

Setting the scene: Humanitarian Action in the 'Undeclared' War in Sri Lanka

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INTRODUCTION

Humanitarian Action in the undeclared war in Sri Lanka or for that matter in Sri Lanka at any time, can not be divorced from the Human Rights situation in the country and especially in the Northeast just as human rights and humanitarian laws overlap in many instances. For example Rev. Father Thiruchelvam Nihal Jim Brown who disappeared on 20.8.2006 and is suspected to have been killed by the Sri Lankan Navy, was involved in rendering humanitarian services to his 800 strong Allaipiddy parish people. Take the case of 17 ACF humanitarian workers in Muthur killed execution style by the Sri Lankan Army according to SLMM on 4th August, 2006 after the LTTE forces left Muthur, (one of the 17 persons who lost his life in this incident was the brother of one of the five students who were killed at the Trincomalee beach on January 2, 2006 believed to be by the Special Task Force of the Sri Lankan Police on 2nd January, 2006). Their right to life, a very fundamental human right has been violated.

The beginning of the present humanitarian crisis of this magnitude in Sri Lanka dates back to April 2006. This is apart from the humanitarian disaster that was Tsunami that struck Sri Lanka on 26th December, 2004, when in Trincomalee District some 973 persons were killed, around 4382 injured and 10 reported missing and some 126,676 persons from 30,545 families were displaced. *I was accompanying the Danish Ambassador based in New Delhi who was on a day's visit to the Muthur East LTTE liberated areas to see the Tsunami affected areas and to hand over officially the large water purifying Equipments to TRO. He was accompanied by the Danish technicians who were to install and commission these equipments and the Danish National T.V. Crew . The Italian and Danish Governments were the exceptions at that time to hand over relief material directly to the NGOs in the LTTE liberated areas in defiance of a request not to do so by the GOSL.*

The Ambassador was looking for visuals, huge structures, many storied buildings that have collapsed due to the Tsunami in Sampoor, Ilankaithurai Muhathuwaram areas in Muthur East to be filmed by the Danish TV cameramen to be shown to the Danish viewers over the weekend (that was a Friday), to collect funds from them for the Tsunami affected people of Sri Lanka. I told him that these areas have not seen any development since independence in 1948 and if he wants such visuals he has to go to the South.

In fact an unpublished paper by a Director of SIHRN, called "Challenges in the reconstruction and development of the 'NORTHEAST' , draws attention to the massive humanitarian crisis that existed immediately after the CFA was signed. He presents statistical evidence to demonstrate that there are acute shortages in human resources. For example in the health sector 41%, education and administration 75%, teachers 45%, public sector upto 80% and for local Govt. accountants 40 out of 41 positions are vacant. Unemployment in the Northeast is 25% compared to 10% in the South. With regard to infrastructure he demonstrates that 25 % of health institutions are completely destroyed or non functional. 15,000 classrooms in 500 schools are completely destroyed or damaged. He draws attention to the problems encountered and suggests that a highly centralised

authoritarian approach undermines the local capacity and prevents innovative changes. He argues that planning is conducted as if it refers to a different planet These figures are provided to give a sample of the extent of the crisis" (Quoted from , Kumar Rupasinghe (ed), Negotiating Peace in Sri Lanka: Efforts, Failures and lessons , Volume 2, Foundation for Co-Existence, Colombo, 2006)

SOME INCIDENTS:

In fact in Trincomalee on January 2, 2006 five innocent students were killed on the beach as stated earlier. This was followed by the murder of the journalist S. Sugirtharajan, in front of the office of the Governor for Northeast, a retired Naval Commander. He has taken the photographs of the bodies of these students that appeared front page of the national Tamil daily 'Sudaroli'. On April 7th, 2006, Mr. Vigneswaran, a political activist who was nominated to become a Member of Parliament to fill the vacancy created by the murder of Mr. Joseph Pararajasingham, Member of Parliament, a Human Rights defender and a founder member of our organisation, inside the Batticaloa Church on the Christmas eve, the previous year.

In or around April 25, 2006 said to be in retaliation for the attempted murder of the Commander of the Sri Lankan Armed Forces, Major General Sarath Fonseka, aerial attack from Kfir planes (made in Israel), Multi Barrel Rocket Launcher attacks (MBRA- Courtesy, Pakistan), from Naval Dockyard-Trincomalee and Artillery fire from Monkey Bridge Army Camp were carried out. The Gun Boats of the Navy started pouncing on the coastal areas of Muthur East. Multi barrel rocket attack went on for days starting in the middle of the night till 2am or 4 am and again in the morning or day time. Windows of our houses in Trincomalee were shuddering and making the heart patients and others in Trincomalee hospital to suffer.

This started the exodus and people in Muthur East started moving towards the south to Batticaloa District. A Report from the Office of the Resident Humanitarian Co-Ordinator of U.N. in Colombo dtd December 12, 2006, under the heading, UN DEMANDS PROTECTION OF VAHARAI CIVILIANS stated, "The United Nations is gravely concerned at the deteriorating prospects facing civilians in Vaharai as intense shelling continues for the fifth day in the area. An unconfirmed number of civilians are with dozens lying wounded at Vaharai hospital. Innocent civilians and school children suffered direct attacks on a school and private homes. In Trincomalee District some 2500 civilians left their homes and took refuge in Kantale. The United Nations is deeply concerned about indiscriminate shelling of civilian residential areas, leading to death, injuries and evacuation of communities to Kantale and surrounding areas out of danger zones.

The Critical need of the moment is the protection of these desperate civilians . All fundamental rights being breached in areas like Vaharai and villages in Trincomalee District and it is imperative where civilians reside shelling stops and the civilian population must be granted full and unhindered freedom of movement away from military operations. The wounded need to be evacuated and assistance and protection to the population must be guaranteed. Some 35,000 people remain trapped along a silver of land where government forces and LTTE are engaged in a military campaign....."

An Amnesty International report dated June 26, 2006 describing the difficulties for the IDPs in Sri Lanka stated amongst other things that, " The last two decades of internal armed conflict in Sri Lanka have been characterized by widespread displacement of the civilian population. The majority of them are from the north and east, the contested areas where most

of the fighting has taken place. Because of the geographical concentration in these regions, the Tamil population has experienced by far the greatest displacement.... while many people were displaced by the fighting, displacement was also the result of a multitude of many other factors. Some left their homes to escape the widespread arrests, torture and disappearances. perpetuated by the security forces..."

UN Human Rights Committee's views In re Nallaratnam Singarasa, with regard to the amendment of certain provisions of the Prevention of Terrorism Act No:42 of 1972 as amended, which were not in accordance with the Human Rights norms were not followed by the Sri Lankan Government, the state party. Very few cases have been filed by the state under the Prevention of Torture and other cruel, inhuman or degrading Treatment or Punishment Act No:22 of 1994. None of the recommendations of the UN working group on past disappearances in Sri Lanka have been implemented by the Government according to Human Rights Educational Website. The Presidential Commission on Involuntary Removals and forced Disappearances in the Northeast presided by Late Justice Balakidnar made many recommendations in its report submitted to the President in 1997. Names of the Army Officers said to have been involved in these disappearances were given but no action has been taken to date. Sri Lanka was second only to Iraq in the number of persons forced to disappear. No action at all being taken against the perpetrators of these dastardly crimes have made these persons to act with impunity.

Professor Subramaniam Raveendranath, Vice Chancellor of Eastern University was abducted in the heart of capital Colombo in high security zone in front of BMICH where he has attended a conference. To-date he is missing and the so called investigations of the Police has revealed nothing. No suspects are ever produced in courts by the Police in any of these cases leading to the people to believe in the complicity of the Police in these offences. As Galtung states, "By signing and ratifying Human Rights Instruments a state makes itself doubly accountable to the U N Organs and to its own citizens. However what is happening in Sri Lanka has led Asian Human Rights Commission to state that, "All Institutions of the Rule of Law and democracy has have been dismantled in Sri Lanka creating a chaotic situation in all aspects of governance throughout the country."

The intentional forced displacement of the people of Batticaloa West (Paduwankarai) for the first time in their history during the three days from March 5th to March 8th, 2007, when indiscriminate shelling of these areas took place from positions within the Weber Stadium Army camp in the heart of Batticaloa town adjacent to the Courts of Justice and Batticaloa Central College and Vincent Girls College has, according to Mr.S.Jeyanandamoorthy, Member of Parliament from Batticaloa District damaged 1000 houses, 103 schools, 107 Hindu temples, 100,000 livestock and 17,000 acres of paddy fields. Around 153,000 people were displaced in this exercise and the temporary camps lacked basic amenities in addition to the presence of armed paramilitaries working with the Sri Lankan Armed Forces. It was ICRC, UNHCR, Care, Oxfam, World Vision and Ehed which rendered most of the humanitarian assistance.

Already 24 army camps and 5 Police stations have been set up thus highly militarising the area.

UNHCR GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

It is pertinent to look at some of the above Principles enunciated consistent with the International Human Rights Law and Humanitarian Law.

According to Principle 7

Authorities should look prior to any decision requiring displacement for feasible alternatives to avoid displacement altogether.

According to Principle 8

Displacement shall not be carried out in a manner that violates the right to life, dignity, liberty and security of those affected

(These Principles were not followed by the GOSL in the case of displacements that took place in the East due to the intentional and forced displacement of the people of the area by military action)

According to Principle 24,

(1) All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartially and without discrimination.

(2) Humanitarian assistance to IDPs shall not be diverted in particular for political or military reason.

(The field report of IMADR in December,2006 noted that, " the ethnicisation of humanitarian assistance is perhaps the most obvious feature of this present round of displacement. The Sinhala families that were displaced were relatively few in number and their capacity to return and resettle is more than that of Tamils and Muslims.. The situation in Kantale and surrounding areas highlights how the provision of humanitarian assistance has been used on ethnic lines as well , to propagate political agendas")

According to Principle 25:

(1) The primary duty and responsibility for providing Humanitarian Assistance to IDPs lies with the State

(2) International Humanitarian Organizations' assistance should not be seen as an unfriendly act or an interference with the State's internal affairs

(Often GOSL and Armed Forces did not take up the above view. They also were of the opinion that the INGOs were pro LTTE and assisted the people in LTTE liberated areas more. The execution style killing of ACF humanitarian workers may be attributed to this fact. Further they harass more the local workers of the UN Agencies , ICRC and INGOs more than the non Sri Lankans and subject them to severe body check etc.)

According to Principle 26

Persons engaged in Humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

(During the Vaharai displacement only ICRC and UNHCR transport of relief items were allowed and even their lorries were stopped and returned first by the Army at the check point although clearance has been obtained by them from higher authorities)

RETURNEES:

The people who were internally displaced are being resettled now hurriedly perhaps with a political agenda to hold local government elections. Principle 28(1) Under Section 5 relating to Return, Resettlement and Reintegration, states that Right to return is Voluntary and according to 28(2), they have their right to full participation in the planning and management of their return or resettlement or reintegration.

It would seem that that these principles are not being adhered to. People from Muthur East villages have been taken in buses with Policemen stating that they are being taken to their villages but have been placed in temporary camps in the Muthur west. People from Poonagar in Muthur East were kept in a transit camp in Kiliveddy 6 km away from their village, built with the support of UNHCR. According to a Danish Council Report a family of seven lived in a 10 sq.metre room made of plastic tarpaulin without windows. Out of the 770 families accommodated ther in July,2007, 150 families returned to Poonagar in August,2007. His two cows are missing and so he has to solely depend on paddy cultivation for his future income. He can not cultivate until land mines and UXOs are removed.

In the meantime 28 villages of 12 Grama Sevaka (Village officers) divisions in Muthur East have been declared by a Government notification as High Security Zone (HSZ). The fundamental rights applications of four villagers from that area and Centre for Policy Alternatives (CPA) a highly respected Civil Group has been turned down by the Supreme Court and they have been effectively barred from returning to their houses. Their property rights have been violated. The Chairman of the Muthur East Displaced persons Welfare Society has stated that they are not ready to be resettled in any other areas as the Government is said to be taking steps to settle them in Kanguvely and Iralkuli, two other villages in Muthur west. It is said that a Buddhist Association was going to fund the building of 200 houses there and arrangements are under way to settle Sinhala people from south there thus changing the demographic pattern of the district.

The democratically elected Tamil Members of Parliament, Two from Amparai District, Four from Batticaloa District and Two from Trincomalee District who are in the majority of members from the East are unable to go to their constituencies due to threat to their lives from a para military organisation working with the Government Forces. They are not consulted in any of the resettlement or reconstruction work in their respective constituencies. The Government Agent of Trincomalee is a former Army General. In 204 years of the Kachcheri System (Civil Administrative system in Trincomalee) no Tamil has served as a Govt. Agent. The Governor of the recently demerged Northern Province is a former Navy Commander. The Governor of the Eastern Province is a former Assistant Superintendent of Police, Civil administration has since been fully militarised.

POSITION OF HUMANITARIAN WORKERS

44 Humanitarian aid workers have been killed between January 2006 and 6th August,2007. Humanitarian Organisations working in the area has been reduced from 104 to 34. Very

recently 'World Vision' which has built many schools in the Trincomalee District in addition many other humanitarian assistance has decided to quit from there. UN Under Secretary General for Humanitarian Affairs and Emergency relief co-ordinator, Sir John Holmes recently said, "Sri Lanka is amongst the most dangerous places on earth for humanitarian workers" and called on the government to probe civil war abuses and consider an International monitoring mission.

CONCLUSION:

Often when the negotiations fail the intensity of war between the parties to the negotiation increases resulting in severe humanitarian crisis. International Human Rights and humanitarian law as well as Guiding Principles on Displaced persons have to be followed fully if we are to avoid this situation.

-K.SIVAPALAN