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‘From the Frying Pan into the Fire’, IDPS in a State of Emergency: Sri Lankan Context

Mahesha Jayawardana¹

With the closure of the last of the Internally Displaced Persons (IDP) welfare camps in the North-Central Province of Sri Lanka, the official records deem an end to a phenomenon that has been a reality for many Sri Lankans for many decades. Considering the furor that was caused by the confining of the IDPs to camps in the last phases of the war, this paper examines the flaws in the framing of the debate that grew into a national crisis and almost set the tone for another ethnic divide.

Introduction

Sri Lanka experienced a long drawn out war (1975-2009) based on ethnic identity and calls for self-determination by groups of the Tamil community. This protracted armed conflict led to the dislocation of all communities in Sri Lanka, especially in the Northern and Eastern part of the island, who have experienced repeated displacement for over two decades. In fact, displacement is used as a tool or even a method of combat by warring parties.

Andre Angles (2008) categorizes Sri Lanka's IDPs into groups based on ethnicity and migration patterns. The first group is comprised of Sri Lankan Tamils who have been forced to flee due to conflict between the government forces and the Liberation Tamil Tigers of Eelam LTTE. Another group, composed of Muslims, has been displaced from the northern districts by the LTTE². Sinhalese communities have also been displaced by the violence³. The

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² In an act of 'ethnic cleansing' in October 1990, the LTTE expelled the total population of some 75,000 Muslims from the Northern Province within 48 hours. They have ever since lived as IDPs in Puttalam.

³ Most Sinhalese constitute 'day and night IDPs' who live in the border areas. This needs to be made clearer to the readers outside Sri Lanka.

displacement crisis in Sri Lanka has fluctuated with the war, generating between 500,000 and one million IDPs of the total population of some 20 million⁴. In fact, the end of the armed conflict between the armed forces of the government of Sri Lanka and the LTTE declared on 20 May 2009 resulted in an exodus of more than 300,000 people in a matter of weeks⁵.

Sri Lanka has also suffered from natural disaster and development-induced displacement. For example, the December 2004 Indian Ocean tsunami significantly increased the number of IDPs by approximately 550,000⁶. But, for the purposes of this paper the concentration shall be upon the plight of the IDPs displaced by the conflict, although the numbers of the two can be intertwined to an extent as the Eastern coast, that was worst hit by the Tsunami, is also an area that has produced conflict-generated IDPs.

This paper will explore the situation of IDPs in Sri Lanka under the still prevailing state of emergency. It will look at the domestic legislation that is in effect to safeguard the rights of these persons and the emergency laws that ultimately subsume these protections. It will explore the paradox of positing this vulnerable group as posing a national security threat. The paper hopes to make an argument to debunk this paradox and reconcile the national security angle perpetuated by the prevailing security syndrome in favour of a human security viewpoint.

Guiding Laws

The Guiding Principles on Internal Displacement 1998 sets out non-binding norms to provide protection guidelines to be followed by political authorities as well as NGOs and humanitarian organizations working with IDPs, covering all phases of internal displacement, ranging from the right not to be arbitrarily displaced to the standards for protection during displacement and standards for protection during return, resettlement and reintegration. Based on this international standard, IDPs have an articulated basis to demand protection and assistance as a right from the governments instead of as a humanitarian favour.

⁴ Hazel Lang & Anita Knudsen, 'Protracted Conflict: Protection and challenges for Humanitarian Agencies' Australian Research Council Briefing Paper 2008
<<http://www.austcare.org.au/media/56973/arcsrilankabp-lowres.pdf>> accessed 1 May 2013.

⁵ 'Sri Lanka: Growing Concern' (*IRIN Humanitarian News and Analysis*)
<<http://www.irinnews.org/Report.aspx?ReportId=84722>> accessed 1 May 2013.

⁶ Brookings-Bern Project on Internal Displacement, 'National and Regional Laws and Policies on Internal Displacement Sri Lanka' (*Brookings Institute*) <http://www.brookings.edu/projects/idp/Laws-and-Policies/sri_lanka.aspx> accessed 1 May 2013.

The nature of internal displacement obliges national authorities to commit themselves as the sole entity with the primary responsibility of protecting and assisting IDPs. A national legal framework for IDPs decrees a government's responsibility to uphold the rights of IDPs, creating the basis for a national policy while reflecting national commitment towards internal displacement. Sri Lanka's domestic legislation that provide for these rights and entitlements can be found in eight pieces of legislation. They form the legislative response to several natural disasters as well as conflict-generated IDPs:

- a. Rehabilitation of Persons, Properties and Industries Authorities Act (No. 29) 1987;
- b. Welfare Benefits Act (No. 24) 2002;
- c. Mediation (Special Categories of Disputes) Act (No. 21) 2003;

In response to the Tsunami and other natural disasters:

- d. Sri Lanka Disaster Management Act (No. 13) 2005 that establishes the National Council for Disaster Management and Technical Advisory Communities;
- e. Tsunami (Special Provisions) Act (No. 16) 2005;
- f. Registration of Deaths (Temporary Provisions) Act (No. 17) 2005;

More generally,

- g. Geneva Conventions Act No. 4 of 2006
- h. Resettlement Authority Act No. 9 of 2007 that creates the Resettlement Authority for 'resettlement or relocation' and makes the government responsible for formulating and implementing a policy on IDPs;

National Framework for Relief, Rehabilitation and Reconciliation (NFRRR) 2002 that incorporates the guiding principles on internal displacement.

These legislations and frameworks have come under much critique from many IDP activists and academia. The NFRRR in particular, which gave hope with its extensive consultative process before its drafting, has not unfortunately included its conclusions when drafting the Framework. It is as yet, non-binding. There is no targeted protection to specific groups of people in different situations of displacement⁷. And moreover it has failed to provide for a national institution focal point that is sorely needed to bring a cohesive action

⁷ The 3 phases of displacement are: 1) Generating phase or pre-displacement; 2) Displaced phase and 3) Resettlement phase or post-displacement.

to address the needs of the IDPs. Another more general critique of the prevailing domestic legislations is that they are mostly authority creating Acts not taking into consideration all phases of displacement, and therefore provide no integrated, holistic and long term response.

There is of course an emphasis on the phase of post-displacement with the end of the conflict period. But that too has been viewed as misguided by scholars. The actions regarding the IDPs are based on several assumptions of IDPs in the post-conflict era. One of the biggest is that the need to create a future for returnees is satisfied by restoring them to prior lives; but this, when viewed closely, means the 'return to situation' is often lacking in security and economic opportunities⁸. The other is that there is a large focus on rural integration by the government, not taking into account that protracted displacement may have changed living and livelihood patterns. This is a phenomenon in the case of the Muslim IDPs of *Puttlam*, Sri Lanka⁹.

Recommendations that could be made regarding these attempts of the authorities are presented in the paper by Andre Angles in 2008. In summary he speak of the need for,

- A focused national legally binding framework or standard of protection;
- Institutional focal point to coordinate;
- Judicial, executive and legislative enforcement of framework;
- A framework that delineates minimum inalienable rights of IDPs;
- Criminalization of forced displacement.

Most specially, he suggests that rights and frameworks that will not be nullified by national security concerns are needed.

The Trump

The concept of security emerges within the framework of existing power relations in society. Invariably it connotes a state of society that is threatened either by an internal or external power detrimental to its preservation. According to Karunan, it is within such a situation, often called an emergency, that security laws are promulgated by governments. In international law, states

⁸ Patricia Weiss Fagen, *Refugees and IDPs after Conflict: Why they do not go home* (Special Report, United States Institute of Peace 2011); The article presents the view that most national programs concerning return of IDPs frequently leave them without access to viable futures.

⁹ Norwegian Refugee Council, *Protracted Muslim IDPs from Jaffna in Puttalam and their Right to Choose a Durable Solution* (2010); the changes in their livelihood practices and aspirations have been researched in the paper.

of emergency are permissible under Article 4 of the International Covenant on Civil and Political Rights (ICCPR). The Covenant recognizes the rights of governments ‘in times of public emergency which threatens the life of the nation’ to derogate, with certain exceptions, from their obligations under the Covenant ‘to the extent strictly required by the exigencies of the situation’.

Three-decades of war have given rise to several pieces of legislation that can be used for the derogation of the rights of IDPs:

- a. Public Security Ordinance 1947: Section 2 bestowed unlimited and wide powers to the President of the country to impose a State of emergency and enforce emergency legislation. Cannot be called into question by the country’s legal procedures.
- b. Prevention of Terrorism (Temporary provisions) Act 1979: Enacted to curb the separatist armed struggle. Initially was to be enforced for one year and renewed annually. In 1982 an amendment was introduced which made the PTA a permanent law of the country.
- c. Emergency Regulation (No. 1) 2005
- d. Emergency regulations (No. 7) 2006

Vitti Munthabhorn (1994) holds that, emergency laws are ‘concocted as part of the propaganda to justify utmost discretion in the use of state powers and to ensure a lack of accountability on the part of the state authorities’.

The article ‘Human Rights Violations under National Security Laws in Asian Countries’¹⁰ looks at how the national security doctrine propounded in the 1970s affirms that internal subversion is the most important threat to national security which means that there is a latent and permanent war between the State and an enemy who is identified within the people. The characterization of subversion as the enemy is wide and limitless. The IDP, who is identified with the enemy, stands as a perfect target in this case of repressive laws that identify the enemy among its people.

The Paradox: The ‘Vulnerable’ versus the ‘National Security Threat’

Principle 2 of the Guiding Principles on Internal Displacement 1998 defines IDPs as: “... persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence in particular as a result of, or to avoid the effects of, armed conflict, situations of generalized violence, violation of human rights, or natural or human-made disasters and who have not crossed

¹⁰ KONUCH, *Human Rights Violations under National Security Laws in Asian Countries* (KONUCH) 85.

internationally-recognized State border.’ Therefore, unlike refugees, IDPs should have an advantage: they retain membership in their state and still live in a realm where the state has an obligation to ensure their protection and well-being. . Since conflict-induced IDPs remain citizens in the country in which they are living, their welfare must be grounded in State responsibility whether or not the government is part of the cause of the displacement.

However, when the state is at war with a rebel group that shares the same identity as the majority of the IDPs, they are often not seen as victims by governments but as partisans of the conflict; especially when IDPs belong to a national minority, as in the case of Sri Lanka.¹¹ According to government sources, *Jaffna*, *Kilinochchi*, *Mulaitivu*, *Mannar*, and *Vavuniya* are estimated to have the largest IDP populations¹². These had become almost singularly Tamil populated areas due to the forced exodus of other ethnicities by the LTTE. They remained in closer proximity to the conflict and the causes of their displacement, making it more difficult to differentiate the civilian from members of the warring factions. And the sudden massive influx of IDPs at the close of armed conflict caused a state of emergency, which was used as justification for the suspension of the normal rule of law. Thus, they became a vulnerable group in the state system lacking effective domestic protection. In fact, they seem to fit the description of Deng in 2006 as ‘disconnected from the enjoyment of the rights normally associated with the dignity of being a citizen, their marginalization becomes tantamount to statelessness’.

The phenomenon of IDPs and their security comes under the traditional realm of state sovereignty, in contrast to the refugee regime, which is part of international law.

Sovereignty is more than just a functional principle of international relations. For a post-colonial state like Sri Lanka, it is the recognition of their equal worth and dignity, a protection of their unique identities and their national freedom, and an affirmation of their right to shape and determine their own destiny. In recognition of this, the principle that all states are equally sovereign under international law was established as a cornerstone of the UN Charter¹³. And, even Francis Deng (2006)¹⁴ reiterates, ‘the principle of national

¹¹ Though the war has displaced people from all three communities, it is estimated that Tamils make up around 80 percent of all IDPs in Sri Lanka.

¹² Ministry of Resettlement and Disaster Relief Services and the GIS Statistical Unit of the Ministry of Nation Building & Development published by the UNHCR and the Internal Displacement Monitoring Centre.

¹³ Charter of United Nations art 2(1).

¹⁴ Representative of the UN Secretary-General on Internally Displaced Persons and is currently the Special Adviser to the UN Secretary-General on the Prevention of Genocide.

sovereignty is still the cornerstone of international relations, despite significant modifications in its application'. Therefore, infringements of the principle of sovereignty are a central justification for the use of force. The argument for collective rights or the greater good reflects Deng's analysis (2006) of the 'tension between... protection of the vulnerable and respect for the sovereignty of the states...'

Karunan (1997) holds that the concept of national security in Asia needs to be understood against the backdrop of the evolution of the Nation-State... the so-called modern nation-state could become a reality only as a top down' process of the reorganization of society (nation building) , a process which nationalist elite called independence and sovereignty vis-à-vis foreign rule. Sovereignty was defined more in relation to territorial rights and jurisdiction, relative to the inherent spirit of national identity and freedom of the people. The Sri Lankan government, like many others in this region, often bases the national security ideology on nationalism, a concept which is put forward as a fundamental principle safeguarding sovereignty.

The State system which has emerged menaces the freedom and well-being of a vulnerable part of its citizenry, especially in the context of threats to state integrity and conflicts. This traditional, narrow perception of security leaves out the most elementary and legitimate concerns of IDP security that not only fall through the gap of national protection but also through international instruments which privilege the state and sovereignty. States should to all purposes be directed by the Guiding Principles on Internal Displacement 1998. Yet, the predominance of the rhetoric of national security has allowed a bypass of these norms¹⁵.

The institutions that determined the status of the IDPs in Sri Lanka have done so using the frame of national security. Dominant access to media by the government allowed an overwhelming focus on the national security threat argument perverting the role of the media as a social educator¹⁶ and allowing the fear psychosis to silence the human security angle, which could have helped transcend the general security and sovereignty prerogatives. The dominant views of key players impact not only how internally displaced

¹⁵ The following texts both recognize the legal gap in protection of Internally Displaced persons when compared to the refugees: Kleine-Ahlbrandt, *The Protection Gap in the International Protection of Internally Displaced Persons: the case of Rwanda* (Institute Universite de Haute Etudes Internationales 1996); Erin Mooney, 'Towards a Protection regime for internally displaced persons' in Edward Newman and Joanne van Selms (eds), *Refugees and Forced displacement-international security, Human Vulnerability, and the State* (UN University Press 2003).

¹⁶ Hall argues that at all time 'the press performs a significant role as a social educator' shaping both the salience and the valence of social and public policies for news consumers.

persons and their roles are defined in Sri Lankan society, but also public discourses on their rights and displaced persons policies. In fact it affects the very social climate of their day to day lives. The effect of the dominant nationalist rhetoric on national security has served to deepen the rifts between communities that were already severely strained.

Conclusions

Prioritising the national security argument of the government of Sri Lanka is not an anomaly when considering the trends of international politics since 11 September 2001. The War on Terror has contributed to the promotion of a state-centric paradigm; making a move away from the momentum of the discourse on human rights and human security as envisioned by the Millennium Development Goals (MDGs) at the optimistic beginning of the century.

But, the defence of state sovereignty, by even its strongest supporters, does not include any claim of the unlimited power of a state to do what it wants to its own people. The report of the International Commission on Intervention and State Sovereignty¹⁷ (2001) states that sovereignty implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. Internal violence ignores the contractual nature of sovereignty. It reifies the state at the expense of its people¹⁸. As the former Secretary General stated in response to the development of the state centric movement of the world ‘Sovereignty is not an unconditional right.’¹⁹

International standards in viewing measures taken to secure national security caution its use. General Comment No. 20 (2001) on States of Emergency spells out the limitations of the derogation of article 4 of the ICCPR. In its discussion on the Limburg Principles and Maastricht Guidelines²⁰ in 2000, the Committee on Economic, Social and Cultural rights have held that national security may

¹⁷ Responsibility to protect is a set of principles based on the idea that sovereignty is not a privilege, but a responsibility. Of which one is that a State has a responsibility to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing and mass atrocities. ‘ICISS Report on The Responsibility to Protect’ (*International Commissions on Interventions and State Sovereignty*) <<http://www.iciss.ca/pdf/Commission-Report.pdf>> accessed 1 May 2013.

¹⁸ UN Security Council’s Resolution 688 on Iraq was the first resolution where displacement and civilian repression were elevated to reasons for breaching state sovereignty.

¹⁹ UN, *Larger Freedom* (United Nations 2005)

²⁰ ‘Substantive Issues arising in the implementation of the ICESCR’ Committee on Economic, Social and Cultural Rights (2000) 24th session
<[http://www.unhcr.ch/tbs/doc.nsf/0/6b748989d76d2bb8c125699700500e17/\\$FILE/G0044704.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/6b748989d76d2bb8c125699700500e17/$FILE/G0044704.pdf)> accessed 1 May 2013.

be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force, in that, it cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order. The Committee emphasized that national security cannot be used as a pretext for imposing vague or arbitrary limitations. Bello has opined that the complex of internal security, anti-subversion, and emergency legislation is part of a repressive colonial heritage that must be dismantled if truly democratic systems are to be built. The PSO of 1947 that is still widely used is a clear example of a pre-independence piece of legislation that is presently used to curb civil freedoms.

The analysis of Angel Andres (2008) suggests that a meaningful and enforceable legal framework for IDPs lessens the viability of vicious cycles of crime and poverty developing nationwide, thus, contributing to the integral development of Sri Lanka. It, therefore, can be considered as within the interest of national security to ensure that the rights of this vulnerable group are realized. As stated by Kofi Annan in his report 'We the people'²¹ (2000): 'Freedom from want, freedom from fear and the freedom of future generations to inherit a healthy natural environment – these are the interrelated building blocks of human – and therefore national security'.

²¹ Kofi A Annan, 'We the Peoples: The Role of the United Nations in the 21st Century' (*United Nations Official Document*) <<http://www.un.org/millennium/sg/report/full.htm>> accessed 1 May 2013.