

The neglect of Sri Lanka's tent people

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The internally displaced people in Sri Lanka are outside the legal jurisdiction of the country, said Chief Justice Sarath N Silva on 2 June 2009, addressing a gathering on the occasion of the opening of court premises. He further said that the conditions under which these people are living will bring a curse on the authorities.

“We construct massive buildings on our side, but these IDPs live in tent shelters,” the chief justice said, according to the BBC's Tamil Service. “Ten IDPs live in one tent shelter. They can stand up straight only in the center of the tent shelter. They will break their necks if they move to the sides of the shelters.” Repeating that this is an accursed situation, Silva said he was willing to face the consequences for making this statement.

In a separate statement, the UN High Commissioner for Human Rights Navi Pillay, in addressing the Human Rights Council, urged the government of Sri Lanka to allow free movement in and out of the camps that hold hundreds of thousands of war-displaced people in the northeast of the country. She was quoted by Reuters as saying, “Unfettered humanitarian access to, as well as freedom of movement for the large number of IDPs held in closed camps, are of the utmost importance.”

Meanwhile the Sri Lankan ambassador to the United Nations in Geneva responded to the high commissioner's comment by stating that there is absolutely no problem with humanitarian access. He added that the high commissioner's offer of assistance would be accepted as soon as her office was “regionally a far more representative and transparent body”. He further said that Sri Lanka is a sovereign country and will decide the degree of access it grants.

The chief justice is the highest judicial officer of the sovereign nation of Sri Lanka, yet he stated categorically that the internally displaced people are outside the legal jurisdiction of Sri Lanka. This raises questions as to the meaning of the word ‘sovereignty’ as used with regard to these people.

The position of the Sri Lankan ambassador to Geneva on sovereignty remains highly questionable in terms of the chief justice's forthright statement that he and the law he represents have no jurisdiction over the 300,000 people now living in this collection of tents. In fact, Sri Lanka's IDPs may well be called ‘tent people’ in the same way that Vietnamese fleeing their country were called boat people.

What defines sovereignty is the law. Anything that is outside the purview of law in Sri Lanka and outside the jurisdiction of the courts is outside sovereignty, except in a very naked sense of political control outside the law. The tent people in Sri Lanka are, by the very declaration of the chief justice himself, being held by naked political power which does not subject itself to the law.

Thus, the high-sounding claims about sovereignty as a defense against securing humanitarian services to these people is nothing more than an abdication of responsibility for their protection. Protection is guaranteed only within a framework of law. When the law does not exist, claims of sovereignty are nothing but rhetoric to justify neglect.

The neglect of citizens is not an attribute of sovereignty. If a state claims that it has a sovereign right to neglect the wellbeing of its people, if it so wishes, this is a corruption of the use of the word sovereignty. Sovereignty, as well as international relationship, does not exist by the mere counting of noses. It is not within the power of a majority of people, for example, to say by raising their hands that murder or rape

will cease to be crimes in their country. The decision to starve or deny facilities to one section of the population also cannot be decided by the counting of noses.

Gathering a number of votes in favor of one party cannot erase the legal consequences, either within a country or under international law. On the issue of crime, votes do not matter.

It may be sometimes extremely unpopular to punish a “hero” if a crime he is known to have committed makes him even more popular under certain circumstances. White settlers who used to harass the blacks were quite popular in their own community, which considered such harassment legitimate.

Sometimes even a thief that steals from the rich and shares part of his loot with the poor can become popular. If a vote were taken as to whether or not he should be prosecuted, the crowd may vote to exonerate him. If that is the criterion on which the law depends then the law cannot exist at all.

Within Sri Lanka now any crime that is considered politically sensitive – which simply means that the alleged criminals may have the protection of the regime – is not investigated or prosecuted. Details about such non-prosecutions have been given over and over again and need not be repeated here. It is enough to remind the reader of the case of Lasantha Wickrematunge, who in his posthumously published letter said that in the event of his murder, it would be the government that was responsible. The latest victim in this list of uninvestigated crimes is Poddala Jayantha, the secretary general of the Sri Lanka Working Journalists Association, who was assaulted on his way home from work last Monday.

Perhaps under the present conditions the government may even be able to get the majority of people to say that prosecution for crimes committed against the opponents of the government is unnecessary. Would that be considered an exercise of sovereignty?

The Sri Lankan government has now extended its disregard of the law to the international sphere. By gathering together a group who seems to agree that human rights affairs and humanitarian problems should remain within the purview of sovereignty, it was able to get a self-congratulatory resolution in its favor. This is like a person sending a congratulatory email to himself and canvassing friends to do the same. Does that alter international law in any way?

The chief justice of Sri Lanka presides over a legal system in a country where the law has ceased to have much meaning. The Constitution has been ignored by the president himself. Thousands of crimes are not investigated or prosecuted. Criminals are rewarded and the victims of crimes neglected.

Now, by the chief justice’s own declaration, the tent people are being kept completely outside the law. By the invocation of “sovereignty” they are also being kept outside the purview of international law. It is within this enormous absurdity that Sri Lankans have to live.

While the Constitution says the sovereignty of the state rests on the sovereignty of the people, the people live outside the protection of the law, creating a position in which the chief justice himself can do nothing other than to publicly curse the authorities.

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