

# Term Paper for Module D 2006

## ***Compare the situation of conflict related IDPs and Tsunami related IDPs in Sri Lanka.***

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In recent years, the fleeing of innocent people in search of a secure and stable environment has increased. The phenomenon is caused generally due to war, mass violation of human rights, repression of minorities, natural and technological disasters and so on. Such people who are displaced within a country due to any of the above reasons are known as "internally displaced people" (IDP). In fact, displacement of population due to the intensifying of armed conflicts in recent decades, has become a common phenomena around the world. Initially, the international community relatively neglected the IDPs crisis, as it was considered to be an internal problem of the country. It was for the national authorities to provide them with necessary assistance and protection. But the global crisis of IDPs finally caught the attention of the international community and the aid agencies. This has been mainly due to three developments. Firstly, the sharp increase in the number of IDPs over the decades. There are approximately 20 to 25 million displaced persons worldwide, almost twice the number of refugees. Secondly, the issue of internal displacement has emerged as one of the most pressing humanitarian, human rights, political and security issues facing the global community. Thirdly, the inability of the national authorities due to resource constraints to provide the necessary assistance. However, despite the issue of IDPs being given the top priority in the international arena, it is still a long way ahead before the problem is addressed.

### **Conflict Related IDPs**

The two decades of ethnic strife in Sri Lanka is said to have left around 800,000, displaced. Some estimate it to be more than one million people. On an average, one in every 18 Sri Lankan is displaced, while in the Northern Province it is one in every three persons. The majority of displaced people are mainly from the northern and eastern provinces. Internal displacement is something not new to the nation, as there have been a series of displacement, especially of Tamils and Muslims following the anti-Tamil riots in 1956, 1958, 1977, 1981, 1983. Subsequently, as a result of IPKF intervention in 1987 and also due to successive military operations from 1995 to till now carried out by both LTTE and the GOSL to have military and strategic advantage over each other. Of the total IDPs, Tamils consist of 78%, Muslims 13% and Sinhalese 8%.<sup>[1]</sup> In fact, many families have spent more than five years of their lives as displaced persons, living in extremely difficult, stressful and inhumane conditions. Among the displaced people, women and children stand out as the most vulnerable and innocent victims of the protracted conflict. Generally, the IDPs are scattered mostly in northeastern parts and to certain extent in south, and can be categorized into five.<sup>[2]</sup> (a) The IDPs in government-controlled areas in the north and the east, especially in areas of Jaffna and Vavuniya. (b) Internally displaced Tamils in northern and eastern territories held by rebels. (c) Internally displaced Muslims from the north. (d) IDPs in border areas between the Government and LTTE controlled areas. They are also known as "day and night IDPs" concentrated mostly in eastern province. They live within the district of their former residence and sometimes have access to their property during the day.<sup>[3]</sup> (e) Then there are IDPs living with friends and relatives.

The main causes of displacement of people vary from place to place and from community to community. The displacement could be due to economic, environmental, ethnic and political factors. Overall, the reasons for displacement can be summarized as: First, the prolonged war has severely affected the livelihood of the people. Apart from this, both the sides have been deliberately targeting civilians as part of their war strategies. Neither side takes adequate safeguards to avoid civilian casualties. Second, frequent military operations by both the sides also causes displacement, since one is not sure of the nature and duration of the operations and there are high chances of casualties. For instances, the most recent military clash between the two parties, despite the existence of the 2002 Ceasefire Agreement (CFA), around 200 odd civilians have been killed and UN agencies estimate around 2.3 Lakhs people have been displaced from Jan-Sept 2006.<sup>[4]</sup> Third, the LTTE for its own long-term gains, from time to time have forced the Muslim community living in the north to leave the area, sometimes within 48 hours. For instance, in 1990, around 90,000 Muslim residents were evicted by the LTTE from the north, who now live in Puttalam, Anuradhapura and Kurunegala areas. In spite of the atrocities, the Muslim community is known for taking a neutral position in this protracted conflict. Fourth, the frequent human rights violations by the rebels and the security forces like the harassment, arbitrary arrest, detention, torture, sexual harassment, has also led to displacement. For example, according to Sri Lankan Monitoring Mission (SLMM), from February 2002- July 2006 the number of violations of the CFA committed by the GOSL and the LTTE is around 277 and 3944 respectively.<sup>[5]</sup> Of these, the violation by GOSL includes the Harassment (30%), Hostile acts against the civilian population (6.27%) and the harassment by LTTE includes 6.54 per cent. Subsequently, from time to time the LTTE's forced recruitment of women and children has been increasing, this has further intensified during the current peace process. According to SLMM, the child recruitment carried out by the LTTE alone constitutes around 47 per cent of total violations, followed by abduction of adults by the LTTE and GOSL includes 16 per cent and 5.54 per cent. Hence, in order to save the lives of their family members, they are forced to flee.

### **Tsunami Related IDPs**

The *tsunami* that struck the island on 26 December 2004, in just 20 minutes it wiped away communities, cities, villages, dismember families, destroyed the infrastructure that had been built over the years. This tragedy devastated the coastal island stretching over 1,000 km which is about 70 per cent of the coastline. The devastation was concentrated on the coast between Galle in the south and Trincomalee in northeast. As a result, around two lakhs families displaced, 40,000 deaths, and 5,000 were missing 15,000 injured and many were in need of medical attention.<sup>[6]</sup> In addition, around 900 to 1,000 children lost their parents, and 150,000 homes, 200

of educational institutions and 100 health facilities were destroyed or severely damaged.<sup>[7]</sup> Hence, the tsunami was big blow for the Sri Lankan people who were already undergoing the scourge of ethnic conflict for more than two decades.

Against this background it is important to compare the response of GOSL, LTTE, international community, civil society and people towards the conflict and tsunami related IDPs.

## **Comparison**

The tsunami tragedy appeared to be everybody's disaster. As most of the people around the world and within Sri Lanka assessed the damage, identified needs, and expressed sympathy/ opinions on the progress and delivery of aid. Even the members of the Sri Lankan diaspora came in numbers and donated huge funds to help their people.<sup>[8]</sup> At the same time, both the national and international media played a vital role in highlighting the issues of tsunami affected persons. As a result, funds began to pour, international agencies, community to certain extent was able to reach out and meet the needs of the victims. Interestingly, people cut across communities, accommodate their differences and put up a brave front in providing relief and carrying out rescues operations. For example, the Buddhist monks and Christian clergymen worked together in villages close to the southern city of Galle. The clergyman through their network of churches was quick to receive loads of relief and money, which they wanted to disburse through what they called 'inter-religious' work. Even the temples were turned into a relief camp.<sup>[9]</sup> Moreover, very surprisingly, in few areas the Sri Lankan Army (SLA) and rebels stood side by side helping tsunami victims in the immediate aftermath of the disaster. Thus, the positive response of people gave much needed support to the victims of tsunami during the crisis period.

Unfortunately, this form of public support, awareness was/is not visible when it comes to dealing with conflict related IDPs. This is due to the ethnic polarization of people, limited support from the international community, financial crunch, and lack of co-ordination between LTTE and GOSL over addressing the issues of IDPs. Subsequently, the role of media has not been encouraging as reporting of these IDPs is considered to be unpatriotic and even media is divided on ethnic lines. However, one of the vital limitations of media is that it has limited access to areas where IDPs are displaced due to restriction from LTTE.

### *Response of GOSL and LTTE*

The response of GOSL and LTTE in dealing with tsunami affected IDPs has been inadequate. The President Chandrika Kumaratunga declared a State of Emergency and concentrated all powers relating to post-tsunami relief and reconstitution in highly centralized authority. As a result, the government was not able to fully co-ordinate and carry out immediate relief works, due to the usual political and administrative delays. Despite this, the GOSL offered better housing, more relief items, utensils and more care to the tsunami victims than conflict related families. Moreover, the financial resources spent by the GOSL for each house of a tsunami victim are much larger than those spent for housing programmes for conflict displaced families.<sup>[10]</sup> This exposed the double standard adopted by GOSL in dealing with IDPs. On the other hand, the LTTE responded with military approach by depending upon its cadres and Tamil Rehabilitation Organization (TRO) to carry out the humanitarian works in northeast.<sup>[11]</sup> Although, the tsunami caused severe destruction in the Eastern and North-eastern coastal belt which is LTTE-held areas, as a result the GOSL did not have any access to most of this coastal areas situated in the so-called 'uncleared areas'. Moreover, in January 2005, the GOSL without consulting the affected communities had declared buffer zone policy, i.e., zone of 100 or 200m inland from the seashore was to be kept free of housing construction. Similarly, the LTTE also declared buffer zone of 300m prohibition zone. This aroused panic and fear among the public who had already lost their livelihoods.<sup>[12]</sup> Apart from this, the GOSL and LTTE were not able reach an agreement for the joint management of aid, which was one of the conditions put forward by the international donors. As a result after must heated negotiations [six months and 13 drafts] on 24<sup>th</sup> June 2005 the GOSL and the LTTE signed a Memorandum of Understanding (MOU) for establishing Post-Tsunami Operational Management structures (P-TOMS), also known as Tsunami Relief council (TRC).<sup>[13]</sup> However, on 15 July 2005, the P-TOMS received a setback with the temporary invalidation of the mechanism by the Supreme Court. Thus, the GOSL and LTTE spent much of time in negotiating and settling scores than responding to tsunami IDPs.

However, to certain extent the response of GOSL and LTTE to conflict affected IDPs has been encouraging, particularly since the 2002 peace process. As a result of peace talks around 380,000 people have returned since ceasefire came into existence. Moreover, by the end of 2003, around 24,103 families were at various Welfare Centres and there are 75,891 families outside the Welfare Centres.<sup>[14]</sup> During the peace talks, resolving the issue of the IDPs was given top priority, especially at the discussions held at Thailand in October-November 2002. The outcome of the talks led to the establishment of three sub-committees – the Sub-Committee on Immediate Humanitarian and Rehabilitation needs in the North and East (SIHRN). Its main functions are to identify humanitarian and rehabilitation needs, prioritize implementation of activities, decide on the allocation of the financial resources and also determine implementing agencies for each of the activities. The other two sub-committees, focuses on Military De-escalation and Normalization and Political Matters. It also was to addresses some IDP related issues like housing in the High Security Zones (HSZ).<sup>[15]</sup> Apart from this, both the parties had expressed concern over the welfare of the IDPs during all the negotiations held so far.

Apart from this, the GOSL has intensified its efforts for the safe return of IDPs by establishing various departments and launching programmes co-ordinated by the international community, aid agencies and local non-governmental organizations (NGOs). For instance, for the returning IDPs the government launched a National Framework for Relief, Rehabilitation and Reconciliation. Along with the UN, the government also introduced the "Donor Alert and Quick Impact Project" to assist the returning IDPs. The Government has also launched a Unified Assistance Scheme (UAS) for the returnees, which commenced from December 2002<sup>[16]</sup>. The Ministry of Rehabilitation, Resettlement and Refugees (MRRR) are involved in finding a durable solution to the IDP problem and in initiating a comprehensive registration of all IDPs. Subsequently, the Ministry of Eastern Development and Ministry for Assisting Vanni Rehabilitation have undertake small-scale self-employment and income generating projects to uplift the living standards of the displaced families are playing a significant role.<sup>[17]</sup> Subsequently, President Kumaratunga after meeting the heads of the UN agencies and the government officials for speedy resettlement of IDPs, allocated a sum of Rs.10 million as an interim measure for assisting the resettlement of the IDPs in eastern province.<sup>[18]</sup> In November 2005, the Mahinda Rajapakse government established Reconstruction and Development Agency (RADA) for combining the work of the separate task forces into one agency responsible for all reconstitution and development activities in post-tsunami and post-conflict areas.<sup>[19]</sup> Subsequently, Ministry of Resettlement and the Ministry of National Building and Development was also created. However, due to lack co-ordination among these department, the plight of conflict related displacement is still perpetuating.

#### *Response by the International Community and Agencies*

They have been playing a vital role in addressing the issues of conflict related IDPs, especially during the current no war situation, by addressing the needs of large-scale voluntary returnees. Numerous international community through UN agencies are involved in rehabilitation and resettlement of IDPs, such as UNHCR, ICRC, UNICEF, WFP, CARE, UNDP, WHO, MSF and so on. All these organizations are co-ordinating with the government, the local NGOs and among themselves for an effective implementation of the said programmes and policies. They are involved in various activities, like: delivery of food and non-food items; providing basic facilities like water, clothes, blankets, mats, cooking utensils and sanitation; training of teachers and setting up non-formal community schools for droop-outs.<sup>[20]</sup> They are also involved in assisting the authorities in stabilizing the situation in IDPs areas where they have to remain in welfare centres pending return to their places of origin; tackling epidemics, promoting female reproductive health and establishing communication and postal service for connecting separated families.<sup>[21]</sup> Other activities include implementing micro-projects conducted in co-operation with the government and local NGO partners for the returnees; developing framework of assistance, relief and rehabilitation of the war-affected communities; mine awareness, assisting government in improving the health care services and social rehabilitation of war-affected groups, particularly children, widows and destitutes.

The response of the international community and agencies toward the addressing the problems of tsunami affected IDPs has been overwhelming in terms of providing aid, relief efforts channeled through the I/NGOs and UN agencies. For instances, the UNHCR has completed its post-tsunami role as coordinator of nation wide transitional shelter and it has build more than 58,000 shelters by over 100 NGOs in November 2005. Subsequently, 4,500 transitional shelter units in northern district of Jaffna and eastern district of Ampara has been completed.<sup>[22]</sup>

#### *Role of Civil Society Organizations*

The response of CSOs to the tsunami related IDPs was effective and overwhelming than their response to conflict related IDPs. For instances, the CSOs brought much need funds for relief and reconstitution, which GOSL could not due to lack of progress in peace process. As a result, the CSOs with the assistances from the foreign countries and institutions responded immediately by providing basic needs like food, clothes and shelter, organizing rescue operations, finding the survivors and dead. Subsequently, many of the agencies had deployed their staff members as well as volunteer citizens within a few hours, without being constrained by the bureaucratic rules from the government. Subsequently, they could also easily tap individual voluntarism and the private philanthropy of fellow citizens.<sup>[23]</sup> According to *Silumina*, the Sunday newspaper stated that "NGOs have taken nine out of the ten billion foreign aid".<sup>[24]</sup> This was obvious, as many foreign donors had refused at that moment to channel funds through the government, due to the inability of the government and the LTTE to evolve an institutional framework to facilitate a joint re-building process. In the areas controlled by the LTTE, it was the TRO with local partners, has been operating since 1985 and during tsunami it carried out the relief and rehabilitation programmes. It looked after the tsunami victims together with the Red Cross and UNICEF.

However, due to certain loopholes among the CSOs, the funds for tsunami victims did not benefit. Such as, most of I/NGOs were inexperienced in regional politics of aid and ethnicity and under pressure to release their funds. Unfortunately, the relief was concentrated only on building schools and orphanages, donating fishing boats. One of the motives behind is to attract media attention and which will in turn attract more funds. These measures proved to be counter-productive, according to the fisheries experts warned that the large number of boats distributed, had exceeded the pre-tsunami level, and this act will increase the pressure on the limited fishing resources around the coastline.<sup>[25]</sup> Moreover, many local and international NGOs continue to distribute relief item, often without even looking at how is receiving them. In addition, many of the NGOs did know the local languages, because of which they were not able to address the necessary needs of victims. Thus, the overall response of the CSOs towards tsunami affected people was adequate.

The Muslim community has been victim of both prolonged conflict as well as tsunami disaster. Unfortunately, neither the GOSL nor the LTTE has adequately addressed the relief and reconstitutions programmes for this community. For example, during the tsunami tragedy, the highest death toll was suffered by the Muslims, in particular in the southeast, the Amparai district, which accounted for almost one third of the overall death toll.<sup>[26]</sup> The Batticaloa region was one of the most affected district since 1978, as these people were displaced more than four times since 1978. However, the state assistance was minimal, due to inefficiency of state machinery and the weakness of the deeply divided Muslim political leadership. Subsequently, the GOSL and the LTTE backed TRO was concentrating on welfare of Sinhala and Tamil communities respectively and neglecting the plight of Muslim community. Moreover, due to lack of access by the government in the areas under the control of LTTE, relief programmes could not reach the Muslim victims. At the same time, neither the government controlled areas were hardly cleaned or cleared at all.<sup>[27]</sup> On the other hand, the Hambantota, constituency of Rajapakse has received adequate attention and support than any other areas in north east. Ironically, many Muslims of northern region are still languish in refugee camps for over fifteen years without much serious relief and rehabilitation efforts nor were receipt of any aid given by the international community either for conflict or tsunami related IDPs. Thus, Muslim community has been at disadvantages position vis-à-vis other communities.

## The Challenges

Although the situation of both conflict and Tsunami related IDPs has improved to certain extent, however there are still many challenges that have aggravated the sufferings of IDPs. For instances: (a) the government institutions involved in relief, rehabilitation and reconstruction of the IDPs, each of these Ministers, departments and institutions – have different areas of responsibility, geographical areas of coverage and work at different administrative levels with little or no co-ordination. There is a lack of uniformity in the distribution of compensation package, as the IDPs in the LTTE held areas have reportedly not received any form of compensation from the TRO due to lack of funds.<sup>[28]</sup> In addition to this, the study done by the Sri Lankan Human Rights Commission has highlighted the failure of the government on various grounds such as, the basic needs of the most vulnerable not being effectively addressed and that their rights to life and dignity are being constantly violated. It further stated that the government policy towards the IDPs is lacking vision and is vague and constantly shifting. Moreover, the policy is shaped by military factors rather than on recognition of the rights of IDPs. (b) The prolonged use of landmines by the government and the rebels as a defensive weapon, and their subsequent failure in taking drastic steps to minimize the threat of mines to the civilian life has become a serious hindrance to the safe return of refugees and displaced people. It has also affected the various humanitarian activities carried out by the international agencies and other NGOs. Nearly one million landmines have been laid in war-zones, and so far only 10% of them have been removed.<sup>[29]</sup> In fact, reports of mine casualties have been increasing since 2002, mostly in Vanni and Jaffna peninsula, from where most of the IDPs are returning. Hence, handling the return of IDPs on a large scale to the mine-infested war ridden areas would be a difficult task for the government. (c) The quest for parity between the government security forces and the LTTE on the HSZ has prevented the safe return of the IDPs, instead it has led to further displacement. The LTTE has consistently demanded for the removal of HSZ in the Jaffna peninsula, stating that IDPs cannot return to their homes because of the Sri Lankan Army's occupation of their lands. The government, on the other hand, refuses to give in to the LTTE's demand on security grounds, and instead insists that the LTTE should first disarm. Although the number of IDPs displaced from the current HSZ is less, the issue of the HSZ has become a major stumbling block for implementing various resettlement plans. (d) Lack of sustainable conditions to support a durable return and resettlement of the IDPs has further marred the progress. There are regular reports of extra-judicial killings, arbitrary detentions and harassment by security forces at various welfare centres and also at checkpoints. Even the Amnesty International has expressed concerns over the rising incidents of rape, incidents allegedly perpetuated by police, army, navy personnel and also by the rebels.<sup>[30]</sup> Moreover, the shortages of personnel, strict control of supplies and inadequacy of infrastructure have further severely limited the functioning of local services, including health, education, roads and agriculture. These factors have gone a long way in diminishing the confidence of the returning IDPs. (e) The intensifying of violence since the CFA, i.e., violence between the LTTE and the government, violence within the LTTE, violence between the LTTE and other Tamil Groups have created a violent atmosphere in which the survival of conflict and tsunami related IDPs have been impossible.<sup>[31]</sup>

Thus, the need of the hour is that GOSL and the LTTE should resume the peace talks at the earliest and abide by the CFA. Fortunately, the both have agreed to do so owing to international pressure and condemnation of its atrocities. The donor communities should turn their pledges into cheques and cash, so that CSOs can carry out the humanitarian programmes effectively. The GOSL should also build consensus with Sinhala hardliners like the JVP and JHU for successful resolving of the conflict. Subsequently, GOSL should do away with the top-down approach in conflict resolution, and accommodate CSOs for a sustained and lasting peace. Finally, the government, citizens and the donor community should equally address the grievances of both conflict and tsunami related IDPs. If this does not happen, then plight of conflict and tsunami related IDPs would continue.

<sup>[1]</sup> *Duration and Multiple Displacements Characterize Displacement in Sri Lanka*, February 2003. Available at [www.db.idpproject.org/Sites/idpSurvey.nsf](http://www.db.idpproject.org/Sites/idpSurvey.nsf) and Renuka Senanayake, "Managing the Internally Displaced in Sri Lanka", in P.R. Chari, Mallika Joseph, Suba Chandran (eds.), *Missing Boundaries: Refugees, Migration, Stateless and IDPs in South Asia* (New Delhi: Manohar, 2003)

<sup>[2]</sup> Joe William, "Internally Displaced Persons in Sri Lanka", in Tapan K. Bose and Rita Manchanda (eds), *States, Citizens and Outsiders: The Uprooted Peoples of South Asia* (Kathmandu: SAFHR, 1997).

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- [4] B. Muralidhar Reddy, "Conflicting Signals", *Frontline*, 20 October 2006, p. 40.
- [5] Darini Rajasingham-Senanayake, "Sri Lanka and the Violence of Reconstruction", *Development*, Vol.48, No.3, 2005, pp.111-120. And [www.peaceinsrilanka.org/peace2005/insidepage/AtaGlance/Ceasefire\\_Feb-July\\_2006.asp](http://www.peaceinsrilanka.org/peace2005/insidepage/AtaGlance/Ceasefire_Feb-July_2006.asp)
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- [9] Ibid.
- [10] Benedikt Karf, "Sri Lanka: the Tsunami after the Tsunami, ", *International Development Planning Review*, Vol.27, No.3, 2005, p.iii.
- [11] Jayadeva Uyangoda, "Ethnic Conflict, the Sri Lankan State and the Tsunami", *Forced Migration Review*, Special issue, July 2005, pp.30-32.
- [12] Ibid, pp.30-32.
- [13] The aim of P-TOMS is to ensure equitable distribution of international assistance for reconstruction of devastated coastline. Subsequently, the MOU is for one year and may be extended for an additional period by consensus.
- [14] UNHCR, *Country Operations Plan Overview: Sri Lanka*, (UN Refugee Agency, 2006).
- [15] *Peace Talks Result in the Establishment of 3 Sub - Committees to Address the IDP issue*, Available at [www.db.idpproject.org/Sites/idpSurvey.nsf](http://www.db.idpproject.org/Sites/idpSurvey.nsf)
- [16] According to this scheme, all the returnees would receive a standardized amount of Rs.15,000 to start-up their life, regardless of the needs of the family or the extent of damage to their property. Moreover, the UAS will be distributed as a financial grant and not in the form of in-kind materials. Ironically, this scheme is running into rough weather due to fiscal constraints. Only a very limited number of returning IDPs have received the full amount. However, still this scheme is estimated to benefit some 50,000 families. *Government Provides a Unified Assistance Scheme to some Returnees*, See [www.db.idpproject.org/Sites/idpSurvey.nsf](http://www.db.idpproject.org/Sites/idpSurvey.nsf)
- [17] The Ministry of Eastern Development is mandated only for return, relocation and rehabilitation in Eastern province and also assumes responsibility for the northern Muslim IDPs currently residing in the areas of Puttalam, Anuradhapura and Kurunegala. and Ministry for Assisting Vanni Rehabilitation is also engaged in assisting northern Muslims IDPs as well as for facilitating the rehabilitation work in the northern province. *Institutional Framework for Assistance to IDPs*, See [www.db.idpproject.org/Sites/idpSurvey.nsf](http://www.db.idpproject.org/Sites/idpSurvey.nsf)
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- [25] Benedikt Karf, "Sri lanka: the Tsunami after the tsunami, ", *International Development Planning Review*, Vol.27, No.3, 2005, p.iv
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- [29] *Conference Report on Researching Internal Displacement: State of the Art*, Series of Articles in *Forced Migration Review*, May 2003, p.34.
- [30] *Internally Displaced People: A Global Survey*, Second Edition (London: Earthscan Publication limited, 2002), p.129.
- [31] Kristine Høglund, "Violence and the Peace Process in Sri Lanka", *Civil Wars*, Vol.7, No.2, Summer 2005, pp.156-170.

## **How relevant are the UN Guiding Principles for different countries in South Asia?**

Nir Prasad Dahal

### **1. Background**

The displacement or forced migration of people within their own countries is today a common international phenomenon. According to the United Nations Commission on Human Rights "in more than 50 countries and practically in every world region, more than 25 million people are actually considered as displaced people just as a result of violent conflicts and human rights violations". This number increases by several millions with those who have been uprooted by natural or manmade disasters (HRWF, 2005).

Internal displacement especially the conflict induced internal displacement is emerging worldwide as a burning problem. Study on forced migration is, therefore, becoming more meaningful coming upto 21<sup>st</sup> century when incidences of war, violence and cruelty causing tremendous incidences of internal displacement, human trafficking, human smuggling, and so on are taking place. Estimates on number of IDPs are said to be controversial due to debate over definitions, and to methodological and practical problems in counting. The number of IDPs around the world is estimated to have risen from 1.2 million in 1982 to 14 million in 1986. At the end of 2001, there were estimated to be 22 million IDPs worldwide, although this is likely to be conservative figure. As shown by one of the studies, more than 52 countries worldwide have been affected by the conflict induced internal displacement causing around 25 million of people displaced internally in the form of internal refugees[i]. Region-wise, Africa has been the most severely affected region in the world where more than 12 million people of around 20 countries have turned IDPs followed by Asia-Pacific, Americas and Europe where more than three million IDPs each have been living in problems and challenges (Table 1).

**Table 1: Number of IDPs (estimates; as of end 2003 in million)**

<b>IDPs</b>	<b>Region</b>	<b>Countries</b>
12.7	Africa	20
3.6	Asia-Pacific	11
3.3	Americas	4
3.0	Europe	12
2.0	Middle East	5
<b>24.6</b>	<b>Global</b>	<b>52</b>

Source: Norwegian Refugee Council 2004

Since region-wise number of the countries accounting for the IDPs are 11, 4, 12 and 5 respectively for Asia-pacific, Americas, Europe and Middle East, it can be said that conflict induced displacement has been approaching worldwide as a burning problem.

The internally displaced often face a far more difficult future. They may be trapped in an ongoing internal conflict. The domestic government, which may view the uprooted people as 'enemies of the state,' retains ultimate control of their fate. There are no specific international legal instruments covering the internally displaced, and general agreements such as the Geneva Conventions are often difficult to apply. Donors are sometimes reluctant to intervene in internal conflicts or offer sustained assistance.

## **2. Introduction to UN Guiding Principles on Internally Displaced Persons (IDPs)**

In April 1998, the Representative of the UN Secretary General on IDPs presented to the United Nations Commission on Human Rights a set of Guiding Principles on Internal Displacement. The Commission in a unanimously adopted resolution took note of these principles whose text is reproduced in Reading V.A (Chimni, 2000). The Guiding Principles on Internally Displaced Persons (IDPs) has included 30 principles to address the problems of IDPs and they have been divided into introduction and other five sections: General Principles, Principles Relating to Protection from Displacement, Principles Relating to Protection during Displacement, Principles Relating to Humanitarian Assistance and Principles Relating to Return, Resettlement and Reintegration.

Introduction describes the scope and purposes of Guiding Principles. This Section stated that the Guiding Principles address the specific needs of internally displaced persons worldwide and they identify rights and guarantees relevant to the protection of persons from forced displacement and assistance during displacement and return. This section also provides the widely accepted definition of Internally Displaced Persons (hereafter IDPs) i. e. "IDPs are persons or groups 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 in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."

Section one provides general principles (Principles 1-4) in which IDPs shall enjoy the rights and freedoms under international and domestic law as do other persons in their country (no discrimination), these principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction, these principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, certain internally displaced persons such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs have been included.

Section two included the principles relating to protection from displacement (Principles 5-9). Principle 5 stated that all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons. Similarly, principle 6 affirms that arbitrarily displacement must be avoided and principle 7 provides a list of procedural protection that must be guaranteed, including decision making and enforcement by appropriate authorities, involvement of and consultation with those to be affected and the provision of an effective remedy for those wishing to challenge their displacement. Principle 8 states 'Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected and principle 9 articulates a 'special obligation' to protection against displacement of a number of groups whose special attachment to territory has been recognized in international law, including indigenous persons, minorities, peasants, and pastoralists.

Section three states the principles relating to protection during displacement (Principles 10-23). This section provides different rights of IDPs (i.e., inherent right to life, protection from genocide, murder, arbitrary executions, and enforced disappearances including abduction, detention, attacks, threatening to death, rights to dignity, mental and moral integrity, protection to rape, mutilation, torture, cruel, inhuman or degrading treatment, forced prostitution, slavery, sexual exploitation, right to liberty, protection from discriminatory practices of recruitment into any army forces, right to know the fate and whereabouts of missing relatives, the right to an adequate standard of living, the right to recognition everywhere as a person before the law, protection from arbitrarily deprivation of property and possessions, right to education etc,) during their displacement. Principle 15 particularly mentions the following rights of IDPs;

- a. The right to seek safety in another part of the country;
- b. The right to leave their country;
- c. The right to seek asylum in another country; and

d. The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Similarly, section four included the principles relating to humanitarian assistance (Principles 24-27). These principles particularly focused that humanitarian assistance should be provided to the IDPs in accordance with the principles of humanity and impartiality and without discrimination and these assistance should not be diverted for political or military reasons. The government is primarily responsible for providing humanitarian assistance to the IDPs, however, international humanitarian organizations and other appropriate actors have the right to offer their services in support of the IDPs. Persons engaged in humanitarian assistance, their transport and supplies should be protected from the attacks and other acts of violence. Moreover, humanitarian organizations and actors should respect relevant international standards and codes of conduct.

At last, in section five the Guiding Principles (Principles 28-30) provide that competent authorities have the primary duty and responsibility to provide the means, which allow IDPs to return voluntarily in safety and with dignity to their habitual place of residence. Furthermore, these authorities have the duty and responsibility to assist returned and / or resettled IDPs to recover their property and possessions. Moreover, Principle 30 emphasizes that all authorities concerned should grant and facilitate for international humanitarian organizations and other appropriate actors in IDPs' return or resettlement and reintegration.

According to Cohen "the Guiding Principles consolidate into one document all the international norms relevant to IDPs, otherwise dispersed in many different instruments. Although not a legally binding document, the principles reflect and are consistent with existing international human rights and humanitarian law. In re-stating existing norms, they also seek to address grey areas and gaps. An earlier study had found 17 areas of insufficient protection for IDPs and eight areas of clear gaps in the law. No norm, for example, could be found explicitly prohibiting the forcible return of internally displaced persons to places of danger. Nor was there a right to restitution of property lost as a consequence of displacement during armed conflict or to compensation for its loss. The law, moreover, was silent about internment of IDPs in camps. Special guarantees for women and children were needed" (Cohen, R., 1998 Cited in Chimni, 2000).

The Guiding Principles are soft laws and they are not legally binding, but the 30 recommendations—which define who IDPs are, outline a large body of international law already in existence protecting a person's basic rights and the responsibility of states—were designed to help governments and humanitarian organizations in working with the displaced.

### **3. Relevancy of the UN Guiding Principles for different Countries in South Asia**

In South Asia, each and every country is facing the problems of IDPs. Their situation is more vulnerable than that of refugees because refugees are protected by international humanitarian and human rights law but unlike the refugees they are never able to move away from the site of conflict and have to remain within a state in which they were forced to migrate in the first place. The following section briefly describes the situation of IDPs of some South Asian countries and the relevancy of UN Guiding Principles on Internal Displacement.

#### **Afghanistan**

There has been on-going conflict in Afghanistan for the last twenty years, leading to massive displacements both within Afghanistan, and as refugee movements, into Iran and Pakistan. In Afghanistan, the causes of internal displacement are Soviet invasion in 1979, start of civil war in 1993, drought and famine of 1996, US air strikes in 2001 and anti-Pushton violence since Northern Alliance regained power in 2001. The total numbers of IDPs is estimated as 11,60,000 persons (DFID, 2001: Cited in Qadeem, 2005). The situation of IDPs in Afghanistan is more vulnerable. On top of the political unrest, the regional drought too emerged as one of the dominating factors affecting the socio-economic situation. This economic decline has exacerbated the level of poverty and economic hardship throughout the country. Serious human rights violations continued to occur and citizens were precluded from changing their government or choosing their leaders peacefully.

In Taliban areas, the Taliban's religious police and the Ministry for the Promotion of Virtues and Suppression of Vice (PVSV), enforced their extreme interpretation of Islamic punishments, such as public execution for adultery or murder, and amputation of one hand and one foot for theft. Furthermore, the Taliban government imposed a strict version of sharia, Islamic law, on the country, prohibiting a wide range of public activities. Many of these prohibitions were particularly designed to restrict the freedom and rights of women. Tens of thousands of women effectively remained prisoners in their homes, with no scope to seek the removal of these restrictions. Women who violated these restrictions were punished severely and their families held responsible for their behaviour. Displaced women who had no shelter in which to maintain their privacy were doubly disadvantaged. Moreover, women IDPs are facing sexual violations, such as abuse, rape etc.



In Afghanistan, IDP families, whether settled in the city or camps, continue to feel insecure. They are facing various problems, such as food shortage, human rights violations, no privacy, malnutrition problem particularly among children, no schooling facilities, no income generating activities, forceful return to their home etc.

IDPs come from different backgrounds and experiences. The changes brought about by loss of status, death of loved ones, loss of valuable property and life's savings, in addition to being displaced, result in immense adjustment difficulties. Children and women are particularly vulnerable in such turbulent times as they are faced with multiple burdens and have a lower social status. The majority of IDP families in Afghanistan, having no potential breadwinner (i. e. with female or disabled head of household), find life too hard to cope with. The widespread loss of assets and sources of livelihood has required IDP families to find manual work to obtain cash.

According to UN Guiding Principles on Internal Displacement, the primary responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, however, Afghanistan government is yet to develop the mechanism to support IDPs due to the political instability. Similarly, I/NGOs could not reach to support IDPs in Afghanistan and women, children and elderly/disabled people are more vulnerable. Therefore, UN Guiding Principles is more applicable and relevant to provide support and care to IDPS in Afghanistan.

### **Burma (Myanmar)**

For years, Internally Displaced Persons (IDPs) in Myanmar have been subjected to horrific human rights abuses. Yet their misery remains largely invisible to the outside world. Although the international community has condemned the situation from afar, insufficient action has been taken to protect those in need. IDPs in Myanmar are entitled to a number of protections under international law; however the inadequate realization of these protections calls into question the role and efficacy of law in safeguarding human freedom and dignity. There are an estimated 600,000 to one million IDPs in Myanmar. Statistics are inexact because the government tightly restrains outside monitoring. Like refugees, IDPs are profoundly vulnerable in every aspect of their lives and legal entitlements are particularly important to them. Their vulnerability is linked to a lack of social, humanitarian and human rights protection and is often caused by conflict and regime victimization. Nowhere is this more true than in Myanmar, where a succession of cruel military regimes has had a stranglehold on the country since the 1962 coup. Like its predecessors, the current military junta (called the State Peace and Development Council [SPDC]) continues to perpetrate large-scale human rights abuses.

Myanmar's IDPs live in sorrowful conditions. Those who are victims of forced relocation are placed under the direct control of the military in relocation centres where they endure untold exploitation as forced labourers, porters for the military and landmine sweepers. Those who escape this fate usually become internal exiles, hiding in the mountains or jungles with only what they can carry in a small bag; they are constantly on the run. They exist in the shadows and silence, moving and cooking only in the mist, constantly afraid that their children will alert the junta by crying out from hunger. While an increasing number of people in the country face a deteriorating humanitarian situation, Burma's internally displaced are particularly vulnerable and face acute humanitarian problems in health, nutrition and education. In December, the UN Security Council received a briefing on the human rights situation in Burma and the Association for South East Asian Nations (ASEAN) openly showed concern for the first time by sending a delegation to the country in March 2006. International and regional actors should take every opportunity to raise the need for humanitarian access with the military regime and should develop a common policy vis-à-vis the government in order to improve protection and assistance to Burma's internally displaced.

Displacement is limited largely to ethnic minorities, however ethnic Burmese are not immune. The Karen, Karenni, Shan and Mon ethnic groups in eastern Myanmar are most intensely affected. There are also chilling reports of displacement and other abuses committed against minorities such as the Muslim Rohingya people along the western borders with Bangladesh and India. Whether Buddhist, Animist, Muslim or Christian, these people are deeply spiritual. Part of what makes the military oppression so barbaric is that it shows utter disrespect for their lifestyle and worldview. The junta's extreme and disproportionate violence forms an unconscionable contrast to the profound peace of most Burmese.

The domestic laws of Myanmar provide grossly inadequate protection for the displaced and there is no overarching regional protection structure in Asia. Hence, it is necessary to look to international law for assistance. Under international law, protection derives from a combination of human rights law, humanitarian law and, to a limited extent, analogy with refugee law. The application of these bodies of law, however, pre-supposes either ratification of relevant treaties or customary international law. The international community should now use its full armoury to secure greater protection for Myanmar's internally displaced. It must strike a careful balance between promoting national responsibility, condemning abhorrent practices and intervening through negotiation or might.

### **India**

Since the partition in 1947, India had its own share of communal riots displacing millions of peoples. Yet, India often dealt with such conflict induced displaced persons with ad hocism and apathy. There is no standard on providing basic humanitarian standards — adequate housing, food, health care, education and protection. It depends on the whims of government of the day. Consequently, the programmes for humanitarian assistance suffer from favouritism and discrimination.

At present, India has over half a million conflict-induced Internally Displaced Persons respectively — 200,000 consisting of the Adivasis, Bodos, Muslims, Dimasas and Karbis in Assam; 2,62,000 Kashmiri Pandits from Jammu and Kashmir; 35,000 Brus/Reangs from Mizoram and about 50,000 displaced persons in Tripura (<http://www.tribuneindia.com/2006/2006101/edit.htm>).

Children who are caught in armed conflict situations in 14 out of 28 States are worse off. Hundreds of children are subjected to arbitrary arrest, torture, rape, custodial death, and extrajudicial executions every year at the hands of both the security forces and the armed opposition groups (<http://www.achrweb.org/press/2003/October2003/IND-CRC011003.htm>). Displaced people, without proper rehabilitation and resettlement often become vulnerable to many hardships including HIV/AIDS. It is a generally known fact that the increase in the CSW population, the number of rickshaw pullers, crimes along the state and national highways, child labour are some of the direct and indirect fallout of conflict-induced displacement in India (<http://www.kanglaonline.com/index.php?template=headline&newsid=1359&typeid=0>). Women IDPs are subject to torture, economic hardship, sexual violence and lack of privacy,

In this context, the Government of India must develop a policy for providing humanitarian assistance and access to essential food and potable water, basic shelter and housing, appropriate clothing and essential medical services and sanitation to the conflict induced internally displaced persons considering the provision and mechanisms provided by UN Guiding Principles on Internal Displacement.

## **Nepal**

Conflict induced displacement is a new phenomenon in Nepal which started in 1996 when the internal armed conflict between Nepal Communist Party (Maoist) and the Government of Nepal began. In Nepal, 12,865 people have lost their lives due to the conflict between the Maoist and the government (INSEC, 2006). Reports from various organizations over the last few years have quoted figures that could range from approximately 37,000 to 400,000 excluding those who may have crossed the border into India (SAFHR, 2005). The official estimate of the government is just 7000-8000. IDD Mission to Nepal Reported that the best reliable estimate of Nepalese internally displaced by the conflict should be up to 200,000 (cited in Aditya et. al, 2006).

Many recorded incidents have revealed that many children are forced to associate with armed forces and armed groups as militia, porters, kitchen helpers, messengers/postmen and spies. According to CWIN, around 40,000 children have been displaced in Nepal due to the armed conflict. During this period (1996-2006) 419 innocent children have lost their lives, 454 have been physically injured, total of 29,244 children along with teachers have been "abducted" while 230 children have been arrested by the state security forces, 150 children are reputed to have been exploited in the worst forms of child labour, and 224 children are facing health problems after being displaced due to armed conflict ([http://www.cwin.org.np/press\\_room/factsheet/fact\\_cic.htm](http://www.cwin.org.np/press_room/factsheet/fact_cic.htm)).

The UN expert on IDPs mentioned in his mission report that human rights problems and violations faced by IDPs in Nepal are related to: poor security and protection; discrimination; inadequate food, shelter, health care or access to education for children; a lack of personal and property identification documents; and gender-based violence, sexual abuse and increased domestic violence ([www.un.org/News/Press/Docs/2005/hr4830.doc.htm](http://www.un.org/News/Press/Docs/2005/hr4830.doc.htm)).

The youth are leaving their home due to threat of force recruitment in the militia. Most of the youth are staying in the city centre. Some of them have fled to India to seek employment and Gulf countries. According to report of Save the Children Norway, about 10,000 young people crossed the border under the age of 14-18 during the July and August 2004 (Save the Children Norway, 2003).

New paradigm has been emerged after Nepal's latest political change (Jana Andolan II). Top level negotiations between the government and the Maoists have been initiated. However, the fate of the IDPs is yet to be decided. Both the rebel Maoist and the government are not serious about the problems of IDPs. In this context the relevancy of UN Guiding Principles on Internal Displacement is felt more acute for the protection and care of IDPs in Nepal.

## **Pakistan**

Army operations targeting insurgent groups in Waziristan and Balochistan are the main causes of conflict-induced displacement in Pakistan today. There is no official information on the number of people displaced and access of journalists and aid workers to the affected areas is tightly restricted. But best estimates from the media and aid agencies are that at the very least many tens of thousands of people have been forced to flee their homes in both areas, though most of these will have returned home within a matter of weeks.

In Balochistan, the fighting has been between tribal rebels and the army. Apart from longstanding demands for increased political autonomy, development projects are fuelling the current conflict in Balochistan as the local population demands increased control over and more benefits from the exploitation of natural resources. The current unrest started in 2003 and has intensified during 2005 and 2006, bringing 40,000 army troops to the region to fight local militant groups. Estimates of the number displaced at its peak are as high as 200,000.

In Waziristan, a government-led operation started in March 2004 against militants connected to Taleban and al-Qaeda hiding on the Pakistan side of the border. Since then, search operations and fighting between rebel groups and the army have displaced an unknown number of civilians. As many as 80,000 army troops are deployed along the border with Afghanistan. The presidents of the two countries swap accusations of not doing enough to prevent Taleban and al-Qaeda activities along the border.

Despite the large numbers displaced due to the conflicts, humanitarian aid from outsiders has been rejected so far. As no one is allowed in to assess the situation in the conflict-affected areas, it is not possible to verify the little information that has trickled out about the displaced populations. However, both national and international actors must insist that the conflict-affected populations be granted basic assistance and protection during displacement, as well as a safe and voluntary return to their homes when the situation permits.

## **Sri Lanka**

Conflict-induced internal displacement in Sri Lanka has occurred on a massive scale. Official estimates show that the number of IDPs peaked at over one million people in late 1995, nearly half of the north-east region's population. By early 2002, just before the signing of the ceasefire, there were estimated to be some 683,286 IDPs, including 174,250 people at the 346 welfare centres around the island (Gomez 2002). More recently, there is evidence to suggest that more than four-fifths of the current population of the LTTE-controlled area has been displaced (CPA 2003). However, it is clear that official figures do not cover the sizeable population of former north-east residents who have not formally registered as IDPs and now live in and around Colombo.

IDPs in Sri Lanka can be classified according to a number of measures. Most importantly, some IDPs have spent all or some of their displacement in camps or welfare centres set up by the government or non-governmental organizations (NGOs). Others chose not to enter these camps or centres, and fended for themselves within the north-east, in the border areas surrounding the north-east or in other parts of the island, particularly Colombo. Some IDPs are returnees from other countries, usually from India (via transit camps set up to receive them) or occasionally repatriated asylum seekers from the West.

In a situation somewhat different from the bulk of Sri Lanka's IDPs, there are approximately 100,000 Muslims who were evicted from homes in Jaffna and Mannar by the LTTE in 1990. Most of this group settled in the districts in Puttalam, Anuradhapura, and Kurunegala, and many remain there even after the ceasefire. Their long-term residence and participation in local economic activities has led to major changes in the local socio-economic context.

However, this group has yet to achieve political inclusion in their new homes and the resettlement of those amongst this group who are prepared to return will need particularly sensitive handling.

There are also various human rights violations of IDPs by both parties\_ state and nonstate. However, considering the UN Guiding Principles on Internal Displacement the Common Humanitarian Action Plan (CHAP) for Sri Lanka is a stand-alone humanitarian strategy document, time framed by the end of 2006. As such, it is an agreement of humanitarian stakeholders on the:

\_ definition and analysis of the humanitarian context;

\_ scenarios;

\_ humanitarian consequences; and

\_ priorities for humanitarian response.

#### 4. Conclusion

Above discussion clearly shows that each and every country of South Asia is suffering from conflict induced IDPs' problem. In this region, IDPs' livelihood condition is vulnerable. There is a need to address the problems of IDPs and make a separate mechanism and law to provide the protection and care to the IDPs. For this, the UN Guiding Principles on Internal Displacement is a milestone and more applicable to conceptualize the IDPs' concerns in the context of South Asia.

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[1] Norwegian Refugee Council, 2004

***On the basis of a close reading of Internal Displacement in South Asia write an essay on how development have often led to displacement in South Asia.***

Nanda Kishor

***We had tongues but could not speak, we had feet but could not walk, Now that we have land, we have the strength to speak and walk***<sup>[1]</sup>.

The term "Development" envisages a battery of changes, changes for the betterment of the community. It involves the notion of progress, growth, upliftment and welfare of the collective. This multifaceted term carries different meanings to different people. For economists, it is an increase in the growth rate and per capita income; for politicians, it is the acquisition of symbols of the modernization and progress; for administrators, it is the achievement of the targets; and for social anthropologists, it is the enhancement of the quality of life, standard of living and satisfaction of basic needs. 'Displacement is a move which is effectively permanent, in the sense that the area where people used to live has been transformed by the intervention, and there is no going back'<sup>[2]</sup>. Involuntary population displacements entailed by development programmes have reached a magnitude and frequency that has been demanding a strong policy guided solution in the present century. Involuntary displacement can be defined as displacement of people (with coercion rather than cooperation) from a specific area and reconstruction of their livelihood; sometimes can be called as rehabilitation. There has been a record where 10,000,000 people each year are displaced worldwide by infrastructural development programmes that may be dam construction, urban development or transportation.

Historically social science has been a discipline, which has taken a strong note in tune with recording the effect. As Cernea puts it, "Public policy responses to hard development issues can gain much from listening better to social research. But it is important to state that social scientists themselves have to much more to equip governments and public organizations with adequate practical and public advice"<sup>[3]</sup>. The present task of finding a long lasting sustainable solution to the problem has shifted over to the arena of public policy. On the other side there has been an inability of social science research to acknowledge the full impact of the process of displacement. The real challenge has come now, as this has to be grounded in a larger and structural critique of development.

What constitutes adequate and appropriate resettlement and rehabilitation of people displaced by development projects has been a subject of considerable debate. "The involuntary displacement destroys productive assets and disorganizes production

systems, and creates a high risk of chronic impoverishment that typically occurs along one or several of the following dimensions: landlessness, joblessness, homelessness, marginalization, food insecurity, morbidity and social disarticulation<sup>[4]</sup>. The whole problem deserves the attention of the civilized population. The violations of individual or group rights that have occurred due to the development projects and resettlement have shattered the lives of thousands running in number. Displacement is increasingly understood as a multidimensional phenomenon, affecting not only the economic but also the social and cultural sphere. Development projects cannot take the education, health facilities and progressive feature for granted. Participatory planning in displacement is severely restricted and what planning does take place is effectively reduced to preparing for the actual relocation of the people. Any preparation and planning for the long term needs of those who are moved, tends to be delayed, or even abandoned, thus fields are not prepared properly before move is clearly seen and which has successfully led to failures of the resettlements.

There is also a large section of the society that is of the view that the displaced can never be compensated and taken care to the fullest. Having a strong and sustainable public policy can contend this. There is also a view that the very concept of taking up a development project which affects people can be used as an opportunity for creating overall sustainable feature for the affected people. "It is universally accepted that every human being has a right to just and sustainable development and it can be taken as a strong base in development projects"<sup>[5]</sup>. Most of the time displacements leading to resettlements have failed to keep up the "**standard of living**" of the people as they were there previously. The renowned economist **Amartya Sen** defines "standard of living" as "at a general level, the standard of living of an individual can be seen to depend on his or her 'entitlements' to the commodities that make the relevant activities possible"<sup>[6]</sup>. In wake of the definition we have not reached this position. The debate on displacement can not be held in isolation. The problem has to be seen against the background of our whole economy and in light of the needs of our country for at least one generation. The essence of any displacement and resettlement must be comprehensive enough to put them on a sustainable development basis rather than just giving relief and a place to live.

The line of arguments presented by different theoreticians and such other researches have most of the time miserably failed in serving the purpose for what they have been instituted. It is not that all the researches have gone waste and there are no positive positions, there are instances where substantial achievement has been made by different people, but it is to say that all the researches have not moved in the same direction. The concept of failure here refers to that effort where the act of convincing the people and politicians has not happened in respective countries. The concern here is, that of making the people and the policy makers to feel that development which leads to displacement and it is not addressed properly is a negative development. Although there is a good amount work has been done in this area, ironically most of the theories and empirical studies have remained at the level of showing the problem and magnifying the problem but at the convincing level and arriving at relative solutions. To put it in more understandable and plain words, these works have not impressed the concerned to the extent terrorism and communal violence. I consider both terrorism and communal violence as essential violence which can never be tolerated but at the same time even displacement having a veil of displacement which is not addressed at proper level is also violence and it can be called as an organized and government orchestrated violence. Just because it has happened from the side of government that does not mean it can be taken for granted.

Historically, there has not been a place where development has fared better and has reduced the agony of the people. Involuntarily displaced people have shared more pains than gains caused by so called development. The place of those displaced is given or used for different purposes has not benefited the original dwellers of the place and what is the logic and justice done for those whose place is snatched away but have not benefited in any way? This type of inequitable distribution of benefits and losses is not acceptable any way. It should not be accepted without any resistance as inevitability, if so still there should be enough dialogue and the participation of the local is very much required as to make justice to those displaced. The concept has to be understood through the prism of social justice which is very rarely invoked in the displacement and resettlement discourse. The question is, is it equitable to support development programmes beneficial to many people, if the same programmes undercut the livelihood of other groups and have consequences which are life long and can not be overcome after a stipulated time. This is the fundamental question we would like to pose to those who are involved in the public policy process. Where 'social justice' is located in the whole discourse? The concept of social justice had not been used very frequently before 1995 when it was spelt out by the president of the world bank of that time. The statement pronounced that 'we must act, so that poverty will be alleviated, our environment protected, social justice extended, human rights strengthened. Social injustice can destroy economic and political advances'<sup>[7]</sup>.

Practically speaking, displacement has been a concept which has not spared any sphere of the world, to be specific India. The scheduled tribes in India are the worst hit people with regard to losing the place of their livelihood in which they were living by past few centuries. This is against the spirit of the constitution. The constitution of India provides for special protection from exploitation and social injustice, and promotion of educational and economic interests of the weaker section, and in particular of the scheduled tribes and scheduled castes. 'the reason why the tribal displaced may often be at risk, facing more acute, longer lasting, impact of displacement than the non-tribal populations is because of the cultural aspects of life. While the kinship of the general population is spread far and wide, this is not true of the tribal groups whose habitation may

be confined only to a certain specific areas. Any unsettlement may become a more crushing blow to their cultural life than in case of the former. Second reason is that of education and the third being that the tribal people depend for their living including trade, profession and calling, on roots and fruits, minor forest produce and forest material than the general population"<sup>[8]</sup>.

**The experience of the past almost five decades of planned development demonstrates that large-scale displacement is inbuilt in the patterns of economic development which themselves are incompatible with social justice and genuine long-term environmental sustainability. The social impacts of the recent thrust, towards a greater market driven economic process, point to realities that as the national and global economies penetrate deeper into every part of the country. The lives, livelihoods and lifestyles of those who critically depend on the natural resources base will continue to be seriously threatened. 'Displacement is an unequal struggle for the control of the natural resources and the powerful minority will continue to appropriate most of them to their own benefit. This process of the further impoverishment of the marginalized sections and transfer of their resources will continue, unless the weak organize themselves to resist this onslaught'<sup>[9]</sup>. While the families getting displaced make a sacrifice for the sake of the community and the country at large, the planners seem to view their uprooting and resettlement as one of the unavoidable logistical operations of project building. Therefore, the problem of resettlement has not gone beyond compensation (kind or cash). There is little understanding of the ethos of the people who are getting displaced. The logical steps in the process of displacement and rehabilitation must be elaborated as time bound conditions, e.g. the kind of base line survey, which uses a participatory approach, the criteria of compensation, and the requirements of total rehabilitation.**

### **Land Acquisition laws:**

The law enabling displacement in this country is basically faulty as still the land acquisition act 1894 is invoked after a small amendment in the year 1984. There are but instances of a statutory order which is so constructed as to legitimate, and facilitate, the displacement of persons, as of communities. In its ordering of priorities, it has not reckoned with displacement. Instead, it has attributed a cost to the acquisition process, and displacement is an unstated incident in the process. Law depends, for its legitimacy, on its popular acceptance. The patent injustice that have resulted from employing the extant statutory regimes for situations which it could never have been intended-and mass displacement is an outstanding example and the popular condemnation that has followed, have concerned the law into rethinking its propositions. To get the laws to revise its priorities, to relocate expediency, to redefine development, to reassess the meaning of cost requires a liberal dose of legal imagination, political will and the induction of empirical knowledge.

The concept of public purpose is of high controversy, it all started with the British. But the real situation started during the period of Nehru being the Prime Minister of India and went ahead with having large public sector projects which involved displacement of lacks and thousands of people. The concept involved was 'larger public good'. But the very concept is problematic as the 'larger public good' is of whom? The field has to be defined to whom it applies and what purpose. A project helping ten lack people cannot displace more than ten lack people. The number is tentative. It is understood that the larger projects bring prosperity to the nation but the prosperity not at the cost of our own people. It is sure that the person who sacrifices many a times does not get the benefit for his sacrifice; the case stands as an irony. Before the land acquisition itself a proper compensation has to be made and make sure that the person affected is restored his income and the life he was living before. Until and unless this criteria is fulfilled every act and statute is a failure and of no use. "Paradigm of development that has found favour with the planners makes displacement of large number of people, even whole communities, and an unavoidable event. The utilitarian principle of maximum happiness for the maximum numbers has been invoked to end respectability to making the lives of communities into a cost in the public interest. The law is ill equipped to counter this attitude and in fact abets it by lending the force of state power"<sup>[10]</sup>. The law has become so ridiculous that sometime it is worse than the orders of the state of affairs in Bihar. For example land acquisition act that of railways acts of 1989, which is very apt for the present situation. The extent of powers is vivid in the clause says that in a very crude way 'do all.... acts necessary for making, maintaining, altering or repairing and using the railway'. Interestingly the land belongs to the government directly and here too the displacement takes place and the involuntary resettlement has become inevitable.

It is, at this juncture, it is very appropriate to have a look at the legal system again and come in terms to have a better fed law which can protect the displaced. "whatever be the shape of laws to come, we may conclude that a separate legal regime in India is necessary not simply for compiling the existing provisions but also for plugging their loopholes"<sup>[11]</sup>.

Direct displacement in the form of evictions to more indirect processes that force people to move as a result of indirect chains of causation, as are mediated by the market and ecosystems, for example, the picture becomes still more complicated. What does it mean to be *forced* to move? The libertarian position, that only violations of one's rights as a person and informal dweller in the form of the deprivation of freedom of movement (other than by the constraints of the property rights of others), of freedom of expression, and of possessions, does not capture the complexity of loss of freedom

resulting from more indirect effects and, more widely, from structural social processes. While treating only directly forced displacement as manifestations of coercion is clearly insufficient, interpreting all movements of people as coerced and thus as forms of displacement would just as clearly be going too far in the other direction. It would deny that mobility, the freedom and capacity to move, is desirable. Mobility represents choice. Those without it are deprived in an important way. This brings out another important distinction to make, namely between those who stay because they *choose* to do so and those who stay because they *cannot* move. The challenge is to articulate what **forms** of movements are objectionable and on what **grounds** they are objectionable, and in the process to distinguish between desirable and objectionable forms of staying.

### **Being Gender sensitive:**

The life of women is often worsened by displacement and resettlement. 'It is true that there have been cases where they have benefited, but such cases are exceptional<sup>[12]</sup>. The exclusion of gender considerations in the planning and implementation of displacement and resettlement is seen in the study. Largely, technical issues have been given more importance than socio-cultural and socio-economic considerations. Equity has not been an explicit goal of development projects. It has been fallaciously assumed that all benefits are shared equally by a community or society, without analyzing the relational aspects of large dams or other infrastructure projects and how these are linked with issues concerning a wider political economy. The concept of displacement as Sangeeta Goyal<sup>[13]</sup> says can't be taken for granted. The people with absolutists stand have to keep in mind that the fight by the civil liberty groups for the absolute and proper resettlement is to make the concerned government to feel responsible and avoid it by taking decisions in haste. The efforts should be made by the concerned agency to make the resettlement the best then at least it will end up in being good. If at all the process starts with the notion that there can never be an absolute resettlement as that of the position before displacement then the whole process will end up in being not up to the mark of even being manageable. There is a greater need for more gender-aware and gender-sensitive policies concerning the planning, implementation and monitoring of resettlements. These policies should be extended to include all the displacement affected areas.

Developmental processes that infringe upon the human rights of any section of society are inimical to the long-term goals of progress. Development activities cannot be taken up with the use of coercion and force. It is important to set up human rights monitoring institutions and ensure the protection of the human rights of the affected population. As women are generally more vulnerable to manipulation by the state and other agencies, special care should be taken to ensure that women are not subjected to any kind of violence as a result of displacement due to development projects. "Displacement from Livelihood has the potential of developing into a fully blown crisis of internal displacement in future"<sup>[14]</sup>. If at all we are able to avoid this major problem then there are all the chances of avoiding displacement in future.

### **Concept of Local Consensus:**

The concept is of high utility in the displacement, resettlement and rehabilitation process. Most of the time it happens that the political leaders and the local representors try to avoid the problem of the oustees and they never seem to be bothering about the problem of the oustees. In a genuine case in Bengal, the land acquisition which happened was for the new Industrial town of Haldia, across the river from, and to the south of Calcutta. The most genuine part of the resettlement and rehabilitation was that there was a ground level agreement between political representatives. This represented the local consensus<sup>[15]</sup> as the ruling and the opposition party came together to the help of the people. These types of agreements would enable the administration to carry out the decision smoothly.

Where population displacement is unavoidable, a detailed resettlement plan with time-bound actions specified and a budget are required. Resettlement plans should be built around a development strategy; and compensation, resettlement, and rehabilitation packages should be designed to generally improve or at least restore the social and economic base of those to be relocated. Monetary compensation for land alone may not be adequate. Voluntary relocation by some affected persons may form part of a resettlement plan, but measures to address the special circumstances of involuntary resettlers should also be included. Preference should be given to resettlement of people dislocated from agricultural settings unto similar settings. This is particularly important for indigenous peoples whose degree of acculturation to mainstream society is limited. If suitable land is unavailable, other strategies built around opportunities for wage employment or self-employment may be used.

Development and displacement at one level has been given a dimension where the victims are projected as one who can't achieve anything and at large they are at the mercy. Here again the concept of self respect sneaks in and it can never be given up by anybody at any level, moreover, there is no necessity to do so as they have not created the situation for themselves. The discourse on displaced people should move in the direction of right based argument. The right based argument has to be given much importance than anything else. The right based argument can be extended from the level of right of citizens to the extent that they have been part of the building the economy although they are not registered workers as the public and private sector employees. Their contribution to the economy can alone be a reason where the displaced in the name of development has to be treated at the lines of right. This has been experienced in cities like Hyderabad<sup>[16]</sup> for those who did not had any entitlements which were registered but still succeeded in getting proper resettlement and rehabilitation. Other arguments based on humanitarian concerns and such other things as it is discussed have become out dated which needs no explanation.

The whole argument is to make an effort to bring the idea of having displacements in the name development out of the mind of the concerned people and make the people to realize that the situation faced by few today can come to any one where market driven forces are working and the governments are becoming agents of different agency helping externally at monetary level. As Cernea<sup>[17]</sup> highlights, the discourse has to show the impoverishment and other risks faced by the displaced. There is also a need to come out with some solid measures which a policy making agency can take into consideration. If this doesn't happen seriously in a democracy then there is all the possibility of democracy being under threat and that threat directly attacking the people. The country has to make a meticulous move regarding development oriented displacements.

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## ***The Dynamics of Conflict-Induced Displacement in Nepal***

Shiva Dhungana

### **Background**



People all over the world are constantly being forced to leave their home and hearth for many reasons: natural calamities, man-made disaster, state sponsored population transfer, giant commercial projects, major infrastructure development such as dams, abuse of human rights and threat of violence from state and non-state forces (Bose, 2005). Most of the developing countries of Asia and Africa are facing the problem of population displacement and its consequences in their socioeconomic and political development. In the past few decades the countries of South Asia are also undergoing the serious problem of displacement of their large population, mainly because of the political, religious, ethnic conflict or partition of country and major development projects such as the dams and other infrastructure projects.

Displacement is generally characterised as the movement of people from one place to another owing to different reasons (Bharttarai 2001). When the displacement is motivated by voluntary choice for better opportunities or looking favourable conditions for the future, it is called voluntary displacement and is also taken in the general framework of the migration phenomenon that is taking place since the early evolution of human civilization. On the other side, the displacement that is influenced by some external factors forcing people to leave their native places is termed as involuntary displacement. Such an involuntary displacement gives birth to a term called Internally Displaced Persons (IDPs). Internally Displaced Persons (IDPs) as defined by the United Nations' Guiding Principles on Internal Displacement 1998 are 'those persons or groups of persons who have been forced or obliged to flee or leave their homes or place of habitual residence but have not crossed an internationally recognized state border, particularly as a result of or in order to avoid the effects of armed conflict, situation of general violence, violations of human rights or natural or human made disasters'.

In general, people who leave their homes because of discrimination, harassment or threat of violence and cross international borders are recognized as refugees under the 1956 UN Convention on Refugees. The international community recognises their right to seek asylum and accepts the responsibility of rehabilitating them in safe countries. But there is no international convention or covenant that protects the IDPs or accepts the responsibility to rehabilitate them. They remain the sole concern of the state of which they are citizens. Though the international community has been concerned about the condition of IDPs and has developed guidelines and principles for their protection and rehabilitation, these remain mere recommendations. The international community has no right to intervene in the internal affairs of any state. Hence, the situation of IDPs in many countries is even worse than those of the refugees and are forced to live in a miserable situation.

While an estimated 25 million people are displaced worldwide by conflict, the number of people uprooted by development projects is thought to be much higher. A study published in 2000 estimated that between 40 to 80 million people had been forcibly displaced so far by the large hydroelectric projects alone. Other development projects forcing millions of people to resettle off their land each year include urban infrastructure projects, expansion of transportation networks, mines, oilfield exploitation and even parks and forest reserves (Norwegian Refugee Council 2005). However, over the past one decade, the magnitude and vulnerability of the conflict induced displacement has been more acute than that of the development induced displacement in Nepal. Therefore, this essay focuses on the situation of conflict induced displacement in Nepal.

### **Forced Displacement in Nepal**

The history of involuntary internal displacement in Nepal is associated with project induced displacement that began in 1960s. People were displaced by construction of roads, irrigation schemes, hydropower projects, airports, national parks and wildlife reserves. In

comparative terms national parks, wildlife reserves and water resource projects have displaced more people than other types of projects in Nepal.

The birth of Maoist rebellion in Nepal has given birth of another dimension of population displacement in Nepal. During the past ten years of fighting and related violence triggered by the state as well as the rebels, more than 13,000 lives have been lost of which almost two-thirds (8,515) were killed by the state security forces and remaining (4,803) by the Maoist rebels (INSEC 2006, INSEC 2005a; INSEC 2005b)<sup>[1]</sup>. The data shows that almost two-fifths (4,648) of the entire casualties took place in 2002 alone, i.e. during the first State of Emergency. Almost 400 innocent children were killed during the ten years period (INSEC 2005c) and hundreds of children and women have become victims of landmine blasts and crossfire between the Maoists and security forces (NCBL 2006), not to mention the trauma faced by the families who lost their loved ones in the fighting. The loss of physical infrastructures is estimated to be worth US\$250 million per year (Mahat 2003; DFID 2002a; DFID 2002b). Another estimate shows that the infrastructure loss is estimated to be worth 8-10 per cent of national GDP (Sharma 2004) that comes to be around Rs18-20 billion per year. The conflict has caused internal and external displacement of people. Nearly 400,000 rural families have been displaced internally while hundreds of thousands of others have crossed over to India in search of safety and livelihood (Ra and Singh 2005). The legal as well as illegal labour migration to India, Malaysia, Gulf countries and other parts of the world has accelerated in the past few years. The youths are desperate to go abroad to get employment, to escape the forced recruitment in the Maoist militia and possible atrocity of the state security forces in suspicion of being Maoists. Such desperation for exiting the national boundary at any cost has brought severe consequences to those fleeing the country where they are compelled to involve themselves in works of inhumane nature including slavery and sex trade (Dhungana 2006).

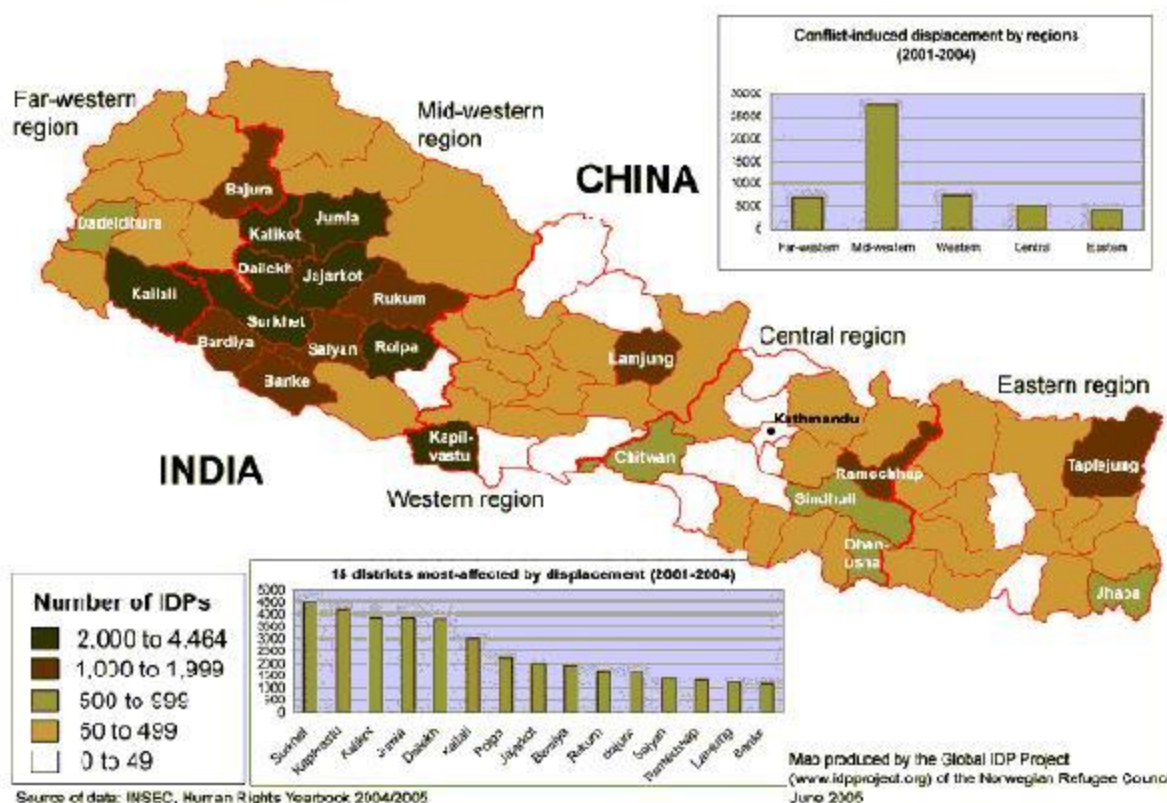
Nepal faces a serious dilemma over the issue of its citizen displaced by the conflict. The Displaced people could simply be divided into two groups. The first group is the internally displaced one which is, by definition, called IDPs globally. But the second group is those who are displaced through the open border to India and their status is a tricky one. By the 1956 UN Convention on Refugees, these people are Nepalese refugees in India, but they are never given the status of refugees in India and the Indian authority never keep track of records that how many Nepalese crossed the border and live in India. The 1950 Treaty of Peace and Friendship between Nepal and India stipulates that the Nepalese people can travel to India (so do the Indians to Nepal) without any documentation and theoretically share the same legal rights, with the exception of voting, as citizens. This provision of the treaty nullifies the chances of the Nepalese fleeing the conflict to India to be considered as the refugees and they remain in the 'state of statelessness' in India. This paper discusses on both categories of displacement in an attempt to draw attention on the complexity of the conflict induced displacement in Nepal.

### **Conflict Induced IDPs in Nepal**

Nepal has witnessed a serious dimension of involuntary displacement of population during the past one decade. Data from different sources indicate that a significant number of people have been displaced over the last few years. However, the government of Nepal has not clearly acknowledged the existence of displaced persons in Nepal. Nor has there been an explicit definition of the term "displaced persons".

The government chooses to define the conflict induced displaced as "victims of conflict" placed within a narrow understanding of who these victims should be (SAFHR, 2005). The National Human Rights Action Plan 2004 covers to some extent the question of the displaced persons. However, this document, too, does not clearly define 'the displaced persons'. The 'victims of conflict Fund set up by the Government of Nepal defines the 'displaced persons' as the people who are victims of Maoist violence or whose family members are murdered by Maoists, completely ignoring those victimized by the security forces and forced to leave their home. The following figure presents the general about the based on the number of IDPs until 2004. However, the scenario has significantly deteriorated since then, especially during the period of royal takeover, where government brutality against the ordinary people reached an all time high, contributing large population exodus from the villages, particularly from the hills.

## IDPs in Nepal: most-affected districts (2001-2004)



The on-going Maoist insurgency and associated events have forced a large segment of population from rural Nepal to move out of their usual places of residence. Though the conflict induced displacement started even before the declaration of people's war by CPN (Maoist) in early 1996, the number of IDPs started to soar up after the breakdown of the peace talks and imposition of state of emergency by the then Sher Bahadur Deuba Government in November 2001. It is estimated that up to 200,000 people have been displaced since the conflict started in the Mid 1990s. Most of the displaced have either flocked to the main urban centres or fled to India (Global IDP Project 2004) through its open border that stretches to almost 1800 kilometres along the plain land. It is debated that the number of displaced people going to India is as high as those displaced within Nepal. Some reports have even suggested that the number of displaced persons may rise up to somewhere between 300,000 and 600,000 and those displaced to India may account as high as one million (UN 2005; HRWF 2005; Shrestha and Niraula 2005), where as the government sources claim that there are only 8000 IDPs officially registered with the government in Nepal. These data may be mere guesses and manipulations by researchers or organizations based on their small survey or observation visits carried out in pocket areas, there is no doubt that a large number of people are displaced within and outside the country whose number is yet to be estimated in the absence of a nationally representative survey. The estimation of number of IDPs between 1, 00,000 to 2, 00,000 has been internationally recognized. The estimated figure of 212,985 - 272,600 compiled by Caritas Nepal based on the data collection of IDPs living in the district headquarters seems to be comparatively more authentic than rest of the estimates. Following table presents the IDP estimation made by different organizations till date.

**Table 1: IDP statistics available from various sources until October 2006.**

Date	Source	No of IDPs	Remarks
Aug 2006	Caritas	212,985-272,600	Only covers IDPs living in the district headquarters
May 2006	UNHCR	200,000	
Feb 2006	Caritas	350,000	
Jan 2006	CHR	At least 100,000	Between 100,000 and a few hundred thousands
Nov 2005	UNFPA	400,000	
July 2005	MOHA	18,666	Only includes those displaced by Maoists
Jun 2005	ILO/CWIN	40,000	Children displaced since 1996
May 2005	MOF	300,000-600,000	

Apr 2005	INSEC	50,000	Only covers period 2001-2004
Sep 2004	ADB	2.4 million	Cumulative figure since 1996, including displacement to India
Aug 2004	Government	> 100,000	
Aug 2004	NMVA	> 50,000	Maoist victim IDPs in Kathmandy valley
Jan 2004	CSWC	350,000-400,000	Based on the identification of 160,000 IDPs in 5 districts
Mar 2003	GTZ/INF/SNV/cie	100,000-150,000	
Apr 2003	EC/RRN	500,000	Includes forced migration to India
Jan 2003	UNDP/RUPP	80,000	Only cover 2001-2003 extra migration to urban areas
Jan 2003	MOHA	7,343	Only includes those displaced by Maoists

Source: *Internal Displacement Monitoring Centre of Norwegian Refugee Council 2006. IDP Return Still a Trickle Despite Ceasefire. 16 October .p 65.*

### Causes and Types of IDPs

INSEC (2005) explicitly mentions that after the escalation of violence followed by the declaration of the State of emergency in November 2001, the problem of internal displacement spread all over the country with varying magnitude. People were forced to flee their homes as a result of the intensified violent conflict, receiving death threat, threats of extortions; fear of being recruited by the Maoists in their People's Liberation Army (PLA) and Militias under their "One Household One Militia" policy, fear of being arrested, brutally tortured and even killed by the security forces in suspicion of being Maoists sympathizers, fear of kidnapping and torture by the Maoist in suspicion of being the government spy for the security forces, fear of being caught in the cross fire between the Maoist and the Security forces, destruction of infrastructures such as the schools and health posts, which the Maoists have widely targeted<sup>[2]</sup>, cessation of livelihood opportunities as a result of full fledged war and others. Further, severe food shortage in many mountain and hill districts due to the transport blockades periodically imposed by the Maoists, security problem among the porters, seizure of the food items by the Maoists, and the government policy of restricting the supply of food items to 'known' Maoist affected areas in the name of depriving the Maoist from having enough food to eat. Such a scenario contributed to generating high unemployment, disruption in business and lack of security as a result of breakdown of law and order situation. People are also forced to flee their villages because of being falsely implicated by the rebels and the government security forces for spying their enemies, because of the murder of their family members by one of the warring parties, using (by force) of vehicles, phones, and other accessories by the rebels and brutal actions taken by the securities forces for letting the other party use them, locking up homes and destroying them by the rebels, and increased brutality by the security forces especially after the imposition of State of Emergency in 2001, increased cases of human rights violation, especially women and girls by the security forces (INSEC 2005).

There is high risk among the people simply living in the conflict affected areas. Both warring parties demand loyalty and obedience. Maoists demand food, shelter and protection. The media report that civilians have been used as human shields. More significant is the risks of that comes from being forced identified by either side as the supporter of the other. They are in a no-win situation. Thus, many have decided that the only realistic option for them is to escape the problem by leaving the place. This explains why, until now, there is such a large proportion of young male among the displaced population.

Among the IDPs, there are two types of people. The first category represents the group of individuals with political affiliation or members of major political parties such as the Nepali Congress, CPN (UML) and the Pro-Palace *Rastriya Prajantra Party* and their families. A large majority of them are victimized by the Maoist cadres as many of them are local land lords and are blamed of socially and economically exploiting the local poor, especially the Dalits and indigenous communities, for centuries as they belong to the upper caste in the Hindu caste hierarchy. These people are displaced to district headquarters and the Capital city, Kathmandu. Majority of them are economically well to do and have no financial problem even in the place of displacement. They are not generally living in the IDPs Camps or under any other temporary arrangements.

The other groups of IDPs represent the poor people from the villages who are mostly targeted by the government security forces on the suspicion of being the Maoists or their sympathizers. There is ample evidence of certain ethnic group such as 'Kham Magars' and Dalits, the so-called untouchables, who have been directly victimized by the security forces for being Maoists just because of them coming from the certain ethnic groups in the western hills. These poor people live in temporary shelters prepared by local NGOs or INGOs working the region or just squat in the urban areas in the hope that they can find some means of livelihoods to feed the family members.

### Patterns of Displacement

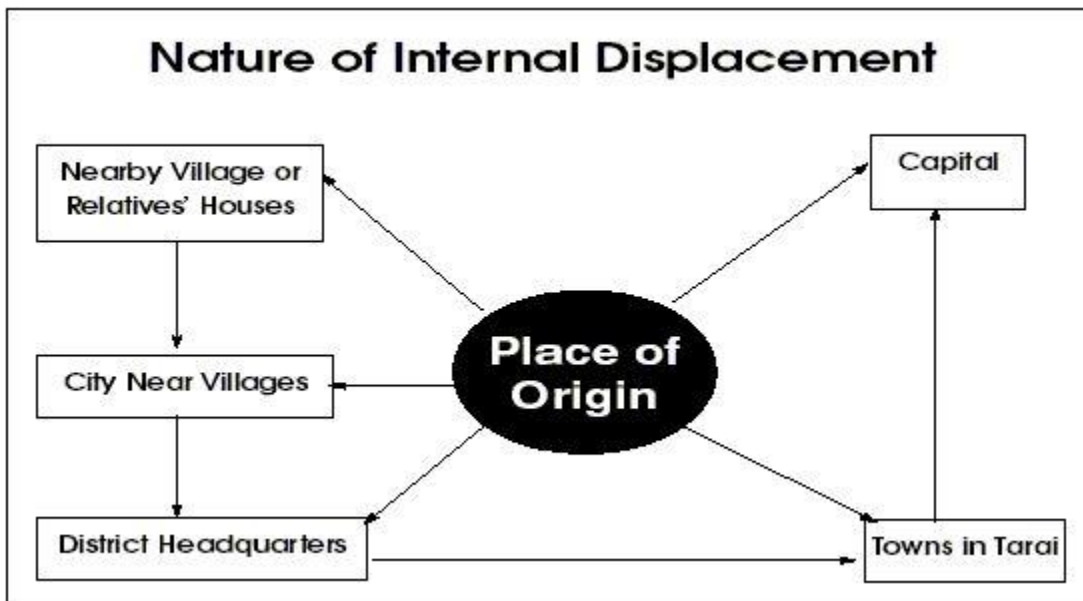
Major pattern of conflict induced displacement in Nepal consists of following steps or options.

- Village to nearby town
- Nearby town to district headquarters
- District headquarters to regional centres
- Major cities of the country
- Capital city of the country
- India
- Third countries

The last two moves of the displaced people do not fall within the accepted definition of the IDPs and are in the state of statelessness.

The flow of internally displaced persons has been described by the following figures

## Place of



Source: INSEC Human Rights Year Book, 2004.

## People Displaced to India

Migration to India has been an increasingly common survival strategy for communities in the hill and mountain regions of Nepal over the decades of Nepal India relations. This has increased dramatically over the past few years. Monitors at the border estimated that between November and December 2003 (the normal period of peak migration) over 1200 people were crossing the border per day in Nepalgunj alone. In previous years, the numbers would have been 200 to 300 maximum. A much higher proportion of women and children were also observed, although majority of the migrants were still men (Nepal IDP Research Findings 2003). Some 120,000 displaced Nepalese crossed into India during January 2003 alone – fleeing both forced recruitment by the Maoists and RNA attacks, Indian Embassy officials have said (ICG 10 April 2003, p. 2). Between 10,000 and 16,000 displaced children reported to have crossed the Indian border in only three months time, between June and August 2004 (SAFHR 2005). And at the end of 2002, some 8,000 people crossed the border every week, according to media reports and NGOs working in Nepalgunj<sup>[3]</sup>. This major influx was prompted by difficult living conditions and fear of being caught in the crossfire in rural areas (The Nepali Times 19 December 2002).

Records at the border crossing at Gaddachauki in Kanchanpur district, Far Western Nepal showed that in the 30 days between 14 December 2002 and 14 January 2003, 10,000 Nepali crossed in to India. Across the border at Banbasa, India, the border police recorded more than 100,000 Nepalese going over to India between mid-September 2002 and mid-January 2003<sup>[4]</sup>. Similarly, Indian embassy officials indicate that roughly 120,000 displaced Nepalese crossed into India during January 2003 alone<sup>[5]</sup> (Thapa, 2003: 155). Though the statistics do not clearly reflect the magnitude of displaced population to India, it definitely highlights the seriousness of the problem and urgency required to carry out study on the situation of those displaced to India.

Further, the exodus of hundreds of thousands of people from the villages of Nepal to India as a result of the armed insurgency has created a panic among the peoples in some bordering states. There is no reliable data on the displacement of people due to armed insurgency. It is estimated that more than one million people have been displaced from the villages since Kilo Sera-2 police operation<sup>[6]</sup> in 1998. Among them, nearly 300,000 are internally displaced. Others have left the country. Absolute majority of them crossed into India.

These statistics give an approximate scenario of flow of displaced Nepali people into India. The number might be much more than we have presented here. The flow of so many people should have been a matter of grave concern for the Indian Union government and state governments at a time when they themselves have high unemployment rate. It would have waxed the number of unemployed youth and heightened the problem of security. On the other side of the coin, the wages of the unskilled needy immigrants is reported to have been very low. There are reports of continued harassment of the Nepali immigrants by the Indian police. The number of Nepali women as sex workers in the Indian market is certainly on big rise in absence of other alternatives for existence and are vulnerable to be exposed to HIV/AIDS and other STDs and communicable diseases. Singh et al (2005) argue that the incidence of HIV/AIDS has increased in the western part of Nepal which is experiencing large number of voluntary

and forced migrants to India, Malaysia and Gulf countries. Sex traffickers have shifted their trade from central hill and mountain to mid-west and far-west Nepal (which are hotbeds of the insurgency) taking undue advantage of the socioeconomic conditions borne by the conflict and violence. While the number of people infected with HIV/AIDS has risen, the prevention and awareness work has declined in Nepal as a result of the conflict (Singh et al 2005). Save the Children Norway's recent study revealed that the 19 percent of the female sex workers stated that they have been pushed into the sex trade directly because of the conflict. The health status of the IDPs is equally miserable. They are vulnerable to sex trade and HIV/AIDS infection (Rijal 2005).

A report by the Save the Children Alliance and Central Child Welfare Board (2005) and another report by the Terre des Hommes and Save the Children (2006) report that exploitative conditions for IDP children in urban labour situations encourage many, in particular boys, to leave for India. The report estimate that during July and October 2004, a total of 17,583 children were documented crossing the border from Nepal to India. Among them children below 12 were found to be traveling in groups but nearly about fifty percent of children above 15 were spotted traveling without any guardian. Children not traveling with family were often being accompanied by people referred to as "mets" locally, who gained a monetary commission in providing children as labour

The displaced people through the open border to India have not received any status of refugee in India and they are ignored, exploited, harassed and considered as unwanted threat to the local population. There is no reliable information regarding their living condition and other plights they are suffering in India.

However, it is also almost impossible to separate the people who migrate to India voluntarily and who are forced to cross the border because of the fear of the rebels and/or the state security forces, unless there is a reliable research on the magnitude, status and vulnerability off the population displaced to India within the past five years or so. Hence the problem becomes even more complicated because of the prevalence of the open border between these two countries. The only solution to this problem of investigating the situation of DPs in India is to carry out primary surveys in the major destinations of Nepalese people in India.

Hence, the debate on IDPs in Nepal is incomplete unless those displaced to India are also brought into the framework of the discussion because there is high probability that majority of the displaced to India would return to their native places, if peace prevails in the country in the future. Further, the Nepalese government is also turning a blind eye on those displaced to India as it has reduced the burden of managing the IDPs in Nepal, which could have developed an explosive situation for the government to handle.

### **Government Response to the problem of IDPs**

The then HMG Nepal and the current Nepal Government both seem to be ignorant towards solving the problem of IDPs in Nepal, not to mention the Nepali DPs in India. After four months of the formation of the new government, there are no concrete steps to reintegrate the IDPs into their native places. Least, the government has not bothered to revise the highly unacceptable definition of IDPs in Nepal as the person who are victimized by the Maoists and are forced to leave their homes.

Based on the 12 Point Agreement signed in November 2005 between the Seven Party Alliance (SPA) and the CPN (Maoist), "the Maoist party has expressed its commitment to create an environment allowing the political party activists of the democratic parties displaced during the course of the armed conflict to return to their homes and live with dignity, return their land and other properties confiscated by their cadres and carry out their activities without hindrances" (INSEC 2005:2). As a follow up to this, the government issues a National IDP Policy in March 2006, but as with previous IDP plans, the latest failed to comply with international standards as it only recognized as IDPs those displaced by the actions of Maoists ( iDMC 2006). Further, the civil society, various advocacy organisations and international community are advocating with the Government and Maoists peace talks team that the issue of IDPs should be one of the major agendas of the on-going peace process. But, both parties does not have realized the gravity of the problem.

### **Maoists Response to the problem of IDPs**

The UN Guiding Principle on Internal Displacement, 1998 clearly stipulates that "all displaced persons have the right to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country", but the security forces (during the King's autocracy) and CPN-M until today have not honoured the Un provision in practice. The OHCHR has expressed deep concern about an emerging pattern of selective 'approval' process. In many parts of the country, the Maoists cadres have established three categories IDPs which serves as the basis of the 'approval process'. While IDPs belonging to the third group-those who quietly left in anticipation or in fear of the conflict- were welcome to return, those belonging to second group- those accused by the Maoists of some 'wrongdoing' had to accept conditions imposed by the Maoists before being allowed to return. These included paying a 'donation' or appearing before a 'People's Court' to explain their displacement and apologise for actions committed before being displaced. IDPs belonging to first group are seen as responsible for 'serious crimes' and not welcome back (UNHCR et al. 2006; OCHA 2006). An overwhelming area of the country is still under the absolute control of Maoists and the government presence is completely confined to the district headquarters only. This makes the situation even worse for the IDPs for their safe and dignified return as they have to be totally dependent on the pleasure of the Maoist cadre's permission. An estimated

68 percent of the Village Development Committee (VDC) secretaries (who are supposed to be the government representative at the village level) are currently displaced, mainly in the district headquarters where they wait for the Maoists to approve their return (iDMC 2006). Hence, the near absence of the government mechanism outside district headquarters has led to lack of protection mechanisms and provisions for basic service and development for the returnees.

### **International Response to the Problem of IDPs**

Since 2005, the international community has geared up its assistance efforts to provide protection to the displaced population. A Common Humanitarian Action Plan (CHAP) was devised in mid-2005 among international agencies and served as the basis for Consolidated Appeal Process (CAP) launched in October 2005 and which requested \$66 million. As of the end of September 2006, almost 75 percent of the total sum had been forthcoming, with the protection sector particularly well funded; but many projects aimed at addressing the needs of IDPs and conflict affected people in the sectors of agriculture, education, economic recovery and water and sanitation had not received any funding (iDMC 2006).

Similarly, the UN organizations such as UNHCR, OCHA, international NGOs such Norwegian Refugee Council and Local NGOs are also coming out to support the IDPs in their relief, rehabilitation and protection. However, all such efforts are not very effective in the lack of governance in the most part of the country and lack of protection mechanism supported by integrated reintegration approach.

### **Problem of IDPs**

The IDPs in Nepal and those displaced to India face many difficulties and challenges for their survival and making livelihoods. The major problems faced by the IDPs in Nepal include, but not limited to, lack of unemployment for survival, lack of food, lack of health and sanitation facilities, lack of education facilities for those who were going to school before being displaced, lack of proper shelter which is a serious concern especially in the winter season and lack of security as many of them are considered as spies/enemy of the people's war or (so-called) terrorists or their sympathizers by the Maoists cadres and the security forces respectively.

Despite the fact that Nepal has been listed among the countries currently experiencing most serious humanitarian crisis, no targeted assistance has been delivered to address the most immediate humanitarian needs of uprooted populations. Whatever efforts are being made by some local NGOs and INGOs to support IDPs, these are mostly limited to providing the immediate relief to those who are living in the camps. Those who are scattered in many parts of the country have not received any support yet.

The IDPs in Nepal are still facing serious problems for returning to their native places despite the fact that the peace process between the government and the Maoists is moving forward in an optimistic path, albeit a bit slowly contrary to people's expectation. Though the 12 Point Agreement between the Seven Party Alliance and the CPN-M and the signing of the 25 Point Code of Conduct has opened the door for the IDPs to return home, the continued abuses committed by the Maoists cadres in many districts and conditions imposed by their cadres; the absence of the government in the villages; and the prolonged and shaky peace talks has discouraged majority of the IDPs to return home.

The IDPs in the urban areas continue to face difficult living conditions in urban areas where a large majority of displaced sought refuge in the past few years. Most of those displaced in recent years and belonging to more disadvantaged groups of society have had to struggle to make ends meet. After belonging to farming community and unprepared for the making of living in the urban areas, most IDPs who find employment engage in low-paid labour intensive jobs. Placing a strain on the Municipalities' capacity to deliver basic services such as water supplies, sanitation and waste management, the arrival of number of IDPs in urban areas has also increased real state and rental prices, making it very difficult for the poorest to find proper accommodation in cities such as Kathmandu (HimRights et al 2005) resulting in the growth of Squatters and shanty towns. A survey conducted in 12 Municipalities in Nepal found that 73 percent of new arrivals in urban areas living in rented accommodations, rest of the migrants have sought shelter in dilapidated unhygienic conditions as like riversides and squatter settlement (Paudel 2005).

Sources of livelihood and lack of jobs and working places for women and children has been another concern. A recent study conducted in Kathmandu and Birendranagar found that over 70 percent of IDPs could not earn enough money to support their families. Some IDPs reported earning no money at all, which has forced them to involve in many unconventional means of earning money including petty crimes. Typical IDP activities include: manual work in brick kilns and construction sites, rickshaw pulling, stone breaking, garbage picking, sand sieving and lorry loading, and local porter (Rai 2005).

There is no authentic information on the status and suffering of people displaced to India, except some case specific information. However, the media reporting from both sides of the border already signal the pathetic condition of lives of many Nepali displaced to India especially in few of the poorest Indian states such as Uttar Pradesh and Uttarakhand, Himachal and Kashmir. The actual situation could only be assessed through a reliable research among the displaced Nepalese in India. The major problem lies in the manner Nepali and Indian government, who put all the voluntary migrants and forced displacement into single group under the Treaty of Peace and Friendship of 1950 between Nepal and India.



## Conclusions

It is quite clear that the large, but fully unaccounted, number of IDPs in Nepal are living difficult lives in various urban areas and district headquarters. The government and the CPN-M both have pretended of giving attention towards the cause of the IDPs but have never paid full attention to address their plights.

When the UN raised its serious concern on the issue of IDPs in Nepal, the Nepal government promised to develop a new IDP policy, which remained far from comprehensive and despite explicit reference to the UN Guiding Principles, it ignored a number of basic principles and recommendations. The policy failed to address the main weakness of the previous state policies on IDPs, i.e. the politicization of IDP definition excluding people displaced by the state forces. Further the lack of implementation plan, allocation of financial resources and, on top of that, the absence of the governance in the local level has not been able to generate a conducive environment to address the problem of IDPs in the districts. The government has also succumbed to the Maoists on IDPs issues as it seems to accept the IDP categories defined by the Maoists and their returns conditions imposed by the Maoists. .

The Issue of IDPs being one of the serious components for the sustainable conflict transformation, the government and the CPN-M have never showed their intention to make it one of the major components of preface process. Even if the international community is getting ready to pour sizable amount of financial resources, the government has not been able to develop a effective mechanism to channel that money for the welfare, safe reintegration of IDPs into the native communities and their protection once they are returned. As a result, the international community is confused in breaking the ice on facilitating the return of IDPs into their native places.

Further, the whole country is in deep slumber regarding the plights of those displaced to India because of the conflict. Those displaced to India are living a difficult life as nomads in many bordering cities suffer harassment, exploitation, torture, blackmailing, forced prostitution and inhuman form of child labour. These people are also vulnerable to various kinds of communicable disease including STDs and HIV/AIDS. This is an area that the Nepali society should pay attention with authentic research.

In conclusion, the IDPs in Nepal and outside are really overlooked and neglected by all stakeholders of the society, indeed, as described by the UN Secretary General's Representative on the Human rights of IDPs, Prof Walter Kalin in Aapril 2005.

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[1] The latest database as of 30 June 2006 provided by Informal Sector Service Centre (INSEC) shows that the death toll has already reached 13,328. INSEC monitors human rights violation in all 75 districts of the country and is the only source of authentic information regarding the human rights violation in Nepal.

[2] As many as 141 health posts and hospitals have been put to arson or bombed by the Maoists and almost one hundred health workers are either brutally tortured or murdered by the Maoists and security forces (Dhungana 2006)

[3] Many of them are commuters

[4] Himal Khabar Patrika, 15-29, January 2003

[5] International crisis Group' Nepal Backgrounder- soft landing or strategic Pause, "ICG Asia Report #50, Kathmandu/Brussels, 10 April, 2003

[6] The police operation of Nepali Congress Government against the cadres of the United Peoples' Front in Mid-western Hill districts Rolpa, Rukum and Pyuthan, which fuelled the birth of Maoist insurgency in Nepal.

## ***When does displacement end?***

Jason Miller

Displacement affects millions of people around the world. Every year, millions of ordinary people are driven from their "*homes or places of habitual residence*"<sup>[i]</sup> for reasons beyond their control into a life of instability, uncertainty, and fear. While many of these people cross an international border to seek refuge in a neighbouring country, the majority remain displaced within the own countries as internally displaced persons (IDPs), and as such are not granted protection under the 1951 Refugee Convention. At the end of 2005 the United Nations High Commissioner for Refugees (UNHCR) claimed that there were 20.8 million "*refugees, asylum seekers and others of concern*"<sup>[ii]</sup> globally. It must be noted however that this number represents UNHCR "persons of concern" (POCs), and inasmuch does not reflect the actual number, which may indeed be far higher. This number for example, does not include the millions of refugees who have crossed an international border but have failed to register with the UNHCR. Furthermore, included within the UNHCR's 20.8 million POCs are 6.6 million IDPs, a far cry short of the 23.7 million IDPs estimated by the Internal Displacement Monitoring Centre (IDMC).<sup>[iii]</sup> On face value, if one were to assume that these numbers were accurate, this would equate to be 37.9 million<sup>[iv]</sup> people affected by displacement in the world today. To place this in perspective, this is a close equivalent of the entire population of Poland.

- The question that we seek to address, however, is: when does displacement end? Quoting numbers may speak of the magnitude of the problem, but it does not even begin to address the frequency, longevity, or indeed the cessation of the displacement that these people face.
- The argument that I propose is somewhat different from many other contemporary discussions on this topic in that rather than attempting to argue the legal obligations of governments and international agencies, the approach that I shall attempt stems more from the perspective of the displaced persons themselves.
- Displacement must be understood in the context that it is not an isolated or singular event. The most vulnerable groups within a society are generally the first to be affected by displacement. More often than not, it are typically minority groups living on the fringes of mainstream society who constitute such groups. Such vulnerable communities who are displaced once, commonly find themselves victims of second and even third displacements.
- Modern day international borders poorly reflect the distribution of minority ethnic groups, most of who have been pushed to the fringes of society, not only socially, but also geographically. Many borders thus cut across the ancestral homelands of many ethnic minorities and as minorities their objections have long gone ignored.
- Furthermore, displacement should not solely be considered as physical displacement. Much of who we are as people depends largely upon our individual cultures and customs, a large part of which for many cultures is their ancestral and spiritual attachment to their land. For those, then who are physically displaced from their homeland, and in being so, lose their connection with that land, does displacement ever end?
- Local aborigines were recently granted Native Title claim over the city of Perth, the capital of the state of Western Australia, citing ancestral and cultural ties to the land.
- Even after resettling elsewhere many displaced persons long to return to their homes. Should such longing be written off simply as a whimsical desire?
- Make distinction between IDP (hiding in forest) and forcibly relocated person (in relocation site). Otherwise will use the generic term: displaced person.

### **Internal displacement**

- In war-torn countries in which the reasons for displacement are conflict-induced, many cannot return to their homes due to landmine contamination. Large parts of Cambodia are still landmine contaminated, similarly in Laos where dozens of people continue to be wounded, maimed and killed each year through contact with unexploded ordinance (UXO). Many other cases may be seen through Africa.
- Many families who have been displaced by development projects (in particular, dams), especially in Pakistan, Bangladesh, and India remain displaced even after as long as 30 years.

### **Understanding internal displacement in the Karen context; a case study**[\[vi\]](#)

The human rights and political situation in Burma is commonly referred to as one of the most complex on Earth today. While there have not been any exhaustive studies, many commentators believe there to be an estimated one million internally displaced persons living within the borders of the country. Some comprehensive studies, such as those conducted by the Thailand Burma Border Consortium (TBBC), places approximately half of this number along the eastern frontier with Thailand.[\[vi\]](#) That which follows is a brief overview of the cycle of internal displacement as it is experienced by the Karen of eastern Burma.

*"We have to flee and live in the jungle. It is not only now, but ever since we have known ourselves. We have had to flee like this many times because there is no peace in our country. There is fighting in our country. We hope to have peace in our country so that our villagers can go back to their villages and work. This is our wish."*

- "Saw Hser Nay Soh" (M, 30), IDP from S— village, Toungoo District[\[vii\]](#)

Civilian villages which exist in areas that the State Peace and Development Council (SPDC; Burma's current ruling military junta) cannot effectively control are forcibly relocated into SPDC-garrisoned villages. Forced relocation orders are issued to villages often with little or no prior warning. Villagers are instructed not to take their belongings with them, but to simply take what is absolutely necessary and that they may return for the rest at a later date. Such promises, however, are never kept and villagers are denied the right to return to their homes to collect the remainder of their belongings. Shortly after departing the soldiers enter the village

and loot everything of value, eat all that they can, carry off all that they are able, and destroy everything else. Anyone who refuses to comply and remains behind may be shot on sight. Entire villages are commonly set ablaze, or as is becoming increasingly more common, villages are littered with landmines to discourage villagers from returning home.

Upon arriving at a relocation site, the newly arrived villagers are not provided with any materials with which to construct their new homes, food with which to sustain themselves, or any other form of assistance for that matter. The villagers are basically left to fend for themselves. It is not long though before the realities of life within an SPDC-controlled relocation site reveal themselves. Villagers are denied the freedom of movement, freedom of association, the right to a decent standard of living, the right to freedom from slavery, and many other such fundamental rights enshrined within the Universal Declaration of Human Rights (UDHR, 1949). Once interned within a military-controlled relocation site, the villagers are exploited as a readily available pool from which the soldiers may extract regular demands of forced labour, monetary extortion, food, materials, and intelligence. Villagers are not permitted to travel outside the relocation site or return to their fields to tend to their crops.

The SPDC's forced relocation program, however, is failing. Not everyone obeys forced relocation orders when they are issued and instead flee deeper into the forest further from military control. For those who did comply, the exploitation and oppression that they had endured living in SPDC-controlled villages and relocation sites is so great that the combination of the regular demands and movement restrictions drive villagers back into the forest again where they live as internally displaced persons (IDPs) evading the Burma Army patrols that hunt them. Doing so, however, exposes them to a Pandora's Box of problems as life on the run in the forest reveals itself to be fraught with its own set of dangers and difficulties. The largest and most immediate threat obviously is the threat to personal security in that any attempt to live beyond State control results in being labelled as being sympathetic to the armed resistance and thus as an enemy of the State. The internally displaced are hunted like animals, and should they be found they can be (and often are) simply shot on sight. This practice, quite obviously, serves as strong motivation to remain displaced and to continue to evade any contact with Burma Army patrols. Most villagers return to rebuild their homes or resettle near the sites of their old villages or close to their fields. The internally displaced flee deeper into the forest ahead of any advancing Burma Army patrols, taking any belongings that they can carry with them. In many cases these villagers will remain in the forest until the soldiers have moved on and they deem it safe to return to their village. Displacement of this kind often only lasts for as little as a day or two before the villagers can return to their homes and in some instances may occur numerous times within a month. In this context, displacement can perhaps be most simply described as: soldiers come: villagers flee; soldiers leave: villagers return. Each time that they flee they lose some of what few possessions they own and must rebuild their homes each and every time that they are discovered by the soldiers. Some villagers have been trapped in this desperate cycle of displacement since the mid-1970s when they were first displaced with the implementation of the junta's scorched earth campaign known as the "Four Cuts Policy".<sup>[viii]</sup>

Gradually, the Burma Army units will tire of unsuccessfully hunting the internally displaced and slowly accept the fact that they have escaped State control. The existence of IDP sites in the forest are tolerated until such time as they are once again looked upon as a village in that the soldiers begin to issue them with forced labour orders and demands for extortion, as happens with other villages under SPDC control. Eventually, these villages will no longer be tolerated to exist in areas that the SPDC cannot effectively control or the military will launch a fresh offensive against civilian villages and they will once again be issued with orders to relocate to an SPDC-garrisoned relocation site, and thus the whole cycle begins anew.

There are approximately 120,000 displaced persons living in Karen State,<sup>[ix]</sup> many of whom have been living a transient existence for decades as they have repeatedly fled from successive Burma Army offensives. A further 140,000 refugees live in seven camps located just across the Thai border. Thousands of children have been born into the camps over the past 20 years and new arrivals continue to enter the camps regularly. Many of the refugees in Thailand have only become so when life in the forest could no longer be endured and had already lived as IDPs in the forests of Karen State for some time. As Chaudhury has aptly pointed out, "[b]ecoming a refugee in Thailand is most often considered a final option chosen only when the alternatives for protection inside Burma have been exhausted."<sup>[x]</sup> For so many of the Karen, displacement is all that they have known. Few villagers would be able to say that they have never experienced displacement and with no end to the attacks in the foreseeable future, this situation is not set to improve any time soon.

## **Displacement as refugees**

- Another key aspect of displacement is the perception that those in host communities have of the displaced persons amongst them. Factors such as xenophobia and racism lead to discrimination, alienation, and, in some cases, open hostility towards the displaced. This dynamic may be observed in just about every refugee situation on the planet. The refugees and migrants are forced to the fringes of society, constantly reminded that they "are not from around here", with the discrimination and prejudice thrust upon them only serving to further isolate them. Many begin to fear contact with local peoples knowing that it will likely lead to resentment, and in some cases, even open hostility. They thus remain on the fringes of the community into which they have been displaced and never really enter the fabric of that society, forever remaining strangers in a strange land.
- Even after resettlement in and attaining citizenship in a third country, displaced persons are constantly reminded that they are different through the imposition of xenophobia and racism. Many are viewed as perennial outsiders who often find themselves being asked: "why don't you go back to your own country"?

- Organisations commissioned with the protection of displaced persons also have their role to play. To be granted refugee status and thus labelled as such, officially brands people as originating from elsewhere; as being “not from around here”. The very system which is charged with the protection of displaced persons is also responsible for perpetuating the concept of displacement.
- Long-term refugees communities: Palestinians (in Gaza, West Bank, Jordan, Lebanon, and Syria), Tibetans (in India), among others

### **Notes and Quotes from *Internal Displacement in South Asia*:**

#### Introduction

“Several studies show that the more vulnerable communities bear the brunt of displacement in South Asia. If one looks into the case of Myanmar or Sri Lanka the brunt of displacement is borne by the ethnic minorities.” (p. 15)

“power is concentrated in the hands of an elite that defines itself in opposition to the fringes.” (p. 15)

“Almost all the South Asian societies make a distinction between the home we simply live in and the *home* (e.g. *ghar* in Marathi or *aamar gharkhon* in Assamese) that helps shape what we aspire to become and therefore invests us with our moral identities.” (p. 25)

#### Chapter 1: Afghanistan

In referring to ethnic Pashtuns who had been displaced from their homes in northern Afghanistan, “IDP families, whether settled in the city or camps, continue (for a variety of reasons) to feel insecure.” (p.41)

#### Chapter 2: Pakistan

“a substantial number of families settled in Punjab and Sindh have not got possession of their allotted lands so far and thus numerous cases are lying pending in the courts as their lands have been grabbed by the local influential people. Another section of affected people are those settled in the districts of Jhang and Khushab. Even after three and a half decades they are still without ownership rights and they do not have electricity or drinking water in their colonies.” (p. 66)

In referring to the Tarbela dam project, “Out of the 667 families who were issued allotment letters in the late 1970s by the Sindh government, over 250 families have not been given possession despite the fact that most of them had already made payments. The affected people who went to Sindh province to get possession of land had to face retaliation from the local people. Similarly in Punjab a majority of those who were allotted land were either forced by the influential people of the area to vacate the land, or were compelled to dispose of their allotted land, as it was difficult to utilize or cultivate it.” (p. 68)

“In 1996, a team of representatives of the World Bank held meetings and gathered information regarding litigations affecting Tarbela dam. ... The findings of the team revealed that 3,000 cases are pending for the last 26 years.” (p. 68)

“About 2,100 families are still waiting to get their claims settled even after the lapse of more than 35 years.” (p. 69)

Referring to the Lyari Expressway project, upon which work commenced in June 2000 and is likely to displace over 200,000 people, “The displaced families who have been allotted land (on locations far away from the area) and given compensation for construction of houses are miniscule in number.” (p. 77)

#### Chapter 3: India

“The Kashmiri Pundits who left Kashmir in the early 1990s are yet to return to their homes.” (p. 119)

“The committee [USCR] also reports that most displaced Kashmiris in Jammu lived in tents even after six or seven years after their displacement.” (p. 123)

As a result of soil/river erosion along the Ganges River, “the number of times the same family has been displaced ranges from an average of four to 16 times.” (p. 138)

#### Chapter 4: NE India

Forced relocation policy used against the Karen shares many similarities with that enforced upon the Mizo of Mizoram. (p. 164)

## Chapter 5: Bangladesh

"In Kazipur, 23 per cent of its total area was eroded during the early 1980s. About 46 per cent of population experienced displacement during 1980-86 and 42.9 per cent of those displaced experienced dislocation of more than four times." (p. 177)

"Because of continuous erosion of land, uthalis [*'landless people'*] fail to settle in a one particular place. They have little or no certainty in their lives and all they can think of is how to get food for the next day." (p. 179)

"Three decades of forced evictions, terrorization as part of counter-insurgency techniques and planned settlements of plains land Bengalis into the CHT [*Chittagong Hill Tracts*] have caused havoc in the life of people who refused to flee to India. After the accord many refugees have come back to find their land taken away and occupied by Bengali settlers and military. They now join the ranks of the internally displaced." (p. 180)

Referring to the CHT, "The land issue remains at the core of the problem of internal displacement. While property rights of the tribal population have been regulated by local traditions and not registered in public records, the Bengali settlers obtained official documents certifying their ownership of the land. After the peace accord [*in 1997*], the Bengali settlers were dispossessed of land previously belonging to returning Jumma refugees and their papers were considered invalid." (p. 181)

"Not surprisingly, many Bengali settlers, backed by the military and the main opposition party in Bangladesh, refused to give up the land to the returning Jumma refugees. Based on available figures, it may be suggested that about 30,000 persons have not been able to regain possession of their land – thus making them internally displaced upon return to the CHT. For the estimated 60,000 Jumma people who remained internally displaced within the CHT during the conflict [*from mid-1970s to late-1990s*], the situation is still unresolved. While at least half of the refugees got their land back upon return from India, the large majority of internally displaced are waiting for their cases to be solved by the land commission." (p. 182)

## Chapter 6: Burma

"It is a matter of serious concern that, in recent years, a large number of civilians evaded moving to the resettlement sites by seeking refuge in the jungle or host communities outside the reach of the SPDC troops. Some hid in areas close to their villages and sometimes tried to continue some cultivation of food crops." (p. 217)

"It should be remembered that the forced relocation of thousands of villages is a product of counter-insurgency operations carried out by the *Tatmadaw*." (p. 218)

- NO! Forced relocation of villages still occurs in areas where there is no (or no more) armed resistance. Forced relocation, along with the whole range of other human rights violations being committed in Burma are being done so for the purposes of control. Non-compliant non-violent resistance by villagers poses a far greater threat to the SPDC than does any of the continuing armed resistances. The military oppresses and terrorises the populace so as to instil fear and to impoverish them to the point where they are incapable of fighting back.

"Many villages now being burnt by SPDC troops were first burned in 1975 when the Four Cuts policy was first implemented, and some villagers speak of having been on the run from the Myanmarese troops since 1975." (p. 218)

"Those who have been forcibly relocated have lost their farms, their livelihoods, and their ancestral attachment to their land." (p.221)

"Many of the Myanmarese refugees lived as internally displaced before they crossed the border." (p. 222)

"the army's constant demands for forced labour, money, food and materials and its arbitrary torture of village elders and others drives people to flee into the hills and become displaced themselves." (p. 223)

## **Notes from *Forced Migration Review* (Issue 26; August 2006)**

Referring to the newly-established ceasefire in Lebanon:

"a large number of people will remain displaced due to damaged houses and the collapse of infrastructure in the affected areas. As people start to return, one of the dangers they will face is that of exploded ordinance." (Archer, T. A, "Lebanon: civilians pay the price", in: *Forced Migration Review*, p. 4, Issue 26, August 2006)

Civil war broke out in Liberia in 1989, followed by 14 years of conflict, forcing most Liberians to flee their homes at least once. The eleven years of conflict in Sierra Leone displaced and estimated third of the population. The cessation of these two conflicts in recent years has allowed several million IDPs to return, however, as many as a million are still believed to be displaced as a direct result of the conflict. (Brookings-Bern Project on Internal Displacement, "The challenges of internal displacement in west Africa", in: *Forced Migration Review*, p. 69, Issue 26, August 2006)

Referring to the Palestinian 'refugees':

- Problem came about with the acceptance UNGA Resolution 181, recommending the partition of Palestine and the formation of Israel (which happened in 1948) – 58 years (4 generations)
- The majority of Palestinians are not accepted as refugees under Paragraph 7(c) of UNHCR statute in that Palestinians also receive protection from other UN agencies (in particular, the UN Relief and Works Agency for Palestinian Refugees in the Near East [UNRWA] and the UN Conciliation Commission for Palestine [UNCCP]).
- "By far the most protracted and largest of all refugee problems in the world today is that of the Palestine refugees, whose plight dates back 57 years." (*The State of the World's Refugees 2006*, UNHCR Chapter 5. Available online at: [www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.htm?tbl=PUBL&id=4444d3c92f](http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.htm?tbl=PUBL&id=4444d3c92f))
- "Palestinians advocated an inclusive or expanded definition that included children and spouses of refugees, and others in refugee-like conditions, including those deported from the OPT [*Occupied Palestinian Territories*] by Israel, persons who were abroad at the time of hostilities and unable to return, individuals whose residency rights Israel revoked and those who were not displaced but had lost access to their means of livelihood." (Rempel, T. M, "Who are the Palestinian refugees?" , in: *Forced Migration Review*, p. 5-7, Issue 26, August 2006)
- Within four years of its formation, Israel drew up three new laws: the "Absentee's Property Law", the "Law of Return", and the "Israel Citizenship Law", all which invalidated the rights of the displaced non-Jewish population to return to their homes. (Shiblak, Abbas, "Stateless Palestinians", in: *Forced Migration Review*, Issue 26, August 2006: 8-9.)
- There are numerous groups of stateless persons, including: the Syrian Kurds of northern Iraq, the Kuwaiti 'Biddons', the Iraqi Shiites, the Palestinians, and populations of ethnic Chinese migrants in Mae Aw village in northwestern Thailand.

#### **Notes from *Internal Displacement and Protection in Eastern Burma***

- 540,000 IDPs in 2005
  - 92,000 hiding in forest
  - 108,000 in relocation sites
  - 340,000 in 'ceasefire' areas (?)
  - Thailand Burma Border Consortium. *Internal Displacement and Protection in Eastern Burma*. October 2005

#### **Notes from *Internal Displacement and Vulnerability in Eastern Burma***

- The frequency of displacement over the past year in areas of eastern Burma indicates that a family must move on average once every 1.4 years. 2/3 of IDPs have had to move at least once in the past 12 months. These numbers do not reflect movement between areas in the same general vicinity, which thus greatly downplay displacement frequency. Local CBOs and NGOs have stated that IDPs hiding in the forests have had to move 3 or 5 times a year in recent years.
  - Thailand Burma Border Consortium. *Internal Displacement and Vulnerability in Eastern Burma*. October 2004

#### **Principle 28 (1):**

"Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country."

## Principle 29 (1):

"Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced."

## More on the Karen

Whether still living within Burma and maintaining their cultural ties to their land, or

Over the past year the Burma Army has been conducting a massive military campaign against civilian villagers to depopulate the hills of northern Karen State and forcibly relocate everyone living beyond military control into SPDC-garrisoned villages. Dozens of villages have been burned to the ground and approximately 20,000 villagers have newly become internally displaced<sup>[xi]</sup> (in addition to the approximately 115,000 IDPs already living in Karen State). Precious few villagers have any food left and under the current climate few places remain where they are able to seek a sustainable solution. This has driven a further 3,000 villagers across the border into Thailand as refugees.

Should these hapless individuals attain refuge in Thailand, yet another set of problems opens up and yawns before them.

Some villagers who find themselves in this predicament find that eventually, oppression is eased and the Burma Army patrols that hunt them relent, permitting some relative degree of freedom. Such villagers then find that they then have the ability to rebuild the shattered fragments of their lives.

The associated human rights abuses that invariably accompany increased militarization are slowly starving the villagers out of the hills.

This has forced thousands of Karen villagers to flee to Thailand as refugees.

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## Endnotes

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[i] From the introductory text to the *UN Guiding Principles on Internal Displacement*, document: E/CN.4/1998/53/Add.2, February 11<sup>th</sup> 1998. See: <http://www.unhcr.ch/html/menu2/7/b/principles.htm>

[ii] See: <http://www.unhcr.org/home.html>



[iii] See: <http://www.internal-displacement.org/>

[iv] Excluding the 6.6 million IDPs from the UNHCR estimate so as to avoid counting this group twice

[v] The author has spent several years working among the Karen of eastern Burma and much of that which follows is based upon his own knowledge and experience of the situation

[vi] In 2005, TBBC estimated there to be a total of 540,000 IDPs in eastern Burma. See: Thailand Burma Border Consortium. *Internal Displacement and Protection in Eastern Burma*. Bangkok: Thailand Burma Border Consortium. October 2005: 24

[vii] Karen Human Rights Group. *Enduring Hunger and Repression: Food scarcity, internal displacement, and the continued use of forced labour in Toungoo District*. Bangkok: Karen Human Rights Group. September 27<sup>th</sup> 2004: 105

[viii] The four cuts are said to be to cut all supply of food, funds, recruits, and intelligence to the armed resistance by their supposed civilian support base

[ix] Karen State as it is defined by the Karen themselves differs from what is 'officially' known as Karen (Kayin) State and encompasses parts of eastern Pegu (Bago) Division, parts of Mon State and parts of Tenasserim (Tanintharyi) Division. See: Thailand Burma Border Consortium. *Internal Displacement and Protection in Eastern Burma*. Bangkok: Thailand Burma Border Consortium. October 2005: 24

[x] Basu Ray Chaudhury, S. "Burma: escape to ordeal", in: Banerjee, P; Basu Ray Chaudhury, S; & Kumar Das, S. (eds.). *Internal Displacement in South Asia; the relevance of the UN's guiding principles*. New Delhi: Sage Publications India Pvt Ltd. 2005: 225

[xi] Refer to recent reports by the Karen Human Rights Group (KHRG) and the Free Burma Rangers (FBR), available at [www.khrg.org](http://www.khrg.org) and [www.freeburmarangers.org](http://www.freeburmarangers.org) respectively

## ***UN Guiding Principals on Internal Displacement: Reflection of Existing International Laws***

Mohd Abdur Rashid

### **Introduction**

In recent years the phenomenon of global Internal Displacement has grown dramatically. At the end of the year 2004, 25 million people affected worldwide the problem of internal displacement far exceeds the dimensions of the world refugee problem due to civil or international war, political conflict or human rights violations civil or international war, political conflict or human rights violations. Although the Internally Displaced Persons (IDPs) are frequently forced to flee their homes for the same reasons as do refugees, the fact that they remain within national territory means they cannot qualify as bonafide 'refugees' entitled to the special protective regime accorded to refugees under international law.

During the past decade the concept of IDPs has become a familiar feature of the humanitarian vocabulary especially after the end of the cold war. The scale and scope of this problem, the human suffering which underlies it, as well as its impact on international peace and security, have rightly made internal displacement an issue of great international concern. IDPs are the most vulnerable victims of conflict and constitute the largest at- risk population in the world. The IDPs often go through immense human suffering and displacement is accompanied by violence and the most serious violations such as arbitrary killings, torture, kidnappings and rapes.

Unlike the refugees, the IDPs stay within their own countries and depend on their own governments to uphold their civil and human rights. In most of the cases the governments themselves are responsible for displacement of population and they are reluctant to admit the fact. Without government concerned the international community has limited option to protect these people. As the IDPs stay within their country's border, it is very difficult for the international community to provide assistance to the IDPs.

Instead of large scale of the worldwide displacement crisis and the particular vulnerabilities of the IDPs, the international community has been slow in addressing these issues. Although many organizations work for the protection of the IDPs with limited approach, unsystematic and unpredictable but there is no single humanitarian agency for the protection and assistance of the IDPs. The international framework for responses to internal displacement crises remain weak because states have been unwilling to allow a more systematic international involvement in an issue they consider an internal affair protected from foreign interference by the principle of sovereignty.

### **The Guiding Principles on internal displacement**

The Guiding Principles (GPs) were prepared to fill the gap in the international protection system and to promote assistance for IDPs. The aim of preparing these principles was to create an international framework for the protection and assistance of IDPs. The purpose of GPs is to create symmetry in dealing with the IDPs because different countries deal with this issue of internal displacement in different ways. The GPs give direction to the governments, NGOs, humanitarian, human rights and development organisations in protecting and assisting the IDPs. In 1998, the GPs were presented to the UN commission on Human Rights by Mr. Francis M Deng, Representative of the UN secretary General on Internally Displaced Persons. The GPs set forth the rights of IDPs and the obligations of and insurgent forces in all phases of displacement. The GPs offer protection before the displacement occurs, during situations of displacement and in post conflict return and reintegration.

The GPs are the result of long term efforts of international legal experts collaborating with international organisations, regional bodies and NGOs under the direction of the Representative of the UN Secretary General. These experts found grey areas in existing laws and wanted a specific body of principles that would consolidate into one document existing norms which at present are dispersed in many different instruments of human rights law, humanitarian law and refugee law by analogy. The GPs restate the existing laws and make key provisions more explicit. It is more liberal than any other existing instrument because it is not a binding instruments towards the protection of IDPs.. It reinforces and strengths existing protections for this disadvantaged group of people because their needs are frequently overlooked.

The GPs restate and reflect international conventions in the field of Human Rights Law. Most of these principles are emerged from Universal Declaration of Human Rights (UDHR), Geneva Convention IV, Protocol I and Protocol II, International Covenant on Civil and Political Rights, (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), ICRC Commentary, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Civil and Political Rights (CCPR), American convention on Human Rights (ACHR), Rome Statue etc.

### **Guiding Principle and Human Rights Law and Humanitarian Law**

The principles have their roots in different existing human rights law and humanitarian laws. They do not replace the already existing laws but they are emerged from them. Some of the principles and their similarity with the existing international law are described below:

#### **1. General Principles**

First four principles focus on equality, same rights and freedom, equal obligation, universal applicability of these principles, right to seek and enjoy asylum, responsibility of the states to provide protection and humanitarian assistance to IDPs, discrimination of race, colour, sex, language, religion, ethnic or social origin, age, disability, property, birth or any other similar criteria and special attention for children, unaccompanied minors, expectant mother, female heads of household and elderly persons. The principles of equality and non-discrimination are firmly rooted in international law. Article 7 UDHR recognises that "all are equal before the law and are entitled without any discrimination to equal protection of the law." Moreover regarding providing protection and humanitarian assistance to nationals, including internally displaced persons, GPs state that it is the primary responsibility of the state. The UN General Assembly on several occasions reaffirmed "the sovereignty of affected states and their primary role in the initiation, organisation, co-ordination and implementation of humanitarian assistance within their respective territories" (GA Resolution 46/128 of 19 December 1991).

#### **2. Protection from Displacement**

Guiding Principles 5 through 9 are related to the issue of protection from involuntary displacement. Grounded in international human rights and humanitarian laws, these principles affirm the right of individuals to be protected against arbitrary displacement from one's place of habitual residence and the responsibilities of governments and other authorities to prevent such displacement exploring alternatives. They also focus on procedures to be followed to minimize the adverse effects of displacement when such movements take place. These principles also discourage the displacement that violates the rights to life, dignity, liberty and security of those affected.

Similarly Article 13 (1) UDHR "Everyone has the right to freedom of movement and residence within the borders of each state." Similar provisions can be found in Article 17 Protocol II-"The displacement of civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand". These principles reflect the wordings of Article 49 (3) Geneva Convention IV. Similarly Article 17 (1) Protocol II, Article 2 (3) CCPR, Article 33 (1) Geneva Convention IV, Article 75 (2) (d) Protocol I and Article 4 (2) (b) Protocol II etc.

#### **3. Protection during Displacement**

IDPs are particularly vulnerable during displacement. Security of life is one of the grave concerns of International Law and has also been taken up by various provisions of the Guiding Principles (GPs). Section III of Guiding Principles address these protection issues.

GPs 10 through 23 focus mainly on the physical safety and security, the family rights, economic and social rights, civil, political and other similar rights of the individual.

For example, GP 10 though 15 concentrate on most basic rights of IDPs. These principles confirm the right to life, right to dignity and integrity, protection against arbitrary arrest and detention, choices of residence, protection against forcible return, protection from forced military recruitment, children right, right to liberty of movement and freedom, right to seek safety and asylum etc. These rights already exist in different human rights law. Article 3 and 5 of UDHR state that "Everyone has the right to life, liberty and security of person; no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". According to Article 9 of ACCPR "No one shall be subjected to arbitrary arrest or detention". In article 12 it also mentioned that "Everyone lawfully within the territory of a state shall within that territory have the right to liberty of movement and to choose his residence." Article 4 (3) Protocol II states that "Children.... Shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."

GPs 16 and 17 are concerned the rights to know about missing family members, right of access to the grave sites of deceased relatives of displaced persons and the importance preserving the family unit during the displacement. Many internally displaced persons are separated from their families as a result of the conflicts and other situations that uproot them. According to Article 16 (3) of UDHR "The family is the natural and fundamental group unit of society and is entitled to protection by the society and the state." These principles also have similarities with Geneva Convention IV (Article 20)- "each party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war with the object of reserving contact with one member and of meeting, if possible". Even in Article 3 Convention on the Rights of the Children it is clearly mentioned, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration."

GPs 18, 19, 21 and 23 delineate to establish the basic demand of displaced persons for enjoying adequate standard of living, right to access proper health and medical care, to establish property right and right to receive education facilities. Most of the time the IDPs are deprived of these rights. These principles include right to participation of women, right to work etc. These reflect the articles of ICESCR. Like, according to Article 11 (1) "The states parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions." In article 12 of the same Covenant it is mentioned that "The state parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Different Articles of CEDAW is the basic foundation of the principles relating to the equal treatment and participation of women. According to Article 23 of UDHR "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."

GPs 20 and 22 recognize the enjoyment and exercise of legal rights, the civil and political rights. Right to recognition before law, civil and political rights are based on the human rights law. "Everyone shall have the right to recognition everywhere as a person before law." (Article 16 of ICCPR). Article 19 of UDHR states that "everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any medium and regardless of frontiers."

#### ***4. Principles Related to Humanitarian Assistance***

One of the most pressing problems for the IDPs is to access to humanitarian assistance. GPs 24-27 deal with the roles and responsibilities of national authorities and international organisations in providing humanitarian assistance to IDPs. According to these principles states should take the main responsibility to protect its citizens but they also affirm an important role for international humanitarian organisations and other appropriate actors. The actors can be UNHCR, UNICEF, WFP, UNDP, ICRC etc. "The right to receive humanitarian assistance and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries.... When we give humanitarian aid, it is not a partisan or political act and should not be viewed as such" (Principles of Conducting for the International Red Cross and Red Crescent movement and NGOs in Disaster response Programmes)

#### ***5. Principles Relating to Return, Resettlement and Reintegration***

Principles 28-30 determine the standard for return or resettlement and reintegration of internally displaced persons. Because finding durable solutions is the ultimate goal for the IDPs. These include right to return or resettle, right to return of property or compensation and also the responsibilities of national authority, international organisations. Human rights law recognizes the right of an individual, outside of his or her national territory, to return to his or her country. Similar rights are mentioned in Article 13 (2) of UDHR, Article 49 of Geneva Convention IV etc.

#### **Conclusion**

Guiding Principles is the only instrument that favored all the rights and obligations of the Internally Displaced Persons. It covers all possible areas of concerns for IDPs. Although it is not a legal instrument but all the principles are based on existing international law, humanitarian law and human rights law. Most of the countries of the world are signatories of these laws. So in a way they all are

obliged to follow these principles while dealing with the IDPs. The number of IDPs is increasing in the world and it is an obstacle to the peace and development of the particular country and as well as to the world. States should take the primary responsibility to protect the IDPs and the wider use of these principles will help to address the problem in a more effective way.

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## ***On the basis of a close reading of Internal Displacement in South Asia show how development has often led to displacement in South Asia?***

Priyanca Mathur

### **Introduction**

Contrarian fallouts have often defined the relationship between development and displacement. What is essential to this relationship is the irony that the process of development meant to enrich the lives of many human beings end up depriving many others of their basic rights by uprooting them from their traditional homeland and way of life. For millions of people around the world, particularly in Africa and Asia, "development has cost them their homes, their livelihoods, their health, and even their very lives"[\[i\]](#). This paper shall begin by exemplifying this relationship with illustrations from all over South Asia and then bring attention to some glaring issues in the field of development-induced displacement today with particular reference to India.

Today, there is evidence that the number of people displaced by development projects is much more than the figure of 25 million displaced by conflict[\[ii\]](#) and "the number involved is large – more than 10 million people each year" says that renowned sociologist and development specialist, Michael Cernea.[\[iii\]](#) Figures in Asia show that in the last decade nearly 7 million Development-Induced-Displaced were impoverished in China and more than 10 million in India were still to be rehabilitated.[\[iv\]](#) Development has been stated to be cause of the impoverishment of 75% of the 20 million people displaced in India alone since its independence in 1947 [\[v\]](#) and according to the World Commission of Dams Report of 2000 majority of those impoverished by large dams in India are still to be rehabilitated. Even if the Indian government's conservative estimates are considered they state that 29% of the project-affected persons (PAPs) have been rehabilitated, which leaves at least 13.2 million still homeless.[\[vi\]](#) Thus what is simply evident that development-induced displacement leads to homelessness and landlessness and inevitably to impoverishment .[\[vii\]](#) The challenge is to convert these 'risks' into 'rights' and rebuild the lives of those displaced.

In South Asia, the displacement of communities from their ancestral lands has been integral to the development process of its economies. The heavy emphasis on large-scale projects for infrastructure development in these countries led to the displacement of millions. The Global IDP Project has estimated that hydroelectric projects have displaced 40-80 million people so far. India's first Prime Minister Jawaharlal Nehru, who once had hailed big dams as the 'temples of modern India', regretted later in his life that we are 'suffering from the disease of gigantism'. He recognized that big projects involve an enormous cost of displacing and rehabilitating people.[\[viii\]](#) "The harbingers of progress began to be viewed as temples of doom spelling disaster for man and nature. The rivers destined to bring change became rivers of sorrow".[\[ix\]](#) Nonetheless, figures in the World Commission of Dam report show that India remains the third largest builder of dams in the world. The World Bank, very recently has announced its interest in reviving funding in these areas. However, today favourable media coverage of anti-dam struggles and arguments is shaking the old belief in dams as shining icons of prosperity and modernity. [\[x\]](#) Besides, in the developing world, particularly in South Asian countries like India, other forms of displacement accruing from urban infrastructure projects, mining etc are catching up with dams in their magnitude and intensity of displacement caused.

Displacement predominately affects those who are politically and economically marginalized, and geographically isolated. In fact, when development-induced-displacement disrupts the lives of those displaced it benefits the interests and power of an elite minority. This showcases a development model in which there is no place for the poor majority[\[xi\]](#). In India, according to Fernandes, "clearly identifiable classes pay the price of development, while its benefits reach other equally identifiable classes" and most displaced or project-affected persons belong to classes that are "kept at the lowest level of the socio-economic totem pole" for e.g., out of an

estimated 21.3 million displaced persons in India between 1951 and 1990, no fewer than 40 percent are the predominantly common property resources (CPR) dependent tribals who form 8.08 percent of the country's population.<sup>[xii]</sup> The Sardar Sarovar project in India, often described as one of the most flawed projects, displaced largely the Tadvis, Vasavas, Bhils and the Bhilalas, but very few caste Hindus. Most of these displaced communities are those dependent on CPRs and most developing countries do not recognise the right of these communities over these resources they are deprived of their livelihood without adequate compensation or any other feasible alternative.

The current DID debate thus highlights the need to focus on the rights of these marginalized displaced groups. In the absence of any formal legal titles, neither the LAQ 1984 Act nor its recent amendment introduced by the Government of India acknowledge the rights of the landless and those with customary land rights to compensation.<sup>[xiii]</sup> Research has proven that development-induced displacement that affects the poor and the marginalized communities doubly impacts women<sup>[xiv]</sup> and children.

### The South-Asian Situation

As much as development-induced displacement exhibits similarities in its outcomes for those it displaces, there are also varieties in its instances. The wide spectrums of cases all over South Asia<sup>[xv]</sup> amply demonstrate this fact. Their study brings in more variables into the development displacement relationship.

In North-Eastern **India**, DID has often contributed to the deterioration of ethnic relations and exacerbated the process of conflict, for e.g., in the state of *Tripura's* south district, the Dumbur hydroelectric project uprooted thousands of tribal people. But it benefited both the migrant Bengali fishermen, as they got fishing opportunities in the reservoir lake, and the urban dwellers who got electricity from it. Also in the *Meghalaya* State's Domosiati and Wakkhaji region the Khasi and Jaintia people have stridently opposed uranium mining by the Indian government agencies. The tales from the northeast reflect how the indigenous population is often pushed to the margins of citizen. <sup>[xvi]</sup> Other development activities like mining have since 1947, in states like *Orissa*, displaced approximately 1.4 million people. Of these 50,000 people have been displaced by mining projects while new projects intend to displace another 100,000. Most of these are tribals as according to the 2001 census there are more than 90 million tribal people in India and large concentrations of these are in eastern and central states like Orissa. Lately as a result of economic liberalization, the mineral-rich lands they have lived peacefully on for centuries are being eyed by transnationals as well as Indian mining companies.

Over the past year or so, Orissa's government has processed something like 35 major proposals to build steel plants or set up mines in the state worth more than \$25 billion. They include players like the POSCO, Australian BHP-Billiton, the world's largest mining company, and India's Vedanta Group, owned by 'metal maharaja' Anil Agarwal. The Japanese conglomerate Mitsui, which already owns mining concessions in Orissa through an Indian subsidiary, has plans for further investments in the state worth \$3 billion. What is primarily cause for worry is that while millions of tribals displaced by erstwhile development projects are still awaiting rehabilitation, more new displaced persons are being created in Orissa. It was only after police violence killed innocent tribals in Kalinganagar that the Orissa Government recently announced a new policy named the Orissa Resettlement and Rehabilitation Policy, 2006.

Micheal Cernea had pointed out long back in 1993 that "Forced Displacements have remained to date a relatively silent companion of urban growth. Yet the frequency and magnitude of compulsory displacement are likely to increase in the developing world as the trend towards urbanization grows stronger". Development projects that are oblivious to the perils of impoverishment through displacements are shown to be in conflict with the poverty reduction goals of urban growth strategies. The financial capital of India, the city of *Mumbai* has huge plans of urban development to realize its dream of becoming India's 'Shanghai'! In collaboration with the World Bank, the government of Maharashtra is co-financing the Mumbai Urban Transport Project (MUTP) which is expected to improve rail and road systems in Mumbai at the cost of displacing over 100,000 people. This project received the Bank's financial support as the Maharashtra state government had adopted formally a resettlement policy, which would be a step in the direction of creating a better framework to manage urban displacement.

In **Pakistan**, development projects, like the Mangla, Tarbela and Ghazi-Barotha Dams have given rise to a number of displaced populations who face acute problems with regard to land acquisition, resettlement, rehabilitation, compensation and environment depletion. Their problems show similar patterns, for eg., those displaced by the Tarbela Dam are still awaiting compensation; the Ghazi-Barotha Hydropower project, despite being declared a model project, still awaits the implementation of its resettlement plans in an integrated manner. This does not stop new projects like the ambitious hydropower project named 'Vision 2025' which in all likelihood will add to the number of internally displaced in the country.

Even decades after the Mangla Dam of Pakistan, the world's third largest earth-filled dam, officially displaced 5,000 persons (independent figures add the numbers to a whopping 35,000) those displaced by the Dam neither have ownership rights to their resettled lands and nor electricity or drinking water in their colonies. The Tarbela Dam, supposed to displace 80,000 people and submerge 100 villages by its reservoir, ended up displacing 96,000 people and submerging 120 villages. Besides, the WCD study had found out that even 35 years later around 2,000 displaced families (approximately 20,000 people) are still awaiting to get their claims settled and thus are without adequate compensation to buy alternative land. The Kalabagh Dam, estimated to displace 83,000 people, has remained the most controversial dam in Pakistan for two decades and political pressure has kept its progress in a limbo.

On the other hand the Ghazi-Barotha Dam that was expected to be a model project as it had a comprehensive rehabilitation plan incorporated within it, was in 2002 termed as the biggest 'Land Acquisition Scam' in South Asia as investigations showed that 200 affected people including 80 women had received excessive land compensation![\[xvii\]](#)

Along with dams, in Pakistan too infrastructure projects have added to the woes of DID. The Islamabad Capital Territory Case has even witnessed brutal acts of the state machinery like police firing on villagers of Sri Saral protesting against non-payment of compensation. The National Motorway Network Project, launched in the early nineties, to connect the northern and southern parts of Pakistan became a 'sorry example of projects creating displacement in recent times'. Its construction work was completed chaotically and hastily and it made life very difficult for thousands of families living on its periphery as it not just displaced people but also divided their lands and blocked approaches to them, stopped water supply lines, cut approach ways to cattle grazing grounds and left women particularly marginalized as it reduced their mobility. The Lyari Expressway Project, another huge infrastructure project in Pakistan intended to displace 203,200 people has caused the Pakistani government to be accused of violating national law on a massive scale as the project's details were kept secret, its resettlement were plans not designed and demolitions for it were carried out in the presence of army and rangers personnel (who beat and tear-gassed protesting residents!). 'The project has created a lot of confusion among displaced communities...the project is a real human disaster where citizen's rights were violated on such a scale'.[\[xviii\]](#)

The acceptance by the state of **Bangladesh** of the modernisation paradigm in development, accompanied by incoming international capital, has also caused displacement in different parts of the country. Forced evictions by the state have made the displacement process even more painful. The rush of the rural poor to urban areas has caused urbanisation of poverty but the government has not recognised the right of the poor to live in the city. Instead, programmes to take the poor back to the villages and resettle them there have made successive governments resort to forced evictions. 'The people living in the slums were very poor and when the government evicted them in the name of rehabilitation and various training programmes they became internally displaced in the real sense of the term.'[\[xix\]](#) In fact the 'urban cleansing' of Agargoan has been a violation of all forms of human dignity and the fundamental rights of the poor. Displacement is also of a mixed nature. Areas of development displacement can also be converted into areas of conflict as the case of the Chittagong Hill Tracts clearly portrays.

In **Myanmar (also Burma)** along with conflict-induced displacement, cases of development-induced displacement also remain a major area of concern. Since the early nineties, three western oil companies viz., Total, Premier and Unocal, have entered into partnerships with the Burmese military regime to build the Yadana and Yetagun pipelines. But the creation of this highly militarised pipeline corridor has been at the expense of violent suppression of dissent, environmental destruction, forced relocations, forced labour, torture, rape and summary executions. 'It may be noted that development-induced displaced people in Burma have very limited access to the basic amenities in life'.[\[xx\]](#)

The irony of development-related displacement in **Nepal** is that its extent and history has been nearly forgotten as there exist no records of people affected and none either of compensation given e.g., the 1960s Hydropower Project Trishuli had no coherent plan for land acquisition. The Rara National Park, that displaced 331 households had, till 1987, not provided land registration to 222 households. But, according to Harka Gurung, in 1989 those displaced around the Rara Lake were found to be better off economically at their new location. The Kulekhani Hydroelectric project of the late seventies had displaced around 3000 people. But though it managed to provide compensation for 450 houses and 50 water mills it did not take into account the loss of trees and bushes. Gurung observed that majority of the households displaced and compensated under this project become poorer than before and that while those with large cash compensation gained most those with less were adversely affected.[\[xxi\]](#)

### **Issues of Policy and Law**

The essential conundrum within the development displacement debate is that the very state that displaces people and converts them into DIDs is again the repository of their rights. Thus the next question is that what place do DID Rights have in Law? The post-independent Indian state embarked on a project on nation-building through extensive and rapid development projects and found a convenient ally in the colonial Land Acquisition Act of 1894. This age-old Act allowed compulsory acquisition of land from private citizens for the 'common/public good', also termed as 'national interest'. It is in pursuance of this principle of 'eminent domain' by the Indian state that property rights of the state came to infringe on the rights of the DIDs. In some Indian states, Displaced Persons Acts were legislated in the past two decades but were not used in most cases. As a result, for most projects anywhere in India, the actual legal framework under which the affected people are displaced is the Land Acquisition Act, originally framed as a colonial law for land appropriation in 1894. In the South-Asian State of Pakistan too, in the absence of any national resettlement policy, the LAA 1894 serves as the basic law, amended and updated differently in different provinces. In both these states this law stands much outdated.

"It is a cruel joke that the Indian Government did not wish to promulgate a national policy on Rehabilitation and Resettlement (R & R) for serving its own people or discharging its constitutional responsibilities"[xxii] Until now work on Rehabilitation policies and acts have only been piecemeal, only few ministries have produced departmental rehabilitation policies (though packages implemented under different projects of the same ministry have often differed and departmental policies have also kept changing!) Some selected projects have also seen their state governments enacting legislation to provide them with R&R packages. The 2004 National Rehabilitation Policy is the only umbrella one till date. The states of Orissa and Rajasthan had policies for rehabilitating water resource project displaced persons. NTPC and Coal India promulgated their policies in 1993 and in 1994 respectively. Though the recent 2006 Orissa Draft R & R Policy is an improvement on the national one it still has its own limitations and does not go too far in guaranteeing the rights of the displaced. Besides, the states of Maharashtra, Karnataka have laws on the rehabilitation of water resource displaced persons. Though in Madhya Pradesh no rules have been framed to actualize the Displaced Person's Act passed nearly two decades ago despite oustee demand. Big Dam Projects like Narmada and Tehri also have formulated their own R&R policies (though their cases of implementation are rare!) Thus invariably for most projects in India, the actual legal framework under which affected people are displaced is the colonial Land Acquisition Act of 1894.

But most of these legislations and state policies have been accused of "viewing rehab in minimalistic terms", "varying widely from state to state, project to project, and from authority to authority" and "having no link with LAA - which has governed compulsory usurpation of land by the state without any clause for rehabilitation".[xxiii] Finally after four drafts and two decades of deliberations, in February 2004, the Indian Government put forth the National Rehabilitation Policy for Project Displaced Persons. But instead of being the state's expression of concern for those displaced it has been accused of pandering to the interests of big business rather than the livelihood of the displaced.[xxiv] It neither provides for transparency nor any consultative process. Instead it encourages paying people cash instead of land for land. Thus today is the time for the development mechanism to reconcile private interests and people's concerns, apart from past injustices to the displaced people.

The NRP 2004 has loads of loopholes. Critics allege that in making it the Government of India seems to be in the midst of a policy surge - draft tribal and environmental policies are also being circulated - each of the RP drafts has been improvement on the previous one. The govt wants to present this as a shining example of its concern for DPs but "in reality its meant for big business that wants more land than in the past but does not want to spend on the rehab of persons displaced by land acquisition (DPs) and others whom the project deprives them of land or other means of livelihood without moving them away physically from their habitat (PAP)".[xxv] The newly promulgated policy seemed to ignore the whole previous process contained in the previous drafts. But the policy advertised in newspapers in Feb 2004 and yet to be notified puts that clock back by several decades. It had none of the progressive clauses that had been added during the period of consultation with the civil society during 1998-9. A principle that even the ministries that prepared the drafts had accepted was that the lifestyle of the DPs and PAPs should be better after the project than before it because they pay the price of development. It is based on Art 21 of the Constitution that protects every citizen's right to life(which the apex court has interpreted is as a life with dignity). It says that its objective is to 'provide a better standard of living to PAPs' but it does not elaborate on the mechanism to provide that. "But the benefits suggested in the policy can at best keep the victims poor and at worst push them below the poverty line". The NDA Government in power at that time was accused of attempting to portray its then Prime Minister, Vajpayee, as a messiah of the DPs by hurriedly promulgating that policy just three months before the national elections were due![xxvi]

Besides, although the Orissa policy promised better compensation for families to be displaced by various projects through three different packages for those displaced by industrial and mining projects, irrigation and forest projects, and linear projects such as highways, it does not go far enough in ensuring adequate representation of affected women in rehabilitation and other representative committees. The draft, while it has created separate categories for the displaced, with commensurate compensation, still does not specify norms stringent enough to assess land claims put forward by investing companies. Thus the need today to address the real policy issues that concern displaced people is acute. The question of the hour is that if laws do not sufficiently protect the displaced isn't the government to blame?

In the case of urban infrastructure projects like in Mumbai, there are growing protests that insist on a generalization of the rehousing policy set for MUDP. Cernea notes that its Project Appraisal Document (PAD) jointly prepared by the Mumbai authorities and the Bank "are silent on the 'risks' of losing employment, or of losing local business and customer base, or of specific risks to women, or of losing access to social services".[xxvii] Interestingly, for this project alone the state government has adopted a special policy for resettlement and rehabilitation that attempts to guarantee to those displaced new entitlements like new accommodations of approximately 225 square feet per household, with kitchen and toilet. Though this project is now being often cited as 'a good practice' it is interesting to note that on March 1, 2006, the Bank suspended its disbursements in two components of the project as it had problems with the grievance process, the equitable resettlement of shopkeepers, and rehabilitation of the people affected by the project. Though the Bank resumed its financing recently saying that it was satisfied with progress made in the concerned areas of R&R, this Project's policy issues involved in guiding forced resettlement need to be examined

The process of development-induced displacement takes away many rights from the displaced that ironically are granted to them by the Indian Constitution. Article 19 (e) of the Indian Constitution guarantees to its citizens the freedom "to reside and settle in any part of the territory of India" and Article 21 lays down that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Thus when land is forcibly acquired by the state Art 19 and 21 turn into paper rights.[xxviii] When the state takes away land and deprives CPR-dependent communities of their livelihood on the assumption that

the natural resources are state property “the right the state has appropriated to itself goes counter to the citizen’s fundamental rights”.<sup>[xxix]</sup> Besides studies have also shown that the few hard won rights that Project-affected Displaced Persons have are also substantially denied to them in practice by state administrations and governmental agencies.<sup>[xxx]</sup>

Where the executive has floundered the Judiciary has stepped in as a check - the Indian State’s judiciary has tried to uphold many rights of the development displaces. In Francis Coralie vs. Union Territory of India, the Supreme Court had ruled that ‘life and liberty’ would not imply mere animal like existence but something more than just sheer physical survival. It said that the right to life included the right to live with human dignity and all that goes along with it. In addition to adequate nutrition, and clothing and shelter over the head, the ruling included facilities for reading, writing and expressing oneself in diverse forms. On personal liberty, the court said that the expression is of the widest amplitude and it includes the right to socialise with family and friends. But displacement causes complete disruption of the traditional socialisation process.<sup>[xxxi]</sup> The Supreme Court, in a subsequent case, Olga Tellis vs. Bombay Municipal Corporation 1985 3SCC 545, went further and held that the right to livelihood and work were both also a part of the right to life. However, in reality, most of the DIDs are resettled in alien environments away from their traditional farmlands when all the working skills they perhaps had was farming. The Judgement of the Samata vs State of Andhra Pradesh (1997) had laid down that if you want to mine in a tribal area, the lease has to be held by a tribal or a cooperative has to be formed.

The Fifth Schedule of the Indian Constitution protects the right of the tribals and the earlier BJP government had tried to pass an amendment to the Fifth Schedule so that the Samata Judgement would not hold but they failed. Tribals form a large chunk of the development refugees in India and recently the Indian Government has introduced the Scheduled Tribes (Recognition of Forest Rights) Bills 2005 in an attempt to address their rights over their lands and forests. Recently a Joint Parliamentary Committee has made important changes in this Forest Land Rights Bill after hearing out people’s groups. The Bill will now recognise the rights of other forest dwellers in addition to scheduled tribes as only tribals are not forest dependent people and the bill should include every forest dependent communities like pastoral communities, agriculturalists, artisans, primitive tribal groups who live in and around forests and are dependent on them for their livelihoods.

Actually, the Development-Induced Displacees are stakeholders in development and should be entitled to rights as equal partners. The new development paradigm views development as real societal development.<sup>[xxxii]</sup> Within this new development perspective, reestablishment and restoration of the livelihoods of the displaced are domains in which affirming human rights, extending social justice and promoting inclusion than exclusion are high on the policy agenda.<sup>[xxxiii]</sup> Besides, minimalist, residualist and welfarist approaches of dealing with displaced populations has given way to the realization that the R& R process needs to be seen as a development project in its own right.<sup>[xxxiv]</sup>

Thus restoration of the rights of the displaced also essentially becomes a matter of ethics and justice.<sup>[xxxv]</sup> Today space for the Rights of the Displaced needs to be carved out not just within state policies, laws and judgments, and also political theory. Can the rights of the displaced be a claim for group or collective or individual rights? The claim for group rights of displaced is premised on the prior logical exercise of determining and defining what sort of a collectivity displaced persons constitute.<sup>[xxxvi]</sup> Can they be perceived as minority rights? Liberal theory supports the claims of individual rights yet its premises have argued a case for refugee rights and outlined a sphere for them. What about the theoretical base of the rights of development displacees?

The study of cases in all South Asian countries show similar problems of delayed resettlement, inadequate compensation, and use of force and secrecy in projects and overall infringements of rights. The essential dilemma remains the same that the benefits of development cannot be denied but how can its costs be reconciled., If earlier just state actions weren’t enough how can today foreign capital displacing tribals be justified?! In lieu of the growing trend of urbanisation how can forced evictions and literal acts of ‘urban cleansing’ reconcile with the right to adequate housing? Will just taking gendered view of development-induced displacement ensure better protection and rights for displaced women? Many questions remain unanswered.

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[iv] Pettersson, B. ‘Development-Induced Displacement: Internal Affair or International Human Rights Issue?’, *Forced Migration Review*, Issue 12, 2002, 16.



[v] Downing <http://www.ted-downing.com/Publications/E5/E5.htm>(accessed in March 2005

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[vii] The Cernean 'Spiral of Impoverishment' Model illustrates that a development displacee suffers from landlessness, homelessness, joblessness, marginalisation, food insecurity, increased morbidity, loss of access to common property resources and community disarticulation – all of which add to his impoverishment.

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[xi] Mathur, Hari Mohan (ed) *Development, Displacement and Resettlement: Focus on the Asian Experience*, Vikas Publishing House Pvt Lmt, New Delhi,1995.

[xii] Fernandes, Walter, 'From Marginalisation to Sharing the Project Benefits' in Cernea, M. M and McDowell, C. (ed) *Risks and Reconstruction : Experience of Resettlers and Refugees*, The World Bank, Washington DC, 2001, 205-207.

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Delhi, 1997,3.

[xiv] See Paula Banerjee, 'Resisting Erasure: Women IDPs in South Asia', in Banerjee et al Internal Displacement in South Asia, SAGE, 2005.

[xv] Most of the examples taken from South Asia in this chapter are from 'Internal Displacement in South Asia' ed by Paula Banerjee, Sabyasachi Basu Ray Chaudhury and Samir Kumar Das.

[xvi] Subir Bhaumik, 'India's Northeast : Nobody's People in No-Man's Land' in Banerjee et al (ed) *Internal Displacement in South Asia*, Sage, 2005.

[xvii] Atta ur Rehman Sheikh, 'Pakistan: Development and Disaster' in Banerjee et al (ed) *Internal Displacement in South Asia*, Sage, 2005

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### **Show how the UN Guiding Principles on Internal Displacement base themselves on human rights and humanitarian legal regimes.**

Neha Bhat

IDPs have increasingly become part of the international human rights concerns since the end of the Cold War. The restrictive nature of current refugee policies has further given impetus to the problem of IDPs, with many persons faced with refugee crises opting to become IDPs in their country of origin once international protection and aid have ceased. Unlike refugees however, IDPs look up to their own government, in many cases the same government which is responsible for the inadequate handling of the displacement situation, for protection of their rights.

Till the 1990s there had been a lack of comprehensive, cohesive and systematic approach to address the problems concerning IDPs. Most states have been reluctant to allow international involvement in the IDP issue given the considerations of sovereignty involved, both territorial and political. There has therefore been very little, in terms of aid and assistance that the international community per se has been able to do for the IDPs in various countries across the world.

The Guiding Principles of 1998 are the most important milestone in terms of legal instruments formulated to fill the gap in the international protection system and to promote assistance for the IDPs. Although the Principles have no legal binding, they are steadily gaining recognition and moral authority at the international, regional and national levels. The Principles aid in developing policies for assistance and protection by various human rights agencies working with the IDPs and also help create a deterrent effect, furthering the observance of the rights of the IDPs.

The UN Commission on Human Rights in its Resolution 1992/73 urged the Secretary General to designate a Representative on IDPs. The Working Group<sup>[1]</sup> formed to compile the relevant provisions of international human rights and humanitarian law and refugee law found that although there already existed an extensive legal regime of rights of the displaced under the general international law regime, there were areas which were not sufficiently covered by the law. The Working Group identified four categories of gaps within the international law covering IDPs.<sup>[2]</sup>

1. Normative Gaps: where international law fails to provide any protection for particular needs. (e.g. Restitution of Property lost due to displacement or compensation for loss)
2. Applicability Gaps: where a legal norm exists but is not applicable in all circumstances. (e.g. conflict situations where in Human Rights Law is applicable but not International Humanitarian Law principles)
3. Consensus Gaps: where a general norm exists but a more specific right has not yet been articulated to ensure implementation in areas of a particular need to the IDPs. (e.g. prohibition of cruel and inhuman treatment but not a right specifying non return to conditions of danger)
4. Ratification Gaps: where States have signed but not ratified key human rights treaties or the Geneva Conventions and are therefore not bound by their provisions, except to the extent of customary law that has arisen out of the treaties.

Although the Special Rapporteur, Mr. Deng had the backing of the UN General Assembly to proceed and develop an international legal framework for the IDPs based on the Compilation and Analysis Report, many players questioned the need for a body of principles specifically applicable to the IDPs. It was argued that new standards could detract from efforts to implement the standards that already exist. Concern was also expressed that a normative framework specifically tailored to the needs of the IDPs could result in discrimination against other groups. But it was pointed out by the Special Rapporteur that such Principles were necessary in order to make the law more explicit, fill gaps and illuminate gray areas and bring together in a cohesive document, the whole of the law as applicable to the IDPs.

Over the format of the Guiding Principles, it was felt that promulgating a new treaty could entail various risks. Primarily the treaty forming process in Human Rights was becoming increasingly difficult and also there was no guarantee whether states would reach an agreement or not. Even if an initial agreement was reached, many years sometimes pass before sufficient ratification is obtained (e.g. the Convention on the Rights of Migrant Workers and their Families which took 13 years to acquire the requisite number of ratifications). Further, there is a possibility, since the ratification of an instrument is upon the discretion of a particular state, that even if most affected by the issues contained in Convention or Treaty, the state is not party to the same. There was also the apprehension that negotiation could result into 'renegotiation' by states which may help formulate new standards, but with considerably higher restrictions and constraints. It was finally decided that the Guiding Principles would be in the form of a non binding instrument exerting adequate moral authority over the nations wanting to adhere to the same. It was further felt that the instrument could attain authority through use and help create the moral and political climate needed to improve protection and assistance for the IDPs while avoiding confrontation with governments. The Guiding Principles it was felt, could lead to the creation of a binding legal instrument, if such were considered to be necessary.

The 30 Guiding Principles were finalized in 1998 and apply to both the government<sup>[3]</sup> and insurgent forces and non state actors<sup>[4]</sup> and deal with all stages of International Displacement: Pre-displacement, protection in times of displacement and post displacement processes for return, resettlement and reintegration.

The moral authority that the Guiding Principles exert is implied in the acknowledgment that they have received at various international forums: 1998 Resolution of the Commission of Human Rights, 2003 resolutions of the Commission and the General Assembly,<sup>[5]</sup> Security Council,<sup>[6]</sup> the Inter Agency Standing Committee, the Inter American Commission on Human Rights and the Organization of African Unity.<sup>[7]</sup> The Guiding Principles have also been adopted various regional level organizations<sup>[8]</sup> as well as many national governments like Angola, Burundi, Colombia, Liberia, Sri Lanka etc.<sup>[9]</sup>

The following offers a comparative look at the various existing legal principles which have been reiterated in the Guiding Principles. It is essential to understand that Guiding Principles merely restate legal principles contained in various 'hard law' instruments in International Human Rights law. They are part of the body of 'soft law'.

The first four principles, based on Article 7 of the UDHR; focus on equal rights, equal obligation, universal applicability of the Guiding Principles, right to seek asylum and the responsibility of states. The principle concerning duty of the sovereign state to implement requisite assistance for IDPs was reiterated by UN General Assembly resolutions 46/128 of 19 December 1991 wherein the General Assembly observed that "the sovereignty of affected states and their primary role in the initiation, organization, co-ordination and implementation of humanitarian assistance within their respective territories."

Guiding Principles 5 through 9 are concerned with the issue of protection from involuntary displacement. These principles, based on Article 13(1) of UDHR,<sup>[10]</sup> as well as reflecting the concerns of Article 49 (3) Geneva Convention IV, Article 17 (1) Protocol II,<sup>[11]</sup> Article 2 (3) ICCPR, Article 33 (1) Geneva Convention IV, Article 75 (2) (d) Protocol I and Article 4 (2) (b) Protocol II affirm the right of individuals to be protected against arbitrary displacement and the responsibilities of governments and other authorities to prevent such displacement. They also focus on procedures to be followed to minimize the adverse effects of displacement when such movements take place. In cases of displacement for 'imperative military reasons', the displacement must also stand the test of reasonableness. In so doing the imperative military reasons must be defined narrowly to minimize the occasions and the number of

persons involved. Even then alternatives to displacements should be identified and the affected populations must be consulted thorough out the whole process.

Guiding Principles 10 to 23 address protection issues during the time of displacement. These principles can be divided into four sub groups: the first set focusing on the physical safety and security of the displaced individual, the second set on the family rights, the third set focusing on economic and social rights and the fourth on civil, political and other similar rights.

Guiding Principles 10 to 15 concentrate on most basic rights of IDPs and ensure the right to life, right to dignity and integrity, protection against arbitrary arrest and detention, choices of residence, protection against forcible return, protection from forced military recruitment etc. Principle 12 lays down that IDPs shall not be ordinarily be interned or confined to camp echoes the same sentiment as provided in Article 9(1) of the ICCPR. These rights already exist in different human rights law. These Principles reflect Articles 3 and 5 of UDHR, Article 12<sup>[12]</sup> of the ICCPR and Article 4 (3) Additional Protocol II to the Geneva Conventions.<sup>[13]</sup>

Guiding Principles 16 and 17 emphasize the importance of preserving the family unit during the displacement. Many IDPs are separated from their families as a result of the situations that uproot them. These principles reiterate Article 16(3) of UDHR,<sup>[14]</sup> Article 20 of the Geneva Convention IV<sup>[15]</sup> as well as Article 3 of the Child Rights Convention.<sup>[16]</sup>

Guiding Principles 18, 19, 21 and 23 talk about economic, social and cultural rights and include right to adequate standard of living, right to health and medical care, right to participation of women, right to education, right to work, property rights etc reflecting the Articles 11(1) and 12 of ICESCR as well as principles of CEDAW. Article 23 of UDHR conferring a right to own property is also reflected in the Guiding Principles. Guiding Principles 20 and 22 describe the civil and political rights reflecting the legal foundations of Article 16 of the ICCPR<sup>[17]</sup> and Articles 17, 19, 23 and 26 of the UDHR

Access to humanitarian assistance is one of the most pressing problems for the IDPs. Guiding Principles 24 to 27 deal with the roles and responsibilities of national authorities and international organizations in providing humanitarian assistance to IDPs. According to these principles the paramount responsibility is of national authorities to assist their citizens, but they also affirm an important role for international humanitarian organizations and other appropriate non state actors. These principles reflect the ICRC view that humanitarian aid is not partisan or a political act and should not be viewed as such.

Principles 28 to 30 set out standard for return or resettlement and reintegration of internally displaced persons. It flows from Articles 12 of the ICCPR, Article 13(2) of the UDHR and Article 49 of Geneva Convention IV. These include right to return or resettle, right to return of property or compensation and also the responsibilities of national authority, international organizations. Every citizen lawfully within the territory of a State has, within that territory the liberty of movement and freedom to choose his residence. Sovereignty means responsibility and national authorities have the primary duty and responsibility to ensure that durable solutions are formed for internally displaced persons. They are also expected to create conditions which would facilitate their return and settlement with dignity.

It is thus not difficult to see that the Guiding Principles are indeed based on existing Human Rights and Humanitarian Law principles formulated at the international level.

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<sup>[1]</sup> The Working Group was formed under the leadership of Robert Kogod Goldman of the Washington College of Law, Walter K. Kalin at the University of Berne and Manfred Nowak of the Ludwig Boltzmann Institute.

<sup>[2]</sup> KORN DAVID, *EXODUS WITHIN BORDERS*, p.87-88, Brookings Institution Press, Washington.

<sup>[3]</sup> Principle 3 casts an affirmative duty on the State to protect the rights of IDPs and does not look at the notion of sovereignty as a barrier to realization of the rights.

<sup>[4]</sup> Principle 2 states that all authorities, groups and persons irrespective of their legal status have to observe these rights. Also see Paragraph 3 of the Preamble.

<sup>[5]</sup> FISHER DAVID, *EPILOGUE: INTERNATIONAL LAW ON THE INTERNALLY DISPLACED PERSONS* in BANERJEE PAULA ET AL. (EDS.) *INTERNAL DISPLACEMENT IN SOUTH ASIA*, p.327 at fn 61, Sage Publications, New Delhi.

<sup>[6]</sup> *Ibid* at p. 328, fn. 62- 64.

[7] KORN DAVID, *EXODUS WITHIN BORDERS*, p.90-91, Brookings Institution Press, Washington.

[8] FISCHER, *Supra* Note 5 at p. 328, fn. 65.

[9] *Ibid* at fn. 66-71.

[10] Everyone has the right to freedom of movement and residence within the borders of each state.

[11] The displacement of civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.

[12] Everyone lawfully within the territory of a state shall within that territory have the right to liberty of movement and to choose his residence.

[13] Children shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.

[14] The family is the natural and fundamental group unit of society and is entitled to protection by the society and the state.

[15] Each party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war with the object of reserving contact with one member and of meeting, if possible.

[16] In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

[17] Everyone shall have the right to recognition everywhere as a person before law.

***On the basis of a close reading of Internal Displacement in South Asia write an essay on how development have often led to displacement in South Asia.***

Hina Shahid

**Introduction:**

Yet, another displacement of around 1.5 million people through development project is ahead in the coastal region of Sindh. The so-called plan of constructing "Diamond Island City" on Buddo and Bandal Islands has put the livelihood of the coastal communities at risk. The military rulers of Pakistan have been violating the constitution by selling the institutions in the name of privatization on the one hand, and purchasing the same with other hand. Here the question arises, where we, the South Asian, will go? We have already been treated as slaves by World Bank, ADB and other IFIs. But, shall we continue to give away our resources to the global financial dictatorship as to increase the count of internally displaced persons.

There are numerous stories about such facts as to how development projects on various islands throughout the world had a negative impact on the human life and nature. A famous story of Mexican Cancun Island would be pertinent to cite here. Before its development, Cancun Island was a barrier island, 17 km long and 100-400 m wide. It faced the Caribbean Sea and enclosed a shallow lagoon and was an important nesting site for seabirds and sea turtles. There were several openings to the mangrove lined lagoon in which there was a variety of marine life.

In order to create a tax base for the newly created state of Quintana Roo (1973), it was decided to create an upscale resort for the wealthy. Quarries were developed and causeways were constructed for linking the island to the mainland, restricting the flow of fresh water into the lagoon. Sections of the lagoon were filled for golf courses and amusement parks. Sewage treatment and the disposal of other wastes became a major problem, and eventually the exhausted quarries were used as rubbish dumps, polluting the groundwater supplies. The creations of marinas in the lagoon created further problems. Thousands of unskilled workers were brought into the area, where no running water or sewerage services were available, and where disease is a constant problem. Many of these workers, having few other skills, turned to crime for survival, resulting in a frightening clash of cultures. After 15 years of development, Hurricane Gilbert hit Cancun in 1988, resulting in considerable destruction and hardships. Many of the beaches disappeared; there was no water, no food, and no electricity. Although Cancun Island is not the only case to refer, there are several others, but who cares for the disasters till they unfold and have taken their toll ('Natural Resources on sale' Draft Report).

Vulnerable communities of South Asia, who have been living since centuries in their ancestral abodes, lost their livelihoods in the name of "Development". Their livelihoods have been degraded due to large-scale reduction in the resources, which were based on agriculture land and fisheries. The region has been suffering from rising unemployment, hunger, water and power shortages, lack of basic services and infrastructure for the masses. Yet the governments, without so much as a by-your-leave or any consideration

whatsoever for what our real priorities are, keep on giving new territories for luxury developments to foreign firms. With the large-scale degradation of the natural resources, the resource politics has almost reached a no-return situation in the coastal areas[i]. Ongoing World Bank projects in Asia are estimated to displace over 1.5 million people[ii]. Somehow, reliable estimates of the number of people displaced by ongoing Bank-financed projects are not available. A lot more needs to be explored and not in the least the experiences of, as Pandey (1997:2261) aptly described, 'refugees in their own homes'.

Thrust, starvation, considerable migration and internal displacement of people in different parts of the world is hoisting the question of its endurance since last many decades. Before talking about the development-led internal displacement in South Asia, we will briefly touch the memories of World War I & II that forced millions of people to become refugees. This discussion will help to understand the situation of internally displaced persons in broader perspective. After the Russian Revolution of 1917, and the subsequent civil war, about 1.5 million refugees fled the Soviet Union. More than one million went to Germany, Poland, and the Baltic; about 200,000 fled into Turkey; 150,000 went to China. The dislocations of early 20<sup>th</sup> century pales next to the chaos of the 1940's, when more than 50 million refugees were displaced collectively by several upheavals, such as the ravages of World War II, the bloodied Partition of India and Pakistan, the creation of Israel, and the conflict in Korea, China, and elsewhere. The total flow of German ethnics, 6.5 million, and citizens, 10 million, is one of the largest refugee movements in history. More than 1 million died, nine million ended up in West Germany, 3 million in East Germany, and 500,000 in Austria. About 2 million remained in the East. The UN Relief and Rehabilitation Administration (UNRRA) was established in 1943 to aid refugees who had fled "to escape persecution or the ravages of war" and displaced persons "who had been removed by official or para-official action" camp survivors and slave labourers. In the 1960s and 1970s, refugee movements developed in countries that had stayed away from the center of the turmoil of the 1940s. The most dramatic growth in the refugee problem occurred in Africa, where the number of refugees was estimated at more than 4 million in 1980. African refugee problems are different from those of Europe. Around 90 percent refugees are from rural areas. In Asia, from 1959 to the mid 1960s, more than 100,000 refugees fled Tibet to China and India. A civil war in 1971, in East Pakistan, which had declared its independence as Bangladesh, caused 10 million refugees to flee to India, where they lived in refugee camps. After 1978, Muslim tribesmen in Afghanistan resisted Communist government there; the subsequent Soviet invasion and suppression of the guerrillas led more than one million Afghans to flee, mainly into Pakistan and Iran[iii]. Until the last decade of twentieth century, the forced displacement of persons within their own countries was included in international agenda[iv].

Yet, there are millions of refugees in the developing countries such as Pakistan, India, Sri Lanka, Nepal etc, who do not have the rights of the citizenship. They are being exploited by the law enforcement agencies in the name of illegal migrants. Under the charter of UNHCR, the repatriation process to such few refugees has given an opportunity to return to their homes.

While studying the refugee flows, that describes physical movement from one country to another, one common understanding has been highlighted, and that is that refugees are somehow being repatriated, rehabilitated etc, but the internally displaced persons within the country have meager options for such settlements. The governments of South Asian states do not have a concrete policy for rehabilitation and resettlement of the displaced people. The international principles on IDPs are also not being followed by them. According to David Fisher, "internally displaced persons face conditions as bad as—and frequently much worse than—refugees".

Despite a drop in refugee totals from 9.5 million in 2004 to 8.4 million last year, overall number has increased by 1.3 million--- from 19.5 million to 20.8 million. Much of the increase is due to rise in the number of people living in refugee-like situations, in slums and dumps, within their own countries. There are around 6.6 million conflict-generated internally-displaced people in 16 countries as compared to 5.4 million in 13 countries at the end of 2004 (UNHCR "2005 Global Refugee Trends"). The world estimates 20-25 million IDPs sometimes called "internal refugees", who are not covered by the 1951 Refugee Convention, because they have not left their countries. Nevertheless, they face many of the same problems as refugees.

The International Financial Institutions (IFIs) have unique specialty to exploit the natural resources of the developing countries by inducing Mega Projects. Being low-income countries, South Asian states accept heavy loans from different international organizations to fulfill monetary requirements of the developmental projects. Under the motto of Poverty reduction, heavy investments by the IFIs into development projects have proved complete disasters for agriculture lands, ground water quality, environment and other livelihood sources of most of the communities of the developing world. Despite having been demonstrated as a total failure over many decades, consecutive governments across the region have continued to feed the already-discredited myths—that exports and foreign investment provide the panacea for the developing world's social and economic problems. While foreign investment and exports do have an important role to play, there is no greater priority than, or substitute for food, livelihood and environmental security, especially in agricultural based countries that can ensure them. It is widely believed that the process of globalization and privatization will hasten the pace of displacement (R&R).

The dilemma of development-led projects that is faced by Third World Countries is immense. The increasing rate of disasters throughout the world causes immense hardships to the lives of people, which cannot be measured. The intricate intertwining of the environment and peoples' lives and livelihood is a noticeable feature in this region[v]. The farmers lose their lands and are forced to work for the industry. Environmental degradation has succeeded in displacing agricultural and agriculture-related work, and activities like rearing of cattle and poultry[vi]. Children in displaced families are reported to be put into child labour markets as to participate in the household economy[vii]. The impact of such faulty projects introduced by World Bank and Asian Development Bank time-to-

time not only affects the livelihood of the people and displace them, but also it does effect the gender relations. Woman's contribution to the household income by the state and project authorities has led to thousands of women being forced into relationships of dependence on male members (R&R). The World Bank and IMF have had 60 years to prove they were doing a constructive job for the South and were indispensable for development. Sixty years, instead, turned out to be excess latitude, leading to the destruction of the economies and the environment of virtually all the hundred or so countries they have lent to [viii].

Let me now begin with the stories of people's sufferings through out the South Asian region by pointing some examples, who are the victims of induced disasters caused by development projects, which has become a regular feature.

## Pakistan

Amongst the population of 158 million, something like 38 million people in Pakistan are living below the poverty line [ix]. In greed of heavy investments for the economic development of the country, the state authorities have given the development plans in the hands of IFIs to play with the livelihood of millions. Being an agricultural country, the entire population depends on the water of Indus system, mostly derived from the melting of snow of the western Himalayas. At the time of independence, 5000 cu/m of water was available for each Pakistani, which has reduced to 1000 cu/m because of uncontrolled population growth [x]. The economic development planning in Pakistan since its independence was based on industrialization. Various mega-development projects were launched to exploit natural resources, which played havoc in terms of displacement of thousands of people from their ancestral homes and habitats [xi]. The construction of *Mangla Dam* caused displacement of around 30,000 people; *Tarbela Dam* caused displacement of 96,000 people and destroyed 120 villages [xii]. *Ghazi Barotha* Hydropower Project looks forward to affect 52 villages and displace around 21,653 people. On the other hand, projects such as National Motorway, *Layari Expressway* have become the reason of the destruction of the livelihood of the people. The absence of resettlement policies and laws, or the use of laws promulgated during the colonial period has left a big number of population marginalized.

**Table 1: Major Floods of Indus Basin in Pakistan**

Year	Monetary Losses	Lives Lost	Villages Affected	Areas Flooded
	(Billion Rs.)	(No.)	(No.)	(miles <sup>2</sup> )
1950	9.08	2,910	10,000	7,000
1955	7.04	679	6,945	8,000
1956	5.92	160	11,609	29,065
1973	5.52	474	9,719	16,200
1975	12.72	126	8,628	13,645
1976	64.84	425	18,390	32,000
1978	41.44	393	9,199	11,952
1988	15.96	508	100	4,400
1992	56.00	1,008	13,208	15,140
1995	7.00	591	6,852	6,518

Source: World Resources Institute

Following is one of the examples, which will give an in-depth scenario and the volume of displacements that continue unabated in Pakistan.

### Case Study: LEFT BANK OUTFALL DRAINAGE (LBOD)

The British rulers commissioned Sukkur Barrage in 1932, introducing one of the major irrigation systems of the world in Sindh. The irrigation system was launched by British rulers and brought at zenith during the 'Green Revolution' of Ayub Khan, which gave a boost to the agricultural sector. However, the dearth of indigenous expertise in the implementation of this irrigation system soon started eating away the short-term agricultural benefits. The non-availability of drainage system started playing havoc with the fertile lands, inviting the menace of water logging and salinity. The government authorities awoke to the problem in the '70s. A number of drainage schemes in Sindh were introduced to minimize the degradation of the fertile lands. Therefore, the project, Left Bank Outfall Drain (LBOD) was launched with the aim of providing a long-term solution to the drainage issue of Sindh, for the first time by disposing the saline drainage water into the sea [xiii].

Eight donors, including World Bank (IDA), Asian Development Bank (ADB), Saudi Fund for development (SF), Overseas Development Administration (ODA-UK), Canadian International Development Association (CIDA), Islamic Development Bank, OPEC Fund, and the Swiss Development Corporation (SDC) financed the project [xiv].

**Table 2 Loans/Grant provided by various Agencies for LBOD Project**

Financing Agency	Type of Financing	Amount of Financing
		(US \$ million)
World Bank	Credit	150.0
Asian Development Bank	Credit	122.0
OPEC	Credit	10.0
CDA	Credit	14.6
ODA(UK)	Credit	35.7
Swiss Development Corporation	Grant	10.0
Islamic Development Bank	Credit	11.5
Saudi Fund for Development	Credit	60.7

Source: LBOD Stage -1 Project, (Booklet) WAPDA,

The investment of Asian Development Bank (ADB) in Pakistan's first and biggest drainage project completely destroyed agricultural lands, ground water quality, biodiversity and other livelihood resources of the coastal communities of Thatta and Badin in Sindh Province.

The LBOD stage-1 project was initiated in 1984, with the initial cost of Rs.9,202.9 million (US \$ 635.7 million) [xvi]. The project was conceived to control water logging of 1.27 million acres in the districts of Nawabshah, Sanghar and Mirpurkhas through a network of open-surface drains that convey the saline effluent pumped by tube wells via a spinal drain and a tidal link into the Arabian Sea [xvi]. The works of LBOD project could not be finished in estimated cost and time. The remaining works were included in the National Development Plan (NDP). The total cost at project completion is estimated at \$ 963.0 million, \$ 308.2 million higher than the appraisal estimate of \$645.8 million [xvii]. Thus, the World Bank and ADB increased the debt burden on the country. The southern part of Pakistan, where the proposed upcountry effluents supposed to be disposed, has less gradient, more flat topography and bestowed with natural shallow water depressions and vegetation. There are several thousand people who entirely depend on local *Dhands* (Small natural lakes), grazing and little agriculture. These *Dhands* provide livelihood resources to the forty villages, having population of around 12000-15000 fishermen. The collapse of Tidal Link Canal and *Choleri* weir constructed to regulate tidewater had a significant negative impact on the ecology of *Dhands*. Later in 1999, a cyclone hit the project area, damaging the Tidal Link embankments. Due to several technical problems, the drainage effluents instead of going into the sea started destroying lands and internationally recognized wetlands. The majority of the coastal communities belong to the *Mallah* people, who have been engaged in fishing since their forefathers. There are more than 100 villages of this community with the population of 50,000 and engaged in fishing at both the sea and contiguous wetlands [xviii]. The operation of LBOD brought significant changes in the lives of these people. Already poor, these communities are pushed into further absolute poverty and displacement from their ancestral land. The National Development Plan (NDP) has not taken into account the impoverishment of indigenous people and is also unable to anticipate the negative effect on the already miserable conditions of these poor fishermen. The project-induced problems like flooding, sea intrusion, loss of crops, and agricultural land, reduction in fish catches and loss of lives have sprouted up over the years, but nobody cared to overcome these faults. 300 people were killed and more than 5000 people were displaced as a result of the LBOD since it was launched in 1997, while 50,000 acres of agricultural land in eight union councils had been wasted by salinity. Some 10,000 fishermen lost their livelihood to become the victim of development led displacement; four vast wetlands, two of them internationally recognized, had been degraded owing to the damage to biodiversity, and about 52 species in the area had also been damaged. Both the government and the IFIs do not even identify the importance of wetland and risk due to such development

project [xix]. The local experts and indigenous communities are kept aside in the designing process of such mega process.

The situation of displacements that breeds due to natural disasters such as drought, earthquake and flood, cannot be ignored. Jacobson (1988) suggests that "environmental refugees have become the single largest class of displaced persons in the world". There are several examples of internal displacement due to natural disasters in the countries of South Asia. The drought spell of the year 2000 in province Sindh created the unsavoury *Mandis* (markets) of women and girls, where they were sold like animals [xx]. These women were kept in private prisons or taken to other parts of Pakistan and abroad for resale and for prostitution, drug smuggling and slave labour. The trafficked women and children from Bangladesh to Pakistan, which count around 200,000 [xxi] are either sold into prostitution or are thrown into bonded labour. Most of them are still living as slum dwellers. They face displacements from time-to-time, either by bulldozing of their colonies or by law enforcement officials for not giving them Bhatta (share). Their generations have grown up with the same violation of human rights. Yet, the status of 'illegal' migrants is still with them.

The recent October 8, 2005 earthquake, of 7.6 magnitudes, which hit northern Pakistan, has killed 73,000 and injured another 70,000 people, making 2.5 million people homeless and 2.3 million people without a secure food supply. Around 100,000 are living in make-shift camps. Also, more than half of 450,000 affected school children still need to be enrolled in schools, and around 1,500 water supply systems need repairing (UNHCR 2006). The comprehensive strategies for rehabilitation and resettlement of the displaced people are more often degraded by the malpractices by the authorities; therefore deprived communities become the victims of the so-called transparent policies of government. In this connection, supervision is essential to ensure transparency.



There is a dire need that Pakistan government should immediately draft a resettlement policy as the existing decades-old document does not address the issue of internally displaced persons (IDPs) at length. Also, the state should reframe the laws regarding the Land Acquisition Act so as to give much attention to the displaced communities.

## **Bangladesh**

The issue of internally displaced persons in Bangladesh is the same like its neighbouring countries India and Pakistan. Prior to Partition of India in 1947, the economy of united Bengal was totally focused on just Calcutta. Soon, after Partition, when Pakistan got East Pakistan, the political scenario kept on deteriorating, which resulted in the civil war of 1971 damaging the area's economic facilities and disrupting its trade patterns[xxii]. As a result, an independent Bangladesh faced very serious problems. In the summer of 1974, severe floods damaged the rice crop and caused famine. The internal displacement of people in Bangladesh is mostly led by river erosions, armed conflict, shrimp cultivation, and forced eviction.

At least 54,000 acres of settled cultivated land, mostly farmed by *Chakma* tribe were lost in 1957, when the government began the construction of the *Karnaphuli* hydroelectric project. Some 100,000 people lost their homes and agricultural lands. Due to such destruction of livelihood over 40,000 *Chakma* tribal people crossed the border into India where majority of them sought citizenship[xxiii].

The *Chittagong* Hill Tracts have been subjected to an extraordinary violence, which in turn evoked a violent response. The 5,093 square miles of the Hill Tracts (almost 10 percent of the land mass of Bangladesh) became highly militarized; 70,000 people crossed the border to India and 60,000 more were internally displaced by massacres, burnings and eviction[xxiv].

The Shrimp Cultivation has brought development-induced disaster to the people associated with agriculture. The communities living around the areas of *Sundarbans* became landless as their land and *Khas* or government-owned land is being used for such cultivation. This *Khas* land was supposed to be distributed among the landless. Unemployment also rose sharply in the area, as shrimp cultivators do not use local labour. [xxv]. Women got deprived economically as they were involved in raising goats and poultry as income-generation activities. Poor and landless women were often caught by police and became the victim of trafficking across the border, to be sold into prostitution. Furthermore, there are other examples of displacement within Bangladesh, such as forced eviction of the slums of *Agargoan* and brothels of *Tanbazaar* and *Nimtoli*[xxvi].

The responsibilities of internal displacements in Bangladesh rely on the state. The proper implementation of R&R program has to be followed as to protect and prevent the communities from environmental degradation, landlessness, unemployment and trafficking caused by development projects.

## **India**

During the last 50 years, some 3,300 big dams have been constructed in India. The then first Prime Minister Jawaharlal Nehru described the dams as 'the temples of modern India'[xxvii]. The displacement-induced development projects since the independence of India has become the permanent feature in shape of constructing big dams. Between the eras of 1955-1999 the installation of development projects such as mines, dams, and industries has displaced around 21 million people internally[xxviii]. The *Narmada* River Valley project caused the world's largest planned environmental disaster while constructing 30 major, 135 medium-sized and 3,000 minor dams[xxix]. *Sardar Sarovar* Project happens to be the largest scheme of the total project. Around 297 villages are to be demolished by the reservoir, displacing around 23,000 people in *Gujrat*, 20,000 in *Maharashtra* and 120,000 in *Madhya Pradesh*[xxx].

Displacement due to Kashmir conflict is still hard to swallow. The government's deputy commissioner for relief said that there were around more than 240,000 displaced persons in the Jammu region[xxxi]. Such conflicts breeds perfect grounds to capture lands of the displaced, violence and terrorism. In such conflicts, women and young girls are victimized by the militants through rape and sexual assault. *Kashmir*, the disputed territory since Partition is still disputed.

Looking into the situation of *Gujrat*, where the floods of *Morvi*, the earthquake in *Bhuj*, the construction of the *Sardar Sarovar* Dam, the anti *Dalit* riots, and the attacks on Christians in 1999, has displaced thousands people[xxxii]. The clashes due to unbalanced economic opportunities might be one of the factors of conflicts in the state. The scars of such riots are still visible, as people, who are directly affected, are put into relief camps. For example, in the city of *Ahmedabad*, around 50,000 people are sheltered in these camps[xxxiii].

Once again, it seems that on the one hand, construction of dams is causing havoc in the country by pushing the vast majority of the poor community into displacement sphere. And on other hand, the policy of R&R does not have sufficient provision for the displaced people. In these circumstances, the poor will be poorer, and thus such conditions create grounds for riots when state fails to give them basic rights of livelihood.

## Burma

The story of internal displacement in Burma began when the military expanded from 175,000 to more than 400,000 soldiers [xxxiv]. And got control on the areas populated by the ethnic minority groups since 1980s. The army of the State Peace and Development Council (SPDC) is the growing cause of the conflicts that has led to the displacement of people internally and across borders [xxxv]. The number of internally displaced persons (IDPs), as enlisted by humanitarian agencies in Myanmar, is between 600,000 and one million. Many villages were put on fire by SPDC troops in 1975. This exploitation continued, and the situation became worse at the end of 1990. Due to loss of livelihood, the communities are completely dependant on forced labour. When such deprived people retaliate, who are being exploited through extortion money, their houses are burned and violent action from the army results [xxxvi].

Women and children are more vulnerable under such violent action. As described by Sabyasachi Basu in the chapter 'Escape to Ordeal', Burma has one of the highest number of children within governmental armed forces in the world. This is pretty obvious that army-controlled states have fewer opportunities for civilians. The issues of street children, orphans and women are less addressed by the army authorities. Such children are the production of displacement events, which takes place more often. Under extreme conditions of compulsory recruitment in armed forces in Burma, each district and village is forced to contribute a minimum number of children to be recruited [xxxvii]. The inquiries made by ILO commission have failed to put any pressure on policies induced by SPDC.

The chronic situation of internal displacement of people in Burma has to be addressed internationally as to bring the attention of the international community in favour of displaced persons. The violation of Child Rights under the convention of CRC should be taken into account.

## Conclusion

It has been clearly observed while studying development-led displacement in South Asia, that in all of this financial hodge podge, the North is kept satisfied, while the South sinks deeper. And every year, against all common sense and sanity, governments ask for more loans, and the World Bank and other IFIs scramble to oblige. Thus, the governments commit themselves to reselling their people into ever-deepening slavery and impoverishment over and over again. Only a comprehensive R&R policy, drafted with the consultation of South Asian countries can bring opportunities for the displaced persons to enjoy development projects.

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***What are the special provisions for Women IDPs in international regimes of protection and care of IDPs. How far have they helped the cause of women's rehabilitation and care?***

Uma Joshi

The vast majority of people displaced due to conflict in the world are women and children, and most of them come from traditional agrarian societies where gender roles are highly differentiated and where discrimination against women is widespread. Gender is about how power is used and shared. In many countries, women tend to be less educated, have less experience dealing with authorities, have access to fewer economic resources and have more restriction on their mobility than men. Such gender hierarchy changes over time and is different depending on different culture.

Violence in itself is an umbrella term for any harm that is perpetrated against a person's will. It has a negative impact on the physical or psychological health, development, and identity of persons and that is the result of gendered power inequities that exploit distinctions between males and females, among males and among females. Although not exclusive to women and girls, GBV (Gender-based violence) principally affects them across all cultures. Violence may be physical, sexual, psychological, economic or socio-cultural. Categories of perpetrators may include family member, community members, and those acting on behalf of or in proportion to the disregard of cultural, religious, state, or intrastate institutions."

Gender-based sexual violence has become a weapon of war, often conducted on a massive scale. Such violence is frequent in countries where total impunity of perpetrators is the rule following the collapse of police and legal systems and the total chaos inherent to war. Gender-based sexual violence can consist of rape, force impregnation, forced abortion, trafficking, sexual slavery and the intentional spread of sexually transmitted infectious, including HIV/AIDS, etc. It is often used to demonstrate the power of the winning side and as a tool of psychological warfare to spread terror and panic in the enemy. GBV is also used to dehumanize the enemy. In any case, women are the main victims.

Since the last two decades, enormous increase in the number of internally displaced people has aroused in all over the world. Their situation is particularly vulnerable because of no specific legal mechanisms which could guide their rehabilitation and care. In 1990s, the international society felt the need to separate legal mechanism for IDPs. Humanitarian law allows IDPs to enjoy the full range of rights enjoyed by civilians and every human being in human rights law. But situation seems particularly vulnerable. There is a need to make legal mechanisms which could guide their rehabilitation and care. Recently, international community has developed such a mechanism that is popularly known as the *UN Guiding Principle* on internal displacement. It has been presented to the UN Commission on Human Rights in 1998.

The Guiding Principles on internally displaced persons set out their rights relevant to the needs they encounter in different stages of displacement. It provides guidance to all relevant actions: the representative in carrying out the mandate, states when faced with the phenomenon of internal displacement, all other authorities, groups and persons in their relations with IDPs, and inter-government and non-government organizations. It also lays out a number of right and obligations such as protection from displacement, protection during displacement, gender aspects of internal displacement, special protection of children and adults, return and reintegration processes.

States are required to take all measures to avoid conditions which might lead to displacement. Guiding Principle 5 requires states to adhere to international law so as to prevent or avoid situations that might lead to displacement. The right to protection from displacement is derived from the right to freedom of movement and choice of residence contemplated in the Universal Declaration of Human Right (UDHR) and International Convention on Civil and Political Rights (ICCPR), which guarantees that "everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence". Protection from displacement is also derived from the right to housing under the international covenant on economic, social and cultural rights (ICESCR). In situation of arm conflict, Additional Protocol II of the Geneva Convention specifically states that "displacement of the civilian population shall not be ordered for reasons related to the conflict". Protecting the right of displaced men and women is at the heart of the humanitarian response. Their rights are enshrined in bodies of law, mainly international human rights law and humanitarian law. UN mechanism specifically promotes equality between men and women in times of conflict. That is why, most of the provisions in human rights treaties are gender neutral-they apply to all. In spite of this, men and women are not always able to exercise their human rights equally. Mainly women right has therefore been the subject of a lot of discussion as well as standard-setting in recent years. The most important one is the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), 1979 requires state parties to:

- Eliminate all forms of discrimination against women in the political, social cultural, civil or any other field,
- Eliminate discrimination in the public and private spheres,
- Eliminate discrimination in customs and practice

Agencies working with internally displaced people in various cultural settings must be prepared to address misconceptions regarding cultural practices when dealing with issues such as those in the cases mentioned above. Agencies and their staff should bear in mind that one of the founding principles of human rights law is that it is not culturally relative, but that basic human rights are universally applicable as a matter of law. It should be emphasized that culture should never be used to suppress or harm another individual. The Optional Protocol to CEDAW, 1999 enables individuals to raise complaints with the UN Committee for CEDAW and the committee to probe into violations of human rights in member states.

The 1949 Geneva Convention and their two Additional Protocols of 1977 implicitly and explicitly condemn rape and other forms of sexual violence as serious violations of humanitarian law in both international and internal conflicts. Through its prohibition of "outrages upon personal dignity, in particular humiliating and degrading treatment," Common Article 3 implicitly condemns sexual violence. The statute of the new international Criminal Court of 1998 (art 7) designates rape, sexual slavery and forced prostitution as war crimes and crimes against humanity. For the first time, gender-based persecution is considered a crime against humanity. The ICC can now hedge the authors of these crimes in international armed conflict as well as non-international conflicts.

Similarly, the UN Guiding Principles on Internal Displacement is generally applied to women as well as to men, and underlines the need of not discriminating on basis of ethnic origin, gender, etc (GP 4.1). The Guiding Principle also offers an explicit protection to women. GP 4.2 states for example that "children, expectant mothers, mothers with young children, female heads of household, shall be entitled to protection assistance required by their condition and to treatment which takes into account their special needs". Explicit provisions in favor of displaced women are guided by two core issues: first, to safeguard them from gender-specific violence (GP11), and second, to uphold their rights to equal access and full participation in assistance programs (GP4, 7, 18, 19, 20, 23):

- 4.1 No discrimination against IDPs on the basis of sex.
- 4.2 Protection and assistance to female heads of household and expectant mothers
- 7.3.d In cases other than the emergency phases of a conflict, governments will try to involve affected women in the planning and management of their relocation
- 11.2.a Protection against gender-specific violence
- 18.3 full participation of displaced women in the distribution of basic supplies
- 19.2 Special attention to the health needs of women, including access to female health care providers and services, and counseling for victims of sexual abuses.
- 20.3 Equal rights for women and men to obtain documents such as personal identification documents, birth and marriage certificates, in their own names.
- 23.3 Special efforts to ensure the full and equal participation of women and girls in education programmes.
- 23.4 Make education and training facilities available to IDPs, especially adolescents and women, whether or not living in camps.

UN has resolutions and mechanisms to promote gender equality during conflict. In addition to promoting the development of a legal framework, the United Nations has passed a series of resolutions to promote gender equality, and has appointed special reporters on women in armed conflict and on IDPs. The United Nations also created an organ devoted to gender equality, the UN Development fund for women (UNIFEM) and increasingly, UN agencies establish gender focal points to ensure the mainstreaming of gender issues in their programs. The information below highlights some of the major steps undertaken by the UN to promote gender equality in conflict situations.

Over the past years, the Security Council (UN SC 1325 Resolution, October (2000) has increasingly focused its attention on issues related to the protection of civilians during armed conflict, as well as the prevention of armed conflict. UN SC 1325 Resolution stressed the need to address gender issues in all peace building and peacekeeping efforts, and the importance of women's equal participation in all efforts to maintain peace, and to resolve conflicts.

It is because of this reason, in 1994, the United Nations Commission on Human Rights appointed a Special Rapporteur on violence against women, its causes and consequences. From the beginning of its work, the Special Rapporteur indicated that "all violations of the human rights of women in situations of armed conflict, and in particular, murder, systematic rape, sexual slavery and force pregnancy.." would be covered by the rapporteur's mandate. The rapporteur's role is to approach the problem of violence against women from a human rights perspective, receiving allegations from victims globally and intervening systematically in response to cases of individual violations and also seek to study different aspects of the broader problem and, in this regard, has reported to the Commission on Human Rights on violence against women in situations of armed conflict.

In practice, the following steps can be promoted to make sure that both the needs of women and men are taken into account:

- Involve both men and women in the planning of their assistance and protection,
- Ensure that the collection of data on the numbers and conditions of the displaced is disaggregated by gender and age,
- Organize the timing and location of programs to accommodate women's role as care-givers,
- Use female personnel when working with women,
- Make sure that women can register independently,
- Ensure that during program implementation, women have equal access to all forms of assistance, such as social, psychological and legal assistance, as well as micro-credit projects,
- Collaborate with other national bodies and organizations working to strengthen women's participation and advocacy, and facilitate the creation of women's groups,
- Ensure the needs of both displaced men and women are included in national policy/ programmes,
- Provide gender training to all officials working with the displaced

Specific steps to stop gender-based violence and to prevent further abuses

- Set up confidential reporting mechanisms for abuse,
- Share the information you receive only with those who need to know, with the explicit consent of the survivor. Those with whom the information might be shared include the police, medical personnel, and officers of agencies with a protection mandate such as UNICEF, UNHCR, and Ministry of Social Welfare.
- Provide access to reproductive health services and psycho-social support, making sure that health services providers have expertise in GBV and HIV/AIDS.
- Direct the survivor to appropriate legal assistance to prosecute perpetrators.
- Develop a code of conduct to prevent sexual violence by humanitarian staff, make sure it is implemented and that all agencies and NGOs working with IDPs follow a similar code.

These protection activities are aiming to prevent or lessen the most damaging effects of armed conflict on the civilian population. Such activities must be integrated into the design and delivery of assistance programs deliberately and early in the process. Protection activities generally fall under the following four categories: humanitarian assistance, health, water and shelter of livelihood programmers. These are best designed with IDPs protection from violence in mind. For example, in a refugee camp in Sierra Leone, sanitation experts consulted with women to map risks and develop a camp protection plan, including proper lighting and location of latrines, as well as the construction of lockable latrines for girls and women. It was practiced expecting that such physical presence of humanitarian workers could provide a restraint on some of the acts of violence. Monitoring and reporting was felt to be important in knowledge of, and information on, violations, humanitarian agencies need to be in a position to engage authorities to ensure their respect of the rights of IDPs. Advocacy activities should be impartial, target the right actor and be well-timed. It is important to assess whether humanitarian advocacy will in a particular context jeopardize humanitarian access and staff security.

The process of displacement has proved to be extremely debilitating for women. Among the vast majority of displaced families are number of women-headed households. Conflict in Sri Lanka resulted in the collapse of community and family structures. Many

women had to leave their homes without any community support. This rendered them more vulnerable to sexual violence. A large majority of IDPs stayed with people known to them. Even while living with friends, women were always expected to shoulder responsibilities for which they were often unprepared. In a recent CEDAW committee report, it is stated that almost half of the female-headed households are still in the hands of elderly women, many of whom are illiterate and devoid of adequate sources of income. This has taken heavy toll on women often lack easy access to healthcare facilities.

The rights of single women of marriageable age who are displaced do not seek refugee status because in the prevailing situation, if they married a non-national, it would be difficult for them to return to Sri Lanka as their children are not granted citizenship. Considering the seriousness of the situation, particularly, after the Thailand Peace Talks in early 2003, the government of Sri Lanka also allowed women to transfer citizenship to their children. However, it is still early days to understand how such an instrument has been translated into practice.

From the 1970s, the Sri Lankan regime has practiced the forced relocation of ethnic minorities. The largest and most intensive forced relocation program was carried out in 1996-97 in the central Shan state. Over 300,000 people from over 1400 village were forced from their homes into relocation sites where nothing was provided for them. Sexual violence against ethnic minority women has become commonplace, especially because of relocation.

The UN Guiding Principle on Internal Displacement emphasizes the necessity to consult IDPs when planning assistance and protection activities, and to involve them in them in the implementation phase. In considering the views of the displaced, it is essential to solicit the views of all segments of the population. Too often, the importance of consulting women is overlooked and their capacities ignored, notwithstanding the fact that women and children typically constitute the overwhelming majority of an internally displaced population.

In the Rwandan refugee camps in Tanzania, there were so many women without husbands that specially marked tents were set up and situated in an area designated "safe". During the brief period when the system was used, the number of sexual attacks increased markedly. The bright orange tents acted like inspirations pointing to unaccompanied women. Had the women been consulted, more suitable and safer arrangements would have been made.

In the context of Nepal populations have been displaced for roads, irrigation, schemes, airports, promulgation of national parks, and watershed management projects. However, the extent and history of these displacements have been mostly forgotten. The only topic in discussion is: displacement from arm conflict between Maoists and the ruling government. In early phases, the women used to stay in the villages and the males used to run away from the conflict affected areas.

Later on, when violence increased in greater numbers, women also left their homes from the threat of both the conflicting parties, though very few are registered with the government. Most of the women displaced have migrated to India with their families. Women who stay back home are also sufferers of the conflict. Emigration and recruitment of men into Maoist carders of security forces as well as the killing of the member of the family by Maoists and security forces have increased the burden on women. Some of the tasks that men traditionally performed have fallen upon the women who have become the head of households.

Organizations are drawing on the knowledge that IDPs regarding the nature and timing of the threats confronting them, as well as the history of previous threats and coping strategies used to face those threats, helps organizations to complement the responses of the displaced. Whenever displacement occurs except from arm conflict, the authorities should involve women who are affected, in the planning and management of their relocation. Similarly, the women IDPs should be protected in particularly against rape, mutilation, torture, cruel, inhuman or degrading treatment and also gender specific violence, force prostitution etc. The health related issues on women should also be focused.

But, in most of the cases, such minor things are not given proper response. Even if different organizations appear active in part of restoring minimal requirements of the women IDPs along with other once, due to insufficient response from the government sectors, they are not able to bring forth effective results. The fact is that in most of the cases government administration and its inflexible laws and orders become the main problem creating factors.

Another problem creating issue is cultural one. The International organizations have their special mandate. But, the obstacles come in front in process of their implementations. Different countries have their cultural norms and values according to which their citizens develop their attitudes. As our world and its values are patriarchal one, mostly all the countries are less responsive towards the women's problems. They are marginalized in terms of priority. That is why, the organizations and their mandates are worth of any value, until the citizens do not give proper response to their own problems. In recent context, there are some nations which have given considerable authority to the UN Guiding Principles and used them in designating national laws and policies for the protection of women IDPs. Though still it needs some time to gain its positive response.