind the flight and plight of many other refugees in the region. Decades of systematic repression by the Chinese authorities of Tibetan national, religious and cultural identity has generated a refugee diaspora reaching from India to Europe. At least 10,000 Irian Jayans have over time fled to Papua New Guinea to escape fighting between the Indonesian military and those seeking independence for Irian Jaya (formerly Dutch New Guinea). Some 3,000 Bougainvilleans targeted in another secessionist conflict in Papua New Guinea's eastern-most province have at times sought refuge in neighbouring Solomon Islands: a further 67,000 are internally displaced.

In addition, restrictive or arbitrarily applied nationality laws have been used to disenfranchise and marginalize ethnic minorities. Tens of thousands of ethnic Nepalese in Bhutan have been arbitrarily deprived of their nationality and forcibly exiled from their homeland. In Myanmar too, restrictive nationality laws have been used to prevent ethnic minorities from exercising their freedom of movement, and to brand entire populations as "illegal immigrants". In Hong Kong, there are still hundreds of ethnic Chinese asylum-seekers from Viet Nam: they have been "screened out" under the Comprehensive Plan of Action for Indochinese refugees (see below) but the Vietnamese Government has refused to recognize their citizenship and is not allowing them to return to their country.⁴

Few refugees in the region will be able to return home until the underlying human rights issues that drove them into exile are addressed and resolved. Such is the urgent task confronting governments and opposition groups across Asia. In the meantime the international community must ensure that all those fleeing for their lives are offered the protection which they deserve.

Causes of flight

The map of Asia offers some clues to the factors behind the region's refugee problems. Many of the lines were drawn arbitrarily by colonial powers irrespective of the ethnic groups they enclosed or divided. Others have been drawn and redrawn through conflicts — some fought or encouraged by outside powers, others the result of internal political and economic inequalities between different ethnic groups. Invariably these conflicts have involved widespread human rights violations, often targeted at particular ethnic minorities. Civilians have been the main casualties and many have been forced to flee for their lives.

Several of the worst refugee crises have been the result of superpower rivalries in the region. The wars in South East Asia created some of the region's largest refugee movements, involving people from Viet Nam, Laos and Cambodia. According to the UN High Commissioner for Refugees (UNHCR), the international agency charged with ensuring that both the protection and relief needs of refugees are met, there were still around 140,000 Indochinese refugees in 1992. Most were in Thailand, Malaysia, Indonesia, the Philippines, Macao and Hong Kong. Others had landed on the coasts of Japan and Australia, while a minority had travelled further, reaching virtually every country in the world.⁵ Following the implementation of the Comprehensive Plan of Action (see below), almost all the camps were closed as the inhabitants were resettled overseas or returned to their own countries.

Two decades of conflict in Afghanistan, fuelled by outside powers, have caused a fifth of the population to leave the country. Today there are around 1.4 million Afghan refugees in Iran and 1.2 million in Pakistan alone, and there appears to be no end to the horrors that continue to cause Afghans to flee abroad.

The Indian sub-continent has been racked by refugee crises for 50 years, as borders have been drawn, countries created and redefined, and vast numbers of people have moved to join others with a shared identity. Millions of people took to the road, many moving in opposite directions, as India was partitioned in 1947 and Pakistan and later Bangladesh were born.

The division of Kashmir by the territorial dispute between India and Pakistan continues to cause violence and the displacement of people. In India, since early 1990, some 300,000 Kashmiri Hindus and up to 50,000 Muslims have fled the Kashmir Valley, which is populated by a Muslim majority. Most of the Hindus live in camps in Jammu, the southern part of the state of Jammu and Kashmir, and in Delhi and its environs. They have fled their homes because of communal violence, fighting between Indian Government forces and Kashmiri Muslim insurgents (who seek independence or union with Pakistan), and widespread human rights abuses by all sides.

As nations consolidate and the pressures of demography and development grow, an "arc" of refugee crises has emerged across the heart of Asia, stretching from northeast India, through the Chittagong hill tracts in Bangladesh, and across into Myanmar and Thailand. Nation states are seeking to assert their authority and control over ethnic and tribal groups, many of which refuse to recognize the borders or umbrella state. As a result, border areas have become battlegrounds,

governments have engaged in long wars of attrition against ethnically-based insurgents, and inter-ethnic tensions have flared up into bloody conflicts. Desperate people flee to and fro across the borders, trying to find at least temporary sanctuary. Border areas are dotted with sprawling camps, filled with ethnic refugee communities from one generation to the next living in poverty and fear, uncertain if they will ever have a secure future. Vast populations have been internally displaced as their communities have come under attack.

The economic development of the region, which has opened up wide disparities in wealth between countries, has also caused large population movements. Some states have enjoyed among the fastest growing economies in the world in the past 20 years. Others have been plunged into poverty by natural disasters, war, corruption or debt. In Malaysia, for instance, a labour shortage has caused the influx of an estimated one to two and a half million migrant workers from other Asian countries, particularly Bangladesh, Indonesia and the Philippines. Many have entered the country illegally and end up in detention camps. Serious allegations of ill-treatment and denial of medical care have been made about a number of these camps. Similar boom conditions on China's eastern coast have drawn in millions of migrant labourers from the poorer inland provinces. They receive meagre wages, are blamed for increasing crime rates, and are targeted for harassment, ill-treatment and detention. The increased migration caused by such economic disparities has often led to a confusion between economic migrants and refugees, often to the detriment of people seeking asylum from human rights violations.

The vast numbers of people seeking sanctuary from persecution and violence in Asia starkly expose the widespread lack of respect for human rights in the region. They are also testing to the full the system for protecting refugees in Asia. In some cases, the system is breaking down because of a basic lack of resources. In others, governments are taking the blatantly political decision of refusing to honour their obligations towards refugees.

A region with few rules

The vast majority of refugees from Asia seek asylum within the region, mostly in countries that can ill afford to support them. The relatively few who manage to reach the borders of wealthier states, both within and outside the region, are increasingly being denied asylum or even access to asylum procedures. At the same time, these wealthier states are reluctant to provide adequate support to countries in Asia that host large refugee populations and who have no mechanism in international law to aid them in carrying out the enormous responsibility they bear. As a result, some Asian governments are turning their backs on refugees or forcibly returning them to their country of origin before it is safe to do so. Other refugees have been forced to return home by reductions in food supplies or other coercive means. Each time such violations of the rights of refugees are committed, lives are put at risk.

The international community has recognized the particular vulnerability of refugees and set up a system to protect them. The UN Refugee Convention and its 1967 Protocol establish the right to international protection for people at risk of persecution in their country of origin because of their race, religion, nationality, social group or political opinion. The protection is based on the principle of non-refoulement — that no one should be returned to a country where they would be at risk of serious human rights violations.

Only a minority of countries in Asia have ratified the UN Refugee Convention and its 1967 Protocol: Australia, Cambodia, China, Fiji, Japan, New Zealand, Papua New Guinea, Philippines, Samoa, Solomon Islands, South Korea and Tuvalu. Those that have not ratified either treaty include Afghanistan, Bangladesh, Bhutan, India, Indonesia, Laos, Malaysia, Maldives, Mongolia,

Myanmar, Nepal, North Korea, Pakistan, Singapore, Sri Lanka, Thailand and Viet Nam. Of all regions in the world, Asia has the worst record of ratifying the Convention.

Many of these states host large refugee communities; indeed, Bangladesh, India and Thailand are member states of the UNHCR Executive Committee (Excom), the sole intergovernmental forum where refugee matters are addressed in a comprehensive manner. Excom, which consists of 53 member states, meets annually and comes to Conclusions on important issues of refugee protection. These Conclusions represent an international consensus and carry persuasive authority. As members of Excom, Bangladesh, India and Thailand wield important influence in the establishment of international standards on refugee protection — even though they have yet to ratify the UN Refugee Convention.

The principle of non-refoulement, the cornerstone of refugee protection enshrined in Article 33 of the UN Refugee Convention, is recognized internationally as a principle of customary international law. As such it is binding on all states, even if they have not become party to the UN Refugee Convention. However, the Convention builds on the principle of non-refoulement and contains many other provisions for refugee protection. For example, it forbids states parties from penalizing refugees for entering the country “illegally”. It also stipulates that states parties must apply the Convention to refugees from all countries without discrimination. In addition, states parties “undertake to cooperate with the UNHCR” and to “facilitate its duty of supervising the application of the provisions of the Convention” — an aspect of refugee protection which, as this report shows, has proved extremely problematic in some countries in Asia. Without doubt, the quality of refugee protection in Asia suffers from the fact that most of its states have not ratified the Convention.

States in Asia have also done little to address the serious and evolving challenges posed by the region’s large number of refugees. Elsewhere, regional bodies such as the Organization of African Unity, the Organization of American States and the Arab League have drawn up instruments designed to improve protection for refugees in their regions. No such agreement has yet been made in Asia, nor does there appear to be any movement towards such an agreement.⁶

There is, however, a precedent of international cooperation in Asia over the protection of refugees. From the latter half of the 1970s throughout the 1980s, “boat people”, primarily from Viet Nam, arrived in large numbers in neighbouring countries in South East Asia. The initial reaction of many of these countries, almost none of which had ratified the UN Refugee Convention, was to treat these asylum-seekers as illegal migrants. Summary rejection at the frontier was commonplace. In response, a number of international agreements were reached, eventually culminating in the Comprehensive Plan of Action (CPA) for Indochinese refugees, agreed to in 1989.⁷ Under this plan, countries in Asia where refugees initially fled were given financial support to accommodate asylum-seekers while they were “screened” to decide if they were refugees. The terms of reference of this screening were the UN Refugee Convention and its Protocol, “bearing in mind to the extent appropriate the Universal Declaration of Human Rights (UDHR) and other relevant international instruments concerning refugees”. UNHCR participated in the screening under the CPA as an observer and adviser, and the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook)⁸ was referred to explicitly as “an authoritative and interpretative guide in developing and applying the criteria” of refugee determination. Of the eight countries and territories of Asia which were party to the CPA, only two, Japan and the Philippines, had ratified the UN Refugee Convention.⁹

Those asylum-seekers “screened in” would, as far as possible, be resettled in other, predom-

inantly Western, countries; those “screened out” would be repatriated. Western countries also funded numerous development programs aimed at improving the situation in Viet Nam and at promoting the reintegration of returned asylum-seekers. The commitment of the states of first asylum was limited to housing asylum-seekers in camps and detention centres until they could be resettled elsewhere. Between 1989 and 1995, some 80,000 Vietnamese people who had fled by sea were resettled outside the region and more than 72,000 were repatriated to Viet Nam.¹⁰

Despite several problems regarding aspects of some of the screening undertaken under the CPA, as well as the detention regimes of several countries,¹¹ the agreement nevertheless remains a remarkable example of how countries can adopt a concentrated and systematic international approach to a refugee crisis. Unfortunately, the CPA, which officially ended in 1996, has not translated into a lasting commitment on the part of countries in Asia to protect refugees. Even though all parties to the CPA recognized the authority of the UN Refugee Convention and its Protocol, as well as UNHCR and the UNHCR Handbook, none of those which had not ratified the Convention at the time have ratified it since then.

Refugee protection issues

The treatment of refugees varies across the region, either because of the scale of the refugee flows or because of the national laws and practices which apply in the host states. Some refugees are offered protection on a group basis. Millions of Afghan refugees, for example, have been accepted into Pakistan as refugees without any individual assessment of an asylum claim. For more than a decade, Pakistan recognized that there was no alternative but to shelter anyone fleeing from the human rights catastrophe in Afghanistan. In recent years, however, Afghan refugees have been detained and treated as illegal immigrants.

People seeking asylum in the region’s wealthier states, such as Australia, Japan and New Zealand, have their status determined on a case-by-case basis. Sometimes the procedures are transparent and fair. At other times they are bewilderingly complex and less than satisfactory. In many Asian countries, individual asylum-seekers have no access to independent advice or representation, and no real prospect of exercising their rights to appeal. In many countries, refugee policies are clearly determined by political and foreign policy considerations.

Australia operates a quota system, allowing a certain number of refugees to resettle in Australia on humanitarian grounds or as refugees. However, people arriving in Australia intending to seek asylum are facing increasing difficulties. Politicians and other influential people in Australia have promoted an attitude that equates those arriving “illegally” (particularly so-called “boat people”) with “queue jumpers” in the immigration system. This ignores the fact that many asylum-seekers are not in a position to join queues or leave their country legally, and that some are unable to obtain a visa to enter Australia.

Under the Migration Act of 1958, all asylum-seekers arriving in Australia without proper documents face arbitrary and automatic detention while their claim is assessed, in clear violation of international standards.¹² Those who attempt to seek asylum immediately upon arrival at the airport may be immediately returned to their country of origin if they do not state to officials clearly their intent to apply for asylum, and even if they do manage to convey their intention they may face detention.¹³ Despite recent reductions in the average length of the determination process — and hence the time asylum-seekers spend in detention — those who appeal against an initial rejection are effectively penalized by prolonged detention and limited contact with the outside world. Such detention can last for years and is not reviewable. In April 1997 the UN-based Human Rights Committee expressed the view that Australia had violated provisions of

the International Covenant on Civil and Political Rights (ICCPR) on arbitrary detention and the right to have continued detention reviewed in court: the statement referred to a case of a Cambodian asylum-seeker who had been held for over four years in various Australian detention centres until his release in January 1994. The Committee asked the Australian Government to reply by the end of July 1997, but there were no indications by 21 July that the government would reply or review its policies.

Of the 2,854 “boat people” who arrived from 1989 onwards, 763 children and 75 babies born in detention centres spent up to four years behind barbed wire fences. The main immigration detention and processing centre is in Port Hedland, some 1,300 kilometres from the nearest city, Perth, and about 4,000 kilometres from Sydney or Melbourne where most assistance organizations for refugees are based.

In a bid to deter asylum-seekers from having rejected claims reviewed, the government in March 1997 announced plans to limit the grounds for judicial review of unsuccessful claims. On 1 July 1997 it introduced a fee of A\$1,000 (US\$ 740) for applications which are rejected by both immigration officials and the Refugee Review Tribunal. The tribunal, an independent body which reviews most asylum claims that have initially been rejected, has recently been directed by the government to make its decisions according to the authorities’ expectations of its performance and interpretation of domestic and international refugee law. Asylum applicants who waited more than six months for the initial determination of their claim are no longer eligible for welfare and medical assistance if they appeal against a rejection of their application. Authorization to work will only be granted in exceptional cases to applicants who do not claim asylum within 45 days of their arrival in Australia. Some asylum-seekers depend on community organizations and concerned Australians for housing, food and medical assistance.

Australia has also restricted independent investigations into alleged human rights violations of people detained under immigration laws. In June 1996 a court ruled, against the government, that Australia’s human rights commission should not be prevented from sending letters informing detained Chinese “boat people” about investigations into alleged violations of their human rights. Two weeks later the government attempted to bring in legislation to restrict the commission’s ability to initiate investigations into human rights violations of immigration detainees or to advise refugees on their legal rights. While the law has not been passed, its provisions have become effectively implemented after negotiations with the commission.

In November 1994 Australia introduced “safe third country” legislation under which it no longer considers asylum applications from people who either had access to protection in another country which meets human rights standards, or had been rejected as refugees elsewhere. Under this law China was designated as “safe” for all Vietnamese seeking asylum in Australia who are said to have previously been resettled in China following the Sino-Vietnamese war of 1979. This applied even if they expressed fear of persecution should they be returned to China. Since then, at least 850 people have been sent back to China as a result of an agreement between the Australian and Chinese authorities under the “safe third country” law.

Asylum-seekers arriving in Japan are sometimes denied access to asylum procedures altogether. Those who are allowed to submit a claim are put through a secretive, arbitrary and often obstructive process. Some refugees have been detained for months waiting for their application to be assessed. Others with a clear claim to refugee status have had their application refused and have then been threatened with refoulement. In March 1995, for example, the Tokyo District Court rejected the appeal by a Chinese pro-democracy activist, Zhao Nan, against the authorities’

refusal to grant him refugee status. His application had been rejected because he had failed to apply for asylum within 60 days of his arrival. The authorities apparently rejected his application without considering the substance of his claim. Failure to comply with procedural requirements does not justify the automatic exclusion of asylum-seekers from refugee status, and under no circumstances does it justify the forcible return of people to countries where they may be at risk of serious human rights violations.¹⁴

Zhao Nan represents a far larger problem. Even though there were many hundreds, if not thousands, of Chinese students living in Japan who had sympathized with or taken part in the pro-democracy movement in China at the time of the 1989 massacre in Beijing, Japan has so far recognized only one Chinese person as a refugee. Many Chinese asylum-seekers have been told by Japanese officials to return home, despite being at risk of serious human rights violations in China. In recent years, however, some Chinese nationals have been allowed to remain in Japan without being formally granted political asylum.

China's law regarding the Entry and Exit of Aliens provides that people who seek asylum for political reasons can live in China on gaining the approval of the competent Chinese authorities. Refugees who enter or live illegally in China can be detained, subjected to surveillance or deported. Many of those fleeing into China do so "illegally" and are therefore at risk of refoulement. The largest group of refugees in China — some 285,000 people — are Vietnamese, most of them ethnic Chinese.¹⁵

India hosts a large and diverse refugee population of some 300,000 people. These include around 123,000 Tibetans as well as tens of thousands of Sri Lankans, Bangladeshi Chakma, ethnic Nepalese from Bhutan, and Afghans. Even though it is not a party to the UN Refugee Convention, India is a member state of Excom and plays an important role in the setting of standards of refugee protection.

Despite this, India's laws and practices fall far short of these standards in many respects. Any refugee who crosses the Indian border without authorization is considered an illegal immigrant and can be prosecuted and punished with up to five years' imprisonment and fined. The relevant Indian law, the Foreigner's Act of 1946, makes no provision for refugees. Moreover, India denies UNHCR access to most refugees and does not permit outside scrutiny of the situation facing some refugees.

Refugees fleeing to India from some countries face risks when applying for asylum. They are required to report to a local police station, some of which have an understanding with their counterparts in the countries from which the asylum-seekers have fled. Some Burmese asylum-seekers, for example, have simply been handed over by Indian police to Burmese officials and never heard of again.¹⁶ India has in the past used coercive measures to induce Sri Lankan refugees to return home.

The National Human Rights Commission in India has intervened on occasion in relation to the protection of refugees in India. For example, it has recommended improvements in the conditions of camps in Tripura for Chakma refugees from Bangladesh, and has taken action in the Supreme Court to prevent the expulsion of Chakma refugees from the state of Arunachal Pradesh. However, to Amnesty International's knowledge, it has no consistent policy towards refugees and has not recommended that India ratifies the UN Refugee Convention.

Thailand too has hosted several hundred thousand refugees for more than 20 years, most of them from Cambodia, Laos and Viet Nam. However, asylum-seekers arriving today, particularly those

from Myanmar, are increasingly at risk of refoulement. Thailand considers anyone lacking proper travel documents to be an illegal immigrant, subject to arrest, detention, fines and deportation, and makes no distinction between asylum-seekers and economic migrants.

The Thai authorities have stated that helping refugees will only encourage more to flee to their borders. They have continually denied UNHCR any permanent presence on the border with Myanmar, thereby restricting UNHCR's ability to fulfil its protection mandate. The authorities' attitude was summed up by a Thai official in the early 1990s, who said: "We have 300,000 Cambodians here, and thousands of Vietnamese and Laotians... Are we to shelter everybody?"¹⁷

It appears in some cases that economic and political considerations are put above the interests of refugees. Thailand stands to gain economically from the opening up of Myanmar's Mon State and this seems to have influenced its treatment of Burmese Mon refugees. Since 1990, their camps have been forced to move four times, each time closer to the Burmese border. In 1992 two of the camps were razed by the Thai army, and in 1994 one camp of 6,000 refugees was ordered to move across the border into Myanmar at Halockani. In July 1994 the new camp was attacked by the Burmese army, which resulted in 60 houses being destroyed and the refugees fleeing back into Thailand. Like India, Thailand sits on the Excom, despite not having ratified the UN Refugee Convention.

In several countries in Asia, UNHCR has faced severe problems. To carry out its work, UNHCR needs access to refugee communities. This is denied in some Asian states. In countries such as India and Sri Lanka where it has been allowed to operate, it has been put under extreme pressure by both countries during repatriation programs, compromising its position and leading to widespread criticisms. UNHCR is hampered in its efforts in Asia by the fact that most countries have not ratified the UN Refugee Convention and fail to facilitate UNHCR's role in monitoring the situation of refugees.

The 1.7 million internally displaced people in Asia are even more vulnerable to human rights abuses than refugees. There is no specific international treaty or organization such as UNHCR mandated to protect them. Governments are frequently reluctant to accept international supervision of their treatment of these displaced people, saying it interferes with the state's sovereignty. Many internally displaced populations are therefore beyond the reach of international humanitarian organizations — and even where they are not, international interest is often focused on relief, not human rights protection. On Bougainville, for example, monitoring of the internally displaced is not allowed and there is little or no protection for the camps' inhabitants against the many human rights violations, including extrajudicial executions and "disappearances", that are regularly reported.

Most refugees and internally displaced people want to return home. However, few are willing to return if there is still a risk that they will suffer human rights violations. Protection must therefore be offered for as long as is necessary. At the same time, every effort must be made to end the human rights abuses that originally caused flight so that at some point people can return to their communities free of fear.

1 Myanmar: ethnic repression

"I was hit countless times on the back and the neck, and blood came out of my mouth. I am lucky to be alive."

The fact that this refugee, a member of the Akha ethnic minority, believes he was “lucky” to escape with being tortured is a chilling reminder of the level of terror in Myanmar, particularly for members of the country’s ethnic minorities.

Ethnic minorities make up about a third of Myanmar’s population and live mainly in the mountainous regions bordering Bangladesh, China, India, Laos and Thailand. They have suffered persistent and gross human rights violations perpetrated by the Burmese army (the *tatmadaw*) during its attempts to unify by force the multi-ethnic country, to open up rural areas for economic development, and to crush ethnically-based armed opposition groups that are seeking greater autonomy from the dominant ethnic Burman majority. The appalling plight of the country’s ethnic minorities has, however, often been overshadowed by the government’s confrontation with the pro-democracy movement, which has also resulted in the flight of thousands of ethnic Burmans from central Myanmar to Thailand, India and Bangladesh.¹⁸

Many thousands of people have also been targeted simply because of their ethnic origin. For example, the Rohingyas — Burmese Muslims who live in the northern Rakhine (Arakan) State — are not acknowledged as Burmese by the government, which has said on several occasions that there are “135 national races” in Myanmar, which do not include the Rohingyas. Under the provisions of the 1982 Citizenship Law most Rohingyas are denied full citizenship. The law provides for three types of citizens depending on how many generations an individual’s family has lived in Myanmar. As a result, Rohingyas do not enjoy many basic rights, such as freedom of movement within the country.

Official denials that ethnic groups are being targeted for abuses are repeatedly exposed as false by the waves of refugees pouring out of the country. The sudden and often large-scale movements of refugees often follow an increased militarization of an ethnic minority area. One moment the flow is eastwards — Karen, Mon, Shan, Akha or Karenni refugees crossing into Thailand. The next it is westwards — Rohingya fleeing into Bangladesh and Chin into India. Then it is southwards as Rohingya escape into Malaysia. Tens of thousands of refugees from Myanmar’s ethnic minorities are in these five countries alone; others have gone further afield. Many thousand families are internally displaced. In many cases, the *tatmadaw* has attacked ethnic minority communities living far from conflict areas, often committing gross human rights abuses.

Since 1988, when the military reasserted power after suppressing a widespread pro-democracy movement, the State Law and Order Restoration Council (SLORC, Myanmar’s military government) has allowed its forces to commit widespread human rights violations against civilians during counter-insurgency operations against the country’s armed opposition groups. Rather than attempting to negotiate a comprehensive settlement, the SLORC has tried to pick off the groups one by one. Cease-fires have sometimes been short-lived. In the meantime, the *tatmadaw* freely kills, maims and terrorizes ethnic minority populations that happen to be in its path.

Civilians, the majority of them members of Myanmar’s ethnic minorities, have also been seized by the *tatmadaw* to work as porters. They have been arbitrarily detained, tortured and ill-treated as punishment if they cannot perform as required. They have been repeatedly beaten with bamboo sticks or rifle butts; deprived of food, water, rest and medical treatment; and killed if they attempt to escape.

Hundreds of thousands of others, including many ethnic Burmans, have been forced to work as unpaid labourers on new construction projects in the past five years. No one is spared. Not the

sick or elderly. Not women or children. For many, such work means cruel and inhuman suffering, degradation and even death.

Countless other members of ethnic minorities have been given no choice but to leave their homes, victims of “resettlements” brutally enforced by the army. In areas where there is suspected opposition, some or even all of the civilian population is forced at gunpoint to move into relocation camps and told they cannot return home until the opposition group capitulates. They are also threatened with death if they do not obey. Their homes, crops and livestock are often destroyed. Such “scorched earth” campaigns have been conducted in Kayah State (Karenni), central Shan State and Papun District of Kayin State.

The rampant human rights abuses have driven at least a million members of Myanmar’s ethnic minorities from their homes. However, their flight does not guarantee them safety. Many risk terrible dangers during their journey or when crossing the border, and later face human rights abuses or forcible return in the countries of asylum. They are in double jeopardy: at home and as refugees abroad.

Targeted communities

The quiet of the morning was broken as soldiers entered the village. Everyone knew what it meant. The army had arrived to throw them out of their homes. The villagers had committed no crime, nor was there any legal basis for their eviction. But the authorities had deemed them to be potential supporters of opposition groups. Confronted by armed men who could kill with impunity, the villagers fled.

Some 100 villages between the Pon and Salween rivers in Kayah State were ordered to move to relocation sites beside SLORC army camps at Shadaw and Ywa Thit. The order stated that anyone seen in or around these villages after 7 June 1996 would be “considered as enemy”, an official euphemism which means they can be shot on sight. Such forced relocation of civilians is just one of the many clear violations of humanitarian law, the law of armed conflict, which the tatmadaw commits regularly.¹⁹

This wave of forced relocations had begun in April 1996, spreading far and wide to cover areas where the authorities believe the Karenni National Progressive Party (KNPP) has operated. In just a few weeks, an estimated 20,000 to 30,000 people had lost everything — their homes, land and belongings. Most are ethnically Karenni, although some are Shan.

A Karenni Animist villager told Amnesty International what soldiers had said to him:

“... ‘all of you villagers have provided food to Karenni troops so we don’t want you here. You should leave and go to Thailand or to Sha Daw or Ywa Thit [relocation sites]. Next month we will come again. If anyone is in the village you will be shot’.”

Most of the Karenni have ended up in relocation camps in the state. Around 7,000 went to refugee camps in Thailand, despite the danger of up to a week’s walk through forest and over mountains, with little or nothing to eat and the constant fear of meeting SLORC troops on the way. A 30-year-old Buddhist Karenni farmer told Amnesty International what had happened during his fraught journey. In August 1996, as he and a group of around 100 villagers from the Shadaw resettlement site were approaching the Thai border, the tatmadaw opened fire. Four men — Ee Reh, Sii Reh, Mii Reh and Hla Reh — were killed.

Tens of thousands of Karen have also fled eastwards into Thailand from Kayin (Karen) State in the past 13 years to escape the *tatmadaw*.²⁰ Many have described how friends and relatives were killed by the army during its counter-

insurgency operations against the Karen National Union (KNU), the largest ethnic armed opposition group not to have agreed a cease-fire with the authorities. A Sgaw Karen Buddhist farmer witnessed the killing of his neighbour, Way Myat Paw, in early 1996:21

“The army asked Way Myat Paw: ‘Are you a KNU soldier?’. The other villagers said ‘No, he’s a civilian, not KNU’. But then the soldiers shot him, one bullet in the back... his body was left there... He was a nice person, a little bit fat, smiled a lot, a happy kind of lad.”

In late January 1997 cease-fire talks between the SLORC and KNU broke down for the fourth time. Days later, the Burmese army launched a major offensive against remaining KNU positions in the Kayin State, resulting in the flight of between 15,000 and 20,000 Karen civilians to Thailand. Refugees streamed into Umphang District, Tak Province, and into Kanchanaburi and Raatchaburi provinces in western Thailand, joining thousands of others who had fled previous onslaughts.

During the SLORC offensive against the KNU, there were also reports of persecution of Muslims. Mosques were burned, Korans destroyed and villagers forcibly evicted from their homes. A woman who fled Gyaidone township in March 1997 after the *tatmadaw* began shelling her village told Amnesty International that they had received a message from the SLORC that any Muslim who returned to the village would be killed. She concluded:

“I dare not go back to my place. If I go back I will be killed by the SLORC.”

Members of the Mon ethnic community have suffered similar abuses in recent years. A 54-year-old Mon Christian woman, her 17-year-old granddaughter and her nephew were attacked by the *tatmadaw* after they returned from Pa Yaw refugee camp to their village in Ye Pyu township, Tanintharyi (Tenasserim) Division, in December 1995 to collect pigs for a Christmas celebration. The grandmother recalled:

“I heard a soldier’s voice and then I heard my grand-daughter give a short but very loud scream and then I heard her sobbing... Then the Captain pulled her towards him and raped her. After he’d done so, he showed the girl his gun and said ‘No one is to know this event. If you tell anyone, I’ll kill you’.”

As soon as they were released, the family fled back to Thailand.

Many thousand members of ethnic minorities from Mon State and Tanintharyi Division, most of them Mon (the majority of whom are Buddhist) and Karen, have fled to Thailand or other areas of Myanmar to avoid human rights violations. Often they run to escape the torture, ill-treatment and threat of execution associated with forced portering and labour. A 14-year-old Mon girl from Ye Pyu township fled after being forced to work three times on the Ye-Dawei railway: she said that many other children, some as young as 12, were enslaved beside her.

Similar abuses have driven members of the Akha and Lahu communities to flee from the Shan State. Women and girls are often raped. A refugee described how Mi Aul, aged 15, and Mi She, aged 16 did not survive:

“[They] had been raped continually for six nights, by two or three men each night, including the soldiers’ commander... After their release, the two girls didn’t sleep, didn’t eat and eventually just died.”

Some of the worst atrocities have been committed in the southern, central and eastern parts of Shan State, where the tatmadaw has organized massive forcible relocations. Since March 1996 the army has relocated at least 100,000 Shan in central and southern areas of the state. Villagers were told that if they did not move, they would be shot when troops returned to burn down villages. Tens of thousands fled to Thailand after these threats. A second wave of relocations took place in March 1997 after fighting broke out between the tatmadaw and the Shan United Revolutionary Army, an armed opposition group. As a result, some 16,000 refugees reportedly fled to Thailand in April and May.

Thousands of ethnic Chin from Chin State and western Sagaing Division in northwest Myanmar have fled to Mizoram State in northeast India to avoid forced labour and the tatmadaw, which has increased its presence in Chin areas in response to the activities of the Chin National Front, an armed opposition group. In the past two years there have also been reports of religious persecution of the Chin, 90 per cent of whom are Christian. The SLORC is said to be forcibly converting Chin children to Buddhism and burning crosses, the symbol of Christianity, in public.

The most dramatic mass flight of an ethnic community in Myanmar began in 1991, when Muslims from Rakhine State (who are sometimes known as Rohingya) began pouring into Bangladesh. By mid-1992 over a quarter of a million had fled (out of an estimated total population of between one and two million), saying they were being driven out of the country by military terror. Refugees spoke of ill-treatment, torture and deliberate and arbitrary killings, committed in the context of forced labour and portering. Women and girls were systematically raped by security forces. The violations appeared to be part of a deliberate attempt to force Rohingyas to leave. One refugee said:

*"When we were beaten at different times we were often told that we should leave and that we weren't wanted in Burma. They said also that we would be killed if we tried to go back."*²²

The SLORC has given conflicting explanations of the legal status of Muslims from Rakhine State. Initially it said the refugees were illegal aliens fleeing to avoid immigration checks. Later it denied that any had fled Myanmar.

The human rights crisis eased in 1992, after which repatriations of Rohingyas took place. By the end of 1995 fewer than 55,000 of the original 250,000 refugees from Rakhine State remained in nine camps in Bangladesh. However, the cycle of violence and exodus has not ended. In the first half of 1997, thousands of Rohingyas fled from forced labour and other hardships into Bangladesh, though estimates vary widely from 2,000 to 20,000.

The pattern is clear across Myanmar. Ethnic communities are being persistently targeted for gross human rights violations by a government that believes it can kill, maim and arbitrarily imprison people with impunity. Until the violations stop, Myanmar's ethnic minorities will continue to seek respite from their fear by seeking sanctuary away from their homes.

Fate of the refugees

The human rights nightmare in Myanmar leaves little doubt that those fleeing the country need and deserve international protection. Yet all too often Burmese refugees are abused or forcibly returned home when they seek that protection.

From 1984 to the mid-1990s, the Thai authorities allowed wave after wave of Karen refugees fleeing Myanmar to stay in camps along Thailand's western border. Since early 1995, however, Karen refugees have increasingly found that they have no place to hide. In January 1995, 10,000 Karen civilians fled into Thailand after the Burmese army took control of former KNU territory.

The Democratic Kayin Buddhist Army (DKBA), which had been formed in 1994 by a group of disaffected Buddhist Karen who had left the KNU, followed the terrified people to the camps across the Thai border. The SLORC-backed DKBA, itself responsible for widespread abuses in Myanmar, then attacked the camps, abducting and killing several refugees, and burning thousands of refugee homes. The Thai authorities on the border responded by moving some of the camps further inside Thailand and by consolidating several smaller camps into larger ones. However, cross-border assaults on the camps by the DKBA have continued in an apparent attempt to force around 100,000 Karen refugees in camps to return to areas of the Karen State under DKBA or SLORC control. The DKBA have also raided the camps to loot supplies and money.

Many Karen civilians fled to camps in Mae Hong Son Province in northwest Thailand in 1995, 1996 and again in 1997 to avoid the abuses associated with forcible relocations and counter-insurgency operations. Tens of thousands remained in central Papun District, reportedly hiding in the forest with little or no means of subsistence.

The legal status of refugees in Thailand is precarious. Despite being a member of Excom, Thailand is not party to the UN Refugee Convention. All refugees who are present in the country without authorization are branded as “illegal immigrants” and are at risk of refoulement to their country of origin at any time. In practice Thailand has in the past “tolerated” the presence of large numbers of Burmese refugees. However, there are recent indications that its policy may be changing.

In February and March 1997 more than 4,000 refugees were forcibly repatriated to Myanmar by the Ninth Infantry Division of Thailand’s First Army. It was unclear why these refugees were singled out for return to Myanmar, while thousands of others in Tak Province and elsewhere were allowed to remain.

On 25 and 26 February around 900 mostly women and children Karen refugees who had sought refuge at Ban Bong Hti in Thailand were forcibly returned to an area around Htaw Ma Pyo Hta, five kilometres inside Myanmar. The repatriations were widely criticized by human rights and refugee organizations, as well as UNHCR. In response, the Thai authorities ordered an immediate halt to all movements of Karen refugees. However, on 9 and 10 March some 3,300 Karen refugees who had recently arrived in Kanchanaburi Province were returned to Myanmar by the Thai army.

Such a change in Thai policy could threaten the security of more than 100,000 Karen refugees alone. Many of these refugees are already in danger of attack by the Burmese army and the DKBA. It is therefore crucial that the Thai Government does everything in its power to ensure that these refugees are offered adequate protection.

All Mon refugees who were living in camps have been returned home by the Thai authorities despite the continuing dangers they face in Myanmar. Between December 1995 and May 1996, at a time when Mon were still fleeing their homes, some 10,000 Mon refugees were forcibly repatriated from Thailand without international monitoring. Most ended up in camps in border areas controlled by the New Mon State Party (NMSP), reportedly because they feared returning to their villages. In April and May 1996 alone, more than a thousand Mon villagers fled human rights violations and sought sanctuary in camps in NMSP territory.

Refugees from the Shan ethnic community who have fled to Thailand have not been permitted to establish camps. Instead, they struggle to survive by finding work on construction sites in Thailand and living where they can.

Thailand is not the only country where refugees from Myanmar are in danger. There have been reports that Chin refugees in India are ill-treated and tortured in custody. These reports are difficult to confirm as the government does not allow access to the region to UNHCR or human rights organizations. The South Asia Human Rights Documentation Centre has reported that many thousand Chin refugees have been forcibly returned from India to Myanmar since 1994. Up to 10,000 were expelled in September and October 1994 alone.²³ They were reportedly met by Burmese soldiers and jailed. They were said to have been held for six months before facing grossly unfair military trials. The Indian Government subsequently suspended the repatriation program until June 1995, when the State Government of Mizoram in northeastern India and the Indian Government initiated a campaign to remove all Chin refugees from Mizoram. The camp at Champhai was officially closed, leaving thousands of Chin families without shelter or provisions.²⁴ It is not known how many Chin refugees have subsequently suffered refoulement.

In Bangladesh, repatriation to unsafe conditions has been forced on many Rohingya refugees. In the first repatriation exercise, between September 1992 and the end of 1993, UNHCR was not present in Myanmar and had no agreement with the Burmese authorities about providing assistance to refugees who returned. Later, when UNHCR was present in Bangladesh, it was unable to stop concerted efforts by the Bangladeshi authorities to force refugees to return home. Among the methods used were beatings and the withdrawal of food rations.

In 1994, during the second repatriation of Rohingyas, UNHCR did establish a presence in Rakhine State and promoted mass repatriation on the grounds that it was safe for refugees to return home. In one month alone, September 1994, nearly 14,000 refugees repatriated, and by October 1995 some 200,000 had been returned home. However, the continued flight of Rohingyas back into Bangladesh during and after this period shows that the policy may have been premature. In a particularly tragic incident, 15 Burmese Muslim women and children refugees drowned in the Naf river in April 1996 as they were being towed back to Myanmar by the Bangladesh Border Rifles, a branch of the Bangladesh army. They were reportedly among a group of 150 Rohingya who were seeking asylum in Bangladesh.²⁵

UNHCR now has a field presence both in Bangladesh and in Rakhine State where they monitor human rights violations against Rohingyas. However, Rohingya refugees who have recently arrived in Bangladesh tend to avoid the camps fearing that they will be forced to repatriate. The Bangladeshi authorities initially ordered the Rohingya camps to be closed by the end of June 1997: the fate of the remaining 20,000 refugees who were in the camps was unclear. The SLORC have agreed to take back some 7,000, but this has not yet happened. As with Thailand, both Bangladesh and India sit on Excom; neither country is party to the UN Refugee Convention.

The fate of Burmese refugees highlights the double danger faced by members of Myanmar's ethnic minorities. Targeted for abuse and repression at home, they may then suffer further threats to their lives and security when seeking asylum in neighbouring countries. The current situation in Myanmar means that Burmese refugees must be offered international protection — and they should not be returned home until it has been established that the human rights situation in Myanmar has undergone a fundamental and lasting change. The international community should establish a mechanism that would ensure an independent and impartial assessment of the human

rights situation in countries from which refugees have fled. Only after that mechanism has determined that it is safe for refugees to return should repatriation programs be implemented.

2 Sri Lanka: a fractured island

Kumar* (a pseudonym) was just 12 years old when he smashed the head of a Muslim baby against a wall during an attack on a village. He later described how he felt no remorse about killing the child and then hacking to death the mother. In fact, he said they deserved to die. The attack had been organized by the Liberation Tigers of Tamil Eelam (LTTE), an armed Tamil opposition group fighting for an independent state called “Tamil Eelam” in the north and east of Sri Lanka.

Such incidents have been all too frequent during the violence and counter-violence that have torn Sri Lanka apart along ethnic lines since the 1980s. Tens of thousands of people have suffered gross human rights violations, including “disappearance” and political killings, as civil war and intercommunal violence have at times spiralled out of control. At the heart of the bloodshed is the Sinhala/Tamil ethnic division of the island’s population, although tensions within each community have also led to human rights abuses.²⁶

In the north and east, where most people are Tamil, government forces have sought to wipe out the armed Tamil separatist movement since the early 1980s. At first government forces used widespread arrests. Then a chilling campaign emerged involving widespread political killings and “disappearances” to sow terror and avoid accountability for the blood on the hands of government forces. The Prevention of Terrorism Act, first enacted in 1979 as a temporary measure but made permanent law in 1982, and Emergency Regulations gave the security forces sweeping powers and almost total immunity for human rights violations, creating a ready context for deaths in custody, “disappearances” and torture. The LTTE, which emerged as the main armed Tamil opposition group in the late 1980s after fierce fighting with other Tamil groups, also began to commit gross human rights abuses, including deliberate and arbitrary killings of Sinhalese and Muslim civilians.

After June 1990, when a second wave of fighting began, the scale of human rights abuses along ethnic lines reached new heights. On 10 June that year the LTTE took prisoner hundreds of Sinhalese and Muslim policemen and summarily executed them. In the following months, over 3,000 Tamil people were reported to have been killed or made to “disappear” by the security forces in the area. This grim pattern of abuse and counter-abuse persisted, with the victims being almost entirely civilians targeted solely on the basis of their ethnicity. The LTTE attacked Sinhalese civilians living in the north and east, including those settled by the government in and around the region. The LTTE maintained that these people were part of the government’s “war for land” and were therefore legitimate targets. Muslim and Sinhalese civilians armed by the government, so-called Home Guards, were also responsible for widespread extrajudicial executions and “disappearances”.

In a policy decision clearly taken along ethnic lines, the LTTE in October 1990 ordered members of the Muslim community to leave the areas under its control. An estimated 120,000 people fled south. Approximately 55,000 of them continue to live in refugee camps in the Puttalam District, while others have been taken in by relatives. When Amnesty International visited the refugees in 1996, they were desperate for information about the fate or whereabouts of more than 40 young Muslim men detained by the LTTE between 1987 and 1990. As one mother put it: “I want to

know whether to celebrate his birthday or his death anniversary.” The fate of the men remains unknown.

The situation improved between 1992 and 1994, the last two years of the United National Party’s rule, and after the People’s Alliance took office in August 1994. The People’s Alliance promised to negotiate a peaceful settlement to the armed conflict in the north and east, and embarked on a process of negotiations with the LTTE. On 8 January 1995 both sides agreed to a cessation of hostilities. However, on 18 April 1995 the LTTE broke the truce and the cycle of violence along ethnic lines resumed. On the night of 25 May 1995, for instance, 42 Sinhalese villagers were deliberately shot dead by members of the LTTE at Kallarawa in the east. Among them were at least 12 women and six children. In a further eight attacks on villages bordering the north and east in October and November 1995, more than 120 Sinhalese civilians were killed in similar circumstances.

The government reintroduced tough security measures. Again, there were increasing reports of human rights violations by government forces and by Sinhalese and Muslim Home Guards. Again, these included extrajudicial executions, “disappearances”, torture, and arbitrary arrest and detention, albeit on a lesser scale than in 1990.

Over the years, the violence and human rights violations have forced hundreds of thousands of Sri Lankans to abandon their homes to seek refuge elsewhere on the island or further afield. Between 200,000 to 300,000 Sri Lankans are living in Europe and North America as recognized refugees, asylum-seekers in the course of having their claims assessed, rejected asylum-seekers, or those simply without any status or documentation. An estimated 100,000 are living as refugees in India. The large majority of these people belong to the Tamil community, one of the world’s largest refugee diasporas.

The majority of people affected by the conflict have sought protection in other parts of Sri Lanka. The UN Secretary General’s Special Representative on Internally Displaced Persons acknowledged the scale of displacement in Sri Lanka following his visit to the country in November 1993. Two years later, at the end of 1995, a record one million people were internally displaced in the aftermath of large-scale military offensives in the north aimed at regaining control of the area from the LTTE. A substantial proportion of the internally displaced are Sinhalese and Muslim people who have fled human rights abuses by the LTTE. They have sought protection in areas controlled by government forces. In March 1997 a National Human Rights Commission was set up in Sri Lanka. Many non-governmental organizations expressed the hope that the commission would include in its mandate the treatment of internally displaced people. Many Tamil people, however, have opted to leave Sri Lanka because they felt that the Government of Sri Lanka was unwilling to provide such protection or, indeed, was directly responsible for the threat to their life.

The internally displaced and restrictions on movement

Both the LTTE and the security forces have prevented internally displaced people from seeking security by restricting their movement. In 1990 the LTTE introduced a system whereby civilians wanting to leave areas under LTTE control had to obtain a travel pass. Such passes were issued under strict conditions — such as leaving at least one family member behind. In October 1995, when the security forces launched a major offensive to take control of Jaffna town and surrounding areas, the LTTE decided to vacate the area and ordered civilians to do so too. While initially this order may have prevented killings of civilians during bombing and shelling, the LTTE’s main motive appeared to be to maintain control of civilians. The LTTE had previously

levied taxes on civilians and recruited new members from among them. An estimated 300,000 people took refuge in the eastern part of the peninsula. At least a further 150,000 moved south to Kilinochchi where the LTTE had relocated most of its offices. This group was displaced once again after the security forces attacked Kilinochchi town in July 1996. They moved further south, some of them remaining within LTTE-controlled areas, others fleeing to Tamil Nadu, India, and yet others trying to cross into government-controlled Vavuniya town.

At Thandikulam checkpoint, the main gateway between LTTE-controlled areas and government-controlled areas in the south, the military set up an elaborate system of passes and “transit camps” aimed at controlling the movement of civilians. In August 1996 the government invited civilians in LTTE-controlled areas to cross into territory controlled by it. However, the army only allowed 25 young people aged between 15 and 30 to cross each day. This restriction stopped parents and family members from crossing as they were reluctant to leave behind young people who they feared might be forcibly recruited by the LTTE. On 22 October 1996 the Ministry of Defence announced that the restrictions at Thandikulam were to be lifted. As a result, thousands of displaced people crossed into government-controlled areas. They were accommodated in 11 “transit camps” in and around Vavuniya. A complicated and slow process of screening ensued. No official notification of the lifting of the restrictions was made and there was uncertainty about its precise nature and application. Soon it became clear that those who were from Jaffna and were waiting in the “transit camps” were expected to return to Jaffna. Conditions in the camps remained appalling in early 1997 and there were several reports of ill-treatment and torture of young men entering the government-controlled areas by armed Tamil groups working alongside the security forces, including groups such as the People’s Liberation of Tamil Eelam (PLOTE).

Having gained control of Jaffna, the government began to encourage people to return there. However, many of the families originally from the Jaffna peninsula were reluctant to do so, particularly as they were alarmed by reports of human rights violations, including “disappearances”, torture and rape by the security forces. In one such case, Krishanthi Kumarasamy, an 18-year-old schoolgirl, was stopped by soldiers at Kaithady, Jaffna District, on her way home from exams, raped and then killed. Her body and those of her mother, younger brother and neighbour who had “disappeared” when they went to look for her were found in mid-October 1996 in shallow graves.

Many of the displaced in the “transit camps” complained that they were not given adequate information about the security situation in their areas of origin and about what would happen to them if they returned. They did not know, for example, if they would be allowed to live in their own homes, be provided with assistance to rebuild houses, or receive food and other assistance.

The Colombo situation

Some ethnic Tamils travel to Colombo, the capital city situated in the south of the country. Often they go there to board a flight for the West in order to seek asylum there. However, leaving the country and entering another has become increasingly difficult because of the visa requirements, carrier liabilities and other measures imposed by many Western governments. Many of these measures have been imposed specifically in response to the large refugee outflow from Sri Lanka.

The situation for many Tamils who manage to reach Colombo has been precarious. They have remained at risk of human rights violations, including arbitrary arrest and detention by the security forces. Particularly targeted have been people originating from Jaffna, as they have often

been suspected of having had contact with the LTTE. In mid-1995, shortly after the resumption of fighting in the north and east, the bodies of at least 21 people abducted in Colombo were found in lakes and rivers in the vicinity. Among the victims were several Tamil young men who were originally from the north but had been displaced or had been sent to Colombo by their parents for their protection. They included Krishnapillai Thurupathan, who was originally from Karaveddy, Jaffna District, and Iyavu (or Iyan) Shanmuganathan, originally from Nanattan, Mannar District. Both were arrested on 14 June 1995 while having breakfast in a café in Kochchikade, Colombo, by Special Task Force personnel travelling in a jeep. To date, their relatives have been given no information about their fate or whereabouts, but it is feared that they were among the people whose bodies were found around Colombo. Two specialized police units in particular have repeatedly been named as responsible for ill-treatment and torture of detainees in Colombo — the Crime Detection Bureau (CDB) and the Criminal Investigation Department (CID).

Even though the human rights situation remains grave for many Tamils in Colombo, several Western governments have returned rejected asylum-seekers, many of whom are Tamil, to Sri Lanka. The Swiss Government in early 1994 was the first to formally sign an agreement with the Government of Sri Lanka on the return of rejected asylum-seekers. Selvaratnam Thanapalan, a 26-year-old Tamil originally from Ellalai, Jaffna District, who had fled to Switzerland in mid-1993 to seek asylum, was returned in July 1996. He was told by police that the Swiss embassy in Colombo, the Red Cross Society and UNHCR would be responsible for his security on return and would be waiting for him on his arrival at the airport. Less than three weeks after his return he was arrested, interrogated about his relationship with the LTTE and tortured. In a sworn statement, he described his treatment in the custody of the army:

“My legs were firmly tied to the bamboo sticks and my head was forcibly immersed in the water in the tub... As I was being suffocated, some other person was hitting my back with his knee.”

A few days later he was taken before a magistrate and released. He immediately went to the Swiss Embassy in Colombo and told officials what had happened to him. He has since left the country and sought asylum again, this time in Germany.

Flight to India

In October 1996 a small boat bobbed precariously towards India’s Tamil Nadu State from Sri Lanka’s northwest coast. At least 110 Tamil refugees were crammed onto a craft designed to carry 40 people. An hour off shore, the boat suddenly lurched and capsized. Fourteen of the refugees, including eight children, perished. Such are the risks people are prepared to take to escape the human rights abuses in Sri Lanka.

The southern state of Tamil Nadu, home to 55 million ethnic Tamils, has been a natural destination for Tamil refugees from Sri Lanka. However, over the past few years, political and security considerations have pushed the Indian authorities to introduce measures to curb the influx of refugees. These include putting pressure on the Sri Lankan Government to intercept and force back boats with refugees heading towards India.

The mass exodus to Tamil Nadu began in July 1983 after widespread anti-Tamil riots. Between 135,000 and 210,000 Sri Lankan Tamils arrived in southern India during the human rights crisis that followed. They were welcomed by the Indian Government and offered housing and provisions. In 1987, following the signing of the Indo-Sri Lankan Accord which saw the intervention in Sri Lanka of the Indian army, some Tamil refugees began to return to Sri Lanka, encouraged by the Indian Government. The same year, at the request of the Indian Government, UNHCR began an assistance program to facilitate their voluntary repatriation and reintegration into their former villages. The government and UNHCR agreed to repatriate 75,000 refugees

within a year. In fact, between December 1987 and March 1989, a total of 25,600 people returned to Sri Lanka through organized channels and with the assistance of UNHCR, and 5,000 returned “spontaneously”, without assistance and not as part of an organized program.

Amnesty International had numerous concerns about the repatriation operation from Tamil Nadu. At the time of the repatriations UNHCR had no full-time presence in Tamil Nadu and there was no way of ensuring that refugees were given an opportunity to express freely their choice about repatriation. Indeed, evidence shows that Tamil refugees were coerced to leave and even threatened. Government financial support to the refugees was stopped. All Tamil refugees living outside camps, some 95,000 people, were told to report immediately to the office of the District Collector or face being treated as illegal aliens and thus risk deportation. Approximately 37,000 did report to the office; the others were people of Indian origin who had returned to India after working on tea estates in central Sri Lanka. They did not identify themselves as refugees and their status remains unclear.

In mid-1989, as Indian troops began withdrawing from Sri Lanka, a further 10,000 Tamil refugees fled to Tamil Nadu. This exodus continued as fighting escalated between Sri Lankan Government forces and the LTTE from June 1990. By May 1991, some 120,000 new refugees had arrived in India.

Following the assassination of India’s Prime Minister Rajiv Gandhi in 1991, which was blamed on the LTTE, opinion in India changed towards Sri Lankan Tamil refugees. New Delhi and the Tamil Nadu State Government began to put more pressure on refugees to repatriate. In early 1992 the government repatriated more than 23,000 Sri Lankan refugees without the benefit of international supervision.²⁷ It is now clear that most of these refugees were forced, overtly and covertly, into leaving Tamil Nadu. The government had imposed considerable restrictions on the refugees and withdrawn facilities in the camps, making life intolerable. Among the changes were: suspending educational facilities for children; not maintaining huts and other facilities; restricting the movement of refugees; arresting and detaining refugees in “special camps” (former jails) without any judicial process; not providing access to information to allow refugees to make an informed decision about returning home; failing to provide adequate medical assistance; and preventing assistance and other services to the refugees by non-governmental organizations. Some of these services were later reintroduced, but not before many refugees had been forced to leave.

After the repatriations were widely criticized, the Indian Government allowed UNHCR from July 1992 to interview refugees prior to their repatriation in order to establish whether their return was voluntary. However, UNHCR was not allowed access to the camps and could not speak to refugees until they had already agreed to leave India.

Subsequent repatriations in 1993 were carried out amidst accusations that departures were involuntary and that conditions in Sri Lanka were still not safe for many of those being returned. Unlike in previous years, UNHCR was officially involved in the repatriation at both ends. In India, UNHCR had full access to the returnees in the transit camps and over 90 per cent were interviewed. Some 6,500 refugees were returned in 1993, compared with 29,000 the previous year. Most went to their original homes or to friends or relatives in Sri Lanka. The remainder were placed temporarily in UNHCR-assisted reception centres in the Trincomalee and Mannar districts. However, the Tamil Nadu office of UNHCR has frequently been criticized for failing to provide information about the human rights situation in Sri Lanka. UNHCR and the Government

of Sri Lanka have also been criticized for their inability to provide aid and protection once the refugees reach home. Refugees who returned to Sri Lanka around 1993 and who have since left the country again complained that UNHCR misled them by circulating a blue leaflet setting out various rehabilitation benefits that the Government of Sri Lanka promised to provide to returnees. The returnees were given initial assistance at the reception centres. They claimed, however, that both the government and UNHCR “goaded” them to return to their villages and once they did so, they said they were left “high and dry”.

In October 1994 the India-based National Human Rights Commission visited some of the “special camps” in Tamil Nadu. They found that many Sri Lankans being detained in the camps had been issued with refugee identity cards on arrival in the country but were being held as illegal immigrants under the Foreigner’s Act. After the Commission complained about this practice, the authorities agreed that refugees with identity cards would not be treated as foreigners without valid documents and that they would be housed in normal camps.

Many refugees who have returned from India to government-controlled areas have been given a productive enterprise grant. This is to cover resumption of economic activity, a settling-in allowance, a housing grant and food rations for three months.²⁸ UNHCR and the Sri Lankan Government signed an agreement formalizing the responsibilities of each: UNHCR would provide for returnees’ emergency needs; the government would allow returnees to return to areas under LTTE control with UNHCR assistance.

In total more than 54,000 refugees returned to Sri Lanka from India under UNHCR auspices between 1992 and 1995. After the resumption of fighting in April 1995, official figures show that more than 7,000 Tamils again sought refuge in southern India, particularly between July and October 1996. But the hospitality of the 1980s has been replaced by measures aimed at curbing the influx. Observers generally believe that the decision by the Sri Lankan Ministry of Defence to “lift restrictions” on travel to the south at Thandikulam on 22 October 1996 (see above) was due to pressure from the Indian authorities on the Sri Lankan Government to prevent a new wave of refugees reaching its shores. And conditions in the camps, despite increased freedom of movement, remained poor.

The international community must share the responsibility for protecting the world’s refugees. If countries with the most resources close their doors, then intolerable pressure is put on other much poorer states to cope with the social and economic costs of sheltering those in need of sanctuary. In such conditions only one thing is certain: the security and welfare of refugees will suffer.

3 Bhutan: forcible exile

“I shouted and cried for help when they were kicking me with their boots... Finally they tied me up with a rope and took me away.”

When Goma Sapkota was released from her torture three days later, she immediately packed her bags and ran from her country. She is one of more than 90,000 ethnic Nepalese who have fled Bhutan in recent years and are now living in camps in eastern Nepal. Most of those who arrived in 1991 and 1992 fled out of fear of human rights violations. Many others have been forced out of their country in the past five years by a government that seems determined to make them leave. Almost all are being forcibly exiled on the basis of their ethnic origin or political views.

This picture of fear, repression and exclusion is a far cry from the remote idyllic community portrayed in tourism brochures. Landlocked Bhutan lies high up in the mountains between the Himalayas and the Ganges plain. It is ruled by an absolutist monarch, King Jigme Singye Wangchuck, and has no written constitution. For generations the mix of ethnic groups coexisted in harmony. The Ngalongs, one of the three main ethnic groups, live mainly in the west and are politically dominant. The Sarchops live primarily in the east. Both are Buddhist but speak different languages. The ethnic Nepalese are concentrated in the south. The large majority of them are descendants of Nepali settlers who came to work in the southern valleys in the late 19th and early 20th centuries until such movement was banned by the Bhutanese authorities in 1959. They speak Nepali and most are Hindus. They made up an estimated third of the approximately one million people living in Bhutan in the 1980s, although no official population figures have been made available by the government since 1980.

More recently, the government began to threaten the harmony by introducing measures aimed at promoting the traditions practised by the northern drukpa population and further curbing the influx of Nepali settlers. In the context of these measures, Nepali-speaking people from Bhutan have been threatened with and subjected to human rights abuses and forced into flight. Many of them have been arbitrarily deprived of their Bhutanese citizenship and then made to leave the country. In the end, these measures have resulted in the mass flight of ethnic Nepalese from Bhutan — the only home most had ever known.²⁹

Reasons for flight

Ethnic Nepalese in Bhutan began to fear the worst in 1988, when the authorities launched a census in southern Bhutan to determine citizenship under the 1985 Citizenship Act. This census operation is still continuing. The Citizenship Act tightened up the conditions of citizenship and appeared to have been framed to exclude ethnic Nepalese. Citizenship by birth could only be acquired automatically through both parents, instead of through the father alone, as had been the case under the 1977 Citizenship Act. The 1985 Act also made 1958 the cut-off year for determining citizenship and limited the granting of citizenship to those who could prove residence before 31 December of that year.³⁰ Those who were determined not to hold Bhutanese citizenship were classified as “illegal immigrants” and required to leave the country.

The census operation was combined with a series of highly unpopular measures supposedly designed to integrate ethnic Nepalis from the south more fully into Bhutanese society. The integration was to be on the basis of driglam namzha, the northern Bhutanese code of traditions and culture. Southern Bhutanese were required to wear traditional northern Bhutanese dress, with on-the-spot fines for those who disobeyed. Dzongkha, the language of the Ngalongs, was promoted as the national language while Nepali was withdrawn from school curriculums.

Amnesty International recognises the right of each state to determine its own criteria for conferring citizenship. However, this right must be exercised in conformity with that country’s international obligations to protect human rights. The Citizenship Act and its application seem geared towards the exclusion of ethnic Nepalese from Bhutanese citizenship. This has resulted in an arbitrary deprivation of nationality, a contravention of international human rights standards.³¹

These policies prompted an unprecedented level of protests in the south in September 1990, sometimes involving arson and violence. The demonstrations were met by swift and severe repression. Hundreds of people were arrested, ill-treated and tortured. Many were detained on the

grounds that they were “anti-nationals” — suspected members or supporters of opposition groups, including the Bhutan Peoples’ Party. They were held in harsh conditions without charge or trial, some for more than two years. Some say they were released only on condition that they left the country.

Prominent figures were arrested and ill-treated to intimidate others into fleeing abroad. In late 1991, for example, inhabitants of Lamedara in Chirang District refused to leave the country. Police arrested and tortured three well-known community figures. Soon afterwards almost the whole population of Lamedara, some 500 households, fled to Nepal.

Torture methods frequently reported included beatings with bamboo canes, wooden sticks, iron rods, electric wire, rifle butts, bayonets and thorn branches. Prisoners were suspended upside-down and had the soles and sides of their feet beaten. Some had their hands bound and were denied food and water in prison. Others were told to drink their own urine when they asked for water. One prisoner reported that a cane had been inserted in his anus.

A 61-year-old refugee, formerly a farmer from Daiphram, described what had happened to him in prison in 1991 before he fled:

“They told me to bend down on fingers and toes and stay in that position. When I toppled over, they beat me with canes... They hung me upside-down from the window bars... I was kicked in the middle of my back. After this I was bleeding from the nose and mouth... Then they started kicking me around like a human football. My body went into convulsions...”

Many women say they were raped by soldiers. A 23-year-old woman refugee who was arrested in Phipsoo, Sarbhang District, in November 1990, told Amnesty International:

“Every night two or three soldiers came and raped me. This happened every night for a month... I was beaten with chains that the soldiers used to tie on their guns... On release I went home until I realised I was pregnant. I was so ashamed that I couldn’t face the other villagers so I left Bhutan. I went into the jungle hoping I would die there... As a result of the rape, I had twins, one of which died.”

The peak of such abuses was in 1991 and early 1992. Tens of thousands of ethnic Nepalese felt that they had only one option — flight. Most ended up in camps in eastern Nepal, although between 10,000 and 30,000 settled outside these camps in India and Nepal.³²

Administrative measures also continue to be used to force ethnic Nepalese to go into exile. Many have been threatened with large fines or imprisonment if they refused to sign “voluntary migration forms”. The forms stated that the person agreed to receive compensation for their land and was leaving the country willingly. The forms were in Dzongkha, a language which most ethnic Nepalese do not understand. Other refugees say they were forced to flee when their whole village was required to leave as a collective punishment inflicted by the local authorities following a crime attributed to “anti-nationals”.

Many refugees complain about the arbitrary manner in which the census was conducted. Some claim that they had previously held citizenship identity cards issued between 1979 and 1981, but were told in the latest census that they were now classified as non-nationals or “illegal immigrants” and required to leave the country. Others say they were classified as Bhutanese nationals but then forced to migrate “voluntarily” because they had relatives in the refugee camps in Nepal, or because they were related to political prisoners. According to the Bhutanese authorities, some left because of intimidation from “anti-nationals”.

A 28-year-old farmer from Chhukha District who left for Nepal in July 1993, told Amnesty International:

“The census team said that I could not have my identity card returned because the 1958 land tax receipt was in my uncle’s name. I was categorized [as non-Bhutanese] and told I had to leave the country within six days or pay a fine of 6,000 rupees or go to jail for six months. Since I am a poor person, I left the country.”

A factory worker from Chhukha District, who was born in Bhutan but could not prove her parents’ birthplace, described what happened to her during the census in 1993:

“Five soldiers came to my house and asked me why I had not left. They grabbed me and pushed me to the ground. My 15-year-old daughter was so afraid that she ran away into the forest. I was so scared that I left Bhutan immediately with my three children.”

Similar stories are repeated time and again by refugees in eastern Nepal. Such consistency contradicts claims by the Bhutanese authorities that they do not wish to see southern Bhutanese leave the country and have tried to stop them.

Ethnic Nepalese are still at greater risk of arrest, ill-treatment and torture than other Bhutanese. “Village volunteer groups”, a 4,800-strong civil defence force operating in southern Bhutan with the approval of the authorities, have been responsible for arbitrary arrests and possible extrajudicial executions in the past three years. In addition, since June 1993, the authorities have used other means to force ethnic Nepalese into exile, including forcible evictions from land, destruction of houses, and harassment and intimidation by local authorities.

Life in exile

The first wave of refugees arriving in Nepal was housed in harsh, overcrowded camps. Later the Nepalese Government provided additional land for new camps. Today, more than 90,000 Bhutanese refugees live in Jhapa and Morang districts in eastern Nepal, the vast majority of them in seven camps organized under the auspices of UNHCR. The Nepalese Government began screening the refugees at the border at Karkavitta in June 1993, by which time over 85,000 refugees had arrived. The refugee community, which is well organized, has taken on much of the responsibility for the camps’ services and activities, and are involved in running the camps’ schools.

One refugee is Mangala Sharma, a 28-year-old mother of two young girls, who fled to Nepal in March 1992 due to the harassment of her family members by the Bhutanese authorities. Her activities have done much to build a spirit of self-reliance in the camps. “For the sake of the children we try to keep happy,” she says. “But inside we are crying”.

Determined to make the best of a bad situation, she set up an organization in the camp called Bhutanese Refugees Aiding Victims of Violence, which trains women and young people in skills such as tailoring, weaving, shoe-making and typing. Mangala Sharma says her present life is fulfilling but empty: “Being a refugee is so sad because you don’t have a country. For us, Bhutan is our only country.”

The frustration felt by the refugees sparked several protests and initiatives aimed at highlighting their plight. During 1996 many refugees from the camps in Nepal crossed into India to participate in peaceful marches and a cycle rally in West Bengal. Hundreds were detained by the Indian

authorities. Of these, 791 were detained without charge for more than two months before being released in July 1996. Others, who tried to cross the border between India and Bhutan at Phuntsholing in an attempt to petition the King of Bhutan, were taken back across the border into India. There they were released, some by being pushed out of moving vehicles. In April 1997 Indian police dismantled the relief camp set up by the Bhutanese refugee marchers at Panchanadi in Siliguri district, and forcibly took 22 of them by bus across the border to Nepal.

What hope for the future?

What was hoped to be a few months of exile has become years for many Bhutanese refugees. Some fear being persecuted if they go back to Bhutan and express uncertainty about what has happened to their homes and land. A decision in June 1997 by the Bhutanese National Assembly to start resettling landless people from the north on land “vacated” by the ethnic Nepalese as of October 1997 has caused anxiety among the refugees. Some refugees say they nevertheless still want to go back to Bhutan. All are hoping that those in power will reach an agreement on their return.

The governments of Bhutan and Nepal have been discussing the refugee question since November 1992, although little progress has been made. In 1993 the two countries established a Joint Ministerial Committee on the issue. UNHCR was excluded, as were representatives of the refugee community. The committee devised four categories of refugees: bona fide Bhutanese who have been evicted forcibly; Bhutanese who emigrated; non-Bhutanese; and Bhutanese who have committed criminal acts. In April 1994 the governments agreed to a process of joint verification of the status of the people in the camps. This was repeatedly delayed because both parties failed to agree on the precise mechanism to use in the classification; indeed, they were also unable to agree what should happen to people in each of the four categories. In any event, there could be people in all four categories who were subject to forced exile and should be allowed to return to Bhutan.

It is unclear what criteria will be used to determine under which category a particular individual would fall. If the citizenship laws of Bhutan alone are applied, it is unlikely that the arbitrary deprivation of nationality which many of the ethnic Nepalese suffered will be remedied, or that their right to return to their country will be realised. Many refugees will find it impossible to prove they were resident in Bhutan in 1958. Census registers are incomplete, some refugees have had their status as citizens altered, some know that their names have been deleted from the records, and many have had relevant documents confiscated. In addition, Bhutanese law excludes anyone from gaining citizenship if they have a record of “having spoken or acted against the King, country and people of Bhutan in any manner whatsoever”. This can include peaceful expression of opposition to government policies, which, as has been shown, many of the ethnic Nepalese have engaged in to protest against their treatment.

Current Bhutanese law also means that anyone who signed “voluntary migration forms” would be excluded from returning home, again in violation of international standards.³³ Moreover, the requirement that citizens be proficient in Dzongkha could be used to exclude many Nepali-speaking people.

If no solution is found, tens of thousands of Bhutanese men, women and children will be forced to carry on living in limbo and uncertainty. Amnesty International deplors forcible exile as a violation of human rights. The organization calls upon the Bhutanese authorities to ensure that their policies and practices regarding citizenship are brought into conformity with international human rights standards, and that the human rights violations which forced ethnic Nepalese to flee

are brought to an end. In addition, the Nepalese and Indian authorities should ensure that those who fear human rights abuses if they return to Bhutan continue to be afforded protection.

4 East Timor: a question of identity

Men and women ran screaming from the cemetery. As bullets flew through the air, bodies slumped to the ground. They were dragged to safety by their relatives and friends, although for some it was already too late. Soldiers chased the fleeing crowds, hitting out at random with batons. Unusually, the scene was captured on film by a lone, brave cameraman, and his pictures opened the eyes of the world to the terror in East Timor. By the end of that terrible day, 12 November 1991, at least 100 East Timorese people, possibly as many as 270, had been massacred by Indonesian troops during a peaceful protest at the Santa Cruz cemetery in Dili, East Timor. Hundreds more were injured.

Alu is still haunted by her memories of the day. She was near the entrance of the cemetery when police arrived. They immediately attacked her with batons. As she ran she heard the police firing their guns. People fell to the ground around her as they were shot. Some of her friends and her cousin were among the casualties. Miraculously no bullet hit her.

In the following years she was threatened by the military, witnessed assaults on other East Timorese, and lived in constant fear that the police would find out that she had been at the Santa Cruz cemetery that fateful November day. In the end, the strain was too much and she escaped to Australia.

People have been fleeing East Timor since Indonesia invaded the territory in December 1975. Since then some 200,000 East Timorese have been killed or died of starvation, and to this day human rights violations remain endemic.³⁴

East Timor was ruled continuously by Portugal from 1702 until August 1975 when, during a period of turmoil at home, the Portuguese authorities evacuated the island. The previous year East Timor had begun a process of decolonization following the overthrow of the dictatorship in Portugal. The transition to independence was abruptly interrupted by the Indonesian invasion: the Indonesian authorities claimed that East Timor had been incorporated as its 27th province by an “act of integration”. This annexation has never been recognized by the UN, which defines East Timor as a “non-self-governing” territory. However, many member states of the UN have been reluctant to take a strong stand on Indonesia’s occupation of the island or the grave human rights abuses taking place in the territory, despite several critical resolutions and consensus statements by the Commission on Human Rights. For these countries, protecting economic and strategic interests seem to be more important than upholding their commitments towards human rights.

Opposition to the occupation remains strong in East Timor and, despite 22 years of Indonesian domination, there is still a vocal movement for self-determination. Every day people suffer human rights violations simply for asserting their identity as East Timorese, however trivial their display of national identity might be. In March 1997, for example, 17 youths were arrested during a pro-independence demonstration at a hotel in Dili during a visit to the territory by the UN Secretary General’s Personal Representative on East Timor. They were charged with publicly “expressing hatred” towards the government and face imprisonment for up to seven years.

Those suspected of membership of the independence movement, whether or not they support violent activities, are dealt with even more harshly by the Indonesian authorities. They are tortured, ill-treated, killed, made to “disappear” or detained as prisoners of conscience. Women in particular are at risk of rape or sexual assault, especially those whose family members are suspected opposition activists. Since late May 1997, dozens of people have been taken into custody and are awaiting trial, after a series of attacks by the armed opposition in East Timor on both civilian and military targets.

Many East Timorese who seek asylum are survivors of torture or trauma. One such victim, 25-year-old Antonio Goivera, was arrested in August 1992 in Dili and taken into military custody. Soldiers hit and kicked him while questioning him about alleged clandestine activities on behalf of the East Timorese independence movement. He was then tortured with electric shocks and beaten with a piece of wood, injuring one of his ribs. He was held for two months in various places before being taken to a military detention facility in Baucau. Again he was tortured. He was eventually released in October 1993, but had to report every week to the Satuan Tugas Intelijen, a military intelligence unit.

A year later, in November 1994, Antonio Goivera was rearrested and tortured once again. At one point soldiers blindfolded him, put him in a car, and drove him to an unknown destination. When the car stopped they said they were going to kill him unless he provided the information they wanted. Later they repeated the threat with a gun in his mouth. After eight days of this ordeal he was released. Soon after, in 1995, he fled to Australia, where he is now seeking asylum.

The repression has forced thousands of East Timorese to flee their country since 1975. They have sought protection in many countries, including Australia, Maucau and Portugal. Increasingly, however, they are being met by less than warm receptions by states that do not wish to offend Indonesia, a powerful and strategically important ally — despite the fact that the granting of asylum is recognized by the international community as a purely humanitarian act.

No easy escape

Estavão* (A pseudonym) waited until dark and then scaled the walls of the French Embassy in Jakarta. This daring venture was, he believed, his only hope of finding safety.

Three and a half years earlier, in June 1993, he had been arrested for supporting an armed East Timorese opposition group. He was repeatedly tortured, including by being locked into an old tin drum full of ice and water. He was also beaten and kicked. After his release several weeks later, he lived in hiding although he remained politically active. When his family began to be harassed by the Indonesian security forces, he decided he should leave the country. So in January 1997 he went by ship from East Timor to Jakarta and broke into the French Embassy to seek asylum. He now lives in Portugal.

Most East Timorese do not want to abandon their homeland. But even when they make the painful decision to do so, their journey to safety is fraught with dangers and difficulties.

The Indonesian Government publicly states that East Timorese are free to leave the country. However, to do so legally, they must have a passport and a visa to travel to another country — and for most East Timorese such a requirement is in practice extremely difficult to fulfil. Those who have a claim to Portuguese nationality cannot obtain a Portuguese passport from inside the country as Portugal does not have any consular or diplomatic offices in Indonesia or East Timor. Obtaining an Indonesian passport is also difficult, particularly for those perceived as political

activists, and often involves payments of bribes. Even when East Timorese do manage to get a passport, many countries are extremely cautious about granting them visas, fearing that they may seek asylum on arrival.

Such problems have driven East Timorese to attempt dramatic and risky escapes. Since September 1993, more than 100 East Timorese have sought asylum after climbing the walls of foreign embassies in Jakarta. Attempts have been made at the Australian, British, Dutch, French, German, Polish, Japanese, and US embassies. When asylum has been requested, the government concerned has usually negotiated with the assistance of the International Committee of the Red Cross (ICRC) the departure of the asylum-seekers to Portugal, which has agreed to accept the refugees.

In several cases, embassies have refused to hear the request for asylum. They have then expelled the asylum-seekers, some of whom have subsequently suffered human rights violations. In April 1996, eight East Timorese entered the German Embassy in Jakarta at 2am. Within minutes they were forced out by embassy security guards and handed over to Indonesian security forces waiting outside. A foreign media crew happened to be there and filmed the East Timorese being beaten and kicked by the soldiers. One of the asylum-seekers suffered a broken leg. All eight were taken into military custody for a day, transferred to police custody for a further day and then taken again into military custody before finally being released without charge. Three needed hospital treatment after their release. The German Government condemned the treatment of the eight and called for the Indonesian Government to investigate the ill-treatment, but it is believed that no inquiry was held. The eight East Timorese eventually left Indonesia for Portugal with the assistance of the ICRC.

A smaller number of East Timorese have made desperate attempts to flee East Timor by boat to Australia, a hazardous journey across an unpredictable ocean forced upon them by the reluctance of governments to grant them visas. Of the three known attempts in recent years, only one was successful. The other two ended up with the asylum-seekers being detained for hijacking and subjected to unfair trials.

In the first of the two cases, a group of up to 29 East Timorese asylum-seekers were arrested on 20 November 1995 as they attempted to travel to Australia by boat. The group, which included four children, was alleged by the authorities to have forced the boat's captain to change course and head for Australia. Most of the women and children were released shortly after the original arrests. Five of the group, however, were tried, convicted and sentenced to imprisonment for unlawfully taking control of a boat from its captain. Maria Fatima Pereira, 38, received a one-year sentence; Januario, 23, Carvalho Casto, 31, Raimundo De Jesus, 22, and Jaimundo de Carvalho, 20, all received nine-month sentences. During pre-trial detention, none had access to independent legal counsel, prejudicing their right to a fair trial.

A similar fate met 23 other East Timorese who attempted to flee East Timor by boat in January 1996. They were arrested and accused by the authorities of having rented a boat and then demanding to be taken to Australia. Even though they were supposed to have hijacked the boat, the group reportedly fell asleep, allowing the captain to change course and return to East Timor. Four of the group were reportedly still held in Baucau in July 1996 accused of trying to kidnap the boat owner and his son. They are now believed to have been released.

Australia's closing doors

The question of nationality for East Timorese follows them abroad when they seek asylum, whether they like it or not. This is particularly the case in Australia, a natural destination for many East Timorese as it is relatively close and is already home to a large East Timorese community. Over the past few years, Australia has made a major political investment in its relationship with Indonesia. Concern for human rights has virtually dropped from the bilateral agenda in the interests of new trade and security ties. Australia is the only country to recognize Indonesia as having sovereignty over East Timor and, despite having repeatedly asserted the right of the East Timorese people to self-determination, has negotiated with Indonesia to exploit oil resources in the Timor Sea in the face of unsuccessful legal challenges by Portugal.

Before 1992 Australia determined asylum claims by East Timorese on a case-by-case basis and many applications were granted. However, current government policy is that East Timorese are not eligible for Australian protection on the grounds that they have Portuguese citizenship. It appears that Australia's current position on East Timorese asylum-seekers reflects a broader pattern of increasingly restrictive interpretation of Australia's obligations to refugees in need of protection (see Introduction), and a reluctance by Australia to condemn human rights violations in Indonesia and East Timor.

The new government policy was the subject of a recent court challenge by an East Timorese man whose asylum application was rejected solely on the grounds that he was a Portuguese citizen. While the case was being decided, Australia's Department of Immigration made no decisions on other East Timorese asylum applications.

Despite Australia's unique recognition of Indonesian sovereignty over East Timor, the government's argument in the recent court challenge was that this recognition does not contradict its position that East Timorese, whom it recognizes as Indonesian citizens, are also eligible for Portuguese citizenship under Portuguese law.

Claiming Portuguese citizenship is far from a straightforward procedure, nor is the outcome guaranteed. According to Portuguese citizenship law, East Timorese must prove that their parents were Portuguese citizens and that they themselves were born in East Timor in order to claim citizenship. In order to do this, they must obtain their own and their parents' birth records. Further complicating the process is the fact that Portugal does not recognize Indonesian civil registration certificates — a baptism certificate from a recognized church must be produced. This is difficult in a territory that has experienced over two decades of war and whose administration is now controlled by Jakarta. In any case, most asylum-seekers are not able to flee their homes with such detailed and precise documentation, a fact recognized by international standards. It is believed that without this documentation, the asylum-seeker would have to undergo a lengthy procedure to establish details about birth, through a declaration supported by testimonial evidence of witnesses. Amnesty International is unaware of any East Timorese asylum-seeker who has applied for Portuguese citizenship in Australia. However, the organization fears that this procedure could prove to be extremely slow and complicated. The Australian authorities have not yet clarified what would happen to asylum-seekers if they are unable to obtain Portuguese citizenship, nor is it clear to Amnesty International how the Portuguese authorities intend to apply the provisions of their citizenship law. It is also not clear whether the Portuguese authorities are willing to accept East Timorese who have been deported from Australia.

In May 1997 the full bench of the Australian Federal Court found unanimously in favour of the East Timorese asylum-seeker challenging the government policy. The court ruled that if an asylum-seeker had more than one nationality, a decision had to be made about the "effectiveness"

of the protection available from the second nationality. It specifically raised issues such as whether it was possible for the asylum-seeker to present the necessary documents in Australia to obtain Portuguese citizenship, and whether the applicant would be allowed to enter Portugal. The court ruled that the asylum-seeker's case should be returned to Australia's Refugee Review Tribunal for a decision. The result of this decision is that for each East Timorese asylum-seeker, Australia's refugee determination process must consider whether Portuguese citizenship is actually "effective". Soon after the court decision, the Refugee Review Tribunal recognized three East Timorese asylum-seekers as refugees, recognizing that their Portuguese citizenship was not effective. The government has appealed all three cases to the Federal Court.

Despite the successful legal challenge the battle is not over. Unless the court rules on the general question of effectiveness of Portuguese protection for East Timorese, each East Timorese asylum-seeker will now have to show not just that they would risk persecution if forcibly returned to Indonesia or East Timor, but also that any claim to Portuguese citizenship would not offer effective protection in their case. It is anticipated that this could considerably lengthen the asylum application process.

Amnesty International recognises the general principle that asylum-seekers with more than one nationality may first be called upon to seek protection from one of their countries of nationality. However, given the difficulties described above, it is questionable whether Australia's insistence on this principle in the case of East Timorese complies with the humanitarian spirit of the UN Refugee Convention. The Australian Government's refusal to provide any kind of durable protection to East Timorese pending completion of this lengthy process could have a serious impact on many asylum-seekers who are victims of gross human rights abuses. A recent study of a group of East Timorese asylum-seekers in Australia by a specialist torture and trauma counselling unit found that a high proportion of them had suffered physical assault and torture,³⁵ and as a result of these experiences suffered clinical depression and other psychological distress. The survey concluded that the psychological condition of the group would be threatened by the prolonged period of uncertainty, and that "the additional imposition of trauma, such as forced removal from their country of haven (Australia)" would result in marked psychological deterioration and increased rates of suicide.

Nationality is a concept much more far reaching than the mere admittance of people to a certain territory (in this case Portugal). Countries have the right, indeed, the duty to strive to ensure that their nationals' human rights are protected — abroad as well as within their own country. Australia claims that East Timorese are Portuguese nationals, but it is clear that in the present situation Portugal is unable in practice to ensure that the human rights of East Timorese are protected in East Timor. For all practical purposes, Portuguese citizenship is a fiction for East Timorese in East Timor. They are unable to apply for Portuguese citizenship in that territory, and are unable to request protection from the Portuguese Government. Indeed, the Australian Government has argued before the International Court of Justice that as Portugal no longer has sovereignty over East Timor, it has no standing to represent the interests of the East Timorese people. Given this position, it is difficult to see how the Australian Government's policies can be viewed as anything but a cynical shirking of Australia's responsibilities towards those fleeing serious human rights abuses.

More than 7,000 Australians have responded to what they see as a gross injustice being suffered by East Timorese asylum-seekers. They have joined a "sanctuary network" of volunteers willing to break Australian law by hiding 1,360 East Timorese refugees who may be refused asylum in Australia on the grounds that they are Portuguese citizens. In the face of increasing xenophobic

opposition to immigration, they are among the many Australians who believe the country should continue to fulfil its international obligations towards people fleeing human rights violations in Indonesia, instead of trying to pass that responsibility on to others.

The ultimate solution to the problem of East Timorese asylum-seekers is for the international community, including Australia, to place more concerted and consistent pressure on the Indonesian Government to take concrete and effective steps to address the human rights problems which cause East Timorese to flee. Human rights are a critical ingredient to any long-term political solution to the East Timor issue.

Recommendations

This report has shown that the plight of refugees and the internally displaced is the result of government failure to protect human rights. It has concentrated on one dimension only — the consequences for people who suffer human rights abuses because of their ethnic or national identity. Countless more people have fled their communities after being targeted for abuses for other reasons, such as their political or religious views, their gender, or their human rights work.

The main thrust of Amnesty International's work is to combat the human rights abuses that force people to flee their homes. In its 1997 campaign on the human rights of refugees, Amnesty International is putting additional focus on the way governments treat refugees. The following recommendations outline the minimum steps necessary to protect the human rights of refugees so that they are safe from further harm and are treated with the dignity that their tragic circumstances demand.

Amnesty International urges the governments in Asia to take the following steps to ensure that refugees receive the international protection to which they are entitled.³⁶

To all governments in the region:

- * All states that have not done so should immediately ratify and implement the UN 1951 Convention relating to the Status of Refugees and its 1967 Protocol.
- * All states that have not done so should immediately ratify and implement international human rights treaties such as the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- * All governments should build awareness and public support for the rights of refugees.

To governments in countries of asylum:

- * Respect scrupulously the fundamental principle of non-refoulement, including non-rejection at the frontier. No one should be sent back in any manner whatsoever to a country where they would be at risk of serious, human rights violations, such as torture, extrajudicial execution or "disappearance".
- * Ensure that the role of UNHCR as the international agency charged with the protection of refugees is respected. Access by UNHCR to refugees should be facilitated in all circumstances, and assessments of the agency regarding the need of particular people for protection should be respected. Access of other relevant intergovernmental and non-governmental agencies should also be facilitated.
- * Those countries with national human rights commissions, or other independent bodies responsible for monitoring human rights within the country, should ensure that the treatment of refugees is included in the commission's mandate.

- * Comprehensive training programs should be undertaken for military and other relevant personnel responsible for frontiers, in the basic principles of refugee and human rights law and the treatment of refugees. UNHCR and other relevant agencies, including non-governmental organizations, should be invited to implement this training.
- * Repatriation programs must include human rights guarantees at all stages of the return. Repatriation should not be imposed until and unless there has been a fundamental and lasting change in the country of origin. Individuals should have the right not to repatriate without a meaningful opportunity for an individual assessment of their asylum claim.
- * The human rights situation in refugees' country of origin should be subject to independent and impartial assessment based on publicly available information before, during and after any repatriation.
- * Ensure that all individual asylum-seekers are referred to an independent and specialized body responsible for deciding asylum claims. All such claims should be considered in a fair and satisfactory asylum procedure which conforms to international standards. Asylum-seekers must be given effective protection against refoulement at all stages of the procedure.

To governments in countries of origin:

- * The obligations under international law for governments to respect and protect the human rights of their own citizens should be fulfilled, so that people are not forced to flee abroad in search of protection.
- * Those countries with ethnic minority populations should ensure that the rights of these communities are respected in accordance with all relevant international human rights standards. In particular, these communities should be protected from arbitrary deprivation of nationality and forcible exile.
- * UNHCR, the UN Commission for Human Rights thematic mechanisms and country rapporteurs, and other international human rights monitoring and reporting operations (both inter-governmental and non-governmental) should be given access to monitor the situation of human rights and of returning refugees.

To governments of countries with internally displaced populations:

- * Special care must be taken to ensure that internally displaced people are treated in accordance with the full range of existing human rights and humanitarian standards. Protection of their human rights, as well as their humanitarian needs, must be taken into account in the formulation and implementation of policy.
- * UNHCR and other relevant intergovernmental and non-governmental agencies should be allowed and facilitated access to internally displaced populations in all circumstances.
- * Measures should be taken to ensure that the internally displaced are provided with independent and impartial information regarding the security and human rights situation in their home area.
- * Those countries with national human rights commissions, or other independent bodies responsible for monitoring human rights within the country, should ensure that the treatment of internally displaced people is included in the commission's mandate.

To the international community:

- * Encourage the countries of Asia that have not yet ratified the UN Refugee Convention and its Protocol to do so. In particular, serious consideration should be given to making ratification of the Convention a criteria for sitting on Excom.

- * Share fully the international responsibility for protecting and sheltering refugees. Concrete measures should be taken in this regard, including a mechanism for providing adequate and sustained assistance to those countries which bear a disproportionate share of the responsibility for hosting refugees because of their geographical location. The implementation of adequate and effective resettlement policies should also be considered.
- * Respect the rights of refugees from Asia who are seeking asylum outside the region.
- * The international community should take concrete measures to ensure that internally displaced people are protected. In particular, the UN Secretary General's Special Representative for Internally Displaced Persons should develop guidelines for the protection of the internally displaced based on the full range of human rights and humanitarian law.

Endnotes

- 1 Amnesty International considers people to be prisoners of conscience if they have been detained for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status — and if they have not used or advocated violence.
- 2 World Refugee Survey 1996, US Committee for Refugees. For Amnesty International, Asia stretches from Afghanistan in the west to the countries of the Pacific; it does not include countries that emerged from the former Soviet Union.
- 3 UNHCR statistic for “Asia”, which includes some countries of the former Soviet Union.
- 4 The Far Eastern Economic Review (19 June 1997) puts the number at 526.
- 5 “Refugees from Cambodia, Laos and Vietnam, 1975-1993”, Michel Mignot, The Cambridge Survey of World Migration, ed. Robin Cohen, 1995
- 6 The Asian-African Legal Consultative Committee has adopted Principles Concerning Treatment of Refugees. However, these Principles have no official force.
- 7 The Comprehensive Plan of Action was introduced in 1989 as a measure to address the problem of countries of first refuge refusing to allow asylum-seekers to settle locally. Thousands of refugees rescued at sea were not allowed to disembark and seek protection in countries in the region.
- 8 Compiled by UNHCR at the request of the Excom, the UNHCR Handbook sets out detailed guidelines for the treatment of asylum applicants and the assessment of their claims.
- 9 The other countries/territories party to the agreement were: Thailand, Malaysia, Singapore, Indonesia, Macau and Hong Kong, and the country of origin, Viet Nam.
- 10 Around 1,600 “screened in” refugees remain in Hong Kong, unable to find resettlement places. Far Eastern Economic Review, op. cit.
- 11 See, for example, Amnesty International's report Hong Kong: Arbitrary detention of Vietnamese asylum-seekers, April 1994 (AI Index: ASA 19/04/94).
- 12 Article 31 of the UN Refugee Convention says that states parties “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ... enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” Excom Conclusion 44, which lays out the specific grounds under which detention of refugees and asylum-seekers is legitimate, states that “in view of the hardship which it involves, detention should normally be avoided.”
- 13 Officials should be trained, as far as possible, to identify people who indicate a fear of returning to their country and refer their cases to the appropriate body. The UNHCR Handbook notes that asylum seekers are in a “particularly vulnerable situation. He finds himself in an alien

environment and may experience serious difficulties ... in submitting his case to the authorities of a foreign country, often in a language not his own” and states that officials must have an “understanding of the applicant’s particular difficulties and needs.”

14 Excom Conclusion 15 states: “While asylum-seekers may be required to submit their request within a certain time limit, failure to do so, or the non-fulfilment of other formal requirements, should not lead to an asylum request being excluded from consideration.”

15 World Refugee Survey 1996, *op. cit.*

16 “Refugees from Myanmar”, International Commission of Jurists, October 1992

17 “Refugees from Myanmar”, *op. cit.*

18 For further information on the human rights situation in Myanmar, see Amnesty International’s reports: Myanmar: Intimidation and imprisonment (AI Index: ASA 16/01/97); and Myanmar: Ethnic minority rights under attack (AI Index: ASA 16/20/97).

19 Article 17 of Additional Protocol 2 to the Geneva Conventions prohibits the forced relocation of civilians “unless the security of the civilians involved or imperative military reasons so demand.”

20 Karen is the English word and Kayin the Burmese word; in this report Karen is used as it is a more accepted version of Ka Nyaw, the word Karen use.

21 The Karen are divided into Sgaw and Pwo Karen, each speaking their own dialect.

22 Union of Myanmar: Human rights violations against Muslims in the Rakhine (Arakan) State, Amnesty International, May 1992 (AI Index: ASA 16/06/92).

23 “Country report on refugee situation in India”, South Asia Human Rights Documentation Centre, October 1995.

24 “Country report on refugee situation in India”, *op. cit.*

25 Burma: The Rohingya Muslims; Ending a Cycle of Exodus?, Human Rights Watch / Asia, September 1996, Vol. 8, No. 9 (C).

26 For further information on the human rights situation in Sri Lanka, see Amnesty International’s reports: Sri Lanka: Correspondence with the Liberation Tigers of Tamil Eelam on human rights abuses (AI Index: ASA 37/18/95); Sri Lanka: Security measures violate human rights (AI Index: ASA 37/12/95) and Sri Lanka: Wavering commitment to human rights (AI Index: ASA 37/08/96).

27 “Country report on refugee situation in India”, *op. cit.*

28 US Committee for Refugees, January 1994, quoted in Background paper on Sri Lankan Refugees and Asylum Seekers, UNHCR, November 1994.

29 For further information about the human rights situation in Bhutan, see Amnesty International’s reports: Bhutan: Forcible exile (AI Index: ASA 14/04/94); Bhutan: Human rights violations against the Nepali-speaking population in the south (AI Index: ASA 14/04/92).

30 “The Exodus of Ethnic Nepalis from Southern Bhutan”, Refugee Survey Quarterly, Vol. 14, No. 3, Autumn 1995

31 The Universal Declaration of Human Rights states in Article 15(2): “No one shall be arbitrarily deprived of his nationality...” The Committee on the Elimination of Racial Discrimination (CERD), in Article 5, obliges states parties to “undertake ... to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in ... the right to nationality.” The International Covenant on Civil and Political Rights (ICCPR) states in Article 26: “The law shall ... guarantee to all persons equal and effective protection against discrimination on any ground such as race...”

32 According to UNHCR figures: 9,036 people were registered in the camps in eastern Nepal in 1991; 63,699 in 1992; 12,343 in 1993; 1,218 in 1994; and 201 in 1995. The total registered by late 1995 was more than 90,000.

33 Article 12 of the ICCPR states: “No one shall be arbitrarily deprived of the right to enter his own country.”

34 For further information on the human rights situation in Indonesia and East Timor, see Amnesty International's report: East Timor: Respect for human rights — the precondition for a political solution (AI Index: ASA 21/40/97).

35 82 per cent of them had suffered physical assault; 52 per cent had family members who had been physically assaulted; 54 per cent had been tortured, including with electric shocks and burning; 61 per cent had witnessed killings; and 43 per cent had family members who had been killed by the Indonesian armed forces. Victorian Foundation for the Survivors of Torture and Trauma, Annual Report, 1995-1996.

36 Similar recommendations are being addressed to governments in other regions. See the comprehensive set of recommendations in Amnesty International's 1997 report, Refugees: Human rights have no borders (AI Index: ACT 34/03/97).

Captions

Tibetan children at school in a refugee camp in Nepal. © Howard J. Davies

An Afghan refugee working in a refugee camp near Peshawar, Pakistan. © Howard J. Davies

Returning Cambodian refugees about to board a train that will take them to a reception centre outside Phnom Penh during a UN repatriation program, June 1992. © Howard J. Davies

Vietnamese boy undergoing a screening interview at the Marang Refugee Camp, Malaysia, 1991. © Howard J. Davies

Karenni refugees from Myanmar in Camp 3 refugee camp on the Thai/Myanmar border. © Howard J. Davies

A painting by Janga Bahadur Tamang, a 19-year-old Nepali-speaking man from southern Bhutan now living in Timai refugee camp, Nepal. The painting was reproduced as a postcard with his poem on the reverse.

The army came to arrest my uncle.
They threatened him and blamed him
for his involvement in politics.

In the second picture my uncle said
he was beaten with an iron rod in the prison.

My uncle was hanged upside down in the prison.
He was trapped in a wooden block and
pressured in his thigh.

My uncle asked for something to drink.
Instead, a soldier passed urine in his mouth.

My uncle left the country with his family,
taking few belongings in bamboo baskets
to escape from the torture in search of safety.

Alu

Antonio Goivera

East Timorese youths in detention awaiting trial for their role in a demonstration on 23 March 1997 outside the Mahkota Hotel in Dili. The demonstrators hoped to bring their concerns about Indonesia's occupation of East Timor to the attention of the UN Personal Representative of the Secretary General on East Timor, who was staying at the hotel. The protest began peacefully, but ended in scuffles with the security forces, who used violence to disperse the crowd. Dozens of youths were injured and dozens of people were arrested.

Front cover photograph: Tamil refugees who have returned home from south India greet relatives and friends at the Trincomalee reception centre, March 1995. © Howard J. Davies