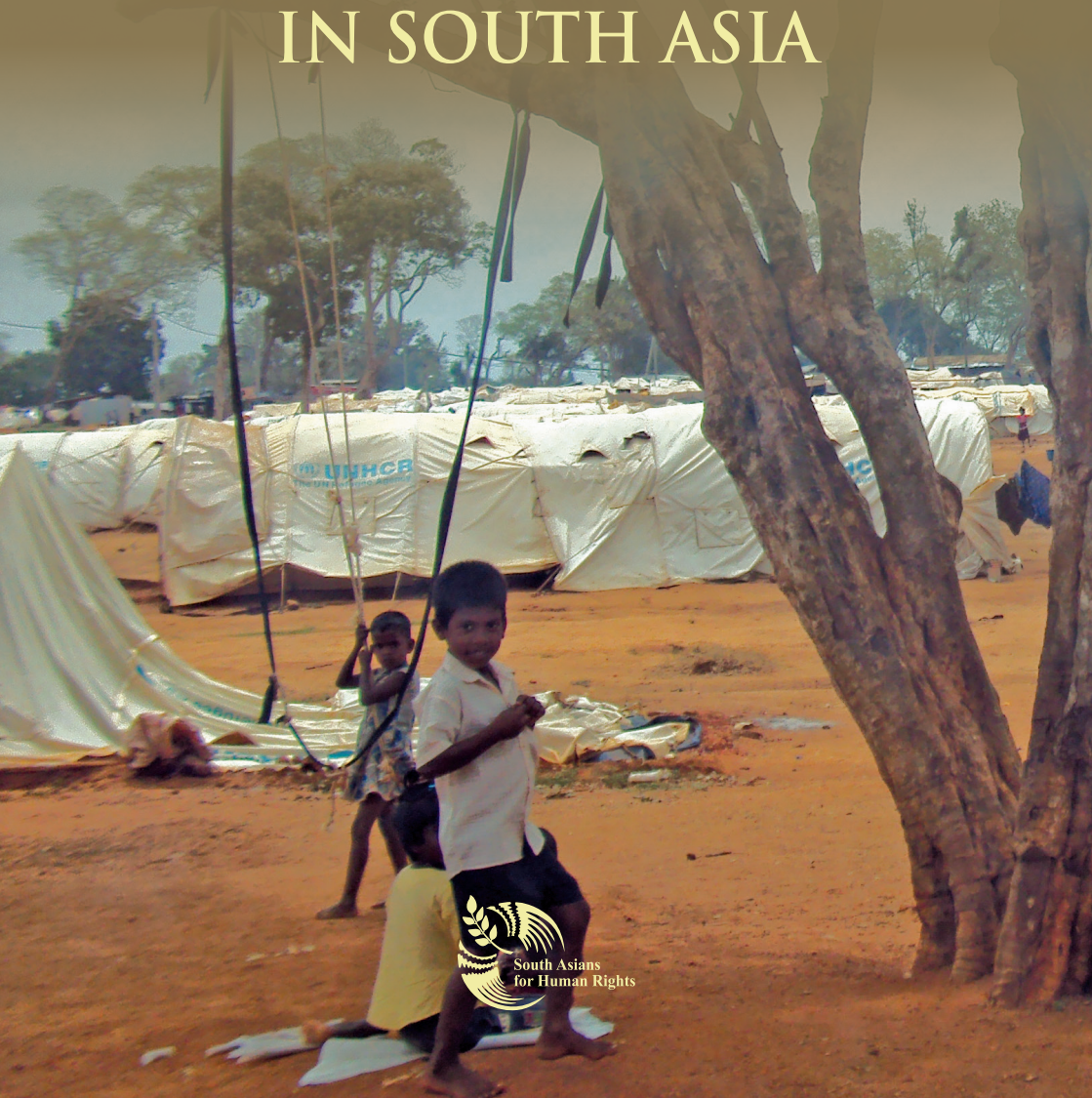


REASSESSING INTERNAL DISPLACEMENT IN SOUTH ASIA



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IN SOUTH ASIA



The views and opinions entailed in the papers presented at the conference are not essentially of South Asians for Human Rights (SAHR).

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Acknowledgements

South Asians for Human Rights is pleased to present this publication which explores the situation of Internally Displaced Persons in Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka and provides recommendations from national consultations facilitated by SAHR, to promote and uphold the rights of Internally Displaced Persons in South Asia and seek methods to operationalise the United Nations Guiding Principles on Internal Displacement.

While the Afghanistan chapter contains a national consultation report, the chapters on Bangladesh, India, Nepal, Pakistan and Sri Lanka examine the state of displacement in each country, the various types of displacement and reasons for it as well as reports from national consultations on internal displacement in each of these countries.

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Abbreviations

AAPSU	All Arunachal Pradesh Students' Union
ADB	Asian Development Bank
AFSPA	Armed Forces Special Powers Act
AITPN	Asian Indigeneous and Tribal Peoples' Network
APDA	Afghan Peace and Democracy Act
ASL	Above Sea Level
BNP	Bangladesh Nationalist Party
BPL	Below Poverty Line
CA	Constituent Assembly
CAFFÉ	Campaign for Free and Fair Elections
CAT	Convention Against Torture
CCI	Council of Common Interest
CDO	Chief District Officer
CEDAW	Committee on the Elimination of Discrimination Against Women
CENISEAS	Centre for Northeast India, South and Southeast Asia Studies
CHJRC	Communal Harmony Justice and Reparation Commission
CHT	Chittagong Hill Tracts
CPA (in Nepal)	Comprehensive Peace Accord
CPA (in Sri Lanka)	Centre for Policy Alternatives
CMEV	Centre for Monitoring Election Violence
CRC	Convention on the Rights of the Child
CRG	Calcutta Research Group

CSO	Civil Society Organisation
CWIN	Child Workers in Nepal
DC	Deputy Commissioner
DDMA	District Disaster Management Authority
DID	Development Induced Displaced
DMB	Disaster Management Bureau
EC	European Commission
EPA	Enemy Property Act
ER	Emergency Regulations
FATA	Federally Administered Tribal Areas
FFP	Friends for Peace
GDP	Gross Domestic Product
GIDR	Gujarat Institute of Development Research
GIZ	German Agency for International Cooperation (<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>)
GN	Grama Niladhari
GON	Government of Nepal
Guiding Principles	UN Guiding Principles on Internal Displacement
HCT	Humanitarian Country Team
HRC	Human Rights Commission
HRCP	Human Rights Commission of Pakistan
HSZ	High Security Zone

ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
ICRC	International Committee of the Red Cross
ICESR	International Covenant on Economic, Social and Cultural Rights
IDMC	Internal Displacement Management Centre
IDP	Internally Displaced Person
IHD	Institute of Human Development
ILO	International Labour Organisation
INGO	International Non-Governmental Organisation
INSEC	Informal Sector Service Centre
IOM	International Organisation for Migration
JAFTA	Japan Forest Technology Association
JPA	Joint Plan of Assistance
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
MoPR	Ministry of Peace and Reconciliation
MoU	Memorandum of Understanding
NAC	National Advisory Council
NAPM	National Alliance of People's Movements
NDMA	National Disaster Management Authority

NGO	Non-Governmental Organisation
NHRC	National Human Rights Commission
NIC	National Identity Card
NLC	National Land Commission
NPRR	National Policy on Resettlement and Rehabilitation
NPTF	Nepal Peace Trust Fund
NREGA	National Rural Employment Guarantee Act
NRP	National Rehabilitation Policy
NWFP	North West Frontier Province
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PAF	Project Affected Persons
PCJSS	People's Solidarity Association (<i>Parbatya Chattagram Jana Sambati Samiti</i>)
PDMA	Provincial Disaster Management Authority
PSA	Programme for Social Action
PTF	Presidential Task Force
R&R	Relief and Rehabilitation
RRN	Rural Reconstruction Nepal
SAAPE	South Asia Alliance for Poverty Reduction
SAARC	South Asia Association for Regional Cooperation
SAHR	South Asians for Human Rights

SC	Scheduled Caste
SEZ	Special Economic Zone
SoE	State of Emergency
ST	Scheduled Tribe
UCPN (Maoist)	Unified Communist Party of Nepal (Maoists)
UDA	Urban Development Authority
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nation High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund
UPDF	United People's Democratic Front
USCR	United States Committee for Refugees
VDC	Village Development Committee
VPA	Vested Property Act
VPRA	Vested Property Return Act
WFP	Wood Food Programme
WHO	World Health Organisation
WMC	Women & Media Collective
YCL	Young Communist League

Introduction

(By *Mirak Raheem*)

Displacement is by no means a new phenomenon in South Asia. As they emerged as independent states, at least half of the South Asian countries experienced mass displacement. In Bangladesh it is estimated that at least one-third of citizens were displaced as a result of the war of independence. The struggle of nation building over successive decades created a series of displacement as a result of a variety of developments including the re-drawing of boundaries, and the intensification of ethno-political and religious conflicts. In addition the development needs of these countries have also resulted in communities being forced to move for macro-development projects. The vulnerability of the South Asian region to natural disasters has been an added factor. Hence, the problem of IDPs has endured and as the chapter on displacement in Bangladesh notes “The processes through [which] internally displaced people are *generated* have become much more diversified and complex”.¹

While there has been substantive work on displacement in the South Asian region and sharing of experiences between the constituent countries, there is a significant gap in terms of the comparative approach to addressing displacement and what can be done within the region to provide for regional and national standards and safeguards. In recognition of this problem SAHR

¹ Bangladesh chapter, page 35

commissioned authors from five of the South Asian countries and organised national consultations in six of the countries to examine the national safeguards and institutions relating to displacement.

Developing Legal Protection for IDPs

Despite the problem of IDPs being more or less a constant problem for most South Asian countries, even while the causes and statistics are dynamic, the response to this issue both at the national and regional level has been found wanting, including specific legal protection for IDPs. This is not unique to South Asia as the international legal protection for IDPs, as compared to refugees, has taken longer to develop. IDPs find themselves in a vulnerable position as they remain within their own territory and in some instances one of the key perpetrators responsible for their displacement, the State, is also responsible for their care and support. The 1990s saw a sharp spike in the number of IDPs and in parallel the demand for legal protection was keenly felt. In 1992 the UN Human Rights Commission requested the UN Special Representative on IDPs, Francis Deng to examine this gap. With the development of the Guiding Principles on Internal Displacement in 1998, there has been increased attention on the need for states to develop a national framework for better protecting the rights of citizens who are facing displacement.

The Guiding Principles have proved crucial in the development and formalisation of a framework for IDP protection, specifically to grant rights to IDPs and obligations on key actors, including national governments, to provide standards for assistance and protection during the various phases of displacement, including protection from arbitrary displacement, protection and assistance

during displacement and for securing durable solutions.² It needs to be noted that the Guiding Principles are legally non-binding and it is questionable whether they have status as customary law. Nonetheless, given the lack of specific legal protection for IDPs in national contexts, the challenge has been to adopt and adapt the Guiding Principles into national law and policy. This does not mean that the rights of refugees in the region should be ignored as substantive work needs to be carried out in this area, including the ratification of the Refugee Convention by states such as Pakistan and the need for South Asian states to continue providing refuge to those foreign citizens fleeing persecution. Pakistan has hosted one of the largest global populations of refugees for over two decades, while Nepal and India are hosting over 100,000 refugees, particularly from the neighbouring states of Bhutan and Tibet in the case of the former, and Sri Lanka, Bangladesh and Tibet in the case of the latter, for over 20 years.

The collective experience of South Asia seems to be that despite the utility of the Guiding Principles, they have not been incorporated into national law, nor has a policy developed along these principles.³ In its absence and the lack of specific laws for dealing specifically with IDPs, the only option has been to turn to broader constitutional guarantees. All the chapters refer to broad constitutional rights, generally found in the Fundamental Rights Chapters of the relevant constitutions, while noting the limitations of such rights. In Nepal, although provisions relating to IDPs have been included in “almost every peace agreement”⁴ the Interim Constitution of 2007 only provides for broad protection. The need for an IDP policy is raised in most of the chapters and each country seems to be at different

² See Guiding Principles on Internal Displacement, <http://www.idpguidingprinciples.org/>

³ Pakistan chapter, page 196

⁴ Nepal chapter, page 140

phases in the timeline for the development of such a policy. In the SAHR national consultation in Afghanistan the need for such a policy is clearly voiced, as is the case in Bangladesh, while in Sri Lanka draft policies on key IDP issues including a Protection of IDPs Bill dating from 2007 have been stalled over the last few years. India has no national policy on IDPs and the task is largely left to state and district authorities but a National Policy on Resettlement and Rehabilitation has been developed. In 2007, the National Policies on Internally Displaced Persons was adopted in Nepal.

Responding to Domestic Needs

In each of these contexts there appear to be clear challenges in developing a consensus on a comprehensive legal and policy framework on IDPs. As the chapters point out there have been significant developments in the efforts by states to deal with displacement including in establishing institutions and policies dealing with specific aspects of displacement, but they have not been able to comprehensively address the wider issue of protection in a structural manner. In addition, there are issues of government accountability in dealing with citizens affected by displacement.

Even while there is a clear need for protecting the rights of IDPs, there are questions as to how the Guiding Principles themselves can be used. Domesticating and internalising these principles for national contexts is a critical step forward but it has not proved easy in convincing a broader constituency of the utility of such a step. A key point that is reiterated in both the Pakistan and Bangladesh Chapters is that there has to be a change in the mindset in how IDPs are viewed by the State, elected bodies and other actors, where IDP issues are dealt with more as a humanitarian task, and not also

addressed as a constitutional obligation.⁵ Hence, the consolidation of an IDP framework could have not just symbolic but substantive value especially given the current approach followed by states and governments. As the Pakistan chapter notes, “the provision of assistance and protection to the displaced has often been seen as a favour to the affected population.”⁶ Transforming this thinking could also change the approach to displacement as consultations with IDPs would be seen as a necessary part of the process rather than an exception. The Indian Chapter in particular highlights this challenge and points out examples of how the Guiding Principles have been used, including the translation of the document, but it also raises critical questions of how it has been used as a tool in the hands of the victim, as opposed to civil society groups and international humanitarian organisations working on displacement, and whether it has benefited the affected population?

A key question that comes out of these chapters and the consultations is what needs to be done now? As noted in the India Chapter, citing the Mahanirban Calcutta Research Group monograph of 2005, “no legal or constitutional mechanisms in any country in South Asia for IDPs in particular, no inventory of best practices [has been developed]. In fact South Asian states have organised rehabilitation and care on an *ad hoc* basis for the IDPs in the same manner as they have dealt with refugees.”⁷ In some of the consultations, including in Afghanistan, there were expectations that SAHR could take the lead even within national contexts to continue to build consensus and lead coordination on IDPs’ protection, however this is beyond SAHR’s capacity and mission. Instead, the challenge is primarily for national civil society actors to devise a way forward. In parallel

⁵ Bangladesh chapter, page 57

⁶ Pakistan chapter, page 199

⁷ India chapter, page 130

however SAHR can serve a vital role in sharing best practices and experiences within the region on domesticating and developing the IDP Guiding Principles. In addition SAHR or other regional collectives need to push for developing regional standards on displacement that uphold and build on international standards.

Defining the Problem

Even while the Guiding Principles have sought to provide a definition, there continue to be debates as to whether the existing definitions are adequate to address ground realities. This is a basic and vital question that the chapters attempt to grapple with; Who is an IDP? The Guiding Principles define IDPs as “persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or 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.”⁸ The definition is not broad enough to include other causes of displacement, such as development, which is a key or contributing cause for displacement cited in a number of chapters. This in turn raises an interesting challenge as to whether the South Asian experience of displacement will prompt a broader definition and where regional standards (if developed) could advance and develop international standards.

A question that arises from the chapter on Nepal is whether the displaced see utility in identifying themselves and being recognised as IDPs, whereas in most other chapters there appears to be an underlying assumption that the displaced have little choice in opting for this status and that they find it advantageous to do so,

⁸ See Guiding Principles on Internal Displacement, <http://www.idpguidingprinciples.org/>

hence the more common problem described in the other chapters is the non-recognition as an IDP. Due to the displaced in Nepal being “excluded from various policies and programmes of both government and non-government sectors,”⁹ in addition to being stigmatised by other sectors of society, some of the affected prefer not to identify themselves as IDPs. This may not be unique to Nepal but may be a more common problem across South Asia, and speaks to the need for increasing the exchange of concepts and ideas from studies on displacement across academic disciplines and the experiences of those working on displacement and the inclusion of voices of those affected by displacement.

Each of the chapters highlight a series of IDP categories, usually based on the cause of displacement. While armed conflict and natural disasters are most commonly referred to as causes, each chapter points to the various sub-categories, not all of which are duly recognised. Almost all of the South Asian countries have faced ethno-political conflicts, including armed insurrections, where ethno-linguistic/religious communities are seeking autonomy either within or without the boundaries of the State while the State is seeking to maintain hegemony, including in Bangladesh, India and Sri Lanka. Some States face armed rebellions, including from Maoists and religious armed groups, attempting to challenge the State in India, Nepal and Pakistan. In other instances, there are communal, religious or other social conflicts, which result in large-scale violence and mass displacement, including the Gujarat pogrom in 2002, anti-Christian violence in Orissa in India, and anti-Hindu violence in Bangladesh. The victims of these episodes of violence have not all been recognised and granted assistance. The variety of natural disasters including the tsunami of December 2004, cyclones, floods, earth slips and droughts have resulted in large-

⁹ Nepal chapter, page 139

scale displacement, however in certain areas the displacement has become a virtually annual event, raising questions as to the semi-permanent state of displacement. The issue of 'climate refugees', which is gradually gaining some international recognition, is a significant challenge particularly in Bangladesh.

While the need to address displacement resulting from macro-development projects is recognised in some countries, there are serious questions as to whether the impact of the displacement, the costs of these projects and the sustainability of relocation has been effectively assessed. In India it is estimated that over the last 50 years some 50 million people may have been displaced due to development.¹⁰ As to the current living conditions of the displaced, who may have found alternate living arrangements and may have even been provided basic assistance to do so, is by no means clear. This in turn raises a larger question of when does displacement end? Is it when IDPs have returned to their homes or have been found other durable living arrangements in the location of displacement or other sites? Or is it when the displaced have found some sustainable way of living but then who can judge it, especially given that the challenges these returnees face may be connected to other issues such as lack of overall development, poverty, or lack of resources, among other factors? This can be especially complicated when IDPs (particularly those from protracted caseloads) opt to live in their area of displacement for the time being until the political, social and economic environment in their area of origin improves or when they end up being identified in other categories such as economic migrants. This is a dilemma that a number of chapters point to but that none are able to substantively respond to.

¹⁰ India chapter, page 91

In a compilation such as this the expectation among readers is that while noting the dynamic nature of displacement, each chapter would provide a set of statistics from each country. The waves of violence and natural disasters mean that the figures change constantly or as noted in the Afghanistan consultation “these figures change daily.”¹¹ The majority of chapters do provide a set of figures for IDPs relating to various caseloads, however it is all too apparent that the accuracy of these figures is very much in question and contested, so in certain instances they are ‘guesstimates’. The Nepal Chapter, for instance, states that the figures of displaced provided by various actors ranged from 30,000 to 500,000.¹² The chapters provide a variety of reasons for this – including the lack of a central state actor compiling and providing the data to other actors, especially in the case of long-standing displacements. As many of the country chapters note, this effectively means that the available statistics do not reflect the entirety of the displaced population. This is related to a larger problem of identifying displacement in all its forms, including the lack of attention to displacement caused by specific factors such as development projects and whether persons who are living in long-term displacement or have been settled in other locations should continue to be identified as IDPs. Other actors such as the United Nations or even national actors may be in a position to provide statistics in certain instances but these figures may not comprehensively cover all forms of displacement and all areas within a given country. The issue of displacement is highly politicised, hence any statistics are likely to be contested and compiling such figures could prove controversial, hence it is difficult for non-state actors to engage in such an exercise at a national level.

¹¹ Afghanistan chapter, page 20

¹² Nepal chapter, page 140

The need for such statistics is self-evident. The lack of accurate statistics makes it all the more difficult to identify the scale and nature of the problem. For the affected population non-inclusion in statistics has a direct impact in that it could actually mean non-recognition as an IDP, thereby affecting eligibility for assistance. There are multiple problems resulting from this including that these affected populations could face increased vulnerability and this in turn could result in potential social, political and economic fallouts. The response to displacement however requires more in-depth information than merely the numbers of individuals and families but disaggregated data that would better ensure the various segments of the displaced population, including expectant and lactating mothers, the disabled, children and the elderly receive specific attention.

Improving Institutional Responses

Despite decades of dealing with mass displacement, the collective experience in South Asia appears to be that the response has been found wanting. Many of the national consultations and some of the chapters reiterate fundamental problems relating to inadequacy of assistance and the lack of or limitations in disaster response. While in most South Asian countries there is a significant role for international and national humanitarian organisations and other civil society groups, the primary actor is the State who is responsible for providing assistance and coordinating the relief and other efforts to cope with the displacement. Above all, the State is responsible for developing the policy framework and structures for addressing displacement. Even while most South Asian countries have developed, albeit to varying degrees, institutional frameworks to coping with displacement, as the Pakistan Chapter most vividly highlights, there are serious concerns in terms of operationalising these responses: “The approach for dealing with

internal displacement has been largely reactive. The country is yet to formulate a template for assistance and protection of the displaced and for safeguarding their rights.”¹³ This statement could also be a fair reflection of its neighbours.

While the institutional frameworks significantly vary between the countries under review, it appears that the issue is not the lack or shortage of relevant institutions but the challenge in operationalising these institutions, including ensuring adequate capacity, disaster responsiveness and coordination. While in some contexts, *ad hoc* mechanisms have been created to respond to specific disasters, in others an institutional framework has already been developed. As the Sri Lankan example shows, it is possible for both processes to operate simultaneously, not necessarily in coordination, resulting in a number of institutions meant to cope with disasters. Similarly, though Nepal was able to adopt a policy on IDPs, there has been criticism that the Government only made “minimal effort” to deal with those displaced since 2007.¹⁴ This in turn highlights the need for adequate monitoring of the implementation of policies and institutional frameworks by actors both within the State and outside.

The responses of these States to the series of disasters in the recent past raise the key issue of disaster preparedness. What happens to the institutional memory of coping with disasters over decades, the best practices and lessons learnt? The institutional limitations in disaster responsiveness have resulted in or contributed to a variety of problems including delays in the provision of assistance, inequitable assistance, corruption and even a dereliction of duty. For the displaced the failures in providing life-saving assistance can be

¹³ Pakistan chapter, page 146

¹⁴ Nepal chapter, page 152

decisive in preventing death, health problems, mental trauma and further suffering. Many of the chapters contain their own horror stories of the failure to meet the basic needs of the displaced: For instance, of IDPs freezing to death in Afghanistan or of returnees unable to build their livelihoods back and forced to become migrants and in extreme cases ending up subject to various forms of exploitation, including prostitution. There are also questions raised as to whether State actors could have been better prepared in coping with the displacement. For instance, the Pakistan Chapter questions whether the Government could not have done more to mobilise humanitarian assistance and put in place measures to deal with a mass influx of people, given that it was planning to launch a wide-scale military operation. Ultimately, the failure in responding to displacement is about the State's dereliction of its duty towards its citizens and of the State committing violations against civilians. The chapters highlight the series of violations against IDPs committed by Governments, including the restrictions on the freedom of movement in Pakistan.

Through documenting the problems in the responses to recent displacements in the various contexts, the chapters make a number of critical points, including the need to establish a basic template for disaster response that can be adapted to the differing contexts of displacement and is sensitised to addressing various vulnerabilities. Ensuring that there is basic contextual analysis is key. For instance, the displacement from the Swat Valley highlighted the lack of attention to supporting host families who absorbed the bulk of the displaced in 2009 whereas only 15% of the displaced sought refuge in camps. It is notable that none of the chapters, including those focusing on the institutional responses to displacement, highlight the importance of the Sphere Standards which provide minimum

standards in key areas of humanitarian assistance.¹⁵ Like the IDP Guiding Principles, they too can be more effectively utilised as a benchmark to be adapted and operationalised for coping with displacement and streamlining humanitarian assistance.

A related question is on pre-emptive action to prevent displacement. Although in the face of large-scale natural disasters and aggressive conflicts it would seem that there is little governments can do in the heat of the moment, but these chapters raise a range of issues where the displacement has been exacerbated or caused by state inaction or delays in action. For instance, in terms of flood-related displacement, the failure of government, national and local level to take steps to strengthen embankments and dykes has increased the vulnerability of communities living in proximity to bodies of water. Man-made disasters are by no means inevitable and are often the result of state inaction/lassitude or unresolved political conflicts, economic and social marginalisation among others. While non-state armed and political groups may play a dominant role in intensifying conflict potential, there is a clear responsibility on the part of successive governments to address fundamental political and economic issues, be it with regards to questions of autonomy, development or recognition of collective rights. There are other instances where there is no insurgency but there are acts of violence and a climate of intimidation against specific communities that is perpetrated by the Government, forces allied to it or other groups, which results in displacement. For instance, in Bangladesh, Hindus have faced increasing violence resulting in their displacement. In this instance, there are questions as to the role of successive Governments in dealing with the harassment of the community and taking steps to safeguard them.

¹⁵ See www.sphereproject.org

Failure to deal with the causes and the multiple impacts of displacement will only further exacerbate conflict and tensions, while contributing to other economic and social problems, including poverty, marginalisation and urban migration. The nexus between conflict and development is all too evident, and hence displacement is often intrinsically connected to the larger challenge of nation building. The struggles of indigenous communities to secure their land rights, while attempt to wrest control over land and other resources largely for development by state actors and private corporations, have exacerbated relations between the communities and the State and contributed to an escalation in the political mobilisation and violence in these areas and communities. Land rights are also connected to the efforts by indigenous groups to secure rights and political recognition. The long-standing demand for political autonomy in the Chittagong Hill Tracts was ignored by successive Bangladeshi Governments who have opted for development without substantive consultation, and the use of armed force. As the Bangladesh Chapter notes, the policies in dealing with these issues “reflect both nationalism and militarisation” of the nation, making clear how displacement is inextricably tied to other critical political processes.¹⁶

The issue of displacement and its response therefore cannot be completely de-politicised, especially when the underlying causes are so fundamentally political. Hence, while the key principles guiding humanitarian work including neutrality and impartiality need to be observed in dealing with issues of relief and service provision particularly by those in the humanitarian sector, the rights of the displaced will involve examining and addressing the politics of the displacement or else charities, NGOs or the UN could end up collaborating with individual governments in the violation of the

¹⁶ Bangladesh chapter, page 45

rights of IDPs. Although many organisations may claim that they do some analysis of the impact of their project, it does appear that there is a need to reintegrate the tool of conflict sensitivity and ‘Do No Harm’ not just in terms of the specifics of individual projects but also in terms of the overall context, especially the politics around displacement, resettlement and relocation. In terms of armed conflicts or ethnic/religious disturbances, there is a significant responsibility on the parties to the conflict and political actors to devise solutions to address the problems faced by IDPs and also in transforming the context of violence, tension and uncertainty that caused the displacement. It needs to be noted that the overall context for addressing displacement for humanitarian organisations in South Asia is complicated by the *de facto* control of areas by non-state actors including some who target humanitarian workers, and the involvement of military actors in humanitarian work and coordination, including in Afghanistan and Sri Lanka, which places serious restrictions on humanitarian space.

In responding to these challenges, the chapters provide a whole series of recommendations, including the need to develop and strengthen the legal and policy framework for the protection of IDPs, while they reiterate the importance of these frameworks being effective and having a meaningful impact on the lives of those affected by displacement. At a national level it is this dual challenge to which human rights and humanitarian agencies need to respond to. To take on this challenge it is essential to deepen the understanding of and appreciation among policy makers and the public, on the core values that these frameworks attempt to safeguard, or else the laws and policies will prove restrictive and the frameworks will end up as mere reference documents that do not get operationalised. These chapters and the discussions around them could play a role in widening the debate on IDPs both nationally and regionally, if the issues they raise are taken up, critiqued and acted upon by a

wider audience, and thereby strengthen the advocacy on internal displacement in South Asia.

AFGHANISTAN

Report on the SAHR Afghanistan National Consultation on IDPs

Introduction

The National Consultation on Operationalising the United Nations Guidelines on IDPs was held on 23 February 2012, at the Sitara Hotel hall in Kabul. The objective of the discussion was to highlight the issues faced by IDPs in the light of the Guiding Principles which have been considered the main international principles in this regard, and to draw the attention of the internal and external actors working on the problems of IDPs in Afghanistan.

The national consultation opened with an introduction of SAHRs work on IDPs at the regional level. Prof. Sarwar Mamound, SAHR Bureau Member and the Chair of APDA, briefly introduced SAHR's activities and its background to participants of the meeting. SAHR Afghanistan was formed in 2006 and from that time its country team has been able to participate in the organisation's activities.¹⁷

Due to the fragile situation in Afghanistan, IDPs face many problems and the national consultation on this pressing issue was a

¹⁷ The Afghan Chapter was able to organize a number of major events such as the SAHR Afghan Chapter founding conference (2006), the National Conference on Good Governance (2007), and the training for the Afghan Defense lawyers and human rights activists (2009). Afghan Chapter members have also participated in the Annual General Meetings of SAHR (Lahore 2007, Kathmandu, 2010)

timely action on the part of SAHR which has laid the foundation for future discussion.

More than 40 persons who are working in the field of human rights (including the media) actively participated in the consultation and the event was given broad media coverage by the national and international media (which included five prominent TV stations and four radio channels as well as newspapers and websites).

Main Discussion Points

The meeting was organised into two panels:

The first panel, which was facilitated by Dr. Saeed Niazi, a SAHR member of Afghanistan, included three panellists: Prof. Sarwar Mamound, Jawid Wali Hakimi (UNHCR Protection Officer), and Zainullah Sultani (Program Officer of IOM), whose presentations on the issue highlighted the following:

At the start of the panel Prof. Sarwar Mamound presented the Guiding Principles through a powerpoint presentation in Pashto and Dari. In light of the Guiding Principles, the issue of Afghan IDPs was highlighted with the increased difficulties they face during the harsh winter period.

According to the available data in Afghanistan about 500,000 persons have been registered as IDPs but due to natural factors and the insurgency these figures change daily. The nomadic people, whose temporary dwelling is driven by their search for grazers, are an especially vulnerable section of society facing huge humanitarian and security problems, particularly during the three decades of war. In the past five years there have been increased violent confrontations between the nomadic people and those who reside in the central

highlands, where they settle in the summer. Due to their mobile lifestyle, lots of nomadic people are killed by land mines, which are a legacy of the war.

Freezing cold winters are a cause of fatalities among tent-dwelling IDPs, and this is particularly devastating among children living in these conditions.

What is particularly worrying is that IDPs still face so many hardships despite the great focus on Afghanistan from the international community and the consequent billions of dollars in aid available to the country. Both domestic and foreign actors have failed to adequately and speedily respond to the IDP problem.

According to the Guiding Principles, the problem of IDPs in Afghanistan, for which the Afghan Government has the primary responsibility, must be analysed, and a plan formulated, in three major sections:

- 1) The right of every Afghan to have security - The State should ensure the right to life and security of the citizens in their native places. As such, the forced migration of citizens should be brought to an end.
- 2) The national actors are responsible to protect those who are forced to migrate due to natural factors or the security situation.
- 3) The national and international actors in Afghanistan are obliged to work for the sustainable resettlement and reintegration of the IDPs.

Mr. Jawid from UNHCR highlighted the reasons for displacement in Afghanistan and mentioned that recent data shows that about 447,524 IDPs (70,209 families) are living in very harsh conditions, while a coordinated approach for their resettlement and relief is still lacking. In 2011, about 185,631 persons left their native places and dwellings because of the ongoing war and natural disasters. The UNHCR is working with national entities and international organisations to highlight the major problems that IDPs face and to coordinate efforts to solve them. The national group led by the Deputy Minister for Refugees and Repatriates is working on these issues and through its monthly meetings takes necessary measures to streamline all stakeholders' efforts.

Mr. Jawid also highlighted that the UNHCR in Afghanistan has been working on the IDP issue for a long time, but the primary responsibility to work with IDPs remains with the Government of Afghanistan. Due to the lack of a unified strategy and policy, the State organs who should work with the IDPs are incapable of delivering. The UNHCR has provided both food and non-food items to the IDP camps in Kabul province as well in the Northern parts of the country. In Afghanistan people are generally displaced as a result of one of the following reasons:

- Widespread conflict that has affected the entire nation.
- Persistent drought in the country.
- Poverty and lack of employment.
- Natural disasters and harsh living conditions.

Many Afghan refugees who have repatriated in the past ten years were not able to settle in their native areas of living and now live in bad conditions in other cities and towns while the Bomi population

cannot afford them in their areas of residence. Due to this many social and ethnic problems as well as conflicts, are arising.

General Discussion

The participants highlighted the following major challenges faced by the Afghan Government and other actors when dealing with IDP issues:

- 1) The warlords are reluctant to return land and property abandoned by IDPs, which they seized.
- 2) The provincial authorities are not able to manage the IDPs who want to return to their native places of dwelling, for security reasons.
- 3) As a result of widespread corruption, the national actors are not capable of delivering the necessary services for the IDPs, especially for their sustainable resettlement. Furthermore, the NDMA was more reactive than proactive in its responses. The most vulnerable segments of IDPs - children, women, and disabled persons - have been suffering, especially during the harsh winter of 2012.
- 4) It is not only the IDPs that are affected but also the host communities with whom they seek refuge. Furthermore, in some areas, national and international actors do not deliver any services to them. They lose their property and do not have alternative means to survive in the sites of displacement.
- 5) Safety is a major question for all categories of IDPs in Afghanistan. Even when they attempt to return they find

their dwellings destroyed or ruined which leaves them vulnerable and lacking a basic feeling of security.

- 6) The ongoing insurgency makes an increasing number of areas unsafe to live in, and contributes to the number of displaced.
- 7) Enrolment in education suffers, because of the conflict and fear of kidnapping and therefore, IDPs are fearful of sending their children to schools far away. This is especially true of girls.
- 8) The NDMA does not have adequate capacity to manage large scale disasters. This is exacerbated in winter, and it is unable to prevent the tragic deaths of children in IDP camps in the central and northern parts of the country.
- 9) For proper implementation of the Afghan Constitution and the guarantee of basic human rights, the State and non-state actors should work together to provide for the protection of basic human rights for all, including IDPs.
- 10) It is the primary responsibility of the Afghan Government to deliver essential services to IDPs, as well as protecting their basic human rights, including their dignified resettlement.
- 11) With regards to aid, streamlining the transportation of relief and emphasising transparency and accountability of its handling and distribution, Afghan civil society needs to work with the international community.

Recommendations

- 1) The SAHR initiative with regards to the Afghan IDPs should be appreciated and the momentum from it, capitalised upon. For a proper follow up on the issue, a working group from the SAHR Afghan Chapter should be formed to organise such gatherings and to coordinate and streamline the Afghan civil society efforts for IDPs.
- 2) Through closer contact with the SAHR Secretariat, the Afghan Chapter should bring to light problems which IDPs face in Afghanistan, and aim to attract both regional and international attention.
- 3) Afghan civil society should work with both the Government and NGOs to draft a national strategy for IDPs. This strategy should be publicised through the media in order to raise awareness among the public.
- 4) The coordination mechanism is lacking and it will be the Afghan Chapter's responsibility to work on it and to bring the lack of such a mechanism to the attention of the national and international stakeholders.
- 5) The Afghan Chapter will use its contacts with Afghan legislators to formulate a comprehensive and sustainable solution to the problems faced by IDPs. Existing rules and regulations should be reviewed, especially with regards to vulnerable groups amongst IDP populations.
- 6) The media should be invited to highlight the shortcomings and misuse of resources.

- 7) Rules and regulations for IDP camps should be reviewed and updated. Authorised and competent staff should be appointed by the governing body in order to ensure they are maintained properly.
- 8) A national strategy for the prevention of man-made displacement should be drafted and publicised.
- 9) Civil society should work on a comprehensive plan which addresses both the physical and psychological aspects of rehabilitation of those who have suffered from the trauma of displacement.
- 10) The Government should ensure that there is consultation and collaboration with civil society, including human rights organisations, in decision making bodies regarding IDPs.

Annexure

List of Participants

- Justice Ghulam Nabi Hakak - Independent Human Rights Commission of Afghanistan
- Hamiduallah Zazai - Director Mediothek Afghanistan (SAHR Member)
- Prof. Sarwar Mamound (SAHR Bureau Member)
- Abdul Rehman Hotaki (SAHR Bureau Member)
- Sayed Noorullah - Deputy Director, Afghan Women Support and Empowerment Organisation
- Masood Momin - Mediothek Afghanistan (Afghanistan Today online)
- Mohammad Azim Popal - Mediothek Afghanistan (Reporter)
- Qudratullah Alemyar - Political Assistance United Assistance Mission for Afghanistan
- Zainullah Sultani - Program Officer, IOM
- Sadiq Aiar - Deputy Director, Afghan Women Skills Development Center
- Suria Parluka – Director, Afghan Women Union
- Engineer Sayed Rahim Satar - Chairman, Afghan National Coordination Body
- Jawid Wali - Protection Officer, UNHCR

- Engineer Abdul Wakil Sadiqi - Director Human Resources, Ministry of Transport
- Abdul Qadeer Sadeqi - Pajwak News Agency Reporter/Analyst
- Meer Ahmad Juendah - member of the National Assembly/Chair, The Foundation for Culture Support
- Roshan Sirran - Director, Training Human Rights Association
- Abasin - Representative, Ariana Television Network
- Zakria - Reporter, International Network of Ariana TV
- Engineer Baryalai Omarzai - Representative, Afghan Community Rehabilitation Unit
- Wazir Ahmad - Deputy, Civil Society for Human Rights and Unity
- Mohammad Asif - Representative, Regional Studies Centre for Afghanistan
- Abdul Ghaffor Liwal – Director, Regional Study Center/Academy of Sciences
- Rafiullah Niazi – Analyst and Director, Regional Study Center/Academy of Sciences
- Baharah Sarwari – Director, Law Education Organisation for Women
- Zarina - Advocacy Officer, Law Education Organisation for Women
- Dr. Saeed Niazi – Director, Afghan Civil Society Development Center

-
- Nargis Nihan – Director, Equality and Democracy Organisation
 - Najiba Ayubi – Director, Publication and Advocacy of Kilid Media Group
 - Malika Qanib – Director, Education Center for Women
 - Fazlullah – Outreach Officer, Mediothek (Mass Media Liaison)
 - Gul Noor Bahman – Representative, Ministry of Information and Culture
 - Zia-ul-Din – Reporter, Mediothek
 - Mahboobullah – Independent Researcher/profile maker
 - Farhad – Representative, Regional Studies Centre of Afghanistan

BANGLADESH

Background Report – The Internally Displaced People of Bangladesh

(By Mohammad Sajjadur Rahman)

Introduction

According to the UNHCR report, there were about 42 million forcibly displaced people worldwide at the end of 2008. The figure included 15.2 million refugees, 827,000 asylum seekers (pending cases) and 26 million IDPs.¹⁸ Through most of the 20th Century, debates over international protection were focused on persons who had crossed international borders seeking refuge from war and persecution. During the Cold War period little attention was paid to persons within states who faced almost similar vulnerabilities and risks to those experienced by refugees. Two factors can be identified regarding this inattention: the notion of sovereignty discouraged any form of intervention on behalf of the IDPs and, more importantly, the bipolar world was less interested to raise such issues at the UN Security Council in order to avoid direct confrontation between the two superpowers. With the end of the Cold War, changing concepts of sovereignty, humanitarian encouraged responsibility to

¹⁸ 2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, UNHCR, 2009, p.2, Available at <http://www.unhcr.org/4a375c426.pdf>

protect, etc have attracted the international community to rethink about the possible ways to assist the displaced people within any sovereign boundary.

In 1992, Francis M. Deng, who became the Representative of the Secretary-General on IDPs, undertook the work of developing the conceptual and legal framework for the international protection of IDPs. He proposed the concept of ‘sovereignty as responsibility’ as the most appropriate protection framework for people displaced within their countries. In 1998, Deng introduced the Guiding Principles. In this document IDPs are described as: “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.” Therefore, the definition focuses on the *involuntary* nature of migration *within* a given country. Many have argued that while this definition does not confer any legal status upon the persons covered, it has failed to include varieties of situations that may induce displacement (for example, evictions from slums or brothels). Besides, it is not clear when to stop considering someone as internally displaced.¹⁹

The Guiding Principles affirm that primary responsibility for displaced populations rests with their governments (principles 3, 25); but if governments are unable to provide life supporting protection and assistance, they are expected to request assistance from the international community which will not be regarded as interference in a state’s internal affairs (Principle 25); the

¹⁹ For basic information, please visit http://www.law.georgetown.edu/idp/english/id_faq.html

principles also call on international humanitarian organisations to pay attention to the “protection needs and human rights” of the IDPs and take “measures” in this regard (Principle 27). The principles are based on international human rights law, humanitarian law and refugee law and rights envisaged in the principles include protection from arbitrary displacement, nondiscrimination, physical security and integrity, freedom of movement, protection of family and communal structures, basic freedoms and subsistence needs and access to services. The Guiding Principles also identify rights relevant to the protection and assistance against internal displacement (Section II), during displacement (Section III), humanitarian assistance (Section IV) as well as during return or resettlement or reintegration (Section V). However, the needs-based approach taken by the Guiding Principles has been criticized by those who prefer a rights-based approach in dealing with the IDPs. Another criticism is that the principles failed to emphasize on the role of the displaced in the processes through which their problems are addressed. So, many contemporary activists give preference to a rights-based approach in dealing with the question of IDPs and want to see the displaced people as agents in their own rehabilitation.

Bangladesh and the Internally Displaced People

It is often said that the State of Bangladesh was born with displaced people. Almost one-third of the population was dislocated during the liberation war of 1971. However, the processes through which IDPs are generated have become much more diversified and complex over the last forty years. Bangladesh has witnessed a rapid growth in the number of IDPs due to environmental crisis and ethnic conflict. Moreover, religious minorities and even slum dwellers have often found themselves to be displaced due to

economic or political reasons. The pattern of displacement is also noteworthy. A general observation is that displaced people in the North have been able to develop coping strategies to deal with slow-paced climate changes that result in seasonal food shortages or *Monga*. But the southerners, particularly those living in the coastal areas, are the most vulnerable people due to unpredictable and often severe environmental crisis like cyclones. Displacements shaped by such problems also determine the course of internal migration. While a large number of displaced are forced to migrate from rural to urban areas due to environmental disasters, many cannot even think of migrating to another area simply because they lack the required cost for traveling. The social consequences of displacement are enormous and women as well as children suffer the most. One must also take into consideration the notion of a 'developmental state' while analyzing the role of the Government in dealing with this category of people. Although the plight of the displaced is very much visible in both rural and urban areas, Bangladesh has largely failed to recognize the special needs of IDPs and to take effective measures to lessen the severity of the crisis.

In order to fully comprehend the manifold crises of the IDPs in Bangladesh, it is necessary to look into the laws of the land. The Constitution of the Peoples Republic of Bangladesh lays out the fundamental rights of the country. Article 26 and 27 of the Constitution outline the general principle that no laws of the State should be against the general principles of the fundamental rights stated in that section (Article 26 to Article 43) of the Constitution. Article 28 states that no law or policy of the State should discriminate against its citizens on the basis of religion, caste, creed or gender. The section on fundamental rights also ensures the right to defend oneself in court as well as the rights to mobility, right to assemble, right to organize, right to freedom of thought and conscience, right to freedom of profession and occupation, right to practice one's own

religion, right to property, right to secure ones household and self against arbitrary entry, search or arrest. Furthermore, Bangladesh as a signatory of the UN Conventions on Human Rights is also bound to abide by their mandates. However, Bangladesh is yet to develop any national strategy or policy to address the problems of this specific group or to recognize the needs and rights of the displaced.

This short background paper is an attempt to shed light on some of the issues of IDPs in Bangladesh. The paper will focus on three categories of IDPs. The first category, climate IDPs, focuses on the persons displaced due to riverbank erosion and cyclones. The next section, conflict IDPs, deals with the ethnic conflict in the CHT and shows how developmental projects and military intervention led to the creation of a large number of IDPs. This section also discusses the displacement of religious minorities, particularly the Hindus and people belonging to the Ahmadi sect. The final section talks about several other sources of displacement such as people evicted from slums and brothels. These three sections will consider relevant legal issues and governmental measures that affect the manifold crises of the displaced people.

Section I: Climate IDPs

Bangladesh is considered to be one of the most affected countries in the world with regard to climate change. The main impacts of climate change are increased frequency of droughts, floods and cyclones which in turn affect agricultural productions and livelihoods, rising sealevels exposing coastal regions to increasing vulnerability, riverbank erosion that dispossesses millions of people, etc. A large number of people are affected every year because of natural disasters and are forced to leave their land. Many of them become dispossessed and displaced. It can safely be said that most of the IDPs in Bangladesh are climate IDPs. The pattern of rural-urban migration in Bangladesh is also characterized by these climate IDPs.

The greatest part of Bangladesh sits astride the deltas of a number of large rivers flowing from the Himalayas. Crisscrossed by seven major rivers and over two hundred minor ones, the country is flooded every year during the monsoon period. These rivers are the lifelines of irrigation system, commercial transportation and fisheries. Most importantly, these rivers have literally defined the geography and cultural life of the land. A large number of people living along the riverbanks are thus vulnerable to floods, droughts and tropical storms. It is projected that about 50% of the land would be flooded if the sea level were to rise by one meter. Although years of experience have accustomed local populations to live with the culture of periodic floods, their livelihoods are now at threat because of the increasing frequency and velocity of floods and river erosion.

According to the DMB, riverbank erosion, which is caused by the continuous shifting of channels, within the major three rivers Jamuna, Padma and Meghna, alone displaces an estimated 500,000 people annually. The ominous process of deprivation and marginalisation

of millions of rural Bangladeshis begins with riverbank erosions. It is also the major cause of landlessness in the country. In one estimate, during the last five years, about 135,632 families became homeless due to riverbank erosion on twelve rivers.²⁰ Most of the displaced become landless and unemployed, thus worsening their socio-economic situation. Fluvial islands, or *Chars* that emerge periodically, become the last hope for the millions. But these islands are often submerged due to the melting of the Himalayan glaciers and the subsequent floods which in turn displace the already displaced. Around five million people inhabit such islands of the three major rivers and most of them are deprived of basic facilities like healthcare and education. Although the Ministry of Land, in a gazette order, proclaimed that riverbank erosion affected families will get priority in the distribution process of the *Khas* land, the reality is that local influential persons along with corrupt officials often make the final decisions. When an alluvion is formed within a river it becomes the property of the State or *Khas* land and only the Government can distribute such land. Even in such cases, the influential locals manipulate the legal frameworks and deprive the displaced. Violence in the *Char*lands is thus quite visible in Bangladesh. Ambiguities and loopholes are also common regarding the laws concerned with disappearance and raising of lands. For example, according to the law of Bangladesh, if a diluvian land re-emerges within 30 years, the owner can claim his/her rights over the land. In a country where rehabilitation programmes are hardly successful, the provision for waiting 30 long years is simply impractical and counter-productive.

²⁰ Poncelet Alice et al, A Country Made for Disasters: Environmental Vulnerability and Forced Migration in Bangladesh, in *Environment, Forced Migration and Social Vulnerability* by Tamer Afifi and Jill Jager (editors), Springer: 2010, New York, p. 213.

Displacement of people is often caused by sudden natural disasters like cyclones and tidal surges. Nearly 55% of the coastal population lives within 100 km of a 710 km long coastal belt, most of whom are poor and landless. Therefore, any natural disaster is followed by large-scale displacement of people. Cyclone Sidr that hit in 2007, affected 30 districts out of 64 districts, impacting nearly 8.7 million people.²¹ It was the 48th major cyclone in Bangladesh's history since 1584. The scientific community has already projected intense and more frequent tropical cyclone activity in this region. Again in May 2009, cyclone Aila smashed the coastal area and nearly 4.82 million people²² were affected. The IOM has reported that 11,118 families in Dacope *upazila* and 5,533 families in Koyra *upazila* were displaced in November 2009 as a direct consequence of the cyclone.²³ More than a year has already been passed, but most of the displaced people still are living on damaged embankments or high strips of land without adequate food, drinking water and proper sanitary facilities.

There is no doubt that disaster-induced displacement is associated with a number of socio-economic issues that intensify the plight of the displaced. Most of these displaced, particularly women and children, become victims of human rights abuses. The displaced are forced to resettle in *Char* land or in the main land, popularly known as *Bir* area. In later cases, people usually go to the places where their friends and relatives have already been settled. Therefore, the displaced have to adjust with a new way of life mostly characterized by alienation and marginalisation. They also become the prime

²¹ *Ibid*, p. 214

²² http://www.unicef.org/bangladesh/media_5130.htm

²³ Roy, Dulal Chandra, Vulnerability and population displacements due to climate-induced disasters in coastal Bangladesh, available at <http://www.ehs.unu.edu/file/get/5410>

targets of human traffickers and a number of women are forced to get involved in prostitution for survival. Displaced people also become indebted as they move to new places. Many IDPs have no place to go as they lack the required money to travel to urban areas, and even when they find a place in slums of major cities they are at constant risk of eviction by the authority. The bottom line is that the manifold problems of the victims of floods and riverbank erosions have never really been addressed properly. They are not even recognized as ‘especially affected groups’ and thus deprived of governmental benefits. The response of the Government in dealing with floods and riverbank erosions is frustratingly limited only to engineering solutions like building embankments, dams or dikes. A more holistic approach to flood and riverbank erosion is thus needed to take socio-cultural, demographic, economic as well as ecological considerations into account.²⁴

Documentation on the climate IDPs is almost nonexistent in Bangladesh. The protracted nature of climate displacement is frequently overlooked and the connection between human needs and human rights is not well recognized. Therefore, in line with the Guiding Principles, the Government should acknowledge the severity of the crisis and take comprehensive action for the most affected displaced people and make arrangements for their return and rehabilitation.

²⁴ For a detailed analysis of this category of IDPs, see, Rahman, Mizanur, *Life on a Swing: Human Rights of the Riverbank Erosion Induced Displacees*, ELCOP: 2009, Dhaka.

Section II: Conflict IDPs

Displacement in the CHT Region

Over the last 50 years, a large number of indigenous people have been displaced in the Southeastern region of Bangladesh. Although events occurring in this remote part have received less international attention, the situation is a classic one for understanding how the dual effects of developmental projects and ethnic conflict can result in creating both IDPs and refugees.

The CHT region²⁵ – situated in the Southeastern part of Bangladesh occupies a physical area of 5,093 sq. miles, constituting 10% of the total land area of Bangladesh. The region covers three districts: Rangamati, Khagrachari and Bandarban. The region is surrounded by the Indian states of Tripura to the North and Mizoram to the East, Myanmar to the South and East and Chittagong district to the West. According to the census conducted in 1991 the population is approximately 974,000. The Hill people constitute 500,000 and the Bengalis 470,000. Eleven ethnic groups populate the CHT: Bawn, Chak, Chakma, Khami, Kheyang, Lushai, Marma, Mrung, Pankho, Tanchangya and Tripura. The region has had a different administrative system from the rest of Bengal since the colonial period. The CHT Manual, promulgated by the British in 1900, laid down detailed rules and regulations for the administration of the CHT. Under Section 18 of the Manual, rules and regulations applicable in other parts of Bengal, are no longer applicable in the context of CHT. The Manual laid down an administrative structure

²⁵ For an overall analysis of the politics of development in the CHT region, see, Rahman, Mohammad Sajjadur, *The Political Economy of (under) Development: The Case of Chittagong Hill Tracts in Bangladesh.* In *Poverty and Development: Perspectives from Women and Indigenous People*, (RIB: 2009: Dhaka), pp. 64-88.

for the CHT. Article 7 of Chapter III placed the CHT under the administration of a DC. He was empowered with special powers by the Governor of Bengal, but these powers were not enjoyed by the DCs of other districts of Bengal. Parallel to this there was another administrative structure in the CHT. The Bengal Government had divided the CHT into three circles on 1 September 1881 and the CHT Manual confirmed this division. The three circles were: the Chakma Circle of 1658 sq. miles (excluding Government Reserve Forests of 763 sq. miles); the Bohmang Circle of 1444 sq. miles (excluding Government Reserve Forests of 620 sq. miles) and the Mong Circle of 653 sq. miles. The Regulation maintained the traditional institutions of the Circles Chiefs and Headmen. Rule 34 of the Regulation restricted possession of land by outsiders in the Hill Tracts but did not impose a total ban upon it. Land could be acquired for the following purposes: [Rule 34 (b)] for plantation on commercial basis; [Rule 34(c)] industrial purpose; [Rule 34(d)] residential purpose; [Rule 34(e)] commercial purpose. Under Rule 52, no indigenous people could enter or reside in the Hill Tracts, without obtaining permission from the DC. More importantly under Rule 51, the DC had the power to expel anybody from the CHT within two hours if he or she was found to be undesirable.

In the State of Pakistan the constitutional safeguards to the special status of the CHT were gradually eroded. The Constitution of 1962 changed the status of the CHT from an 'Excluded Area' to that of Tribal Area. The recognition of its distinctness was given but CHT could not remain excluded. Furthermore, the construction of the Kaptai dam became a critical factor in shaping the future demography of the region. Without any prior study on the social impact, the Kaptai dam was constructed with United States assistance (1957-62) in order to revolutionize the industrial affairs of the former East Pakistan. The dam submerged an area of about 400 sq. miles including 54,000 acres of cultivable land making up

40% of Rangamati's total average. About 90 miles of government roads and 10 sq. miles of reserve forests also went beneath the water. The result was 100,000 homeless and landless Hill people of whom 40,000 displaced people crossed over to India. The Government then hastily drew up a rehabilitation plan that was never properly executed. Around 5,633 families who were rehabilitated received 3 acres of inferior land which on average was half of their original holding. There remained 4,500 Hill families who could not be allocated land of comparable quality and thus were brought under a special programme involving the establishment of mixed plantations on inferior lands. These poorly envisaged projects failed altogether. The Government also set up a Revenue Compensation Office at Kaptai to pay compensation but failed to distribute not more than \$2.6 million, whereas the target was to dispense \$51 million. Overall, the Kaptai dam marked the beginning of the annihilation of the autonomy of indigenous economy.

The 1971 war of independence was another factor that determined the course of inter-communal relationships between the Bengalis and the indigenous population. Due to the decision of Chakma Raja Tri Dev Roy to side with the Pakistan Army during the war, the Hill people were regarded as the collaborators of the Pakistan Army after the war through which Bangladesh emerged as a new state in 1971. The leaders of the Hill felt the need for constitutional safeguards as a separate community and on 15 February 1972, a delegation led by Manobendra Narayan Larma (who was the lone elected MP from the CHT) called on Sheikh Mujib and placed the following demands:

- Autonomy for the CHT with its own legislature;
- Retention of the CHT Manual in the Constitution of Bangladesh;

- Continuation of the tribal chief's offices;
- Constitutional provisions restricting the amendment of the Manual and imposition of a ban on the influx of non-tribal people into the CHT

The above demands were unacceptable to Sheikh Mujib and he insisted that there could be only one “nation” in Bangladesh. This was also unacceptable to Larma who by then had emerged as the champion of the Hill people's cause. Therefore, the hegemonic formulation of Bengali nationalism within the constitutional framework denied the multicultural realities of Bangladesh which induced the creation of the PCJSS in 1972. The political changes in 1975 fostered the rise of Bangladeshi nationalism, which again marginalized the non-Bengali population with its emphasis on Islam. Concomitantly, ‘Jumma’ nationalism was promoted by the PCJSS to counter this hegemonic construction. Ironically, the creation of Jumma nationalism itself represents hegemonic dominance of the Chakmas over the 13 different ethnic groups living in that region. By the mid-1970s a full blown insurgency had started in the CHT and the region came under the total control of the military. Thus the developmental issues in the CHT do reflect both nationalism and militarization of the Bangladeshi state.

The Government, with the deployment of the military, began its counter-insurgency operations from late 1976 in apprehension of the fear of losing the whole of the CHT – long considered to be a strategically important part of national security. At about the same time, demographic engineering was carefully planned and ruthlessly followed by the Zia regime to forcefully relocate the Paharis from their lands and concomitantly to transmigrate thousands of Bengalis from the plain land to counterbalance the Paharis. This of course heightened the prevailing tensions between the two communities

and eventually transformed the military operation into a civil war. The next regime of General Ershad followed its predecessor's policy and at the same time tried to find ways, after being pressurized from the outside world, to negotiate directly with the rebel leaders as it was becoming clear that the nature of the conflict was more political than military. In addition, the authority came to recognize that the astronomical cost of prolonging the military operation for an indefinite period was simply too prohibitive to stomach. After years of negotiations, the Government and the PCJSS, amongst critical antagonism from both the opposition parties and the breakaway sections of the PCJSS, signed a peace accord on 2 December 1997. With the intention of consolidating the Hill people into the mainstream population, the State undertook a number of development projects which eventually became counterproductive as the results of the programmes proved beneficial to the Bengali settlers. It was a common allegation by the PCJSS that those developmental agendas were directed as tools of counter-insurgency strategy and hence were viewed as conspiracy against the Hill people.

Displacement in the CHT region can also be attributed to the politics of land ownership. The land, quite understandably, is the most contentious issue of the CHT. In 1979 the Government lifted the restrictions against the settlements of CHT lands with non-residents by amending Rule 34 of the CHT Manual. This move was part of the strategy to counter insurgency and by 1984 a demographic shift was made by settling almost 400,000 Bengalis on the so-called *Khas* land. This settlement policy has rendered around 100,000 indigenous people homeless, half of them became refugees in the Tripura state of India and the rest became scattered within the CHT.

However, the land issue became more convoluted in the post accord period when thousands of refugees returned and the newly formed Land Commission was supposed to give them back their lands on producing their land deeds. The rehabilitation programme turned out to be full of twists and turns as most of the returnees had no prior deeds – specially the Jhumias who never cognized the need for such title deeds. The notion of private ownership has always been an alien concept to the Hill people. Furthermore, the accord failed to include any clause regarding the Bengali settlers who, the PCJSS thought and claimed, would be withdrawn due to an internal understanding with the regime at the time. The Government denied any such deals with the PCJSS and the verity is that the settlers could not possibly be ejected as they had licit documents which were furnished by the authority itself. The more enigmatic actuality is that the settlers are not ‘settled’ in its genuine sense as they had to rely upon Government rations. Besides, displaced settlers are often found near the army camps, a fact confirming the claim that Bengalis have also become IDPs in this region and they are also living under constant physical threats.

While violent conflicts between army backed settlers and the *Paharis* (hill people) have often resulted in forced evictions, an unknown number of people, more recently, have also been displaced due to sporadic clashes between the two indigenous political groups, the PCJSS and the UPDF. As a result of such clashes, a large number of people have been forced to flee to more remote areas or to reserve forests where health and education facilities are limited. However, the total number of displaced people in the CHT remains a contested issue. In 2000, when the authority claimed that the number of IDPs in this region was 500,000 people, local and international NGOs working in this field criticized the Government for including the non-indigenous people in its count. In the same year, Amnesty International produced a report stating that the total number of

IDPs in CHT was 60,000. This figure, of course, did not include the non-indigenous populace.²⁶

The present Awami League Government which came to power after the December 2008 election gave every assurance to implement the peace accord fully. The new regime reestablished the Land Commission and the Task Force on Rehabilitation of Returnee Jumma Refugees and IDPs. It also pledged assistance and reparation to the dispossessed people and promised to withdraw some 35 temporary military camps. But the progress so far is not satisfying at all. As of December 2009, nearly 300 military camps were still there. Contrary to the spirit of the peace accord, it has been alleged that the State encouraged land grabbing in order to expand the so called forestation programmes and implement development projects that ultimately displaced indigenous people. It is also alleged that the military too is acquiring land for its own purpose and the District Council continue to acquire land for the settlement of Bengalis. Various indigenous groups have also complained at times about the plight of the displaced indigenous families who are forcibly evicted from their lands for the purpose of building dams and eco-parks. Along with the continuation of the settlement of the Bengalis, the State has failed to provide equitable social protection to the indigenous IDPs. For example, in July 2003 the Government stopped providing rice rations to 65,000 indigenous IDPs while their counterparts, the Bengali settlers, continued to receive those rations (Global IDP, 2003). The expansion of reserved forests, an area over which the Ministry of Environment and Forests enjoys exclusive control, has also increased the number of internally displaced within the CHT region. For example, some 2000 indigenous people were

²⁶ Report of the IDMC, Bangladesh: Indigenous People and Religious Minorities Still Affected by Displacement: A Profile of the Internal Displacement Situation, July 2009. Available at www.internaldisplacement.org

displaced in the late 1990s when approximately 100,000 acres of land was declared reserved forest. This was done without any compensation for the losses of the victims and there are many similar incidents that confirm the allegations over the State's denial of indigenous people's rights over their land and resources.²⁷

Since the signing of the peace accord, donor countries and UN agencies have shown interest in funding various projects in the region but the Government has not really been able to muster their support for a sustainable solution to the crisis of the displaced. Furthermore, the works of the Land Commission and the Task Force have slowed down due to lack of financial and human resources. Although the accord has provisions regarding the rehabilitation of the displaced (Section D), the task force has failed to initiate any comprehensive programme toward fulfilling the commitment. The fact is that the IDP population in this region continues to have restricted access to basic human rights and services. The most fundamental problem, it seems, lies in the failure to come to an agreement on the definition of IDPs. The disagreement between the Government and the PCJSS regarding this issue has made things complicated and implementing rehabilitation of the displaced has become almost impossible.

There has also been little movement towards resolving issues of land ownership or towards creating stability that may ensure peaceful co-existence of Bengalis and the indigenous communities. The vulnerability of the IDPs and the violations of their land rights are often overlooked. Many do not understand that indigenous people,

²⁷ People were displaced mostly from the Khyang community. See, Bangladesh: The Interface of Customary and State Laws in the Chittagong Hill Tracts, in *Bridging the Gap: Policies and Practices on Indigenous Peoples' Natural Resources Management in Asia*, edited by Helen Leake (UNDP-RIPP & AIPP FOUNDATION:2007), P. 64. Available at <http://asiapacific.undp.org/practices/governance/ripp/docs/Bridging%20the%20Gap%20-%20202- Bangladesh.pdf>

who lack legal ownership of land, can have rights over land based on customary practices and common land rights. Even those with legal ownership have become victims of forceful eviction and their lands have been distributed to Bengali settlers by the State. Therefore regaining access to land remains the most important factors for the indigenous IDPs. Other basic rights relating to housing, health care, education and food are also compromised in this process of state-engineered displacements, as these people have limited access to legal frameworks or information about these rights. One of the most frequently overlooked issues of the Guiding Principles is the emphasis on ensuring full participation of IDPs in the planning and management of return, resettlement and reintegration.

Although the chairman of the CHT Land Commission, appointed in July 2009, assured that land held in customary law will be considered when determining land disputes, as per the CHT accord, the rate of progress towards activation is not satisfactory. The disputed land claims have not been determined properly and the apparent decision to hold a cadastral survey before settling those disputes has simply amplified the crisis. Besides, ambiguities remain regarding the best possible ways to deal with cases involving customary title/use vis-à-vis certificates issued by the Deputy Commissioner to Bengali settlers from the plains during the late 1970s or early 1980s. Along with the Land Commission, the Task Force on Rehabilitation of Returnee Jumma Refugees and IDPs also lacks necessary resources and planning to perform its duties. A reliable database on the IDPs is thus necessary to understand the nature and extent of the problem and to plan resettlement. Furthermore, displaced people should be recognized as agents in their own rehabilitation and reconstruction programmes. The Government should also rethink planning developmental initiatives that can reach IDPs living in remote parts of the CHT. At the same

time the restrictions on local and international NGOs need to be reassessed in order to ensure physical access to IDPs.²⁸

Displacement of Religious Minorities

Although Bangladesh has a colourful history of religious tolerance, minorities sometimes find themselves in threatening conditions. This is quite a paradoxical phenomenon in the sense that the very establishment of the State of Bangladesh was based on secular values and commitments to abolish communal violence which had been a regular feature of politics in the Pakistan period. As religious fundamentalism became a more critical factor in global politics, sectarianism within Bangladeshi polity has also grown considerably within the last two decades. But sectarianism alone cannot be blamed as the prime cause of internal or external displacement. For example, displacement of the Hindus is associated mostly with violent party-politics and conflicts over property ownerships. Although, a significant number of Hindus have been forced to cross the border over the last forty years, many among the Hindu community still do not consider it as a first option. However, in 2001, when the BNP came to power, a series of violent incidents against the Hindu minorities at different areas have been reported. Systematic human rights violations encompassing forced evictions, rape, attacks against the places of worship, abductions, forced conversions, etc. compelled many Hindus to flee from their homes. Nearly 200,000 Hindus were forced to move to safer places or to migrate to India as a direct consequence of post-election violence.²⁹ Although the Constitution of Bangladesh ensures protective

²⁸ For a detailed discussion, see Skinner, Jessica, *Internal Displacement in the CHT and Rights Based Approaches to Rehabilitation*, Occasional Paper 18, RMMRU: 2008: Dhaka.

²⁹ *Ibid.*

measures for religious minorities, the Government has generally failed to initiate effective action against the perpetrators.

Another factor that is directly connected with the displacement of Hindus in Bangladesh is the application of laws regarding vested properties.³⁰ When Bangladesh became a new state in South Asia, she reinforced the provisions of the 1965 EPA with the VPA in 1974. The former Act had authorized properties such as land, buildings, companies of Indian nationals and those residing in India to fall under the jurisdiction and control of the Pakistani Government. The VPA also continued the same practice and allowed the Government to confiscate property from individuals it considered as an enemy of the State. This Act, thus, functioned as a tool to dispossess and displace a large number of Hindus and other minorities. According to a study, nearly one million or 40% of the total Hindu households in Bangladesh have been affected by the VPA.

In 2001, the Awami League Government dissolved the VPA and approved the VPRA in order to end this discriminatory practice. However, the following Government led by the BNP and its right-wing partners passed an amendment to the VPRA which allowed the Government unlimited time to return the vested properties and assigned local Government employees to dictate the fate of the properties. On September 9 2009, the Bangladeshi cabinet, during its 38th meeting, decided to scrap the VPA. It may be mentioned here that the military controlled interim Government actually passed the required law to return the property. However, the Government is yet to unveil any systematic programme that ensures the return of the properties, compensation for the most affected or rehabilitation of the displaced.

³⁰ *Ibid.*

Another religious minority group threatened by displacement is the Ahmadi sect which has about 100,000 followers in Bangladesh. The Sunnis have long regarded this sect as non-Muslim since they are alleged to have challenged the ‘finality of the Prophet-hood of Muhammad’, one of the principal tenets of Islam. During the BNP-led coalition Government, the Ahmadi sect had to face intimidation campaigns organized by the Khatme Nabuwat, an umbrella of extremist groups. Although, the Government did not declare the sect as non-Muslim, it declared a ban on Ahmadiyya publications on 8 January 2004. However, in December 2004, the High Court of Bangladesh overruled that declaration. In June 2005, a report by Human Rights Watch documented abuses against members of the Ahmadi community that included hate speech, attacks on Ahmadi mosque, lootings, forced evictions, beatings as well as killings.³¹ The international community was quick to respond and the Government was under huge pressure for normalizing the crisis situation. The number of displaced, however, is not available in this case.

³¹ *Ibid*

Section III: The Eviction of Slum-Dwellers and Sex Workers

While Bangladesh remains largely an agrarian society the country is witnessing rapid change due to economic development. One of the consequences of this is that cities are becoming more crowded than ever. The capital, Dhaka, alone houses around 13 million people with an annual growth rate of 4%.³² A large number of this population belongs to the informal sector that literally runs the city. The growth of urbanization is associated with the growth of slums or *Bastees*.³³ Although there is a tendency to view the slum dwellers as a problem population, the reality is that the fate of slum dwellers is very much connected with the economic development, migration dynamics and poverty reduction. It is a general observation that most of the slum dwellers are in fact environmental IDPs. It has been frequently alleged that the authorities evict slum dwellers without proper notification or, more importantly, without providing alternative shelters. News reports on this issue often suggest that behind such evictions lie vested interest in occupying lands, building of housing estates or shopping malls. The same is true regarding the eviction of sex workers³⁴ from brothels who are still fighting for their right to housing and work. In 2000, the Bangladesh High Court ruled that prostitution as a livelihood is not illegal. It made Bangladesh one of the few Islamic countries which do not ban prostitution. But in practice, the prostitutes here receive little support from the laws because of their ambiguous and contradicting nature. The fast

³² UN-Habitat, *State of the World's Cities 2008-9*

³³ For an excellent discussion on this issue, see, Nawaz, Rasheda, *Right to Shelter: Bangladesh*. Available at http://www.urbancentre.utoronto.ca/pdfs/housingconference/Nawaz_Right_to_Shelter.pdf

³⁴ For a detailed analysis of this issue, see, Mohsin and Ahmed, *Commercial Sex Workers in Bangladesh: Policies and Practices*, Centre for Alternatives: 2006, Dhaka

changing state of Bangladesh, shaped by the dual complexities of modernity and morality, fails to recognize the predicament of IDPs who are forced to live in the slums or involuntarily get involved in the sex industry.

Although the High Court gave clear directions to stop the forcible evictions of slums without proper legal notice and resettlement, slum dwellers in major cities regularly face such forceful eviction. The forced evictions clearly violate the right to shelter spelled out in Article 15 of the Constitution of Bangladesh: “It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care.” Article 31 of the Constitution also gets violated when the authority forcefully evicts people from their places: “To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person of for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation of property of any person shall be taken except in accordance with law.” The Constitution also states (Article 43): “Every citizen shall have the right...to be secured in his home against entry, search and seizure.” In addition to these kinds of Constitutional violations, forced evictions also jeopardize the commitments Bangladesh has already made toward upholding the values and principles of various international treaties and conventions.

Several initiatives to rehabilitate the slum dwellers had been taken by the Government. Programmes like Ghore Phera, Asrayan, Adarsha Gram Prokalpo were introduced to deal with the problems

of growing urban poverty, but detailed statistics are not available to assess the success of the programmes. It is therefore mandatory for the Government to recover and protect public lands from illegal occupation and use the *khas* lands for meeting the growing demands of the urban poor on a priority basis. Apart from the issues discussed above, there is a growing concern regarding the people affected by land grabbing activities. It is a common belief that a large number of people are being displaced by influential real estate companies. However, the actual figure of displacement is not available in this regard. Moreover, a significant number of people have also become IDPs due to the construction of eco-parks, bridges (for example the Jamuna bridge), and other developmental initiatives. Systematic analysis or major surveys are also unavailable on these cases.

Concluding Remarks

The issues raised in this background paper suggest that the Guiding Principles can be an important manual for formulating a national plan on IDPs. Several points stipulated in the Guiding Principles are quite relevant in Bangladesh's case. For example, principles relating to protection from displacement (section II) can be applied to the issues of slum evictions and displacements caused by developmental initiatives. [See, Principle 6 (1), (2, c and e)]. Principle 7 also suggests finding out alternative options and ensuring accommodation along with other basic rights for the displaced people. Seeking consent of those to be displaced (as proposed in the guidelines) is an important issue for the authorities charged with slum eviction. Furthermore, engaging women in relocation planning (7 d) and management can help reduce hardships of the displaced families. The Guiding Principles also recommend ensuring education for the displaced children, an issue often ignored in cases of environmental IDPs, conflict IDPs and eviction IDPs. Principles 21 and 29 can have important implications for the CHT region, particularly on issues related to land and property. The most important thing is that the Guiding Principles ask governments to show responsibility toward the displaced people within their sovereign authority and suggests various measures that are important for safeguarding the basic fundamental rights of the displaced.

What Bangladesh needs now is first, to recognize the severity of the crisis associated with IDPs. There is a lack of understanding regarding the special needs of such a category of people. Even news reports often fail to differentiate between IDPs and more general terms like homelessness or landlessness. Therefore, concerted effort is needed from the Government as well as civil society and media to comprehend the problems of IDPs and to find alternative ways to provide sufficient assistance to the most affected. It is not only

a humanitarian duty but also a constitutional obligation for the State of Bangladesh. However, as discussed in this paper, the legal instruments are often violated by the very State. A more proactive role from civil society and its institutions is therefore required in facilitating desired changes in the attitude of the Government and to make sure that the rights of the displaced are not violated.

Report on the SAHR Bangladesh National Consultation on IDPs

1. Introduction

The National Consultation on Durable Solutions for Internally Displaced Persons in The Context of Shrinking Humanitarian Space was held on 15 May 2012 at the training venue of Manusher Jonno Foundation of Bangladesh. The summary of the main discussion and recommendations is presented below. The objective of the consultation was to share the study findings on IDPs and to engage on issues related to the Guiding Principles and come up with suggestions for the implementation of these principles in the context of Bangladesh.

The consultation opened with a formal introduction of SAHR's work in the South Asian countries. The meeting was chaired by Khushi Kabir, Bureau Member of SAHR. The chair gave a short brief on SAHR, its objectives, research, publications and ongoing activities. SAHR has focused its work on common problems facing the people of this region in order to protect the rights of the marginalised. SAHR's research emphasises on policy and advocacy rather than typical academic research.

The Chair also shared that SAHR has a very strong bureau and membership. SAHR would like to bring a change at the regional level by providing a platform for human rights activists and could take a pioneering role in maintaining consistency in interest to create a regional civil society. Membership can play a key role in this regard. In addition, care has been

taken to ensure that international standards always comply with international mechanisms and regulations to ensure the rights of the marginalised people of this region.

Before wrapping up the meeting a note of thanks and closing remarks was made by Dr. Asif Nazrul, Bureau Member of SAHR. In order to operationalise the Guiding Principles effective measures should be taken to incorporate the issues of IDPs within the policy making process of the concerned ministries (Ministry of Environment and Forests, Ministry of Land etc.). In addition, the State should take responsibility to resolve the problems regarding IDPs by adopting a sustainable development policy, and should take measures to reduce the number of IDPs originating from internal conflicts (political clashes, pre- and post-election violence, militarisation, forced settlement etc.). Finally, he emphasised the need to use the adaptation fund for the upgrading of shelter and early warning system in coastal areas.

2. Key Discussion Points

1. The situation of IDPs was primarily discussed in light of international law. The plight of the displaced is very much visible in both rural and urban areas of Bangladesh. The country has largely failed to recognise the special needs of IDPs and to take effective measures to lessen the severity of the crisis. Bangladesh, as a member of the UN and signatory to UN conventions on human rights, is also aware of the Guiding Principles. However, Bangladesh is yet to develop any national strategy or policy to address the problems of this specific group or to recognise the needs and rights of the displaced.

2. Who is an IDP? What is the difference between an IDP and a refugee? How do we define them and what are their rights? The rationale of following the Guiding Principles was also highlighted with special focus on three basic sections; a) Rights and guarantees of people not to be forced to become IDPs b) Protection and assistance during the period of displacement c) Return, resettlement and reintegration into the society.
3. Bangladesh has witnessed a rapid growth in the number of IDPs due to environmental crises and ethnic conflict. Moreover, religious minorities and even slum dwellers have often found themselves displaced due to economic or political reasons. According to the DMB, riverbank erosion, which is caused by the continuous shifting of channels, within the major three rivers alone, displaces an estimated 500,000 people annually. Most of the displaced become landless and unemployed, thus worsening their socio-economic situation. Although the Ministry of Land, through a Gazette notification, proclaims that riverbank erosion-affected families will get priority in the distribution process of the *Khas* land, the reality is that influential persons along with corrupt officials often make the final decisions and manipulate the legal frameworks and deprive the displaced. Ambiguities and loopholes are also common regarding the laws concerned with disappearance and raising of lands.
4. A peace treaty was signed in 1997 to end the decade long ethnic violence in the CHT region. However, effective implementation strategy is still lacking. The current ruling party which came to power after the December 2008 election gave every assurance that it would implement the

peace accord fully. It also promised to withdraw temporary military camps but the progress, so far, is not satisfying at all. Contrary to the spirit of the peace accord, it has been alleged that the State itself encouraged land grabbing in order to expand so-called forestation programmes and implement development projects that ultimately displace indigenous people. It is also alleged that the military is acquiring lands too for its own purpose.

5. The expansion of reserved forests, an area over which the Ministry of Environment and Forests enjoys exclusive control, has also increased the number of internally displaced within the CHT region. For example, some 2,000 indigenous people were displaced in the late 1990s and this was done without any compensation. There are many similar incidents that confirm the allegations of the State's denial of indigenous peoples' rights over their land and resources.
6. The vulnerability of the IDPs and the violations of their land rights are often overlooked. Many do not understand that indigenous people, who lack legal ownership of land, can have rights over land based on customary practices and common land rights. In addition, one of the most frequently overlooked issues of the Guiding Principles is the emphasis on ensuring full participation of IDPs in the planning and management of return, resettlement and reintegration.
7. Another factor that is directly connected with the displacement of Hindus in Bangladesh is the application of laws regarding vested properties. According to a study, nearly one million (40%, of the total Hindu households)

in Bangladesh have been affected by the VPA. In 2001, the Awami League Government dissolved the VPA and approved the VPRA in order to end this discriminatory practice. However, the Government is yet to unveil any systematic programme that ensures the return of the properties, compensation for the most affected or rehabilitation of the displaced.

8. Despite the fact that the High Court gave clear directions to stop the forcible evictions of slums without proper legal notice and resettlement, slum dwellers in major cities regularly face such forceful evictions. It has been frequently alleged that the authorities evict slum dwellers without proper notification or more importantly, without providing alternative shelters. News reports on this issue often suggest that behind such evictions lie vested interest in occupying lands and building of housing estates or shopping malls.
9. Most of the participants felt that both short term and long term measures are required to ensure durable and effective solutions. Immediate attention should especially be given to lessen the plight of the current environmental IDPs. There is no satisfactory data bank on IDPs. Furthermore, there is no effective mechanism for data collection during the time of disaster.
10. There is no doubt that disaster induced displacement is associated with a number of socio-economic issues that intensify the plight of the displaced. Most of such displacees, particularly women and children, become victims of human rights abuses. They also become prime targets of human traffickers and a number of women are

forced to get involved in prostitution for survival. Even when they find a place in slums of major cities, they are at constant risk of eviction by the authority. It was stated that measures should be taken to apply the Guiding Principles in the context of Bangladesh.

11. Documentation on the climate IDPs is almost nonexistent in Bangladesh. The protracted nature of climate displacement is frequently overlooked and the connection between human needs and human rights is not well recognised. Therefore, in line with the Guiding Principles, the Government should acknowledge the severity of the crisis and take comprehensive actions for the most affected displaced people and make arrangements for their return and rehabilitation.
12. One of the key problems in disaster management has been a lack of coordination amongst different actors and authorities. The response of the Government in dealing with floods and riverbank erosions is frustratingly limited only to engineering solutions like building embankments, dams or dikes. A more holistic approach to flood and riverbank erosion is thus needed to take socio-cultural, demographic, economic as well as ecological considerations into account. Along with the State, civil society must continue to consult and engage with other key players in the private and public sector. Some NGOs in Bangladesh are working with IDPs to address their problem, but institutional limitations still exist.

3. Key Recommendations

1. Measures can be taken to develop the data bank on IDPs. Organisations working on IDPs in Bangladesh can launch a collaborative online database which would include all relevant news items published in different media within Bangladesh. It will be of immense help to researchers and practitioners, who can better monitor developments in this field.
2. Popularising the terminology associated with IDPs is another important task, as journalists, human rights activists, lawyers, civil society members or relevant state authorities are not totally aware of the Guiding Principles, and only through regular interactions in the form of workshops, training sessions and seminars will it be possible to create the kind of awareness that will lead us to take creative initiatives regarding IDPs.
3. Engage in discussions with various departments of universities and encourage them to introduce academic discourse on IDPs.
4. The HRC of Bangladesh can play a leading role as the 'appropriate authority' to monitor the situation of IDPs and provide legal support.
5. A committee of legal experts, along with academic researchers and activists on IDPs, should be formed to provide suggestions on how to improve legal mechanism for supporting the rights of IDPs in Bangladesh

6. Develop a national policy on IDPs based on the Guiding Principles. For operationalising, effective measures should be taken to incorporate IDP issues in the policy-making process of the concerned ministries.
7. A Bengali book project should be launched that will have chapters on regional and global case studies of IDPs. Tools and modules in Bengali should also be developed for use in workshops and training sessions.
8. There is a need to encourage the use of the adaptation fund for the improvement of shelter and warning system in costal areas.
9. Above all, a concerted effort is needed from the Government as well as civil society and media to comprehend the problems of IDPs and to find alternative ways to provide sufficient assistance to the most affected. It is not only a humanitarian duty but also a constitutional obligation of the State of Bangladesh. A more proactive role from the civil society and its institutions is therefore required in facilitating desired changes in the attitude of the Government and to make sure that the rights of the displaced are not violated.

Annexures

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**National Consultation
on
Durable Solutions for Internally Displaced Persons in The
Context of Shrinking Humanitarian Space**

Agenda

VENUE: Alok, Training Venue,
Manusher Jonno Foundation,
House # 47, Road # 35(A),
Gulshan – 2, Dhaka – 1212

DATE: 15 May 2012

Time/Duration	Agenda	Resource Person
2.30 P.M.	Introduction of SAHR , its main focus and the project on IDPs	Khushi Kabir SAHR Bureau Member
2.45 - 3.00 P.M.	Brief Presentation of an overview of the UN Guiding Principles on Internal Displacement	Sajjadur Rahman Assistant Professor Dept. of International Relations University of Chittagong Bangladesh

3.00 -3.30 P.M.	<p>Presentation on;</p> <p>SAHR Chapter's background paper on IDPs' and,</p> <p>the Issues the IDPs face at present and,</p> <p>A review of the past responses, both of the humanitarian community and the Government, to key issues surrounding IDPs</p>	<p>Sajjadur Rahman Assistant Professor Dept. of International Relations University of Chittagong Bangladesh</p>
3.30-4.00 P.M.	<p>Discussion and Q & A on the Presentations</p>	<p>Dr. Meghna Guhathakurta Executive Director RIB</p>
4.00-4.30 P.M.	<p>Suggestions to operationalise the UN Guiding Principles within the country</p> <p>(Note that in making suggestions to Operationalise all (five) areas of the UN Guidelines, the suggestions should focus on achieving durable and lasting solutions.)</p>	<p>Dr. Meghna Guhathakurta Executive Director RIB</p>
4.30-4.45 P.M	<p>Closing Remarks</p>	<p>Dr. Asif Nazrul Bureau Member, Bangladesh Chapter</p>

List of Participants

- Progati Chakma
- Md. Saidur Rahman, Research Initiatives of Bangladesh
- Stefanie Eicke, NETZ Bangladesh and Research Initiatives of Bangladesh
- Dr. Meghna Guhathakurta, Research Initiatives of Bangladesh & Member of SAHR
- Khushi Kabir, Bureau Member of SAHR
- Sara Zaker, Member of SAHR
- Adv. Subrata Chawdhury, Member of SAHR
- Shaheen Anam, Manusher Jonno Foundation & Bureau Member of SAHR
- Taleya Rehman, Democracy Watch
- Md. Sajjadur Rahman, Assistant Professor, University of Chittagong
- Nirupa Dewan, Member of Human Rights Commission and Member of SAHR
- Tazima Mazumder, Member of SAHR
- Zahidul Islam Biswas, Representative from Bangladesh Legal Aid and Services Trust
- Sanjeeb Drong, Human Rights Activist and Member of SAHR
- Dr. Shahnaz Huda, Chairman of Law Faculty, Dhaka University and Member of SAHR
- Dr. Asif Nazrul, Bureau Member of SAHR
- Irfath Ara Iva, Chapter Coordinator of SAHR Bangladesh

INDIA

Background Report – The ‘Other’ in the ‘Self’: The IDPs in India

(By Sibaji Pratim Basu)

Introduction

They are homeless at ‘home’. Yet, they cannot cross borders and seek ‘outside’ help: rather they are forced to remain as the ‘other’ within the boundaries of their ‘own’ national states. The number of such homeless/displaced people, who for over the last two decades are known as IDPs constitutes twice the number of refugees since the 1990s. IDPs and refugees are very closely related since both are displaced persons. Like refugees, the IDPs “breaks up the immediate family... cuts off important social and community ties; terminates stable employment relationships; precludes or forecloses formal educational opportunities; deprives infants, expectant mothers, and the sick of access to food, adequate shelter, or vital health services; and makes the displaced population especially vulnerable to acts of violence, such as attacks on camps, disappearances, or rape.”³⁵

However, unlike the refugees who have a supportive international legal/institutional regime, the IDPs are doubly wronged, because to fulfil their minimum needs for living they have to negotiate with

³⁵ W. Kalin & R. Goldman, “Legal Framework” in R. Cohen & F. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington D.C.: Brookings Institution Press, 1998) pp. 74, 92.

the same power-regime, which is directly or indirectly responsible for their displacement. Moreover, despite the formulation of the UN Guiding Principles on Internal Displacement in 1998, there is no legal binding on states to abide by these principles. It entirely depends on the pious wish of the States concerned to enact laws to protect and rehabilitate IDPs.

For the last two decades South Asia has seen a meteoric escalation in the number of IDPs, but to date not a single state in this region has formulated any legal mechanism in line with the Guiding Principles. Here, it should be made clear that by ‘South Asia’ we do not only consider the SAARC countries (i.e. India, Pakistan, Nepal, Bhutan, Bangladesh, Sri Lanka, Maldives and the new inclusion, Afghanistan) but also Myanmar because “what happens in today’s Myanmar has its implication for minorities in north-eastern India and Bangladesh.”³⁶ Similarly, the displacements in countries like Bhutan, Nepal, Pakistan or Sri Lanka have bearing – direct or indirect – on India. We have to comprehend the issues of IDPs in India within the broader South Asian context.

Internal Displacement in India – A ‘Modern’ Phenomenon

Internal displacement is not a new phenomenon in India. Even in the *Mahabharata* we find the instance of mass eviction from Khandava Vana to build up Indraprastha (near the present Delhi), the capital of Pandavas. In the Sultanate era, when Mohammad Bin Tughlagh, whimsically decided to shift his capital from Delhi to Daulatabad, near Aurangabad in Maharashtra, thousands of people in Delhi were also forced to shift, leaving behind their homes and means of livelihood. Many people died during the long and

³⁶ Paula Banerjee, Sabyasachi Basu Ray Chaudhury and Samir Kumar Das (ed), *Internal Displacement in South Asia* (New Delhi: Sage, 2005), p13.

painstaking journey. However, let us also not forget that these were only stray instances. Internal displacement had never been a regular and systematic phenomenon till the arrival of the 'modern' State and modern modes of production.

Most states in South Asia had long colonial experiences. In most cases, the colonial regimes did not try to disturb the traditional demographic (ethnicity and community-wise) balance. However, with the formation of new 'national' states after the Second World War, this balance was fairly threatened. India, the biggest nation-state in the region, had to face partition in 1947 with the creation of the new State of Pakistan, which existed on the Western and Eastern borders of India. East Pakistan ceased to exist after the coming of Bangladesh in 1971. Both the partitions of 1947 and 1971 took place after fierce conflicts: large-scale communal violence before 1947 and armed conflict between the Pakistani army and the Mukti Joddhas of Bangladesh ('liberation forces' of Bangladesh) backed by Indian army in 1971.

In both cases, a huge number of humanity had to suffer; large-scale displacement – both external (because a vast population had to cross the newly defined 'borders') and internal (because with the huge influx of refugees the old inhabitants faced a sharp competition over land and employment and other opportunities) – took place. In these new states grew new political and economic power groups, which comprised a handful of ethnic, linguistic and religious communities. As a result, a large number of people belonging to other communities were excluded and marginalised. The latter groups often demand autonomy within the new state and even, in some cases, organise themselves for 'liberation' from the new nation-state. Further, the redrawing of administrative-territorial units (states/provinces/districts) of the new nation-state, especially in India, also

complicates, and often jeopardises the age-old demographic balance, which enhances the potential for internal displacement.

Modern economy – especially the idea and practice of rapid and mechanised development – has been another major source of displacement. The process started in the colonial period but got its real momentum after the formation of the new nation-state. Large-scale land acquisition for the construction of big dams, industries, power stations, highways, ‘reserve forests’ etc has made a great number of people homeless and jobless. In most of the cases, they belong to the weaker/marginalised section of the population: thus they fall prey to more miseries. In many cases, the so-called modern industries cause severe health and environmental hazards (pollution of air and water), which often lead to displacement of that section of people which heavily depend on these natural resources for their livelihood. In India, the success of the Green Revolution, achieved through mechanised agriculture and heavy use of chemical fertilisers and pesticides, gradually led to infertility and degradation of land in many places, especially in Punjab.

In 2009, under a Greenpeace Research Laboratories investigation, Dr Reyes Tirado, from the University of Exeter, conducted a study in 50 villages in Muktsar, Bathinda and Ludhiana Districts that revealed chemical, radiation and biological toxicity was rampant in Punjab. In addition, 20% of the sampled wells showed nitrate levels above the safety limit of 50 mg/l, established by WHO. The study connected this finding with high use of synthetic nitrogen fertilizers.³⁷ With increasing poisoning of the soil, the region once hailed as the home to the Green Revolution, now due to excessive

³⁷ Uranium, metals make Punjab toxic hotspot”. *The Times of India*. 15 June 2010, <http://timesofindia.indiatimes.com/india/Uranium-metals-make-Punjab-toxic-hotspot/articleshow/6048431.cms>. Accessed on 10 November 2010

use of chemical fertilizer, is being termed the “Other Bhopal”, and “even credit-takers of the revolution have begun to admit they had been wrong, now that they see wastelands and lives lost to farmer suicides in this “granary of India”.³⁸

Effects of Globalisation

The number of IDPs worldwide has taken a sharp rise since the beginning of 1990s – after the end of Cold War and with the ascendancy of a ‘unipolar world’ under the supreme leadership of the USA. In this so called ‘new world order’ developed a new kind of worldwide networks of integration, popularly known as globalisation. In short, it is a process by which regional economies, societies, and cultures have become integrated through a global network of communication, transportation, and trade. The era of globalisation is characterised by extensive and rapid movements of people. An ever-increasing number of people are becoming displaced within their homelands as a result of a multitude of interconnected factors like uneven development of new industries and its hinterland of cheap labours, environmental/climatic changes etc. The majority of these displaced persons are women and children, yet they are severely underrepresented in making claims for proper rehabilitation.

Decline in the traditional notion of sovereignty of the nation-state is another feature of globalisation. States, especially the poorer ones of the Southern hemisphere, are also arbitrarily compromising with the situation. South Asian states fall under this category. In such a situation, the IDPs do not receive sufficient humanitarian

³⁸ Laws To Tackle Other ‘Bhopals. Mint (newspaper). 10 June 2010. <http://www.livemint.com/2010/06/09212410/LAWS-TO-TACKLE-OTHER-8216BH.html?type=tp>. Accessed on 10 November 2010

protection from their own states. In this changed scenario, the human rights discourse has acquired a new connotation. Since, states alone cannot effectively maintain/protect the interests of IDPs, international humanitarian agencies and national or foreign-funded NGOs have come to fill the vacuum. The UN Guiding Principles on Internal Displacement by Francis M. Deng, the Special Representative of the Secretary-General on Internally Displaced Persons, also appeared in this time of high internal displacement (1998).

The Guiding Principles

According to these principles, “internally displaced persons 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 generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”³⁹ Principle 6 declares, “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.” It also defines the phrase ‘arbitrary displacement’ which includes the following:

- a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

³⁹ Guiding Principles on Internal Displacement, 1998 http://www.reliefweb.int/ocha/ol/pub/idp_gp/idp.html Accessed on 11 November 2010

- c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- e) When it is used as a collective punishment.⁴⁰

IDPs in India: A Typology

In a salutary departure, a group of Indian scholars⁴¹ had put forward a ‘typology’ of IDPs in South Asia, a decade ago. According to this, in South Asia we find five types of IDPs.

1. Development-related displacement:

This may be divided into direct and indirect categories. The first refers to those cases where installation and commissioning of big development projects cause displacement, and the latter happens where installation and functioning of projects continuously push up the consumption of natural and environmental resources, thereby depriving the indigenous people their means of sustenance.

2. Ethnicity-related displacement:

It takes place where an ethnic community claims absolute and exclusive right over a territory, which it claims to be its homeland. Such exclusive and exclusionary claims certainly lead to ethnic tension, violence and finally large-scale displacement of the ‘other’/‘outsider’ communities.

⁴⁰ *Ibid.*

⁴¹ Samir Das, Sabyasachi Basu Ray Chaudhury and Tapan Bose, ‘Forced Migration in South Asia: A Critical View’, *Refugee Studies Quarterly*, 19. no. 2 (2000): 51-52.

3. Border-related displacement:

It can be also divided into two kinds: a) internal border-related disputes and displacement (for example, border disputes between Manipur and Nagaland in India's Northeast); b) external or international border related conflicts and displacement (for example, displacement owing to Indo-Pak border conflicts).

4. Externally-induced displacement:

It happens when a large number of migrants pour in and put pressure on land and livelihood of the indigenous/'native' people. This often leads to a 'nativist' movement and as a result the once displaced persons might face further displacement.

5. Potentially displaced persons:

This category refers to those old/infirm, children and women, who cannot migrate to other places in order to save their lives and livelihood. Technically speaking, these persons have not left their homes, yet they live constantly in a displaced-like situation.

Following the Guiding Principles (and of course, going by our experiences) we can include another type of displacement with the above list, i.e. 'natural-disaster related displacement'. A few years ago, the coastal states of South Asia faced such type of displacement – in the time of the Tsunami. Moreover, for a number of reasons, many areas of South Asian states are flood-prone. The Eastern and Northeastern provincial states of India; all of Bangladesh; parts of Nepal, Bhutan, Burma, Maldives, and even Pakistan are badly affected by flood in the monsoon. Erosion of riverbanks (especially of the river Ganga/Bhagirathi in West

Bengal, India) also makes many people homeless. Earthquakes and storms like tornadoes also occasionally take a disastrous form. In most of the cases, the states do not have any long-term policy and mechanism to cope these challenges.

Now let us take stock of the status of IDPs in India in recent years. But before delving deep, one should remember that notwithstanding the above list, displacements in India are, broadly speaking, conflict-induced, development induced and natural-disaster related.

Estimates of the IDPs

Conflict-induced Displacement

It is very difficult to estimate the total number of IDPs in India as there is no central Government agency responsible for monitoring the numbers of people displaced and returning, and humanitarian and human rights agencies have limited access to them. In addition, there is no UN agency that has an overall overview of the situation, and NGOs and CSOs have generally focused on specific displacement situations in India rather than on the overall situation. The numbers on IDPs are based on those living in camps and registered there, and it is not known how many people live in displacement outside of camps. A conservative estimate of the total number of people displaced by conflict and violence would be at least 650,000, as of August 2010.

In 2009 and during the first half of 2010, at least 650,000 people in Central India (Chhattisgarh, Andhra Pradesh and West Bengal), India's Northeast (Assam, Mizoram-Tripura and Manipur), Jammu and Kashmir, Orissa and Gujarat were living in displacement owing to armed conflict and ethnic or communal violence. Besides, a large and unknown number of displaced people were living in Indian cities.

In Central India, armed conflicts over land and mineral resources in tribal forest areas is ongoing. In 2009, Government security forces launched Operation Green Hunt against Naxalite insurgents. The conflict led to new displacement of more than 100,000 tribal people from Chhattisgarh to Andhra Pradesh between mid-2009 and mid-2010. Of those displaced, 20,000 were still staying in camps in Chhattisgarh prior to 2009 and another 20,000 in Andhra Pradesh.

In addition, 8,000 people were displaced within West Bengal, with many of them staying in makeshift camps.

In Assam, about 170,000 people who had been displaced by ethnic violence were living in camps in deplorable conditions. In 2009 and 2010, new violence in Assam displaced more than 16,000 Dimasas and Zeme Nagas and 4,000 Nepali-speakers. 30,000 Brus displaced from Mizoram in 1997 and living in difficult conditions in camps in Tripura State had not been able to return, and new Mizo-Bru violence in November 2009 displaced another 5,000 Brus. In Manipur, 1,500 to 2,500 people had to flee their homes in May 2009 due to counterinsurgency operations by security forces. In May 2010, clashes between security forces and Naga protesters displaced 500 Nagas from Manipur to Nagaland.

250,000 Kashmiri Pandits displaced from the Kashmir Valley since 1990 were still living in displacement in Jammu, Delhi and elsewhere in India. In addition, military border fencing separated 15,000 people from their land in Jammu and Kashmir State in 2009. In Orissa state, at least 10,000 people who had to flee their homes due to communal violence between the Hindu and Christian communities in 2007 and 2008 remained displaced, and in Gujarat state, 19,000 people who had been displaced by Hindu-Muslim violence in 2002, were still staying in camps until recently.

The Government of India has no national policy to respond to internal displacement caused by armed conflict and ethnic or communal violence. The responsibility for protecting the displaced and providing assistance to them generally falls on state Governments and district authorities. This has resulted in wide discrepancies between responses from one state to another and even from one situation to another within the same state.

It is very difficult to estimate the total number of conflict-induced IDPs in India as there is no central Government agency responsible for monitoring the numbers of people displaced and returning, and humanitarian and human rights agencies have limited access to them. Those whose numbers are known are generally those living in camps and registered there. A conservative estimate of the total number of people displaced by conflict and violence would be at least 650,000 as of August 2010, but the real number, which would include displaced people outside of camps and dispersed in India's cities, is likely to be significantly higher.⁴²

Development-induced Displacement

Extensive research findings presented by the World Commission on Dams have shown that between 40 and 80 million people have been forced to leave their homes as a result of the construction of large hydroelectric dams alone. In 1994 the Government of India admitted that 10 million people displaced by dams, mines, deforestation and other development projects were still "awaiting rehabilitation", a figure regarded as very conservative by most independent researchers. According to a conservative estimate there are at least 21 million development-induced displaced in India.⁴³

Prior to 1947, water resource development works in India comprised mostly of diversion weirs or small earth dams not exceeding 15 to 20 metres in height, mainly in the form of small tanks and bunds with localised networks of canals. In fact there were only 30 dams that were 30 metres or more in height before the onset of independence. However, many of these systems involved extensive and sophisticated

⁴² www.internal-displacement.org/ Accessed on 11 November 2010.

⁴³ <http://www.fmreview.org/FMRpdfs/FMR12/fmr12.6.pdf> Accessed on 15 November 2010

modes of water harvesting, sometimes with massive canal systems, and involving creative application of indigenous technologies.

With the adoption of policies for planned development after freedom in India, a major priority for policymakers was the harnessing of the country's water resources for irrigation and power. Support to earlier technologies, based on diversion or run-of-the-river schemes, gradually diminished in favour of large dams. The visibility, scale and sweep of mega-dams made them potent emblems of the reconstruction and regeneration of the battered economies of long-suppressed post-colonial nations.

Large storage works such as the Bhakra, the Hirakud, the Tungabhadra and the Damodar Valley Dams were amongst the earliest projects undertaken in the post-independence period in the country. Construction of high dams for hydropower generation was also taken up, especially in peninsular India, and this included schemes such as the Machkund, Pykara and the Kundah hydroelectric projects. The national plans also attempted to incorporate wherever possible a multi-purpose orientation to dam projects, including hydro-power, flood control and navigation, in addition to irrigation. Some 3,300 big dams have been constructed in India in the last 50 years. Budget provisions for major irrigation projects outstrip most other sectors, including health and education, in the annual plans of many state governments. These are also far in excess of financial allocations for establishing or strengthening decentralised irrigation schemes.

Although enthusiasm for mega-dam projects amongst policymakers remains largely undimmed, a formidable body of independent empirical research into many of these large dams has established how their social, human and environmental costs have been ignored or grossly understated in the planning of these

projects, and the expected benefits exaggerated. The actual output of irrigation and power of these projects has fallen short, sometimes spectacularly, of the level on the basis of which investment on the project was initially justified.

Of the very many neglected costs of the big dams, some of the most grave are the social and human consequences of displacement. In this paper we will restrict ourselves to an analysis of these human and social impacts of displacement, and especially to those that result directly or indirectly from the omissions or commissions of policy.

It was clear from the start that mega-projects would require the displacement or forced uprooting of substantial populations, particularly for hydraulic projects which entail large-scale submergence for reservoirs. However, national leaders and policy-makers typically viewed these as legitimate and inevitable costs of development, acceptable in the larger national interest. Javaharlal Nehru, India's first Prime Minister, while laying the foundation stone for India's first major river valley project, the Hirakud Dam in Orissa in 1948, said to the tens of thousands facing the grim prospect of displacement: 'If you have to suffer, you should do so in the interest of the country'.⁴⁴ The same sentiments were echoed 36 years later by Prime Minister Indira Gandhi in a letter to one of India's most respected social workers, Baba Amte. She wrote: "I am most unhappy that development projects displace tribal people from their habitat, especially as project authorities do not always take care to properly rehabilitate the affected population.

⁴⁴ See, Arundhati Roy, 'The Greater Common Good', 1999 <http://www.narmada.org/gcg/gcg.html>. Accessed on 15 November 2010

But sometimes there is no alternative and we have to go ahead in the larger interest..."⁴⁵

There is painful irony, and possible design, in the fact that there are no reliable official statistics of the numbers of people displaced by large projects since independence. Many researchers place their estimates between 10 and 25 million. In an influential 1989 study, Fernandes, Das and Rao provide an estimate of some 21 million displaced persons (see also Fernandes 1991). Scholar-administrator and currently Secretary of India's Planning Commission, Dr. N. C. Saxena, places his estimate of persons displaced by big projects since 1947 at more than double this figure — 50 million.

This is also the figure quoted by writer-activist Arundhati Roy in a recent essay 'The Greater Common Good: The Human Cost of Big Dams'. It is worth quoting her persuasive reasoning: According to a detailed study of 54 Large Dams done by the Indian Institute of Public Administration, the average number of people displaced by a Large Dam is 44,182. Admittedly 54 Dams out of 3,300 is not a big enough sample. But... it's all we have... let's err on the side of *abundant* caution and take an average of just 10,000 people per Large Dam. 33 million... That's what it works out to... What about those that have been displaced by the thousands of other Development Projects?... Fifty million people... I feel like someone who's just stumbled on a mass grave.⁴⁶

Going beyond the numbers and based on the large body of painstaking research into the experience of displacement in India, and confirmed by the direct observation of the Sardar Sarovar and

⁴⁵ <http://www.indiaenvironmentportal.org.in/files/Displacement%20in%20Singrauli%20Region.pdf> Accessed on 15 November 2010.

⁴⁶ Arundhati Roy, *Op. Cit.*

Hasdeo Bango projects by the writer of this paper, this part of the paper will attempt to identify some of the recurring and predominant trends in the experience of displacement and rehabilitation as a result of big dams in India.

Dams and the displacement of tribal people

Name of project	State	Population facing displacement	% of tribal displaced
Karjan	Gujarat	11,600	100
Sardar Sarovar	Gujarat	200,000	57.60
Maheshwar	Madhya Pradesh	20,000	60
Bodhghat	Madhya Pradesh	12,700	73.91
Icha	Bihar	30,800	80
Chandil	Bihar	37,600	87.92
Koel Karo	Bihar	66,000	88
Mahi Bajaj Sagar	Rajasthan	38,400	76.28
Polavaram	Andhra Pradesh	150,000	52.90
Maithon & Panchet	Bihar	93,874	56.46
Upper Indravati	Orissa	18,500	89.20
Pong	Himachal Pradesh	80,000	56.25
Inchampalli	Andhra Pradesh – Maharashtra	38,100	76.28
Tultuli	Maharashtra	13,600	51.61
Daman Ganga	Gujarat	8,700	48.70
Bhakra	Himachal Pradesh	36,000	34.76
Masan Reservoir	Bihar	3,700	31
Ukai Reservoir	Gujarat	52,000	18.92

Source: Satyajit Singh, *Taming the Waters*, OUP, 1997, and Government figures.

Recent Debates over Industrial Displacements

In achieving average growth rates of 9% over the four years until 2009, India has caused much excitement as the economic success story that promises to alleviate poverty. With the aim of increasing national income and maintaining high growth rates, India has expanded its service sector and pursued industrialisation, pushing large-scale projects and setting up SEZs - specially demarcated and self-sufficient growth centres. These, it is hoped, will accelerate development and industrialise India's hinterland. However, India's path to industrialisation is not straightforward, many alleging that this growth story has excluded India's poor. With land acquisition being essential to building large dams, steel plants or economic zones, it is argued that India's rural poor are being unfairly displaced, while benefits of the projects bypass them. The strongest opposition in recent times has been to SEZs, in particular to the \$350 million Tata Nano project in Singur, which led to violent protests by farmers across the country refusing to part with their land, which were backed by many intellectuals and activists. Nearly 200 projects including factories, railroads and highways are being held back by similar struggles.

The Indian Government passed the SEZ Act in 2005 and nearly 500 SEZs have been granted approval since, covering over 50,000 hectares of land. While the specific aspects and benefits of an SEZ have been debated, land transfer, displacement and dispossession have been most controversial in the recent past, given that acquisition of rural land is essential to the setting up of industrial units, factories and projects.

The issue of displacement of rural population has emerged as the most important concern in the context of development and industrialisation. The displaced families are often given a raw deal

by the businesses, and poor Government compensation, which takes years to come by. Many displaced people do not reap benefits of the projects for which they are displaced. Big industry is accused of displacing the poor and tribals and uprooting their culture and livelihoods. The State, on the other hand, is accused of holding a dismal record for compensation and rehabilitation. Also, displaced people are not provided with an alternative livelihood, as most are unskilled for employment in the factories that come up on their land, widening the gap between the rich and the poor.

In India, where over 70% of the workforce is engaged in agriculture, land is a sensitive issue. Land acquisition for industrial purposes is often argued as inevitable and for the greater common good. But those opposed to the acquisition of rural land hold up farmers' right to land in arguing against their displacement and lamenting destruction of rural life. Besides, for most farmers in India, land is the primary source of livelihood, with many more landless labourers and their families depending on it. People who have been agriculturalists traditionally and do not have industrial skills are better off tilling than losing their land to corporations. Land provides them more security than the promise of SEZs and has greater agrarian potential.

The majority of Indians are however subsistence farmers, who live off their land and in poverty. While 60% of India's workforce is engaged in agriculture, its contribution to the GDP is a mere 17% the average size of farm holding being only 1.15 hectares. Lack of mechanisation means back-breaking toil and frequent crop failure. Lack of development in the rural hinterland means no healthcare, high infant mortality rates, poor education facilities and perpetual poverty. Small and marginal landowners find agriculture unviable. Those in favour of industrialisation consider the shift from agriculture to industry inevitable, arguing that the

small land holdings in India cannot promise growth. Citing the shift from agriculture to industry as essential to the development of any economy, opponents of industry have been charged with romanticising small-scale farming. Critics have also pointed to the gap between intellectuals promoting a general anti-development ideology, and the specific circumstances of the rural poor whose interests they claim to represent.

The Naxalite conflict has so far affected more than 200 of India's 626 districts in 20 of its 29 states. These areas largely overlap with the Dandakaranya forest covering parts of West Bengal, Jharkhand, Orissa, Chhattisgarh, Andhra Pradesh and Maharashtra, where large deposits of mineral resources such as bauxite, iron ore and uranium are located and where millions of Adivasis (tribal people) live. The latter have suffered from chronic famine and have had no access to health care, education or judicial procedures.

In 2009, the Government of India initiated 'Operation Green Hunt' against the Naxalites in Chhattisgarh, Jharkhand, Orissa and West Bengal, the states worst affected by the conflict. Ostensibly aimed at suppressing the rebellion, some have argued that its real aim is to "turn [...] the area into a war zone" to force the low-caste tribal people off their mineral-rich land to make way for large-scale commercial exploitation of natural resources by private companies.⁴⁷

Since 2005, the Government of India has signed several hundred MoUs with companies on resource exploitation and large-scale infrastructure projects such as power plants, dams and steel factories. Between 1999 and 2009, 160,000 people were estimated to have been displaced in Andhra Pradesh, Chhattisgarh, Jharkhand and

⁴⁷ http://www.atimes.com/atimes/South_Asia/LH04Df04.html Accessed on 12 November 2010.

Orissa because of development projects.⁴⁸ As of August 2010, the Government of India was considering the Mines and Minerals (Development and Regulation) Act, 2010 that would oblige mining companies “to allot free shares equal to 26% of a project’s equity to the local population affected by the mining project”. The proposed legislation met with strong opposition from mining companies.⁴⁹

⁴⁸ http://www.tehelka.com/story_main42.asp?filename=Ne110709no_place.asp. Accessed on 12 November 2010.

⁴⁹ http://www.atimes.com/atimes/South_Asia/LH04Df04.html Accessed on 12 November 2010.

The Communal Violence Prevention Bill

Communal violence, we all know, is a major cause of displacement throughout South Asia. India, Pakistan and Bangladesh suffer most on this account. In India, the memories of Bhagalpur or the post-Godhra Gujarat riots still haunt all peace loving people. In this context, the Communal Violence Prevention Bill should come under the purview of our discussion.

From the framing of its first draft in 2005 to the heated debates that have followed it, the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill has been mired in controversy. The Government feels that CSOs want to take over its powers; CSOs believe the Government is simply not prepared to go far enough. Now, after five years of back and forth, the NAC is still pursuing to, among other things, try and reshape the voluminous draft law into an effective instrument against communal violence. In this task, the NAC is up against both a hostile bureaucracy as well as the sometimes-impossible demands from CSOs, from which it derives its legitimacy.

At the heart of the battle is a fundamental question: Can an independent body (like the NAC) assume, temporarily, the powers of the Government? The Government's draft bill, for instance, suggests a Union Home Minister-headed 111-member National Council to oversee relief and the rehabilitation of victims. This has been rejected by civil society activists, which has, instead, proposed a CHJRC, with national, state and district councils, and a mandate that goes beyond responsibility for relief, compensation and rehabilitation to include the "power to recommend the notification of the application of the Communal Violence Law."

“The State is responsible for maintenance of law and order. If the State fails in its task, it has to be made accountable — those powers can’t be handed over to civil society members, unless you want to change the Constitution,” senior Government sources told *The Hindu*. The problem, these sources stressed, stemmed from the fact that some civil society activists are “looking at the issue only through the prism of Gujarat,” rather than focussing on creating a bill for all time. “In 2002, the Gujarat Government was at fault. But in 1984, the Centre was at fault, while the State Government behaved admirably.”

Asked to respond to this view, the NAC’s Harsh Mander — who is among those entrusted with holding consultations to come up with a new bill — agreed that this demand could not be conceded: “I agree, an independent body can’t have overriding powers; it can only bring pressure, not interfere with the authority of the Executive.” Having conceded that point, the NAC does have fundamental differences with the architecture of the official bill, with its objections starting with the preamble, which reads: “To empower the State Governments and the Central Government ...” This would suggest, says Mr. Mander, that “Narendra Modi — since Gujarat was the context for this Bill — did not have sufficient powers to deal with the violence. That’s not true. From my experience as a district magistrate, I can tell you that no riot can last more than a few hours without political support from somewhere. A District Magistrate has the authority to call in the Army which, in some senses, makes him more powerful than even the Prime Minister.”⁵⁰

The draft Bill’s suggestion to declare certain areas “communally disturbed areas” has also come in for criticism, with civil society

⁵⁰ Communal Violence Bill: Activists Governments at Loggerheads, *The Hindu*, 14 July 2010

activists saying this will give the Government the opportunity to use the draconian AFSPA. The Government's argument is that this provision has nothing to do with the Disturbed Areas Act, which allows the use of the AFSPA. The NAC's view is that since the phrase "disturbed areas" has an unpleasant connotation, it could be substituted with "protected areas."

Intriguingly, there is one provision in the draft Bill for which the NAC blames the Union Home Ministry, while other sections of the Government hold CSOs responsible for its inclusion — the "special powers given to the Central Government to deal with communal violence in certain cases," something that will be hotly contested by the state Governments. NAC sources say this has been deliberately included so that the bill is never passed; Government sources say, "civil society organisations are confused — they don't know whether state Governments should have less or more powers."⁵¹ Clearly, the Communal Violence Bill is a matter of heated controversy — and it will remain so even after the enactment.

⁵¹ <http://www.hindu.com/2010/07/14/stories/2010071464281400.htm> Accessed on 15 November 2010.

Applicability of the Guiding Principles

The CENISEAS in collaboration with the CRG held a workshop on the Relevance of the UN Guiding Principles on Internal Displacement in Guwahati, Assam.⁵² It was stated that the CRG project on IDPs is in collaboration with the Brookings Institutions project on IDPs. Because India is such a large country this workshop was meant to look closely at the situation of IDPs in Northeast India alone. In the inaugural session Sanjib Baruah, Senior Fellow of CENISEAS, said that Northeast India has the largest number of conflict induced IDPs in India yet they get little attention from either the Government or the civil liberties activists and the national and international media. He said that indigenous people are the hardest hit as a result of conflict in the Northeast. He talked of about 150,000 IDPs languishing in Kokrajhar camps and stated that a translation of the Guiding Principles in vernacular languages might be a tool in the hands of the victim community. Dr. Paula Banerjee from CRG discussed how the Guiding Principles are based on international humanitarian and human rights laws. She also spoke on how the Guiding Principles are being translated and used in different countries of South Asia. Dr. Ranabir Samaddar, Director CRG and A.N.S. Ahmed, Director Omeo Kumar Das Institute of Social Science released a bilingual booklet on the Guiding Principles in Assamese and English. The workshop was attended by many different organisations from Northeast India and also by members of different IDP camps such as Serang IDP camp, Adivasiya Sahitya Sabha, STTEP etc. There were a number of women's rights activists, academics, researchers, lawyers and Government administrators. There were over 50 participants in the workshop.

⁵² <http://www.mcrg.ac.in/idprp.htm>. Accessed on 17 November 2010

Several important suggestions were made for carrying the programme forward:

- It was said that in the context of Northeast India it is not adequate to translate the Guiding Principles only in Assamese.
- The CENISEAS in collaboration with CRG agreed to translate it into Boro, Adivasi, Meitei and some other Northeast Indian languages in the future.
- The translated Guiding Principles, it was agreed should be sent to inmates of the camps, other victims, civil liberties organisations, media, administrators and the security personnel.
- CRG agreed to hold future workshops in IDP camps in collaboration with partner organisations in Northeast India. All participants at the workshop expressed their interest in contributing towards such activities.
- It was suggested that in depth empirical studies should be conducted in IDP camps because hardly any reliable data exists on them.
- It was also suggested that an information and media campaign could be organised around the visit of Prof. Walter Kalin.
- Efforts should be made for better exchange of data among people working on IDPs.
- A network of interested people should be organised. This network should consist of activists, scholars, lawyers, victims of displacement and other stakeholders.

Sanjib Baruah, who led the advocacy work in Northeast India commented that the situation in the Northeast is extremely complex. There are a number of languages and so translating the Guiding Principles only in one language may complicate the issue. Hence he aid as a first step he translated the Guiding Principles into Assamese with the hope that later he might do it in other languages such as Bodo, Meitei, Santhali etc. In describing the translation of the Guiding Principles into Assamese, Baruah said that he followed it with the English text next to the translations. This was done keeping in mind the polarisation of the Northeast whereby publishing the Assamese text only would have been perceived as being politically motivated. He also said that Bengali and Nepali translations of the Guiding Principles are a must in the Northeast because there is a sizeable population speaking these two languages. As for the displacement scene in the Northeast, Baruah is of the opinion that the region has seen a chain reaction in displacement. The displacement of Bengali Muslims from India led to the pushing out of Bhutias from Darjeeling, which in turn led to the expulsion of Nepalese from Bhutan. This was followed by displacement of many other groups who were both victors and vanquished at the same time.

Resettlement and Rehabilitation Policy

Displacement due to development in India is not new, though resettlement and rehabilitation as a policy measure certainly is. The colonial period has produced a vast segment of displaced people. In the Indian context, it is of interest to note that most of the developmental projects are located in the most backward areas and populated by various small nationalities – otherwise called tribals. Any resistance to the displacement was treated as a ‘law and order’ problem, so there was no question of R&R policy. Land was acquired by the draconian provisions of the Land Acquisition Act 1894, which still continues, with some amendments in 1967 and 1984, to be a weapon for an independent Indian State for acquiring land from its citizens.

The situation just after independence was not much different. Independent India’s Nehruvian development model based on development of heavy industries found a nationalistic fervour with planners and its privileged citizens. That there would be large-scale displacement was not a hidden fact and Nehru, while speaking to displaced persons of Hirakund Dam in 1948, said, ‘If you are to suffer, you should suffer in the interest of the nation’. Barring a few exceptions, most pre-1980 projects did not have a clear-cut resettlement plan and resettlement was undertaken on a case-to-case basis. To mention a few, the Nagarjunasagar, Hirakud, Tungabhadra and Mayurakshi dams; the Rourkela, Bhilai and Bokaro steel plants, several defence establishments, coal mines, did offer resettlement in the form of house sites to the displaced. Only the National Thermal Power Corporation, and Coal India Limited, two Government undertakings, have formulated an R&R policy and constituted R&R departments to administer it. In addition, resettlement colonies have been demarcated near all their project sites to resettle the displaced (Asif, 2000). As a result of this *ad hoc*

approach many of the displaced were left out of the process and even though there is an absence of accurate national database studies on displacement a study for 1951-1995 completed in six states and other research show that their real number 1947-2000 is probably around 60 million.⁵³

At the national level, the first policy draft was prepared in 1985 by a committee appointed by the department of tribal welfare when it found that over 40% of the IDPs and PAFs 1951-1980 were tribals (Government of India, 1985). The next draft came from the ministry of rural development eight long years later in 1993 and the third in 1994. In response the civil society alliance struggling for a national rehabilitation policy proposed its own draft to the ministry in 1995. There was silence till 1998 when another draft came out but the ministry that prepared it also prepared amendments to the Land Acquisition Act 1894. The above alliance found about 50% of the policy acceptable but thought that the amendments rejected all the principles enunciated in the draft policy, so they came together again to dialogue with the ministry and work on alternatives. Many principles evolved from this interaction. A meeting convened by the minister of rural development in January 1999 ended with an implicit unwritten understanding that a policy would be prepared first and that any amendments to the Land Acquisition Act would be based on the principles it enunciated. However, the newly promulgated policy seems to ignore the whole process (Fernandes, 2004). In the scenario of growing unemployment the policy could have revived one of earlier practices where till 1986, the T.N. Singh Formula (1967) stipulated that the parties concerned give one job to every displaced family. But increasing mechanisation has reduced the number of unskilled jobs (Fernandes, 2000). This is another

⁵³ Walter Fernandes, Rehabilitation Policy for the Displaced, *EPW*, 39, 12, March 20-26, 2004.

instance where the Government has failed to take responsibility for PAFs and also making them beneficiary to the supposed benefits of development.

NPRR and Vulnerable Communities

The NPRR in its preamble says, “the Policy essentially addresses the need to provide succour to the asset less rural poor, support the rehabilitation efforts of the resource poor sections, namely, small and marginal farmers, SCs/STs and women who have been displaced.” A close study of the various provisions, however, does not say the same.

To mention the provisions for women, the NPRR defines a family as PAFs consisting of such persons, his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him and dependent on him for their livelihood. It makes provisions for adult sons to get compensation but not for adult females. This has been more or less the same in previous drafts of the NPRR and also the Narmada Waters Dispute Tribunal Award of 1979, a landmark in R&R policy innovation, which has recognised the male as the head and sole deciding factor for compensation and rehabilitation but, remained completely ‘gender blind’.

The World Bank, one of the first in developing and initiating wide ranging socio-economic studies on the cases of displacement and rehabilitation, also did not include any special provision for land allotment to women in studies conducted in the early nineties. In a study by the Tata Institute of Social Sciences in 1993 it was pointed out that the absence of employment opportunities and adverse conditions at the rehabilitation sites in Gujarat where PAFs of the Sardar Sarovar Project were resettled, forced women to join

the casual labour market to earn and supplement family income, mainly in the sugar plantation, where they were paid less than male workers. The experience also shows that since most of the tribal communities are not familiar with the monetary economy, more often than not their money is wasted on buying consumer goods or liquor which increases the burden on women. Writings before the policy was finalised do hint that land for adult daughters did not find much favour either with the PAFs or activists, which may be true in some areas but is not desirable. The policy also fails to address the issues of gender equity and provisions for empowerment of women. To pay lip service, however, it makes provision for a representative of women residing in the affected zone to be included in the R&R Committee to monitor and review the progress of implementation of scheme/plan of R&R of PAFs.

The price paid by the Government for the loss of common property resources and customary rights/usages of forest produce to each tribal PAF shall be additional financial assistance equivalent to 500 days minimum agriculture wages, i.e. Rs 43,310. It is difficult to think of a sustainable livelihood for tribals without forest. The forest is not just the source of fuel wood or other minor forest products, but is their natural habitat and central to their existence and cultural heritage. The Government probably expects those who are not used to monetised economy and urban ways of living, to buy cooking gas stoves and build concrete houses with the money provided. We shall see later the instance where the previous attempts at rehabilitating tribals have failed miserably. This is enough to show the ignorance of the tribal way of life and their culture and the Government on its part has learnt nothing from its own R&R experience of dealing with various kinds of displacement in the last 50 years. The Government's sincerity in resettling tribals in their natural habitat is visible from the fact that it would have to pay only 25% higher R&R benefits in monetary terms if it fails to do so.

The policy categorically mentions that the rehabilitation grants and other monetary benefits proposed would be *minimum* and applicable to all project affected families whether belonging to BPL or non-BPL category. States where R&R packages are higher than proposed in the Policy are free to adopt their own packages. However, it is a known fact that the states would always prefer to choose where their obligation is minimal. According to Government policy, any PAF owning house and whose house has been acquired may be allotted free of cost house site to the extent of actual loss of area of the acquired house but not more than 150 sq. metres of land in rural areas and 75 sq. metres of land in urban areas.

However, only PAFs of the BPL category shall get a one-time financial assistance of Rs. 25,000 for house construction and non-BPL families shall not be entitled to receive this assistance. There is no compensation for loss of the house except for the fact that the Government would provide one-time financial assistance of Rs. 5,000 as transportation cost for shifting of building materials, belongings and cattle etc. from the affected zone to the resettlement zone.

It is a commonly known fact that BPL families are generally landless, casual labourers, and sharecroppers and still the policy makes provision for a one-time financial assistance equivalent to 625 days of the minimum agricultural wages. In case of displacements a displaced PAF shall get a monthly subsistence allowance equivalent to 20 days of minimum agricultural wage per month for a period of one year, up to 250 days of minimum agricultural wage. A generous estimate of minimum agricultural wage at the rate of Rs 86.62 per day would add up to Rs 37,500 or Rs 15,000 depending on the category to which one belongs. This is the price the Government proposes for livelihood of its citizens who are already at the margins of development. There is no attempt on part of the Government,

visible from these policy guidelines, at making the life of IDPs or PAFs sustainable, except for increasing their risk of impoverishment and disempowerment.

The policy provides no safeguard against double or triple displacement which has happened in the past due to poor planning of the resettlement process and project assessment, especially in the dam-related submergence and displacement. This is one of its major lacunae, in absence of such a safeguard chances are that these communities can be displaced again and again over a period of time.

Absence of any provision of penalisation for R&R officials in the policy is another serious lacunae. Whereas the Land Acquisition Act, 1894 categorically mentions that “any person or agency obstructing the process of acquisition on conviction before a magistrate is liable to imprisonment, for any term not exceeding one month, or to fine not exceeding Rs. 500 or both.” Simply interpreted, it means the Government can displace its citizens whenever it wants on the pretext of development or public interest, but is not accountable for their resettlement. The NPRR in turn sets up a Disputes Redressal Mechanism and Grievance Redressal Cell, the terms of which is to be fixed by the appropriate Government. Even there, only the Disputes Redressal Mechanism has provisions for accommodating the representatives of PAFs and specifically mentions women, SCs, STs, NGOs and Member of Parliament/Member of Legislative Assembly of the area, but not in the Grievance Redressal Cell. In a way no PAFs can move to court unless and until the Government decides to give them the power to do so or at the most they can appeal to the National Monitoring Committee at the Centre.

Responsibility of the NHRC

In the recent past, at a conference organized by Mahanirban Calcutta Research Group⁵⁴, the representatives of the NHRC talked about the importance of transparency while framing implementing various R&R policies. They suggested that a committee should be constituted for looking after the interests of the project-affected persons and this committee should include representatives from the Government as well as investors. They further pointed out that effective governance on the basis of public participation can protect the rights of the IDPs better.

The representatives from the NHRC also acknowledged that one of the problem areas with regard to the protection of development-induced displacement is the Land Acquisition Act. The participants agreed upon the need for an immediate review of the Land Acquisition Act of 1894 that could be the cause of large-scale development-induced displacement in the country. The participants also felt the need for reassessment of the controversial Coastal Regulation Zone Act.

There was a demand for a review of the NRP, 2006. Apart from the more recently talked about problem of development induced displacement in the country, in the context of a neo-liberal economic agenda being pursued almost throughout India, the participants also discussed the problems relating to the situations of conflict-induced displacement. In this context, the representatives of the NHRC provided their inputs from the experiences of this institution while working in Gujarat, Tripura and Arunachal Pradesh in recent times.

⁵⁴ For detailed report, see the Report prepared by Sabyasachi Basu Ray Chaudhury and Ishita Dey at www.mcrg.ac.in/

It is disturbing to note that even five years after the Gujarat disturbances, about 4,500 families still remain displaced and are forced to stay in the makeshift structures set up by a few NGOs and community organisations. At least 500 families are still compelled to live in tents. In this scenario, the administration of care and the role of the care-givers become more crucial.

These issues also became important in the context of the refugees taking shelter in the camps of South Tripura from the neighbouring CHT in Bangladesh in the late 1980s and early 1990s. At times, these refugees were turning into strategic pawns in the larger context of the India-Bangladesh bilateral relations and resultantly the basic minimum needs of these refugees were being ignored and the ration supplies were becoming quite infrequent. The intervention by the NHRC brought about significant improvement in the administration of care. On the basis of the recommendations of the NHRC, prepared after the visit of its representatives in the concerned refugee camps, the supply of food and other essential commodities to the camp inmates was restored. It also persuaded the Government to provide certain facilities to the refugees like better accommodation, water supply, medical care and educational facilities.

The role of the NHRC in the context of the Chakmas and Hajongs in Arunachal Pradesh also illustrates how the national human rights institutions can play a crucial role in a conflict situation. When the AAPSU activists started demanding the expulsion of the 'foreigner' Chakmas and Hajongs from the state of Arunachal Pradesh in 1996 the fate of about 65,000 Chakmas and Hajongs became quite uncertain. These Chakmas and Hajongs were settled much earlier by the Government of India as they were displaced in 1964 when their land was inundated due to the construction of the Kaptai Dam over the Karnaphuli River and they crossed over

to Tripura to take refuge in India. As they technically remained 'stateless persons without any formal granting of Indian citizenship, the AAPSU supporters were agitating for their expulsion from the State that otherwise is restrictive not only to foreigners but also in the context of the Indian citizens who require an Inner Line Permit to visit the state. But, the NHRC invoked Article 21 of the Constitution of India concerning the right to life and recommended adequate measures for ensuring the life and liberty of the Chakmas and Hajongs in the state. That also helped the Supreme Court of India to deliver its landmark judgment in this case on the basis of the said Article 21.

O. P. Vyas, a representative of NHRC, argued that a democratic society is one where the State and its citizens come together to create an open society where there is maximum and effective public participation. The administration of care is the primary responsibility of the State but it can only be achieved with active participation of all the stakeholders, and the people can effectively participate and contribute only when they are empowered with knowledge of their rights and avenues of redress. The State has a responsibility, in the interest of the nation, to undertake appropriate projects for its economic development. The question, however, arises whether national interest is best served when the interests of the most vulnerable sections of the society are seriously neglected. He reminded the participants that, in the opinion of the NHRC, the issue of resettlement and rehabilitation of persons displaced through the acquisition of land for mega projects should be part of the provisions of the Land Acquisition Act itself or be a part of any other appropriate legislation, so that they become justiciable. He also said that the Commission had reviewed the provisions of the NPRR, sent to it by the Ministry of Rural Development. The Commission suggested specifically that the Union and state governments should examine and appropriately amend their

laws, regulations and practices in order to ensure the rights of the marginal people in the society.

Some of the major cases brought before the Commission relate to:

- The rehabilitation and resettlement of tribals affected by the construction of the Kabini reservoir in Karnataka.
- The rehabilitation and resettlement of tribals affected by the Bandipur Project Tiger National Park in Karnataka.
- The rehabilitation of persons affected by the Maheshwar Dam in Madhya Pradesh.
- The rehabilitation of persons displaced in consequence of a Defense Ministry project in Karnataka.

The Commission had dealt with at length the issues related with rehabilitation and resettlement of the tribals of the Mysore District, who were affected by the construction of the Kabini Reservoir in early 1970s and the formation of Bandipur Project Tiger National Park in 1973-74. The Commission on 13 January 2003 deliberated upon the issue of earmarking suitable land for rehabilitation of the displaced 154 tribal families and sent recommendations to the Government of Karnataka in this regard. The Government, in response, diverted 200 hectares of forestland for the rehabilitation of those displaced tribal families. It also constituted a committee with the Special Rapporteur of the NHRC to monitor the rehabilitation process and to ensure that it is completed expeditiously. Similarly, the positive consequences of the Commission's intervention in Orissa in view of the devastating cyclone in October 1999, set the precedent for similar action by the Commission in the aftermath of the catastrophic earthquake that devastated large areas of Gujarat in January 2001.

The political and economic dimensions

In 1995, the names of thousands of Bru voters had been deleted from the electoral rolls in Mizoram. After 30,000 Brus were displaced from Mizoram to Tripura in 1997, the Delhi High Court ordered the Election Commission of India to set up two polling booths for the displaced Brus just inside the border of Mizoram and to provide security to the Bru voters on their way to the booths. However, one of the two booths was set up at a distance of about 25 km from the Tripura-Mizoram border (AITPN, 2009).

Before the Mizoram State assembly elections in 2004, the Election Commission of India introduced the postal ballot for displaced Bru people staying in Tripura. In 2008, only a little more than 8,000 displaced Brus were included in the voters' lists, and only about 6,500 received electoral photo identity cards and were able to vote in the Mizoram State assembly elections on 2 December 2008. The Mizoram Election Department included photographs of candidates in postal ballots only after the Bru IDPs had initially boycotted the elections. Before the April 2009 elections, displaced Brus demanded the right to vote through electronic voting machines (For more see AITPN, 27 December 2009; Kaladan News, 16 September 2008; Assam Tribune, 2 April 2009).

Economic Conditions

Livelihood opportunities for IDPs living in camps in Chhattisgarh were insufficient. The few opportunities available included work as daily labourers in Government-run construction projects and the collection of forest plants. The situation was difficult in particular for IDPs staying in Bijapur District. IDPs stated that they had not received financial assistance or loans nor training to facilitate sustainable livelihoods (NHRC, November 2008, pp.105–106). IDPs returning from Salwa Judum camps to Basaguda village in

Bijapur District of Chhattisgarh State in 2009 had to rebuild their lives from zero. Only in 2010 was the NREGA set up in Basaguda (Express Buzz, 16 May 2010).

The Dantewada district authorities of Chhattisgarh stated in 2007 that permanent camp residents were provided with free housing at a rate of Rs. 12,000 (\$256) for each individual and those who wanted to return received temporary tin sheds. In reality, however, camps reportedly consisted of huts that the IDPs had built themselves immediately after having been evicted from their villages by Salwa Judum and Government security forces. Only at a later stage did every household receive Rs. 5,000 (\$107), and some also received tin sheets and tiles. Camps were overcrowded, and IDPs were unable to keep their livestock, as space was too limited. According to the NHCR, conditions in the camps had deteriorated over time and the response of the Chhattisgarh State Government was insufficient.

Among the tribal people who had fled from Chhattisgarh to Andhra Pradesh because of the Naxalite conflict, many had not been able to find sustainable livelihoods. Having lost their farmland in their home areas, some of them found work as farm labourers, with men earning Rs. 50 (\$1) and women only Rs. 30 (\$0.64) per day. Forest officials regularly dismantled IDPs' makeshift homes in the forest areas. Often they also took away the farming equipment needed for farming work, thereby further endangering IDPs' already fragile livelihoods (Tehelka, 11 July 2009).

Until recently, the Andhra Pradesh state government excluded IDPs in Chhattisgarh from NREGA since it did not consider them to be "local residents". This was in spite of the fact that the NREGA does not include any requirement concerning beneficiaries' minimum length of residence. IDPs living in Khammam district were scheduled to receive job cards under the NREGA as late as 1 March 2010.

In Search for a Durable Solution

“All happy families resemble one another”, Leo Tolstoy had once written, “each unhappy family is unhappy in its own way.” The same truth goes with the IDP families of South Asia including India. Their socio-economic-cultural backgrounds vary, so vary their political regimes and their individual experiences of eviction. Yet they are subjected to almost the same kind of miseries in camps or sometimes under the open sky.

We know that the Guiding Principles is not a legally binding treaty. Some day it may attain the status of customary international law, but presently, these Principles ‘serve as a morally binding statement’. It, therefore, provides a moral directive for political regimes to frame policies, enact laws and initiate programmes for care and meaningful rehabilitation of IDPs. Thus, the issue in question hovers around the ‘ethics of care’. This can be argued from three broad premises.⁵⁵

The first is the premise of a ‘rights-based argument’, which holds that right against displacement “has to contend with the argument for development and decent life in these countries as a ‘collective goal of the community as a whole’. The successful assertion of right against displacement therefore entails some form of compromise with ‘the collective goal’”. The problem with such a rights-based discourse is: what happens if the right against displacement (which protects the ‘right to life’ of IDPs, a non-derogable right) violates another non-derogable right – the ‘right to decent life’ (of non-IDPs)? There is no fixed, ‘once-for-all’ solution. The nature and amount of ‘compromise’ is bound to vary from situation to situation. And if we really try to move beyond the limits of such a rights-based argument to protect IDPs, we should posit rights on ethics,

⁵⁵ Paula Banerjee, Sabyasachi Basu Ray Chaudhury and Samir Kumar Das (ed), *Ibid*, 22-28

not merely on positive laws. Simultaneously, the derogable and non-derogable rights must be redefined, which can be done only by waging a constant political struggle.

According to the second line of argument, care and protection become effective on the established lines of community and kinship. This is empirically true in Indian instances. For example, the displaced Nagas of Manipur, in the times of crisis, get refuge and rehabilitation from their kinship brothers of Nagaland. But such kinship-helps also can reinforce the 'inequities and asymmetries' (such as gender asymmetries) based on older traditions, as happened in the case of Afghan IDPs. It can also reinforce traditional rivalries.

The third argument stands for 'humanitarian ethic', which presupposes to protect not only the physical home – the place of living – of IDPs but also the home that gives us our moral identities, without which humans are only hollow creatures.

Although, the above three arguments have differences, they often cut across each other. Above all, these arguments, despite their limitations, are ultimately based on the ethics of care. But the hard fact is that one has to ultimately negotiate with the power-that-be to gain access to resources of care and protection. Thus, finally, it remains a political question. It is a kind of politics where one must dare to challenge and negotiate with power, with the premise of ethics of care.

Report on the SAHR India National Consultation on IDPs

National Conference on Internal Displacement in India: Issues and Perspectives

India International Centre, New Delhi

A daylong conference was organised on the issue of internal displacement in India on 17 July 2012 in Delhi that aimed at arriving at a deeper understanding of the issue and the possibilities of giving IDPs the kind of recognition they require in today's times.

The introduction to the conference was given by Vrinda Grover⁵⁶, where she set the tone of the conference by saying that the discussions should begin by keeping South Asia as a region in mind and everyone present should aim at addressing concerns as South Asians. The vision of SAHR was spoken about which was to nurture the vision of a meaningfully engaged South Asia with mutual respect and a progressive vision for the future.

She mentioned that the earlier conferences on the issue of IDPs had envisioned to take it to a level where an analysis of conflict situations could be incorporated and that this is a very central factor to discussions in today's times. The Planning Commission in its 12th five year plan approach paper has included the term IDP and that could be an entry point towards gaining recognition for this issue, to make headway into the work being done at the level of policy, for them to be recognised as rights bearers and allocations of benefits for them since they are one of the most vulnerable communities

⁵⁶ Bureau Member of SAHR and lawyer

which the Government does not want to take responsibility for various reasons.

The meeting began after a round of introductions of people present. It was attended by academicians, researchers, activists, lawyers and journalists. There were people associated with the CRG, Gujrat Institute of Development Research - Ahmedabad, University of Delhi and University of Calcutta, Institute for Human Development, Smiles - Chennai, Centre for Social Justice - Gujarat, National Alliance of People's Movement, and PSA.

Prof. Samir Kumar Das⁵⁷ was the chair for the first session titled 'Internal Displacement in India: Issues and Concerns'. Dr Sudeep Basu⁵⁸ made a presentation titled 'Normative/ Moral Framework and application' where he mentioned how internal displacement not only affects the general population but also neighbouring countries. The UN Human Rights Commission created the mandate of the representative to the UN Secretary General on internal displacement in 1992 after which, the resulting Guiding Principles were submitted to the UN in 1998. Dr Basu's focus was on the analysis of these Guiding Principles which define IDPs as "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 recognised State border." This definition, along with those displaced due to conflict situations, was considered by the USCR which estimated that there were more than 20 million IDPs worldwide

⁵⁷ Department of Political Science, University of Calcutta; Vice Chancellor of North Bengal University and member of Calcutta Research Group.

⁵⁸ Gujarat Institute of Development Research (GIDR), Ahmedabad

in 2002. According to Dr Basu, there are three main types of displacement defined in the Guiding Principles - disaster induced displacement, development induced displacement and conflict induced displacement. The point brought to attention was that the States are usually willing to provide support for victims of disaster induced displacement but when conflict induced displacement takes place, States tend to be restrictive and highly selective. Development induced displacement although, occupies a middle ground. Funding is welcome to launch development projects but it is not encouraged when development projects are in operation and displacement has occurred. Then, States become less open to outside remedies. He further mentioned that the Guiding Principles have been accepted, adopted and numerous laws and policies have been implemented in various countries. Significant points which can be part of an action plan for this are that firstly, Governments must be familiarized with the Guiding Principles; secondly, they must incorporate these principles along with the World Bank and OECD guidelines; thirdly, Governments should be encouraged to adopt their own national action plans on human rights that include provisions for prevention and protection against arbitrary displacement. Speaking of the various laws for IDPs, it was suggested that the process of drafting policies should be in consultation with IDPs and other civil society members.

There were very engaging discussions on the Guiding Principles and the responsibility of the State. An important point that came out of the discussions was regarding the rights of the IDPs and their right to be allowed to cross borders. Thus, debates regarding rights and need based approaches were highlighted upon.

Priyanca Mathur Velath⁵⁹ made a presentation titled ‘Development-Induced Displacees - A Relook’ where she mentioned the relevance of the term DID, also called Development Induced Displacees and looked at the various policies which have come out on this issue including The Land Acquisition, Rehabilitation and Resettlement Bill, 2011. She mentioned how DID has different impacts on men and women but this fact does not get enough attention by policy makers which then creates gaps in the R&R policies. The essential problem with the R&R was mentioned as lack of political will which was evident since it took years for a national policy on R&R to be devised. She further mentioned that there is a need to reassess the rights of DIDs by evaluating their legal framework against two dimensions of good governance- accountability and transparency. An important point raised by her was that India is a signatory to several international human rights instruments but at the national and state levels these obligations are not being addressed. Thus, she asserted that there is a need to bridge gaps between policies and practice and bring changes in the perspective since rights are required, not charity.

Dr. Nasreen Chowdhory⁶⁰, made a presentation titled ‘Conflict induced displacement and ethnicities: a comparative study of Bengali and Tamils in India’. Giving an insight to the severity of the situation she asserted that in most cases, women, children, the elderly and the disabled are victims of wars and account for 30-90% of the casualties. She also mentioned that the global IDP figure in 2008 was 26 million. Some of the figures to be brought to notice were of the countries with the most IDPs at the end of 2008, of which the highest was Sudan with 4,900,000. The country with the

⁵⁹ Priyanca Mathur Velath is a Visiting Fellow at the Institute for Human Development

⁶⁰ Dr. Nasreen Chowdhory is a faculty member at the Department of Political Science, University of Delhi.

highest percentage of IDPs was mentioned to be Cyprus, up to 23% of the population. The circumstances with which many Bengalis and Tamils became refugees was highlighted in the context of the Sri Lankan civil war which continued from 1983-2009 between the Government of Sri Lanka and the LTTE. The exodus of Bengali refugees from East Pakistan to India was also highlighted. Dr Chowdhury asserted that along with ensuring rights of IDPs that being the State's responsibility, it is important to understand provisions which would relate to their desire or right to return.

Priyanca Mathur Velath placed the issues in the context of the two presentations and said that if we are trying to understand how things are between the conflict induced and development induced, then where does the right to return feature between these two. She said that R&R also focuses more in the context of development induced.

There were very interesting discussions on the concept of consent and informed consent in the context of IDPs which Dr. K.M Parivelan⁶¹ raised. Dr. Chowdhury clarified that refugees have the right to return but the problem is regarding where they return to. The concepts are there but the ground reality is very different. Dr. Basu raised the debates around people having a right to not develop and the complexities around this issue. All these problematize conflict at a certain level. It can also be seen how an attitude to land is connected to the attitude on modernity. Questions of nationalism in this context were also raised. Madhuresh Kumar⁶² discussed that with regard to the right to fair compensation, it has to be realised that in the context of land, no one is asking for compensation but that is the line mostly used, it is the convenient line. Examples

⁶¹ Dr. K.M Parivelan, of Smiles, Chennai

⁶² Madhuresh Kumar, from National Alliance People's Movement

such as POSCO were elaborated upon. The misuse of the term public purpose was also spoken about. Johanna Lokhande⁶³ gave an overview about how the official figures of IDPs are not usually accurate. Dr. Chowdhury also elaborated that there are some people who came in the 1975 uprising in Bangladesh, they became refugees but then later were stateless. They were left to the whims of the host country. She also mentioned the Khudiram Chakmak Case, a lone case which suggests that the right to life can be challenged. National schemes cater only to citizens, not for non citizens and that is the bottom line. The host State on customary tradition basis decides that you have certain rights but the enforcing mechanism is absent. Thus, there are certain policies for whatever reasons, so they do exist.

The next session raised the question of whether right against displacement is also the right to home. Dr Sibaji Pratim Basu⁶⁴ chaired this session.

Prof. Samir Kumar Das made a presentation titled 'Is Right Against Displacement also Right to Home?' His focus was on the right to home being more fundamental than the right against displacement. He also asserted that the right to home comes as a corollary to our constitutional right to life. His presentation aimed to understand the complexities of the right to home keeping in mind the debates related to the campaign against homelessness. In the first part of his presentation he began with a brief theoretical discussion on family and home and how they are differentiated from the realm of rights. The second part was based on a series of case studies recently conducted in various parts of Northern West Bengal (known popularly as North Bengal) based on these problems.

⁶³ Johanna Lokhande from Centre for Social Justice

⁶⁴ Dr. Sibaji Pratim Basu of Mahanirban Calcutta Research Group

During the discussion session, Madhuresh Kumar gave an insight into the Bombay slum evictions for whom the right to home, moved to a question of housing rights and he said that this is being recognised, but slum dwellers are usually termed as encroachers. Thus, getting legitimacy to get a home is also a problem. Dr. Basu gave an insight into the complexities of the concept of homeland and if the right to home extends to that, but whether it extends to the idea of homelessness, being outside the idea of homeland, and to then idea of hopelessness was also brought forth. The anthropological understanding of these concepts was further elaborated upon by Dr. Chowdhury who spoke about the idea of 'placelessness' and that it is important to understand the fact that the people have their focus more on how to be able to earn their bread rather than be insisting on the boundary of their land, and just that particular piece of land. Thus, it is important to think about that sense of being bounded. Prof. Das clarified that the theoretical stand that he was taking was on a non-celebratory idea of home and homeland unlike Syed's writings where there is a celebration of these terms.

Gagan Sethi⁶⁵ mentioned how during the earthquake in Gujarat in 2002, the rehabilitation carried out touched world standards and it was a remarkable initiative. There was a lot of financial help that came through at that time with civil society groups alone contributing close to Rs 400 crores. The Godhra incident, which happened after, collected not more than Rs 2 crores. He gave an insight into what the situation was like during those times and asserted that the three kinds of displacement cannot be put in the same bracket since it is a different kind of situation altogether when in a violent conflict situation the State is the perpetrator. For instance, during that time in Gujarat, even the camps were removed as shelters and continued

⁶⁵ Gagan Sethi from the Centre for Social Justice, Janvikas

to exist due to outside efforts and the Government of Gujarat denies the existence of these shelters. The Central Government did give an extra grant in lakhs for each person unlike the Government of Gujarat which gave less than Rs 50 per person. Thus, this discussion was definitely needed and for us to realise and accept the fact that the Government is not comprehending more than their basic perspective of treating IDPs as riot affected, project affected people and victims but the word internally displaced does not come in. The concept of minorities also comes in here. He also mentioned that students giving their inputs for surveys of IDPs would be very important so that practical interventions could be made.

The next session was called 'Risks and Vulnerabilities Needing Special Attention' and was chaired by Dr. Sudeep Basu.

Dr. K.M Parivelan presented a paper titled 'Tsunami Disaster Displacees'. Nearly 2.5% of our GDP is spent on disasters which amount to thousands of crores. Nearly 6% of our population is affected by disasters. It is only in 2004 that an institutional mechanism was being sought for and in 2005 a NDMA came about. In 2009, there came a National Disaster Management Policy. It is important to understand who disaster victims are and whom these policies ultimately address. They have been managed in a way that there are policies at the urban and the rural level but it was observed that in many of the states it is not working. The National Calamity Contingency fund still pays Rs 500 for a fully affected house. Thus, there is a constant treatment as victim. There are five main types of hazards- hydro-meteorological hazards (drought, heat wave, cold wave); geological related hazards (earthquakes, landslides, dam burst); industrial, chemical and nuclear disasters (eg. Bhopal, Kudankulam) where most of what people are saying is not being heard; accident related hazards (rail accidents, forest fires, stampede, terrorist bomb blasts); biological related hazards (malaria,

cholera, epidemic diseases). There is some overlap between them. He also spoke about the drawbacks in the disaster management policy and that the Guiding Principles must be included and their implementation ensured.

Dr. Basu added to the discussion saying that the Government's idea is to mitigate risks but in order to do that one ends up accentuating vulnerabilities. Thus, this twin problem needs to be looked at from the point of policy. Dr Parivelan added that this results in the Government adopting a perspective where instead of making livelihood available to people, increasing their coping capabilities, they want to remove them from areas so that there is no risk.

Dr. Sibaji Pratim Basu presented a paper titled, 'The Most of the Margins: Internal Displacement in Northeast and Central India'. He spoke mainly about the binary between the 'national' and the 'regional' and focused on two areas: India's Northeast and the Naxal-dominated parts of Central India. He mentioned that in the Northeast all three categories of IDPs could be found. The striking feature of displacement in the Northeast was observed to be its ethnic character. Here, ethnic conflict includes the conflict between the State and ethnic groups/ insurgent groups, inter ethnic and intra ethnic conflicts. He further gave a detailed account of how many people have been displaced due to conflicts, development projects and environmental factors in the North-east region.

The Naxalite conflict has so far affected more than 200 of India's 626 districts in 20 of its 29 states. These areas largely overlap with the Dandakaranya forest and parts of West Bengal, Jharkhand, Orissa, Chhattisgarh, Andhra Pradesh and Maharashtra, where large deposits of mineral resources such as bauxite, iron ore and uranium are located and where millions of low-caste Adivasis (tribal people) live. He suggested that India has the mechanisms in place

for monitoring IDPs. He asserted that the Guiding Principles must be abided by, ethnic conflicts tackled and the people and the media must be more sensitive.

Ishita Dey⁶⁶ made a presentation titled ‘Gender Dimensions of Displacement’. The Guiding Principles, she mentioned offer exceptional protection for women taking into account their special needs. There are two main factors which are included in the principles, protection of women from gender specific violence and to uphold their rights to equal access and participation in assistance programmes. She mentioned that these cater to an ideal kind of situation but the focus of the presentation was on the change in gender roles in situations of conflict and development induced displacement. For instance, female headed households are not included in the compensation frame for IDPs. She gave an insight to the vulnerable situation women IDPs are in with security being their central concern. While mentioning this, she made a reference to the AFSPA. Among women affected due to development induced displacement; she mentioned the problems faced by them for protecting their children and the responsibility to protect being on them. She asserted that displacement is not gender neutral and gave the example of a mining area, saying that the way coal mining affects men is not the way it affects women and wherever natural resources are affected, women are affected the most.

The concluding remarks included a discussion on the resolutions which are as follows:

- Continuous pressure should be exerted upon the State to accept that IDPs exist.

⁶⁶ Ishita Dey, PhD Scholar, Department of Sociology, Delhi School of Economics, University of Delhi

- To ensure that IDPs, when displaced by development projects, be given the right to “free prior informed consent” - to participate in the R&R.
- To ensure that no displacement begins till R&R provisions are completed.
- Recognizing the need to and taking steps towards “minimising displacement” before the development project begins.
- That development projects should not only be inclusive but they must be participatory.
- Steps towards sensitizing media about displacement in India and dissemination of information at all levels.
- The need to address internal displacement at the national level, both as a matter of legal obligation and creating national awareness.
- Adopting the principle of non-discrimination governing states’ treatment of IDPs *vis-à-vis* non-displacees.
- Foster consultation with IDPs in drafting policies formulated to respond to the crisis of displacement.
- Need to reduce vulnerability or prevent accentuation of vulnerability, particularly with regard to disaster displacees.
- Taking steps to incorporate the Guiding Principles into Disaster Management Act and Policy.
- Understanding that the displacement problem is not gender neutral.

Annexure

List of participants:

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 - Tapan Bose - Pakistan India People's Forum for Peace and Democracy

The Work of the Mahanirban Calcutta Reserch Group

The Study and Campaign

The CRG has engaged in research on IDPs since 2002 in view of the fact that, in the last decade, the number of IDPs has been on the rise in South Asia just as in many other parts of the world.⁶⁷ Discrimination against minorities, violence, war, ethnic hatred, State repression, demands for self-determination, natural and man made disasters such as famines and floods, ill-conceived development projects such as highways and dams, have all contributed massively to internal displacement. It is integral today, to study forced displacement in South Asia, particularly in the context of the experiences of Sri Lanka, India, and Nepal.

An interesting aspect in the study of IDPs, in South Asia conducted by the CRG with the help of the Brookings Institution, which has already been published as a monograph by Sage in 2005, portrays that there are no legal or constitutional mechanisms in any country in South Asia for IDPs in particular, no inventory of best practices. In fact, South Asian States have organised rehabilitation and care on an *ad hoc* basis for the IDPs in the same manner as they have dealt with refugees.

In the last decade the Guiding Principles have created occasion for rethinking on the situation of IDPs worldwide. Individually South Asian scholars, jurists, civil liberties and human rights activists are in the forefront of such rethinking. Keeping this in mind the CRG has organized a South Asian advocacy campaign on the Guiding Principles and on how coupled with other legal and non-formal measures, it can be used to serve the interest of

⁶⁷ www.mcrg.ac.in/

the victim communities. The CRG has been the founder of the only regular journal on forced migration in South Asia, *Refugee Watch*. This journal has built up a substantial body of writings, case studies, analyses, interviews, and documents on IDPs that became significant study material for such training programmes. CRG has completed, in collaboration with the Brookings Institution, a massive study of the patterns of internal displacement in South Asia based on country analyses of Afghanistan, Bangladesh, Burma, India, Nepal, Pakistan and Sri Lanka.

Public Lecture Series

In 2005, the CRG hosted three public lectures by Robert Kogod Goldman⁶⁸, on Internal Displacement, The Guiding Principles on Internal Displacement, The Principles' Normative Status, and The Need For Effective Domestic Implementation in Kolkata, Pune and Delhi in collaboration with the West Bengal Political Science Association, Bhowanipur Education Society College, Kolkata, and Indian Society for International Law, Delhi.

Tsunami and After

The last few years have witnessed an enormous increase in the number of IDPs in all South Asian countries. The 2004 tsunami has further added to this overwhelming problem. Keeping that in mind it becomes imperative for scholars working on issues of forced migration in South Asia to design programmes that look into the IDP situation in this region and the relevance of the Guiding Principles. The CRG has, in collaboration with the Brookings

⁶⁸ Professor of Law & Louis C. James Scholar; Co-Director, Center For Human Rights and Humanitarian Law, American University, Washington College of Law, Washington, D.C., USA

Institution for the last few years, been working on this theme. The group has designed a number of programmes on rehabilitation and care of IDPs in the region, which has been supported by the Brookings Institution project on IDPs. The activities listed below should be considered as a continuation of previous such work. The CRG in collaboration with the Forced Migration Review (Oxford University) and the Brookings Institution conducted a one-day meeting on rehabilitation and care of tsunami victims in India. In the meeting, experiences from Andaman and Nicobar Islands and Tamil Nadu were discussed and lacunae of state and non-state responses were pointed out.

Northeast India Segment

Northeast India has witnessed protracted conflicts and displacement of thousands of people in the last few decades. On the one hand, we know of such cases where an ethnic community claimed exclusive rights over a space that it defines as its “homeland” on the grounds that it is the “original inhabitant” of the land. By the same token, they have held that outsiders have no right to settle there. The total number of ethnicity-induced IDPs is close to 300,000 in Northeast India alone. Other than that millions of people are displaced for reasons of development such as dam building. Keeping this in mind the CRG has planned an advocacy programme for the rehabilitation and care of displaced and potentially displaced people in Northeast India. CRG in collaboration with Omeo Kumar Das Institute of Social Change and Development in Guwahati is in the process of translating the Guiding Principles into four different Northeast Indian languages.

Nepal Segment

The purpose is to create a forum for in-depth study on IDPs in Nepal and formation of a website, entirely in Nepali, and devoted to the situation of those IDPs. All materials published in English will be translated into Nepali. This is particularly because English is spoken only in urban areas while the majority speaks Nepali. For that purpose the CRG proposed the creation of a website that would not just contain all published reports and studies on IDPs but also constantly update it through fresh research and through materials collected from media and reports of all rights based organisations.

Pakistan and Bangladesh Segments

The CRG has proposed the translation of the volume on 'Internal Displacement in South Asia' in the Urdu. The translation of the book in Urdu would serve the purpose of reaching a wide audience in Pakistan, increase its readership, and justify the CRG-Brookings Institution's joint plan of building a core team on South Asia devoted to the rehabilitation and care of IDPs. The proposal of holding a series of public lectures in Bangladesh have also helped in the dissemination of news and views on the IDPs and facilitate discussions on the book. More significantly, it will help the dissemination of the Bengali translation of the Guiding Principles (already published).

Myanmar Segment

The contemporary phenomenon of large-scale displacement of people in Myanmar has turned into a matter of acute concern in the last decade and a half. Whereas some displaced civilians could take shelter in countries on the other side of the border, mainly in Thailand and sometimes in India, the remainder could not or did

not cross the international border and became IDPs. The CRG has proposed to hold a consultative meeting of different Myanmar ethnic groups in Bangkok where representatives of Shan, Chin, Karen and other ethnic groups will develop a consolidated framework for improving the situation of IDPs in Myanmar and design an advocacy programme for their rehabilitation and care.

'Voices' Project

This is a project on Recording the Opinions of the IDPs on National and International Measures Relating to their Relief, Rehabilitation, and Resettlement and Protection of their Human Rights. As a result of the ceaseless campaign by the global human rights and humanitarian community – the UN institutions, several national Governments, individual human rights and humanitarian groups within countries, and legal and other experts - the task of safeguarding the human rights of the IDPs on a national and global scale has been receiving increased attention.

Yet, amidst all this increased attention and proliferating measures, few have cared to find out how all these measures have benefited the victims of internal displacement - the IDPs themselves. It is important to know their voices so that the humanitarian and protection measures become participatory, these measures can be improved upon, and the human rights community and the public get to know if the measures are effective, if they reach their target at all, and what measures are necessary to make the human rights and humanitarian protection more effective.

Such a task for mapping the “voices” in the region of South Asia was begun by the CRG in collaboration with the Brookings Institution. Conceived in a small South Asian meeting held in Bangkok in March 2005 the project began in August 2005. The

initial time-bound pilot study covered select IDPs in Sri Lanka, Nepal, Bangladesh and in four different regions in India. This was meant to be a pilot study carried out in IDP camps in South Asia.

NEPAL

Background Report

(By Padma Prasad Khatiwada, PhD)

Executive Summary

The main objective of this study is to carry out a national level study on existing legal frameworks, best practices and national plans that affect the lives of IDPs.

Nature of Displacement

As Nepal attempts to move into a post conflict scenario, the issue of displacement has become all the more complex, even as there is greater opportunity to resolve the issue, including on whether displacement is voluntary or forced. IDPs do not want to term themselves as such because they have been excluded from various policies and programmes of both Government and non-Government sectors. Nepal is also exposed to several types of natural and human-induced hazards. A wide variety of physiographic, geological, ecological and meteorological factors contribute to the high level of hazards faced. Natural disaster-induced displacement has been observed for the past 5-6 years as a growing trend. In 2008, an estimated 180,000 people were displaced by floods.

During the conflict period, Nepali organisations involved in advocacy and R&R programmes faced problems in ascertaining the actual number of IDPs, and their specific locations of settlement.

Varied number of IDPs, as given by various institutions and organisations, which usually ranged from around 30,000 to 500,000 (IDMC, 2010), added further problems to addressing the displacement, as figures on the actual number of required relief packages was difficult to come by. Since the Maoist movement was operating underground, the displaced population on their side was hardly revealed.

The increase in the number of IDPs continue, especially from 2007 onward when Madhesi groups in the Tarai region started to protest over the lack of progress in the implementation of the peace process and the lack of opportunities for political and social integration. The violence forced thousands of people, mostly Pahadis, from their homes (IDMC, 2011).

Most IDPs have chosen to stay in their area of displacement, mainly in urban areas (IDMC, 2010) and some have managed to integrate and find jobs. Many others, including displaced children and women in particular, have struggled to find proper accommodation or access basic services in cities.

Legal Framework

The preamble of the Interim Constitution, 2007 guarantees basic human rights to every citizen of Nepal. The ‘Right to Property’ under Article 19(1) provides that all citizens of Nepal are guaranteed the right to acquire, own, sell and otherwise dispose of property. Provisions relating to IDPs have been included in almost every peace agreement. Point 5 of the 12 point agreement between the then seven party alliance and the UCPN (Maoist) stressed the need to “create conducive atmosphere to allow all ..., who were displaced from home during the conflict, to return to their respective places

with full respect.” According to the agreement, “Both sides [Maoist and Government] agree to maintain the peace in the society normalising adverse situation occurred by the reason of the armed conflict... .”

In 2007, National Policies on Internally Displaced Persons, 2063 (2007) was updated from the draft of 2006. It defined an IDP as “a person or family who is displaced internally by compulsion owing to creation of such a situation where it is not possible to live in one’s home or place of habitual residence due mainly to armed conflict or situation of violence or the conditions of gross violation of human rights”.

Implementation of laws and policies has been a major question in the interest of IDPs. Rounds of discussions and agreements were conducted, but implementation with a strict monitoring and evaluation mechanism remained a significant question. Recently UCPN (Maoist) and other major political parties have agreed on a Seven Point Deal to give the current peace impasse “a sustained end”. One of the points agreed among the political parties is about the relief packages for the conflict victims (FFP, 2011). To what extent this recently held agreement can address the needs and interests of the displaced people, is yet to be seen.

Return & Rehabilitation

Those IDPs who have returned have not been properly rehabilitated and those still in the areas of displacement or transit have to suffer with scarce resources. Lack of coordination among the stakeholders is another problem observed even after the formulation of the IDP Policy in 2007. The MoPR itself is overloaded mainly with the political peace process. The issue of IDPs has been a very small

part of the ministry's activities. The policy gives responsibility of overall coordination to the Chief District Officers in the respective districts who are over-burdened with other coordinating roles. Livelihoods and security concerns were the two main reasons behind the migration of a number of IDPs to their areas of displacement or of their re-displacement elsewhere. There is also a high number of people who have deliberately gone back to their areas of displacement where they were previously residing as displaced on the lookout for improved economic opportunities and who could then be considered as migrants. Those at greatest risk of re-displacement are politically active people considered by the Maoists as "village feudalists who can no longer dominate villagers". Some people also decide to go back to the urban areas where they first fled because they realise there is insufficient education and economic opportunities in their original homes.

The official data quotes a total of 7,000 physical structures damaged during the conflict. Of them, more than 2,000 physical structures, destroyed during the ten year long conflict, have been rebuilt (Republica, 2011). These include the reconstruction of police posts, schools, village and district development committee buildings that were carried out in the previous fiscal year by the Reconstruction Project under the MoPR. However, no record has been made available by the Government as yet on how many description of losses made by IDPs have been recorded and of them to what extent and how they have been compensated.

During the armed conflict many IDPs lived in their places of destination with meagre resources for their basic necessities such as housing, food and clothes. This still continues even after the peace process has started. Many IDPs still keep on visiting the places of origin expecting that they would get the land confiscated by the Maoists during the war. Both the Maoists and other political parties

in power during the armed conflict in Nepal, adhering to the spirit of the CPA (2007), have agreed not to seize the property of anyone except when mandated by law. Accordingly, property of individuals and organisations and that belonging to the Government have, to a large extent, been returned. However, successful implementation of the returning of property is yet to be seen. During the reporting period, Maoist cadres collected forced donations, held houses belonging to individuals and did not return all buildings and land held during the insurgency, as committed in the CPA. Similarly, reports of security forces not vacating the land used by them during the armed conflict for the safety of their camps have been often quoted and highlighted.

To conclude, there is no apex body yet formulated to bring all the stakeholders together and conduct discussions on the issues of IDPs, which could at least identify the issues of IDPs, and contribute to formulation/amendments in the existing policies and action plans. Such a body needs to be formed involving all the stakeholders, mainly the line ministries, respective departments, UN agencies, bilateral agencies, INGOs, NGOs and also academics who can contribute to the research based issues and discourses. Furthermore, such a body would have documentation on who is doing what; identify the resources, and gaps in them and ways to tackle the challenges. Such an authority could give vision and inputs with some academic foundation, and suggest outcomes for activism to give directives for effective resettlement, rehabilitation and reintegration of IDPs in the days to come.

Recommendations

1. The Interim Constitution of Nepal, 2007 considers the right to property as a fundamental right. International documents such as the UDHR, and ICCPR have also recognised the

right to property as a fundamental right. In this regard, the Government should ensure the right to property to IDPs.

2. The newly emerged groups and regional agitating forces also started to seize the property by following the precedent set by UCPN (Nepal Crisis Group, 2010). The mutual solution has to be explored among the Government and IDPs.
3. Implementation of the comprehensive national IDP policy and its procedural directives, as well as guidelines should be the strict agenda of the Government in collaboration and cooperation with UN agencies, multilateral and bilateral agencies and civil society. Unless and until the policy gets full implementation, the lives of the IDPs will not improve even after they get rehabilitated, returned or resettled.
4. The recently concluded Seven Point Deal needs to be implemented sincerely and honestly. The parties need to find opportunities with newer avenues to convince the people and needs to remain committed towards lasting peace by developing a wider consensus on the draft of the new constitution. This deal should be able, at least, to announce the constitution without further delay.
5. Another need is for a more strategic research cooperation in the field of forced migration. Such cooperation should facilitate local researchers' exploration of the theoretical significance of the international research paradigms in IDPs and should assist in establishing linkages between local and international researchers. The burning issues like Madhesh movement, and other ethnic movements needs to be the priorities of the future researches in the context of Nepal.

Section I: Nature and Type

As in other countries such as Sri Lanka, the voluntary-forced dichotomy of displacement is difficult to work out in the Nepalese context (Sanmuguratnam, 2003).⁶⁹ Some of the IDPs do not want to term themselves as IDPs because these displaced people have been excluded from various policies and programmes of both Government and non-Government sectors. People want to tag the conflict victims, mainly the IDPs, as “*Naya Pauna*” and “*Bhaugauda*”.⁷⁰ Even the house owners of the IDPs in rent told them that “They [the IDPs] are the people to organise procession in the streets and they are ‘bad people’ so were displaced from the respective places of origin” (Khatiwada, 2010).⁷¹ More people have been displaced due to the political conflict than the occasional flood disaster as referenced in Box 1.⁷² Conflict-induced displacement spiralled as a result of the conflict between the then Communist party of Nepal–Maoist (now UCPN) and the Government, and later a paradigm shift in displacement has observed the growing

⁶⁹ Shanmugaratnam, Ragnhild Lund and Kristi Anne StØlen (2003). *In the Maze of Displacement: Conflict, Migration and Change*. Norway: Norwegian Academic Press.

⁷⁰ Though not stated in formal documents, the IDPs themselves have expressed their realities in such tone. *Naya Pauna* has been the common term especially in the conflict affected areas of Nepal and this word signifies the presence, activities and movement of Maoist leaders, cadres and supporters. *Bhaugauda* on the other hand is the term for the police and army personnel who were forced to resign from their respective posts during the armed conflict and were displaced.

⁷¹ Khatiwada, P.P. (2010). *Conflict Induced Migration in Nepal: A Social Inclusion Perspective*. A PhD Thesis Submitted to the Office of the Dean, Faculty of Humanities and Social Sciences, Tribhuvan University (Report online: www.socialinclusion.org.np/researchdetail-220.html).

⁷² Royal Norwegian Embassy Kathmandu (2008). Report on Koshi Flood. <http://www.reliefweb.int/rw/doc.nsf/doc108?OpenForm&rc=3&emid=FL-2008-000104-NPL>, accessed 15 January 2009.

number of regional conflicts, especially in the Tarai area (INSEC, 2010).⁷³

Box 1: Koshi flood and displacement

On 18 August 2008, the Koshi river in the eastern region of Nepal broke through a retaining wall causing massive flooding of nearby villages as well as in the Bihar region of India. An estimated 107,000 people in Nepal were affected by the floods and about 70,000 were displaced. A number of agencies including supported the relief activities. However, this relief package was for a short term and could not contribute to the solutions to the problems faced by these flood victims.

It is estimated that about 50% of the displaced persons were under the age of 18. Although agencies like UNICEF have provided relief materials with a focus on shelter materials, water purification products, hygiene kits, insecticide bed nets and school library sets.

Psycho-social counselling support to distressed children and families was the prime needs to these people which could not be done in a systematic manner.

The Nepali Government's coordination mechanism for the relief operation at the national and district levels almost failed when the flood victims launched several protests saying that their genuine issues were neglected.

Source: Royal Norwegian Embassy Kathmandu, 2008

Similarly, more than 110,000 Bhutanese refugees have been staying for the past two decades and are now in the process of getting settled in a third country. Almost half (more than 50,000) of the Bhutanese refugees have been resettled into eight different countries⁷⁴ and of them more than 42,000 have been welcomed by the United States of America (The Himalayan Times National Daily; 17 August 2011). Similarly, an estimated 30,000 Tibetan refugees are said to be

⁷³ Informal Sector Service Centre. 2010. Protracted Peace Process in Nepal: A Window through IDPs. *Informal* Vol. 30, No. 2, April–June 2010. Available online: <http://www.insec.org.np/pics/1281096723.pdf>.

⁷⁴ United States of America (which has welcomed 88% of the resettled), Australia, Canada, New Zealand, Denmark, Norway, and the Netherlands.

taking shelter in Nepal and each year, approximately 1,000 Tibetans transit through Nepal (UNHCR, 2007⁷⁵; UNHCR, 2011⁷⁶). Nepal does not have a significant number of recorded asylum seekers.

Nepal: A Highly Disaster Prone Country

Nepal is a country exposed to several types of natural and human-induced hazards. A wide variety of physiographic, geological, ecological and meteorological factors contribute to the high level of hazards faced. Various demographic factors such as rapid population growth, improper land use, slow economic development and the conflict situation increase the population's vulnerability (UNDP, 2004).⁷⁷ Major types of hazards in Nepal include: floods, earthquakes, droughts, landslides, hailstorms, disease epidemics, glacial lake outburst floods, and fires. Among them, floods and landslides are the most recurrent, causing significant material and human losses in the country, whereas earthquakes although less frequent cause huge loss of life and property (MoAC/UNDP, 2004).⁷⁸ So far, Nepal has not faced serious displacement due to development projects.

Natural disaster induced displacement has been observed for the past 5-6 years as a growing trend. Several reports like IDMC

⁷⁵ UNHCR (2007). Refugees, Asylum-seekers, Internally Displaced Persons (IDPs), Returnees (refugees and IDPs), Stateless Persons, and Others of Concern to UNHCR by Country/Territory of Asylum, end-2006, (Tables 1 & 11), www.unhcr.org/statistics/Nepal/Table1,11, accessed 25 October 2007.

⁷⁶ UNHCR (2011). UNHCR Country Operations Profile – Nepal Working Environment. <http://www.unhcr.org/pages/49e487856.html>, accessed 17 November 2011.

⁷⁷ UNDP (2004). Reducing Disaster Risk: A Challenge for Development. New York: UNDP.

⁷⁸ MoAC/UNDP (2004). *Disaster Risk Reduction in Food and Agriculture Sector: Implementation Manual*. Kathmandu: Ministry of Agriculture and Cooperatives and UNDP.

(2011)⁷⁹ have shown that in September 2008 an estimated 180,000 people were displaced by floods. Up to 70,000 families in 47 districts were reportedly affected by floods and landslides during 2007. A total of 18,000 houses were completely destroyed by the June 2007 monsoon rain and 16,000 people were displaced. Monsoon floods and landslides displaced thousands of people in the mid and far western region in August-September 2006 and left 14,000 families in need of assistance. Heavy rains in July 2004 resulted in widespread flooding and landslides in eastern and central Nepal causing an estimated 37,000 families to be evacuated. Up to 68,000 houses were destroyed and many schools damaged (IDMC, 2011). Box 2⁸⁰ highlights further detail about this heavy floods and the displacement scenario due to this.

⁷⁹ IDMC (2011). Around 50,000 people remain displaced (July 2010). [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/1949E98C81942B55C12571FE004D8821?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/1949E98C81942B55C12571FE004D8821?OpenDocument) (accessed 2 November 2011).

⁸⁰ SAAPE (2010). *Poverty and Vulnerability in South Asia*. Kathmandu: South Asia Alliance for Poverty Eradication.

Box 2: Flash floods and displacement in Western Nepal

Heavy rainfall followed by severe flash floods from 19–21 September 2008 affected more than 200,000 people throughout the far west and mid west regions of Nepal. While Kailali and Kanchanpur were the worst-affected districts, other districts were adversely impacted by the heavy rainfall including Bardiya, Dadeldhura, Kalikot, Doti, Bajhang, Mugu and Dang. The flood water receded quickly in many areas, enabling families to return to their place of origin. However, they returned to damaged homes with varying degrees of impact from the flash floods, including loss of food stocks, goods, crops and livelihood options. A significant number of people remain displaced and vulnerable in terms of health, sanitation, hygiene and nutrition.

In Kailali district, Nepal Red Cross Society estimates 160,000 people (23,571 households) were affected by the flash floods. This includes around 45,000 children under the age of 15. While the whole district was affected, the most affected VDCs were Dasinhapur, Narayanpur, Tikapur, Khailad, Lalbojhi, Bhajani and Thapapur. The landslides in the hilly areas combined with bad road conditions constrained access to relief services for affected people, in particular in Sugarkhal and Pandaun VDCs.

The floods in Kanchanpur district affected 30,733 people (5,961 households). The disaster claimed 14 lives. This data is being verified by the DDRC. 18 VDCs and Mahendranagar Municipality were affected by the flash floods. The worst affected areas were Dekhatbhuli, Shankarpur VDCs and Mahendranagar Municipality. Other severely affected VDCs include Krishnapur, Parasan, Dodhara, Rauteli Bichawa, Rampur Bilaspur and Raikawar Bichawa.

Source: SAAPE, 2010.

Conflict Induced IDPs: A Protracted Issue

Conflict induced forced migration has been emerging as a complex problem in Nepal, especially in the form of internal displacement. Due to this, the social harmony and social settings have not only been in disarray, but it has also created problems in social inclusion. Persons displaced from the place of origin have to face many problems relating to social, economic, cultural and other aspects. The rural areas, the places of origin of the overwhelming majorities

of the Nepalese, remained under the hegemony of the conflicting parties. As the armed conflict escalated over years, people in rural areas were compelled to leave their places of origin in fear of being killed, tortured, abducted and/or arrested by the parties in conflict. Around 16,000 people were killed, more than 1,000 disappeared, and thousands suffered from torture in connection with the 10 year long Maoist insurgency. Similarly, numerous physical public infrastructures were destroyed. Destruction of private and public properties led the country towards regressive development (NHRC, 2010).⁸¹ Frequent acts of atrocity by the conflicting parties led to the movement of the people to safer places.

As a result, the number of IDPs in Nepal grew tremendously, especially after the SoE announced by the Government for the first time in Nepal on 26 November 2001. Although incidences of IDPs were observed prior to the SoE, with the start of the Maoist 'People's War' in 1996, the figure as well as the pattern of internal displacement increased unexpectedly after 2001, when the Government, with the imposition of the SoE, labelled the Maoist rebels as 'terrorists', and promulgated The Terrorist and Disruptive Activities: Control and Punishment Ordinance and deputed the then Royal Nepalese Army for the operation against the rebels (INSEC, 2003).⁸²

⁸¹ NHRC (2010). Conflict induced IDPs: Return and Reintegration Situation and Way Forward. Paper Presented by Uma Joshi, 22 November 2010.

⁸² Informal Sector Service Centre (2003), Human Rights Yearbook 2003 (Kathmandu: INSEC).

Figuring out IDPs: A Hurdle for Humanitarian Aid

During the conflict period, Nepali organisations involved in advocacy, relief and rehabilitation programmes faced problems in ascertaining the actual number of IDPs and their specific locations of settlement. Varied numbers of IDPs as given by various institutions and organisations, which usually ranged from around 30,000 to 500,000 in number, created further problems in ascertaining the actual number for relief packages. Since the Maoist movement was operating underground, the displaced population in areas they dominated was even harder to track and quantify (IDMC, 2010).⁸³

After ten years of armed conflict, which caused the displacement of almost 300,000 people (Caritas Nepal, 2005),⁸⁴ Nepal shifted to a peace process in 2006. People still talk about the peace process, which has been part of the rhetoric of almost all political party leaders and the stakeholders. The sluggish movement in the process suggests that the problems of conflict induced IDPs have not been resolved. An estimated 50,000 people displaced by the ten years of civil war are still unable to return to their homes (IDMC, 2011). A recent record of the Relief and Rehabilitation Division of the MoPR shows that 89,171 IDPs of 22,863 families have applied for the relief packages announced by the Government (GON, 2011).⁸⁵

⁸³ IDMC (2010). Failed Implementation of IDP Policy Leaves Many Unassisted. [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountrySummaries\)/165DEC64D0375862C12576B6005058F6?OpenDocument&count=10000](http://www.internal-displacement.org/8025708F004CE90B/(httpCountrySummaries)/165DEC64D0375862C12576B6005058F6?OpenDocument&count=10000), accessed 5 November 2011.

⁸⁴ Caritas Nepal (2005). Caravan of IDPs. Kathmandu: Caritas Nepal. Available online: http://idps-nepal.org/index.php?option=com_docman&task=cat_view&gid=42&limit=5&limitstart=0&order=name&dir=ASC&Itemid=57.

⁸⁵ GON (2011). Report of IDP Registration at Relief and Reconstruction Division. An Unpublished Documentation Report of MOPR.

The increase in the number of IDPs continue especially from 2007 onwards when Madhesi groups in the Tarai region started to protest over the lack of progress in the implementation of the peace process and the lack of opportunities for political and social integration. The violence forced between 6,000 and 8,000 people, mostly Pahadis, from their homes. Of these 4,000 were sheltered in IDP camps, while the rest stayed with family members (OHCHR, 2008⁸⁶; IDMC, 2008⁸⁷; Khatiwada, 2009⁸⁸).

Most IDPs have chosen to stay in their area of displacement, mainly in urban areas like Kathmandu valley, Nepalgunj, Birgunj, Hetauda, and others, where some have managed to integrate and to find jobs. Still, they cannot be treated as resettled because they want to return to their places of origin but they have not got the environment yet. Many others, including displaced children and women in particular, have struggled to find proper accommodation or access to basic services in cities. Children are exposed to a variety of threats, including trafficking, sexual exploitation and child labour. Displaced women, particularly widows, suffer from significant discrimination, making them highly vulnerable to further impoverishment and forcing many to resort to prostitution (IDMC, 2010).⁸⁹

⁸⁶ Office of the High Commissioner for Human Rights (2008). Human Rights in Nepal one year after the Comprehensive Peace Agreement, <http://nepal.ohchr.org/en/PressRelease.html>; Accessed on 15 June 2008.

⁸⁷ IDMC (2008). Livelihoods of people living in rural areas in the Far- and Mid-Western Hills and mountains most affected by conflict (October 2007). [http://www.internal-displacement.org/8025708F004CE90B/\(httpEnvelopes\)/F28B9C53F5D7509FC125736A0048158A?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpEnvelopes)/F28B9C53F5D7509FC125736A0048158A?OpenDocument); accessed 14 November 2011.

⁸⁸ Khatiwada, P.P. (2009). Even the Displaced Have a Good Luck to Shape, Spotlight, September, 2009.

⁸⁹ IDMC (2010). Failed Implementation of IDP Policy Leaves Many Unassisted. [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountrySummaries\)/165DEC64D0375862C12576B6005058F6?OpenDocument&count=10000](http://www.internal-displacement.org/8025708F004CE90B/(httpCountrySummaries)/165DEC64D0375862C12576B6005058F6?OpenDocument&count=10000); accessed 5 November 2011.

Section II: Existing Legal Frameworks

After “the 19-day peaceful and non-violent movement [in 2006] turned successful and restoration of democracy was made by restoring the sovereignty of Nepal inherent to the people and reinstatement of the then House of Representative” (MoPR, n.d.),⁹⁰ several dialogues were held between the parliamentary political parties and the UCPN (Maoist) to strengthen the peace process. In these dialogues, the issue of IDPs was raised and was given prime focus.

The preamble to the Interim Constitution of 2007 guarantees basic human rights to every citizen of Nepal. ‘Right to Property’ under Article 19(1) provides that all citizens of Nepal are guaranteed the right to acquire, own, sell and otherwise dispose of property. The State shall not except in public interest, requisition, acquire or create any encumbrance, on the property of any person, and this should be just, fair and reasonable and not be arbitrary but by rule of law only (Article 19 Sub-Article 3). Other provisions under the Constitution include the right to earn and use one’s property and the right to choose one’s place of residence. Moreover, the Constitution enshrines that the State has a responsibility to conduct programmes to rehabilitate the displaced and provide relief for damaged private properties (Article 33) (GON, 2007).⁹¹

⁹⁰ Ministry of Peace and Reconstruction, <http://www.peace.gov.np/admin/doc/Histroy%20of%20Peace%20Talk-eng-web1.pdf>; Accessed on 25 June 2010.

⁹¹ GON (2007). Interim Constitution 2007. Kathmandu: Government of Nepal.

Onset of the Peace Process: A Ray of Hope for IDPs

The peace process initiated in 2006 was itself a ray of hope for every victim of conflict in Nepal including the IDPs. Many had thought that at the very least the peace process would help realise their eagerly awaited dream of returning home. Those who could not return had expected that they would be resettled and their dignity would be restored. Those who were staying on at the sites of displacement, were slowly changing character to also becoming voluntary/economic migrants and were also starting to take part in their own political or occupational activities. Unfortunately, the ongoing peace process has not been satisfactory to some IDPs including other types of victims of conflict. Those who returned did not get an opportunity to claim all of their properties. They were not treated as equal citizens of Nepal. They were instead forced to make donations to the parties and the regional forces.

Provisions for IDPs in the Peace Process

The provisions made so far to address the problems of IDPs is a matter of interest to everyone. The IDP provisions have been included in almost every peace agreement. Point 5 of the 12 point agreement between the then seven party alliance and the CPN – Maoist, stressed to “create conducive atmosphere to allow all ..., who were displaced from home during the conflict, to return to their respective places with full respect” (Nepal Research, n.d.).⁹² They further agreed to “return the houses and physical properties of the people and the party cadres seized unjustifiably.” It also showed commitment to create an environment for all the people to “take part in political activities without any hindrance” (*ibid*).

⁹² Nepal Research, n.d., Unofficial English translation of the 12-point agreement between the seven parties and Maoists, http://www.nepalresearch.com/coup_2005/papers/maoists_parties_agreement_051122.pdf; Accessed on 25 June 2010.

After “the 19-day peaceful and non-violent movement [in 2006] turned successful and restoration of democracy was made by restoring the sovereignty of Nepal inherent to the people and reinstatement of the then House of Representative” (MoPR, n.d.),⁹³ several dialogues were held between the parliamentary political parties and the UCPN- Maoist to strengthen the peace process. In these dialogues, the issue of IDPs was raised with prime focus. The CPA signed between the then CPN-Maoist and the parliamentary political parties representing the State on 21 November 2006 has been the major basis for proceeding with the peace process till now. Based on this agreement, several political decisions have been made. The Point No. 5.2.4 of the CPA document highlights thus,

“Both sides [Maoist and Government] agree to maintain the peace in the society normalising adverse situation occurred by the reason of the armed conflict and to carry out relief work for, and to rehabilitate people victimised and displaced by the war to constitute a National Peace and Rehabilitation Commission to perform the business related to it” (MoPR, n.d.).⁹⁴

In 2007, National Policies on Internally Displaced Persons, 2063 (2007), which was in fact the updated and revised version of the 2006 IDP policy document was finalised. The former policy document had not recognised the IDPs displaced mainly due to the State-controlled security forces. This updated version has defined the conflict-induced IDPs as,

⁹³ Ministry of Peace and Reconstruction, <http://www.peace.gov.np/admin/doc/Histroy%20of%20Peace%20Talk-eng-web1.pdf>; Accessed on 25 June 2010.

⁹⁴ MoPR, n.d., Comprehensive Peace Accord Concluded Between the Government of Nepal and The Communist Party of Nepal (Maoist), http://www.peace.gov.np/admin/doc/CPA_eng-ver-corrected.pdf, Accessed on 25 June 2010.

“a person or family who is displaced internally by compulsion owing to creation of such a situation where it is not possible to live in one’s home or place of habitual residence due mainly to armed conflict or situation of violence or the conditions of gross violation of human rights” (MoPR, n.d.).⁹⁵

Policy Intervention: A Knotty Problem

Nepal’s peace process has had a number of ups and downs. Rounds of discussions have been held and from time to time an almost equal number of decisions have also been made. However, the lack of effective implementation with a strict monitoring and evaluation mechanism is the major problem faced by the Nepali people. This hard fact is also applied in the IDPs’ situation. Appropriate implementation of these policies has not been made effective by playing a crucial role between or among the political parties and their stakeholders. For example, the IDP Policy document of 2007 reiterates thus:

“...to rehabilitate the internally displaced persons or families with respect, safety and voluntary basis and assist in reconstruction of physical infrastructure and adopt preventive as well as sustainable measures with re-socialisation in order to prevent the re-emergence of such situations in future.”⁹⁶

⁹⁵ MoPR, n.d., National Policies on Internally Displaced Persons, 2063 (2007),

⁹⁶ MoPR, n.d., National Policies on Internally Displaced Persons, 2063 (2007), <http://www.peace.gov.np/admin/doc/IDP%20Policy-2063.pdf>, Accessed on 25 June 2010.

Row over Recent Seven Point Deal

Recently UCPN (Maoist) and other major political parties have agreed on a Seven Point Deal to give the current peace impasse 'a sustained end'. Civil societies in Nepal have cautiously welcomed the Seven Point Deal reached between the political parties of Nepal on 1 November 2011. Although this agreement has brought out some confusion and has already channelised confrontations and disagreements within and between the parties, CSOs are of the firm belief that at least such a new agreement has been made after the election to the CA. The earlier agreements after the CA election concentrated mainly on forming a new Government or reshuffling it. This deal is the second most important agreement after the CPA in 2007 (FFP, 2011).⁹⁷

One of the points agreed among the political parties is about the relief packages for the conflict victims. According to the agreement, relief packages would be made available without discrimination to the kin of those killed and disappeared, maimed, displaced and those whose properties were damaged in the armed conflict. The relief packages to be distributed after the signing of the CPA, would be provided equally and without discrimination (The Republica National Daily, 2011).⁹⁸ To what extent this recently held agreement can bring faith to the displaced people is yet to be seen.

⁹⁷ FFP (2011). Views of Civil Society on the Recently Agreed Seven Point Deal Among the Political Parties of Nepal. An Unpublished Documentation of Friends for Peace.

⁹⁸ The Republica National Daily (2011). The Seven Point Peace Deal. 2 November 2011.

Section III: Best Practices

During the armed conflict and especially after the peace processes was initiated, IDPs from different places and different forums have been identified by joint programmes, interactions and demanding from the Government, political parties and others concerned the relief and rehabilitation packages. Although the Maoist Victim Forum was made during the armed conflict and is still active, the leaders of the forum sympathised with the displaced people's cause. In many of the interactions and programmes, incidences of joint activities have been observed in the past. Some disaster victims have also initiated such forums. After the heavy flood disaster in Kailali and Kanchanpur in 2008, many of the IDP communities formed committees and approached district authorities collectively to make their problems known and have them addressed. They mainly desired to have a small piece of land and not vulnerable to further natural disaster.

In Kanchanpur, the displaced groups seem active and have undertaken agitation programs, such as encircling the District Administration Office and blocking the road. Kailali groups have not undertaken agitation activities as such; however, several delegations from different settlements met with district and central authorities, including the Ministry of Home Affairs and Ministry of Forests and Soil Conservation which pledged to examine their requests (SAAPE, 2010).⁹⁹

⁹⁹ SAAPE (2010). *Poverty and Vulnerability in South Asia*. Kathmandu: South Asia Alliance for Poverty Eradication.

Section IV: National Plans

The issues of relief and rehabilitation of IDPs is still the slogan of the political parties. Although some progress has been seen in distributing the relief packages to the IDPs, it has not been completed and all the IDPs have not got such relief programmes. Many times the Government committed itself to returning, rehabilitating and managing the resettlement of the IDPs, but these commitments have not been fully implemented. As a result, the political parties in the recently announced Seven Point Deal have reiterated their commitment to work for the unsolved problems of IDPs. As they have quoted in the agreement that an environment will be created for the displaced people to return and rehabilitate, especially “those whose properties were damaged in the armed conflict” (The Republica National Daily, 2011).¹⁰⁰

Box 3: Facts about the Government’s return and relief package

- Transportation expenditure: Per person Rs 300 to Rs 1000.
- The administration office will provide plane fares where there is no road access.
- Refreshment (snack) cost: Per person Rs 500 for lodging and food while returning.
- Livelihood cost: Per person Rs 60 per day for 4 months.
- House maintenance and reconstruction cost: Per family Rs 7,500 for maintenance and Rs 20,000 for reconstruction of your house.
- Educational relief: Per student Rs 2400 as a one time support.
- Loan support without interest: Rs 10,000 to purchase seeds and raw materials and Rs 10,000 to buy cattle, industrial equipment and trading materials; possible total of Rs 20,000.

Source: NRC, 2008; IDMC, 2010.

¹⁰⁰ The Republica National Daily (2011). The Seven Point Peace Deal. 2 November 2011.

According to the MoPR personnel who was interviewed, they will initiate the development of a national strategy on establishing a Rehabilitation Centre for Conflict Affected Persons with Disabilities, which will take up future projects that are currently at the stage of conceptualisation. Since adopting the National IDP policy in February 2007, the Government has made only minimal efforts to ensure that those displaced by the conflict or by ethnic unrest in the Terai since 2007 have received proper protection and assistance to enable them to achieve durable solutions (IDMC, 2010).¹⁰¹

¹⁰¹ IDMC (2010). Failed Implementation of IDP Policy Leaves Many Unassisted. [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountrySummaries\)/165DEC64D0375862C12576B6005058F6?OpenDocument&count=10000](http://www.internal-displacement.org/8025708F004CE90B/(httpCountrySummaries)/165DEC64D0375862C12576B6005058F6?OpenDocument&count=10000), accessed 5 November 2011.

Section V: Return & Rehabilitation

As an aftermath of the peace process initiated in 2006, there was a belief that all the IDPs would easily return to their respective places of origin. Some of the agencies/organisations also initiated attempts to help return the displaced people. A national policy was made and some relief packages were brought into effect by the Government. Some progresses has also been seen, a positive outcome to the policy. However, all the problems regarding IDPs have not been solved. Those returned have not been rehabilitated properly and those still in the displacement sites have to suffer with scarce resources and they mainly lack human dignity. Lack of coordination among the stakeholders is another problem observed even after the formulation of the IDP policy in 2007. The MoPR itself is overshadowed mainly with the political peace process. The issue of IDPs has been a very small part of the activities of the ministry. The policy gives responsibility of overall coordination to the CDOs in the respective districts who are overloaded with their other dozens of similar coordinating roles.

Lack of Livelihood and Security Concerns

Livelihood and security concerns were the two main reasons encouraging the return of a number of IDPs to their areas of displacement or their re-displacement elsewhere. There is also a high number of people who have deliberately gone back to their areas of displacement in search of improved economic opportunities and who would then be considered as migrants. Those at most risk of re-displacement are politically active people considered by the Maoists as “village feudalists who can no longer dominate villagers”. Some people also decide to move back to urban areas where they first

fled because they realise that there are insufficient education and economic opportunities in their original homes (IDMC, 2009)¹⁰².

Compensation for Losses

Returning of captured land and property is one of the necessary parts of rehabilitation. According to the Guiding Principles, competent authorities have the duty and responsibility to assist returned and/or resettle IDPs to recover, to the extent possible, their property and possessions which they left behind or were dispossessed upon their displacement (United Nations, 1998).¹⁰³ When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

A clearly mentioned point in the National IDP Policy is that the State shall make necessary arrangements to return such physical properties that were forcefully seized at the time of conflict. However, the commitment of the peace process has not been implemented on the issues of returning the properties to the IDPs (Free Library.com, 2011).¹⁰⁴

According to the official data, a total of 7,000 physical infrastructures were damaged during the conflict. Of them, more than 2,000 physical

¹⁰² IDMC (2009). Lack of Livelihoods and Security Concerns Make Returns often Unsustainable. [http://www.internal-displacement.org/8025708F004CE90B/\(httpEnvelopes\)/0EFAAFD078988A9FC125768D00591CE2?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpEnvelopes)/0EFAAFD078988A9FC125768D00591CE2?OpenDocument), accessed 14 November 2011.

¹⁰³ United Nations (1998). Guiding Principles on Internal Displacement. New York: United Nations.

¹⁰⁴ Free Library.com (2011). Dilemma of Right to Property and IDPs in Nepal. <http://www.thefreelibrary.com/Dilemma+of+Right+to+Property+and+IDPs+in+Nepal-a01074224464>; accessed 10 November 2011.

infrastructures destroyed during the ten-year long conflict have been rebuilt. These include the reconstruction of police posts, schools, village and district development committee buildings which was carried out in the previous fiscal year by the Reconstruction Project under the MoPR (Republica National Daily: 6 Nov 2011).¹⁰⁵

However, no record has been made available by the Government yet as to how many of the displaced persons' description of losses have been recorded and of them to what extent and how they have been compensated. The Maoist wing farmer's Association has clearly stated that the "property of feudalists won't be returned (Box 4).¹⁰⁶

¹⁰⁵ The Republica National Daily (2011). The Seven Point Peace Deal. 2 November 2011. The Republica National Daily, 4 November 2011.

¹⁰⁶ Nepal News.Com (2011). Property of 'Feudalists' Won't be Returned. www.nepalnews.com. 6 November 2011.

Box 4: Property of 'feudalists' won't be returned

The public and private property seized by the party during the decade-long insurgency will not be returned even though Prime Minister and party vice chairman Dr. Baburam Bhattarai has ordered the party's organisations to immediately start the process of returning the property.

The All Nepal Farmers' Association (Revolutionary), Nawalparasi, which is affiliated to the Maoist party and close to Baidya faction, has said that land seized by the party from "feudalists" and distributed among landless squatters and farmers won't be returned at any cost.

The association instead accused the Government of turning a blind eye to the problem of landlessness in the country by instructing return of the property of feudalists and landlords seized during the decade-long armed conflict.

The party's farmers' wing made its position clear on the very day PM Bhattarai instructed his party and Government bodies to start the process of returning property seized during the armed conflict period on Tuesday.

Talking about returning the seized property, but not implementing sweeping land reforms is not the solution to the problem faced by millions of landless peasants in the country, the association said, and demanded an independent commission to look into the problems vexing the landless squatters and farmers.

Source: nepalnews.com,

Land Rights

Land is the primary resource for agrarian economics, and Nepal is no exception to it where more than 85% of the population live in rural areas. More than 60% of the economically active population rely on agriculture as their primary occupation (Subedi, 2003).¹⁰⁷ Data on agricultural land is not available in Nepal through the census. So far only the Land Resource Mapping Project (1978/79) and JAFITA 2000 have given a concrete picture of the state of agricultural land

¹⁰⁷ Subedi, B. P. (2003). Population and Environment: A Situation Analysis of Population, Cultivated Land and Basic Crop Production in Nepal in 2001, *Population Monograph of Nepal* (Kathmandu: CBS), http://www.cbs.gov.np/Population/Monograph/volume2_contents.htm (Accessed 13 February 2009).

in all 75 districts of Nepal. However, these two sources are also not readily comparable (*Ibid*).

During the armed conflict, many IDPs lived in the places of displacement with meagre resources for their basic necessities such as housing, food and clothes. This still continues even after the peace process has started. Many IDPs still keep on visiting the places of origin expecting that the land confiscated by the Maoist during war would be returned to them.

Both the Maoist and other political parties in power during the armed conflict in Nepal adhering to the spirit of the CPA (2007) have agreed not to seize the property of anyone except when mandated by the law. Accordingly, property held from individuals, organisations and that belonging to the Government has, to a large extent, been returned. However, successful implementation of the CPA remains to be seen. During the reporting period, Maoist cadres collected forced donations, held houses belonging to individuals and did not return all buildings and land held during the insurgency, as committed in the CPA (NHRC, 2010).¹⁰⁸

Similarly, reports of security forces not vacating the land used by them during the armed conflict for the safety of their camps have been often quoted and highlighted (NHRC, 2010). The recently signed Seven Point Deal also mentions the points of agreement regarding the return of the land and property. It says,

“...The UCPN (Maoist) would take an official decision to return the private and public properties seized by the party during the armed conflict to

¹⁰⁸ NHRC (2010). Conflict induced IDPs: Return and Reintegration Situation and Way Forward. Paper Presented by Uma Joshi, 22 November 2010.

the rightful owners for their use by Nov 23. Due compensations would be paid to the owners for the loss caused by the seizure of properties. ... The rights of the peasants would be guaranteed as per the letter and spirit of the Comprehensive Peace Agreement, Interim Constitution 2007, and scientific land reforms” (The Republica, 2011).¹⁰⁹

However, this agreement has already been defied by another lobby of the Maoist. They have said that “ Property of ‘feudalists’ seized during insurgency won’t be returned”, as reported by Baidya faction Maoist (Box 4).

The Government of Nepal and its allies do not have proper records of the extent of land and other properties confiscated by the Maoists and neither do they make these details public. In many of the seized public lands, offices and places, the Maoist wing YCL have established their offices and captured all the properties within them. The victims of the private land owners have filed complaints at the district administrative offices of conflict affected districts in Nepal. However, no hearings have taken place yet to give justice to the victims.

Right to Livelihood

Nepal has shown commitment to almost all international instruments including all major treaties including ICCPR, ICESCR, CEDAW, CAT, CRC and ICERD. Nepal has ratified 17 such UN conventions. These instruments can help a lot to reduce the present ongoing conflict if the conflicting parties adhere to these instruments on moral ground, seeing the sensitivity of massive

¹⁰⁹ The Republica National Daily, 4 November 2011

human rights violations. Furthermore, international humanitarian laws like Common Article 3 of the Geneva Conventions¹¹⁰ are applicable to the non-state actors as well.

As compiled by the IDMC (2011), various results of the assessment show that much of rural Nepal was significantly affected by the conflict. The conflict impacted employment and trade, civil and social relations, food availability and production, access to markets, gender roles and personal security. These in turn affected household livelihoods and food security. In general, districts with the most severe conflict impact are located in the Far- and Mid-Western Hills and Mountains. This area also has some of the lowest development indicators in terms of food security, accessibility, poverty and malnutrition. Districts in the Central and Eastern Hill Regions and some areas in the Eastern Terai have also been heavily affected by the conflict. From a food security and livelihood perspective, priorities for assistance include small scale irrigation schemes, drinking water schemes, training in income generation activities, and rehabilitation and (re)construction of infrastructure such as roads, bridges, VDC buildings, agricultural service centres and health posts (IDMC, 2007).¹¹¹

When the knowledge and capacity of women are strengthened through awareness raising, advocacy on women friendly instruments,

¹¹⁰ This provides provisions to abide by both of the parties in conflict such as Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. Available online: <http://www.icrc.org/ihl.nsf/WebART/375-590006>, Accessed on 20 January 2012.

¹¹¹ IDMC (2007). Livelihoods of people living in rural areas in the Far- and Mid-Western Hills and mountains most affected by conflict (October 2007). [http://www.internal-displacement.org/8025708F004CE90B/\(httpEnvelopes\)/F28B9C53F5D7509FC125736A0048158A?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpEnvelopes)/F28B9C53F5D7509FC125736A0048158A?OpenDocument), accessed 14 November 2011.

policies and laws and other training and education programmes, women can better ensure redress for incidents of human rights violations through their own initiatives which will ultimately contribute to good governance and sustainable peace in the long-run. There are certain bases for launching these activities. Many instruments, policies and laws have been formulated so far which have contributed a lot to protect and promote human rights of women. However, women themselves are unaware of these instruments. Even those women who have reached the policymaking levels or significant posts of political parties are unaware of these instruments. Nepal, as a member state of the UN has actively participated to finalise, sign and ratify these instruments.¹¹² The Constitution of 1990 has also clearly explained that men and women are equal irrespective of any variables like age, caste, social norms and values (His Majesty's Government, 1990).¹¹³

Although women's activism has heightened in Nepal in recent times, this is not enough. There has not been much community activism to overcome the major gender problems like trafficking, domestic violence, educational discrimination and dowry. By raising awareness of both men and women that gender consideration is important in the major policies and programmes of Government and political parties, through such considerations being included in the policies, protection and promotion of human rights, good governance and sustainable peace can be achieved. The tools for this are advocacy, education and training. To start with, women involved in politics are to be targeted for their capacity building through empowerment

¹¹² Among these major conventions, which are also known as the big six treaty bodies, are ICCPR, (1966), ICESCR, (1966), CEDAW, (1979), CAT, (1984), CRC, (1989) and CERD, (1969). Prior to these six major conventions, two important principles have also been made, the UDHR (1948) and the 4 Geneva Conventions (1954).

¹¹³ HMG (1990). The Constitution of Kingdom of Nepal. Kathmandu: His Majesty's Government of Nepal.

programmes like need based trainings and other capacity building activities. Once they have the knowledge, skills and tools to protect their own rights, they can be successful in asserting them and achieving peace. According to recent research conducted for the Jagaran Nepal¹¹⁴ women involved in politics do not know what are human rights, treaties, resolutions and so many other issues which they need to know for the social justice of women. The increased political participation of women involved in the decision-making level would not only help correct their positions but also frame or amend women friendly policies and laws.

Simultaneously, activities for the grassroots level are also necessary because on the one hand women involved in political parties are not aware of human rights, good governance and peace-building issues, on the other hand the local level women are more victimised. More victimised during the period of war are the women and children who are already in a vulnerable situation when a conflict begins and who have to witness and face all kinds of violence and victimisations. Unless they are the target groups of training and awareness/empowerment, other efforts and top-down solutions may prove futile. A cross between a local level approach focussed on the women of the area and a more regional and national focus on issues is the ideal way forward.

¹¹⁴ Jagaran Nepal (2011). Update Survey on Women in Politics. Kathmandu: Jagaran Nepal.

Conclusions

As the National IDP Policy has not been implemented properly and the Procedural Directives 2007 of National Policy Relating to Internally Displaced Persons, 2007 is still pending, various issues are yet to be resolved. The IDPs who wanted to resettle at their present place of living are unable to receive compensation as it is only for returnees, although the National IDP Policy clearly entitles every displaced person to integrate into their current place of displacement or resettle elsewhere in Nepal.

Land attraction caused many of the displaced in Nepal. The returning of captured land and property has become a political agenda at present and the every property is connected with mainly the displaced leaders/cadres of the political parties other than the Maoists. Therefore, returning of the captured land and property has been the major demand of the political parties which has caused deadlock of current crisis (Refugee Watch Online, 2010).

The capturing of land by various armed groups and political parties still continues in different parts of the country. The UCPN (Maoist) and its sister organisations are continuing to capture private and trust-owned land in various places despite the signing of the CPA. The rule of law is weakening and people are unable to claim the right to land and property.

Repeated Maoist commitments to return confiscated houses and land is yet to be honoured in several districts, and IDPs from non-Maoist political parties have found it particularly hard to recover property. The Government return package has been limited to those officially registered, and in many districts up to half of the IDPs have been unable to register for assistance. The post-war economy is depressed and there is limited access to basic services in rural areas,

so many returnees have had to go back to towns and cities again in search of work (IDMC, 2010).

One of the major reasons for not implementing all the agreements, policies and laws made for the protection of IDPs is connected with the issue of delaying the promulgation of the new constitution. Unless and until the new constitution is promulgated, the entangled problems of IDPs remain unsolved because it seriously lacks accountability.

Finally, there is no apex body yet formulated to bring all the stakeholders together and to have dialogue on the issues of IDPs which could at least identify the issues of IDPs, and contribute to formulation/amendments in the existing policies and action plans. Such a body needs to be formed involving all the stakeholders, mainly the line ministries, respective departments, UN agencies, bilateral agencies, INGOs, NGOs and also academics who can contribute to the advocacy and dialogue. Furthermore, such a body would be able to map who is doing what identify the resources, and gaps in them and ways to tackle the challenges. Such an authority would give some visionary input with some academic foundation and outcomes of the activism so as to give directives for effective resettlement, rehabilitation and reintegration of IDPs in the days to come.

Recommendations

1. The Interim Constitution of Nepal 2007 as well as international documents have considered right to property as one of the fundamental rights. In this regard, the Government should ensure the right to property of IDPs.
2. The newly emerged groups also started to seize property by following the precedent of UCPN (Maoist). A mutual solution has to be explored between the Government and the IDPs.
3. Implementation of the comprehensive national IDP policy and its procedural directives as well as guidelines should be the strict agenda of the Government in collaboration and cooperation with UN agencies, multilateral and bilateral agencies and the civil society. Unless and until the policy gets fully implemented, the lives of the IDPs will not fully improve even after they get rehabilitated, returned or resettled.
4. Implementation of the recently conducted Seven Point Deal needs to be implemented sincerely and honestly. The parties need to find opportunities with newer avenues and environment to convince the people and remain committed towards lasting peace by making a wider consensus on the draft of the new constitution. This deal should at least be able to announce the constitution without further delay.
5. Another need is also for a more strategic research cooperation in the field of forced migration. Such cooperation should facilitate local researchers' exploration of the theoretical significance of the emerging international research paradigms and should assist in establishing linkages between local

and international researchers. The burning issues like the Madhesh movements and other ethnic movements needs to be the priority of future research on the Nepali context.

Report on the SAHR Nepal National Consultation on IDPs

1. Introduction

The National Consultation on Durable Solutions for Internally Displaced Persons in the context of shrinking humanitarian space was held on 26 August 2012 at SAP Falcha in Kathmandu. There were around 50 participants in this programme including conflict victims, human rights activists, civil society leaders, academicians, and students. The chief guest of the programme was Rt. Hon. Kedar Nath Upadhyay, Chairperson of the NHRC along with other special guests Prem Bahadur Khadka, Chairperson of Nepal Bar Association, Subodh Pyakurel, Chairperson of INSEC¹¹⁵ and Prof. Kapil Shrestha, prominent human rights activist and civil society leader/SAHR member, and Bishal Khanal, Secretary of the NHRC, were the key speakers. There were many representatives from the media who participated in this programme. The programme was broadcasted on national television stations such as Mountain TV and Avenues TV, among others.

The objective of this national consultation was to engage those concerned and interested in human rights to find durable solutions for IDPs and to obtain suggestions to operationalise the Guiding Principles. The discussion was led by Dinesh Tripathi, SAHR bureau member, with a brief introduction on SAHR's work and the IDP project. SAHR has been working in the South Asian region for more than a decade now serving as a platform for human rights activists to give voice to people's needs and views from the

¹¹⁵ INSEC is a leading human rights organisation working for the past two decades with a commendable reputation and significant achievements.

ground in order to better realise human rights. The human rights movement in the South Asian region has still not been strengthened and is often being marginalised. SAHR was conceived by a group of eminent personalities involved in human rights as a response to the increase in human rights violations in the region and in order to stand together for a common cause. This organisation therefore serves as a network for human rights activists to advocate together on increasing human rights violations in the region.

The IDP issue is a result of human rights violations. In Nepal, due to a Maoist insurgency there were a lot of IDPs, of which the full number has not been maintained in any database. One estimate states that there were around 500,000 IDPs during the conflict but no specific studies have been conducted to provide an official statistic and the issues related to IDPs have not been addressed. The UN and the international community have come up with the Guiding Principles but this has not been implemented at the ground level in Nepal.

The IDP issue, however, is a multidimensional one. The displaced persons are the most vulnerable population. In order to understand the status of IDPs, SAHR has developed background papers for each of the countries in the South Asian region. It was envisaged that this would eventually lead to the development of best practices that can be disseminated and adopted across the region.

Following the address by Tripathi, the background paper was presented by Dr. Padma Khatiwadato to familiarise the participants on the status of IDPs in Nepal. The key points highlighted in this paper were that there was no specific data related to the number of IDPs in Nepal. Different estimates show different data contributing to the ambiguity of the IDP number and plan accordingly. The State does have some legal frameworks to address the issues of IDPs as

they have been highlighted in various historic documents such as the CPA interim constitution and the like but there has hardly been any action seen on those commitments. The State has even devised an IDP Policy in 2006 which was revised in 2007 but it has not yet been fully implemented. The discussion was started following this presentation and later recommendations were obtained from the participants.

2. Key Discussions

1. An attempt was made to obtain clarity on the definition of IDPs. Who are IDPs? Are the conflict-affected displaced the only IDPs? Should the rights of IDPs displaced through other means such as floods or other natural disaster be the concern of human rights organisations? Should squatters be considered IDPs? An effort should therefore be placed to include socioeconomic aspects as well, while talking about IDPs in general.
2. Differences between IDPs and refugees were also discussed where refugees are displaced people who cross international borders and IDPs are people displaced within the nation. The refugees are taken care of by international organisations like the UNHCR who provide refuge for these people. But while the conditions of IDPs and refugees may be the same, IDPs can remain out of the jurisdiction of the international community, which can have serious impacts, including in terms of status of these people.
3. All the participants agreed on the point that there was no clear database on the actual number of IDPs existing within the country. Different studies point to different numbers. Additionally, there are a number of cases where the State has

not recognised actual IDP populations, while it has provided certain benefits to non-IDPs who claimed to be IDPs. For instance, 89,171 IDPs of 22,863 families applied for the relief packages announced by the Government. However, it cannot be discerned whether all of them were real IDPs. In the absence of a scientific and digital database on IDPs, the political parties sell it for their own agenda.

4. The issue of IDPs is multidimensional and needs to be looked at through various perspectives. The rights and responsibilities perspective is one of them. The Guiding Principles also suggests the need for the right to food, clothing and shelter which needs to be fulfilled by the State.
5. Within the IDP population, women are more vulnerable, sometimes being sexually assaulted. Furthermore, their property rights are not assured, and these are just a few unique challenges they face.
6. The issues of IDPs have always been neglected by key actors, including the academic sector, research institutions, and think tanks. What should an IDP receive from the State? A detailed study by the State needs to be done.
7. IDPs lack particular awareness on what their rights are. Most of them blame it on their fate and resort to traditional beliefs not knowing their rights as a citizen.
8. For conflict-induced IDPs, there have been known cases of murder when the IDP returned to their homes. Such cases have not been dealt with sensitivity or seriously enough.

9. There are some legal and policy provisions existing within the country to deal with the issues of IDPs such as its inclusion in the CPA and Interim Constitution and the formation of a National IDP Policy (2006). However, due to lack of monitoring of the implementation status, the existing legal frameworks for IDPs have been limited to documents only.
10. For IDPs, there are hardly places where they could share their grievances. If only they were provided platforms where they could express their sufferings, things could improve. Forums like these are rare because those involved in policymaking must first be oriented by the actual IDP itself in order to better reflect intervention for the IDP.
11. Recently, the country has been experiencing increasing acts of impunity and a deterioration in governance. The transparency and accountability among political parties have been decreasing with direct effects on the public.
14. There is however a silver lining as increasing numbers of IDPs have come together and formed various forums to raise their voice jointly and demand their human rights through collective action.

3. Key Recommendations

1. Conduct a comprehensive in-depth study on IDPs to define and identify them in the context of Nepal. The number of IDPs in Nepal must be scientifically documented. Efforts should be made to provide such identified IDPs an identification card by the State.

2. Develop an appropriate strategy on IDP management for long-term sustainability of the solution.
3. Orient and raise awareness among the general public on pain, grievances, and problems related to displacement. The real voice comes from the affected people. Without knowing how and in what way they have suffered, it is difficult to envisage an IDP friendly policy.
4. Develop a platform to let IDPs speak of their grievances and suffering so that the general public knows and understands what goes on in the life of an IDP, how they deal with it and what the role of the State as well as the public, should be to deal with such a scenario.
5. Create an environment to realise the rights of the IDPs as there have been a number of human rights violations specifically related to the IDPs in Nepal.
6. The gender aspect in general is often neglected from the development discourse. With the case of IDPs, this needs to be taken more seriously, as women IDPs are more vulnerable to sexual exploitation and rape.
7. Relief packages should be given to IDPs from the State, but care should be taken to provide it to all the IDPs, instead of only those who have clout within politics or with elites.
8. Proper monitoring needs to be done regarding implementation of the existing policies and plans related to IDPs.
9. The State must guarantee the safety of individual IDPs who choose to return to their home.

10. Create international pressure to establish the rule of law within the nation.
11. The seized land and property during conflict must be returned to the respective owners. Political parties must agree on this in order to effectively implement it. The State should punish those who retain the seized property.
12. The IDPs lose dignity, security and health during the displacement process, and they could become psychologically affected. This aspect also needs to be looked into.
13. The issue of IDPs must be taken as a part of transitional justice and should be taken forward accordingly.
14. CSOs focusing specifically on IDPs need to be established so that IDPs can raise their voice through such organisations.

Annexures

Organisations engaged in or responsible for IDP related activities within the country

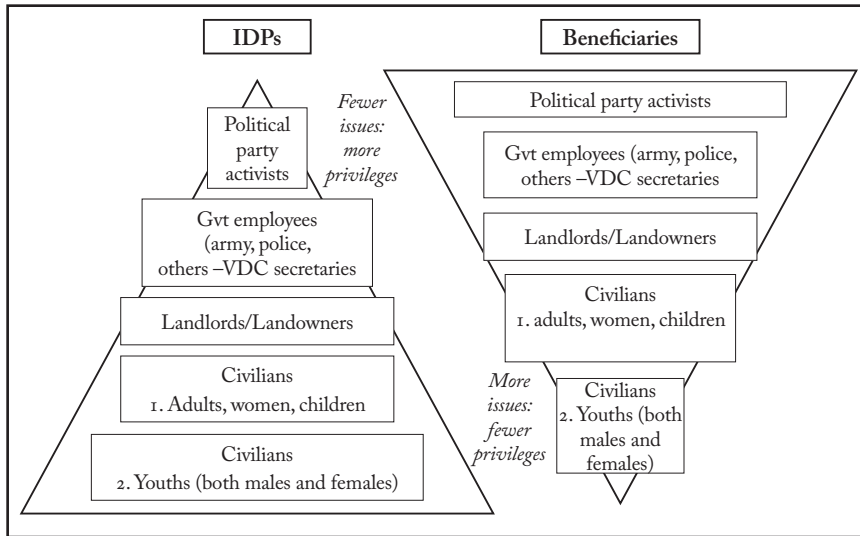
Organisations	Main areas of activities	Contact details	Remarks
Ministry of Peace and Reconstruction (MoPR)	Formulation of IDP policies; Programme coordination with agencies; Record maintenance of IDPs; Coordination for relief and rehabilitation.	Tel: +977-1-4211189, 4211090, 4211176, 4211092 Fax: +977-1-4211186 and 4211173 Email: info@peace.gov.np Website: www.peace.gov.np	The Ministry deals with the overall issues related to ongoing and post conflict.
Nepal Peace Trust Fund (NTPF)	Reintegration and Rehabilitation project since 2007	Tel: +977-1-4248144 Fax: +977-1-4228261 Website: www.nptf.gov.np	
National Human Rights Commission (NHRC)	Gave forum for IDPs to share their problems Commitment to protection of their human rights amidst the challenging situation during conflict. condemned the atrocities of the conflicting parties towards IDPs. Workshops, seminars on IDP issues.	Tel: +977-1-5010000 Website: www.nhrcnepal.org	
UNHCR	Expressed in 2007 the number of IDPs being 200,000 and of them maintained record keeping of 100,000.	Dhara Marga-1, Anil Kuti, Maharajgunj, Kathmandu P.O Box 2374 Tel: +977-1-4412521 Fax: +977-1-4412853 Email: nepka@unhcr.org Website: www.unhcr.org/pages/49e487856.html	Now no concentration for IDPs seems to be in priority.

Organisations	Main areas of activities	Contact details	Remarks
OHCHR	Concerns raised from time to time.	Museum Road, Chhauni, G.P.O. Box 24555, Kathmandu Tel: +977-1-4280164, 4280326, 4280542 Fax: +977-1-4670712, 4670713, 4671256 (security) Email: registry.np@ohchr.org Website: nepal.ohchr.org/en/index.html	Such as: Representatives of victims and internally displaced persons (IDPs) should be included in all district level decision-making processes that address their situation, including resettlement and compensation. Source: http://www.nepalbiznews.com/newsdata/Biz-News/ohchrofficenews.html
Save the Children		Website: www.savethechildren.org/site/c.8rKLIXMGIpI4E/b.6150545/	
Informal Sector Service Centre (INSEC)	Maintained data keeping of IDPs in earlier phases. Assisted returning of IDPs after the peace accord.	G.P.O. Box: 2726, Kathmandu, Nepal Syuchatar, Kalanki, Kathmandu, Nepal Tel.: +977-1-4278770 Fax: +977-1-4 270551 E-mail: insec@insec.org.np Website: www.inseconline.org ; www.insec.org.np	
GIZ, the then GTZ		E-mail: giz-nepal@giz.de Website: www.giz.de/en/worldwide/378.html	
Caritas Nepal		Website: www.caritasnepal.org	

Organisations	Main areas of activities	Contact details	Remarks
UNFPA		P.O. Box 107, Kathmandu, Nepal United Nations Population Fund Sanepa, Lalitpur Tel: +977-1-5523637, 5523880 Fax: +977-1-5523985 Email: registry-np@unfpa.org Website: nepal.unfpa.org/en/index.php	
International Labour Organisation (ILO)		Ravi Bhawan, Kathmandu, Nepal Tel: +977-1-4282255, 4278064 E-mail: cwin@mos.com.np Website: www.cwin.org.np/	
Asian Development Bank (ADB)		SrikunjKamaladi, Ward No. 31 P.O. Box 5017, Kathmandu, Nepal Tel: +977-1-422 7779 Fax: +977-1-422 5063 Website: www.adb.org/countries/nepal/main	
European Commission & Refugee Research Network		Website: www.rrn.org.np/	
The Lutheran World Federation Nepal (LWF)	Peace, Reconciliation and Human Rights	GPO Box 3330 House No 217, Chundevi Marg-4, Maharajgunj, Kathmandu, Nepal Tel: +977-1-4720217, 4720152, 4721271 Fax: +977-1-4720225 Email: rep@lwf.org.np Website: lwfnepal.org/	Overall development goal: Displaced, marginalized, oppressed and vulnerable people empowered to enjoy their rights and live a peaceful and dignified life
Global IDP Project & IDMC	Database	Website: http://www.internal-displacement.org/8025708F004CE90B/%28httpCountries%29/CC2C3C0FBDAD8F03C125746D002F61D9?OpenDocument	

Some Study Models Related to IDPs

Figure 1:
Relationship between Issues of IDPs and Beneficiary IDPs



Source: Khatiwada, 2007¹¹⁶

Khatiwada (2007) argued that there is a big gap between the types of IDPs and the benefits obtained by them. Those who are fewer are getting more benefits because they have better access to resources and those who are many have fewer resources.

As a result, more political party activists are in the centre: urban areas. Government employees including doctors, army, police, and even VDC secretaries are reluctant to stay in the rural areas. Landlords-landowners are turning into economic migrants in the cities. Civilians (adults, women, and children) are compelled to stay

¹¹⁶ Khatiwada, P.P. (2007). Internally Displaced Persons in Nepal: A Policy Perspective, Paper Presented at Nepal Institute of Development Studies (NIDS), 15 August 2007.

in destination places with hardship. Civilian youths (both male and female) are compelled to seek foreign labour, join rebels' militia, get involved in crime etc. Therefore, employment of young civilians inside the country is the major concern.

Spatial Movement of IDPs in Nepal

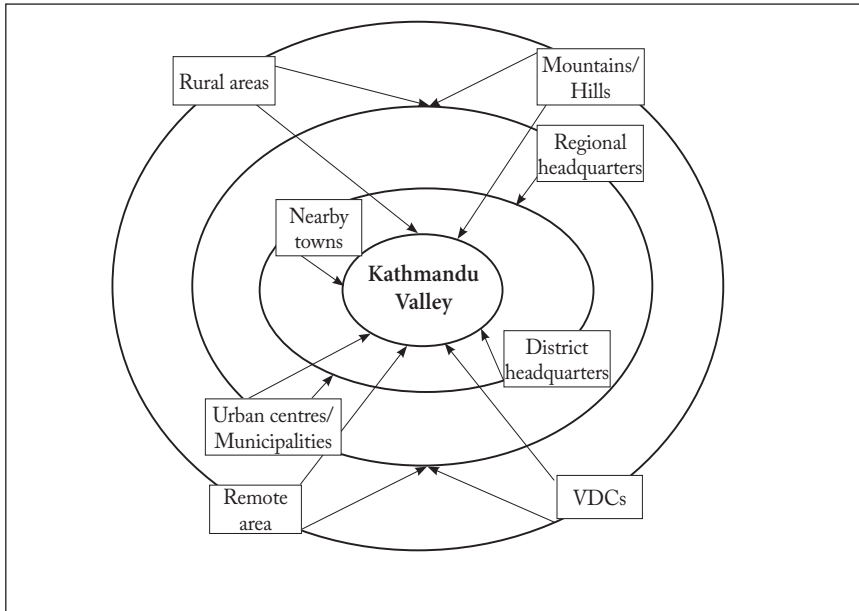
HimRights (2005) developed a model showing the flow of displaced people, which clearly indicates that Nepalese forced migration due to conflict is centralised to the urban cities (Figure 2). From the rural areas, which are usually the remote mountain and hill VDCs, people tend to move to the nearby towns¹¹⁷ when they find them insecure to live in or are forced by the conflicting parties to leave the place. Although this sort of migration is forced by nature, it takes the same course as migration theorists like Ravenstein (1885; 1889)¹¹⁸ and Lee (1966)¹¹⁹ described. When displaced people leave their places, of residence, they search for a better place where they could be more secure and are comparatively facilitated by better resources and opportunities. So from the towns, displaced people tend to move to the regional headquarters and the urban centres – the municipalities. Some may remain in the respective towns, district headquarters, regional headquarters and municipalities whereas some others may decide to come to the Kathmandu valley depending upon the networks they have such as political parties or any others.

¹¹⁷ Some people however may tend to come to the city areas directly depending upon their accessibility such as contacts, relatives, political affiliation and so on as the dot-mark arrows indicate in the figure.

¹¹⁸ Ravenstein, E.G., 1885, 1889, "The Laws of Migration", *Journal of the Royal Statistical Society*, Vol. 48, No. 1, pp. 167-235.

¹¹⁹ Lee, E.S. 1996, "A Theory of Migration", *Demography*, Vol. 3, No. 1, pp. 428-445.

Figure 2:
Nature of Conflict Induced Internal Displacement in Nepal¹²⁰



Source: HimRights, 2005¹²¹.

Due to the conflict and in some cases other contributing factors as well, upsurge of population in the major cities of Nepal mainly in the Kathmandu valley has been unexpectedly increasing. One may have

¹²⁰ Ecologically, Nepal is divided into three zones – Mountain, Hill and Tarai. By place of residence, it is divided as rural and urban. For administrative purpose, Nepal has been divided into five development regions, 14 zones, and 75 districts. Districts are further divided into VDCs and municipalities (urban centres). A VDC consists of nine wards while the number of wards in a municipality depends on the size of the population as well as on political decisions made by the municipality itself. As stipulated in the figure above, VDCs, remote areas, and rural areas are synonymous. Therefore they are put in the same layer. Although many VDCs are also located in the Tarai (plain area), they are comparatively less remote and less rural than hills and the mountains.

¹²¹ HimRights (2005). *IDPs Dynamics in the Kathmandu Valley: Auditing of Conflict Induced Internal Displacement*. An Unpublished Research Report Jointly Conducted by Plan International and HimRights.

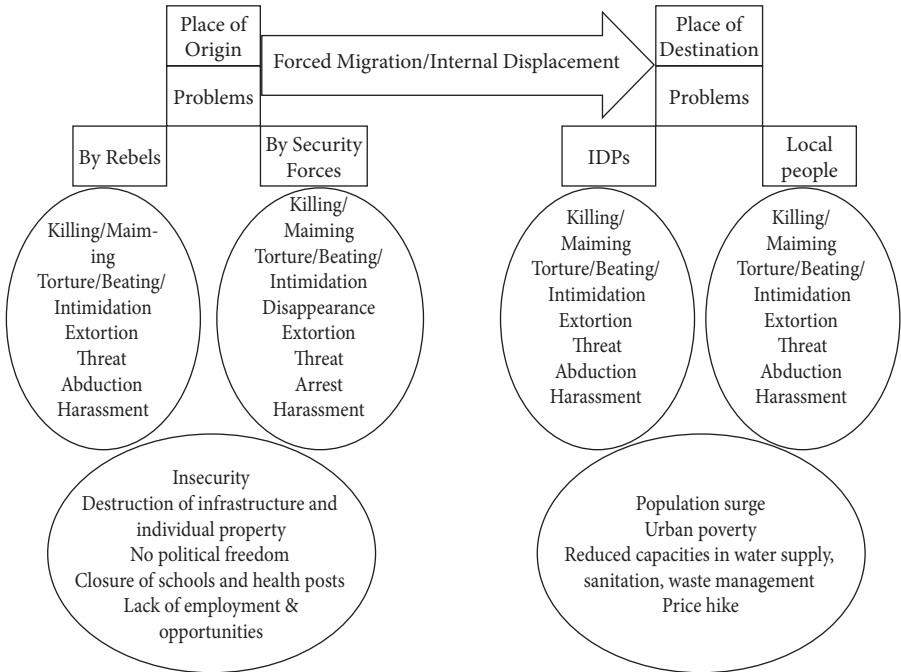
to wait for another five years for the national population census to figure out the skyrocketing population growth of the Kathmandu valley because of mainly the internal displacement. However, it is estimated that more than 2.5 million people reside in Kathmandu valley¹²². This also shows the urgency of conducting research on this burning issue – conflict-induced migration.

Problems of IPDs due to Armed Conflict in Nepal

Khatiwada (2004) presented a problem analysis of conflict-induced displacement in Nepal (Figure 3). Due to internal displacement in Nepal IDPs both at the places of origin and the places of destination are facing problems. The figure attempts to present these problems and their main causes. Although many of the “wealthier IDPs have been able to find shelter in the cities and may expect to return to their homes when conditions improve or may settle in the destination as voluntary migrants”, the middle and low class people are facing severe problems of shelter and food in the cities and the district headquarters. The wealthy people who have been targeted by the rebels are reportedly buying land and building house in the cities and the district headquarters. Therefore, their problems are less severe than those of the people who lack resources. However, it cannot be underestimated because even a landlord faces several kinds of challenges such as the threat of being killed.

¹²² Based on a report on IDP Assessment in Kathmandu Valley conducted by the HimRights in 2005.

Figure 3:
Nature and Problems Brought out by the Internal Armed Conflict in Nepal



Source: Khatiwada, 2004¹²³.

¹²³ Khatiwada, P.P. (2004). Internally Displaced Persons in Nepal: Problems and Challenges, in Lok Raj Baral et al (eds) *Nepali Journal of Contemporary Studies*, Vol. V, No. 2. Nepal Centre for Contemporary Studies.

The SAHR National Consultation On Durable Solutions For Internally Displaced Persons in the Context of Shrinking Humanitarian Space

To Suggest

Means of Operationalisation to the United Nations Guiding Principles on Internal Displacement in the specific context of Nepal

Agenda

VENUE: SAP Falcha, Kathmandu, Nepal

DATE: 26 August 2012

01:00 – 01:30	Welcome Tea and Registration
01:30 – 02:00	<p>Presentation by Dinesh Tripathi (Bureau Member)</p> <ul style="list-style-type: none"> • Introduction of SAHR and the project on IDPs • Brief presentation of an overview of the UN Guiding Principles on Internal Displacement
02:00 – 02:30	<p>Presentation by Dr. Padma Khatiwada</p> <ul style="list-style-type: none"> • the SAHR Chapter's background paper on IDPs' • the Issues the IDPs face at present • a review of past responses, both of the humanitarian community and the Government to the key issues surrounding IDPs
02:30 – 04:30	Suggestions to operationalise the UN Guiding Principles within the country
4:30 onwards	Tea and snacks

PAKISTAN

Background Report - Internal Displacement in Pakistan: a human rights perspective

(By Najam U Din)

Introduction

Large-scale involuntary internal displacement has almost been the norm in Pakistan throughout the last decade. Between April and July 2009, 2.7 million people were internally displaced in Pakistan in the context of military operations against militants. It was the largest internal displacement of population in the country's history until then. Pakistan faced unprecedented internal displacement once again in the summer of 2010 as floodwaters covered almost a fifth of the country.

The main cause for internal displacement in the spring of 2009 was military operations against militants in the Malakand region of the Khyber Pakhtunkhwa Province, leading to an exodus of about 2.3 million people in a little over a fortnight and creating one of the largest displacement crises in recent times. Military offensives against Taliban militants in the FATA bordering Afghanistan also contributed to forced displacement, pushing the number of IDPs to 2.7 million between April and July 2009.

The unprecedented displacement in Pakistan, in August and September 2010 after the worst flood to hit the country, affected 20 million people, forcing around 7 million people from their homes. Although most of the flood-affected IDPs returned to their native areas soon after floodwaters receded, many of them were living out in the open as over 1.9 million houses had been damaged or destroyed across the country, according to the NDMA. More than 1.1 million of the affected dwellings were in the province of Sindh.

The 2009 exodus from Malakand and the flood displacement in 2010 were only the latest instances of large-scale human displacement in Pakistan in the last few years. They had been preceded by dislocation of population following clashes between rival militant and sectarian groups in the tribal areas; military operations against extremist militants in the tribal areas and against insurgents/dissidents in Balochistan; generalised violence and violations of human rights; and other natural and human-caused disasters, including a devastating earthquake in Khyber Pakhtunkhwa (previously the NWFP) and Azad Kashmir; the annual havoc caused by floods across the country; sea intrusion; and displacement induced by development projects such as enhancement of water storage capacity at Mangla Dam, construction of Mirani Dam and the sale of two Islands off Karachi to an international real estate developer.

Since the post-1979 Afghan refugee influx in Pakistan, 2010 was only the second year that the number of IDPs in Pakistan was higher than that of registered refugees. The first time that had happened was in 2009. All indicators suggest that internal displacement will remain a key issue of concern in Pakistan, at least in the medium term.

The scale of the displacement crises that Pakistan has had to endure in the past few years has been such that any country in the

world would have struggled to cope. However, they have also laid bare the lack of ability and planning to appropriately respond to displacement challenges.

This paper highlights the key areas of concern prior to and during displacement as well as during and after return or reintegration.

The response to recent displacement crises in Pakistan has been reviewed to draw on key lessons with a view to ensure that these lessons inform strategy to deal with similar crises in the future, not only with respect to protection and humanitarian assistance during displacement, but also to promote a comprehensive approach to prevent conditions that lead to forced displacement in the first place.

Legal Framework

This paper relies upon the definition of IDPs articulated by the Guiding Principles, which describes them as individuals or groups forced or obliged to flee their homes, particularly as a result of or in order to avoid the effects of armed conflict, generalised violence, violations of human rights or natural or human-made disasters, and who remain within the borders of their own countries.¹²⁴

A specific framework exists to offer protection for refugees, in the form of the 1951 Refugee Convention, and an international organisation, the UNHCR, has been mandated to assist them.

The protection and provision of humanitarian assistance to the uprooted persons remains the responsibility of the State concerned because, unlike refugees, IDPs remain within the territorial jurisdiction of their own countries. The State is required to provide protection and humanitarian assistance to its citizens without

¹²⁴ Introduction, paragraph 2, United Nations Guiding Principles on Internal Displacement.

discrimination and in accordance with international human rights and humanitarian law.¹²⁵

It has not been uncommon for the Government of Pakistan to restrict or even block humanitarian assistance or access to displaced populations. Ongoing conflict and overall insecurity in Khyber Pakhtunkhwa and FATA have also impeded humanitarian assistance to the internally displaced. There have been administrative restrictions on access to affected areas. The Government has, at times, not allowed access to the population displaced in the wake of a military operation in Balochistan during military ruler Pervez Musharraf's regime.¹²⁶

Although Pakistan has hosted Afghan refugees, one of the largest displaced populations in the world, for over three decades, the country is poorly equipped to deal with large-scale internal displacement at the policy and implementation levels.

The approach to dealing with internal displacement crises has been largely reactive. The country is yet to formulate a template for assistance and protection of the displaced and for safeguarding their rights. Pakistan does not have specific legislation addressing internal displacement nor a policy or framework for protection of IDPs.

The Guiding Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement.

¹²⁵ Principles 3(1) and 4, UN Guiding Principles on Internal Displacement.

¹²⁶ Pakistan: Displacement in Balochistan, IDMC, [http://sinope.activeweb.fr/idmc/website/countries.nsf/\(httpEnvelopes\)/B7A20DA4D8F9D1C2C125778C007E EA48?OpenDocument](http://sinope.activeweb.fr/idmc/website/countries.nsf/(httpEnvelopes)/B7A20DA4D8F9D1C2C125778C007E EA48?OpenDocument); Internally Displaced Persons, A report on the Fact Finding Mission to Balochistan in 2008, SAHR, <http://www.southasianrights.org/wp-content/uploads/2009/10/Internally-Displaced-Persons-in-Baluchistan.pdf>

The Guiding Principles are generally acknowledged as a useful framework for dealing with the needs and protection of the displaced — not only providing protection against arbitrary displacement, but also offering a basis for protection and assistance during displacement, and guarantees for safe return, resettlement and reintegration. Even states that do not accept them as part of binding international law support the goals of these principles and agree that they can play a valuable practical role in the protection of the internally displaced.¹²⁷

¹²⁷ In view of the upsurge of the internal displacement crises in the early 1990s, the United UNCHR had requested the UN Secretary General to appoint a representative for on IDPs in 1992. The UN secretary general appointed Dr. Francis Deng, a Sudanese diplomat, as his Representative on IDPs. Dr. Deng reviewed the scope of the displacement crises and assessed the adequacy of existing mechanisms to address them. Upon the request of the UNCHR, the Representative also studied the extent to which international law provides coverage for the IDPs. Based on a detailed legal survey, the Representative compiled the Guiding Principles, which consolidate and restate existing international human rights and humanitarian law relevant to internal displacement. The document reviews the rights of IDPs and the authorities' responsibilities during the various phases of displacement, including prevention from arbitrary displacement, protection during displacement and durable solutions.

The UNCHR welcomed the Guiding Principles as “an important tool for dealing with situations of internal displacement”, while an increasing number of agencies, regional and sub-regional organisations, as well as states use them as a standard today.

The distinguishing feature of the Guiding Principles is that they incorporate elements of three branches of public international law in a single document: international humanitarian law, human rights law, and refugee law. These bodies of law can be found in both conventions and treaties ratified by states, as well as international customary law. The Governments that have incorporated the Guiding Principles into domestic law or developed national policies based on the principles include Angola, Colombia, Peru, Burundi, the Philippines, Sri Lanka and Uganda. USAID, the US foreign aid agency, issued a policy document in 2004 to guide its assistance to IDPs, referring to the Guiding Principles as a “framework for response”.

See details of the legal basis for each of the Guiding Principles in ‘Guiding Principles on Internal Displacement – Annotations’, 2nd Edition, by Walter Kälin, The American Society of International Law and The Brookings Institute, 2008, <http://www.asil.org/pdfs/stlp.pdf>.

However, despite the growing scale and frequency of internal displacement in the country, Islamabad has not benefitted from the Guiding Principles in any way. Pakistan has neither incorporated the Guiding Principles into domestic law, nor developed national policies based on them. In fact, reference to rights of the internally displaced has largely been missing from the official discourse on internal displacement in Pakistan.

The internally displaced often find access to adequate and meaningful processes to enforce their right to protection and assistance blocked on account of circumstances associated with their displacement.

Pakistan's commitments under international human rights treaties,¹²⁸ such as the ICCPR, CEDAW and CAT, provide the basis for protection of the rights of the displaced as well. The CRC is of fundamental importance for displaced children and can support efforts for their protection and rights.

However, after ratifying the key international human rights instruments, Pakistan has done little to incorporate international obligations into national legislation. The situation hinders IDPs from invoking their right to protection under the relevant international human rights instruments and the protection afforded by law therefore remains limited.

In the absence of specific domestic legislation recognising the rights of IDPs, the rights guaranteed in the Constitution of Pakistan¹²⁹ have acquired central importance in the protection of the internally displaced.

¹²⁸ See Annexure I for Pakistan's signature and ratification of key human rights instruments.

¹²⁹ Articles 8-28, Constitution of the Islamic Republic of Pakistan.

Key areas of concern

A number of factors have further compounded the problems associated with displacement in Pakistan. Many problems have surfaced because the response in displacement situations is not rights-centric. Provision of assistance and protection to the displaced has often been seen as a favour to the affected population. The focus in such situations has overwhelmingly been on the emergency or immediate needs of the displaced persons, who are generally seen as one homogeneous group having identical needs, rather than individuals with a variety of differing needs. Their opinion is seldom sought or given importance.

Some of the main concerns from the human rights perspective in the context of displacement in Pakistan are enumerated in the following pages.

Disaster mitigation and response

In recent years Pakistan has taken some steps to institutionalise disaster mitigation and integrated response. After the October 2005 earthquake struck, Pakistan immediately created a disaster management agency, the first in the country, to respond to what was the country's worst natural calamity until then. In the event of a disaster, the NDMA is supposed to coordinate efforts of all stakeholders, including Government ministries/departments/organisations, armed forces, NGOs and UN agencies. The National Disaster Management Ordinance, 2007 also envisages disaster management authorities at the provincial and district levels.¹³⁰ If implemented, such a system would offer obvious advantages in terms of avoiding duplication of efforts and rule out possibilities of

¹³⁰ Sections 13 and 15, National Disaster Management Ordinance, 2007.

some areas getting more assistance than they need as others do not get any at all.

However, the PDMA in general and DDMA in particular lack capacity, resources, or both, for disaster mitigation, preparedness and response. The province of Punjab did not even have a PDMA before the recent floods caused extensive devastation in eight districts of the province. Across the country, the DDMA had either not been set up or were not functional when the 2010 floods hit. That exacerbated the affected population's plight as 71 of Pakistan's 122 districts were affected by the flooding. In the absence of functional DDMA, the NDMA or the PDMA would encounter obvious difficulties in effectively responding to any emergency. Absence of a comprehensive post-disaster response and relief plan and lack of mechanisms at the district and sub-district levels and of a common implementation strategy by the relevant actors in the districts and at the grassroots remained a constraint in efficient provision of assistance and relief to the affected populations in the aftermath of the 2010 floods. Recurrences of such problems can only be avoided by devolving implementation structures right down to the village level, through the sub-district/town and Union Council administration, in order to ease administration and improve efficiency of the entire exercise.

Absence of disaggregated data

The official data on IDPs in Pakistan is mainly confined to citing the number of displaced individuals and that of families/households.

There is an urgent need for the Government and humanitarian actors to realise that the displaced are seldom a homogeneous group and, unlike the prevalent practice in the country, disaggregated data on

the basis of age and gender is vital to assess and respond to specific needs of all segments of the affected population during all phases of displacement. Such data would have an impact on prioritisation in areas such as education, school reconstruction, recruitment of male and female teachers and training requirements, healthcare facilities and the number of male and female health service providers, social protection and welfare needs, psychological needs, food security and livelihood rehabilitation, and access to water, sanitation and hygiene, etc.

In June 2009, the UNFPA said that 69,000 pregnant women were also among the population displaced as a result of the massive offensive against the militants in Swat and other areas of Khyber Pakhtunkhwa and were living in camps at increased risk.¹³¹ The UNFPA estimated that nearly 6,000 of the pregnant women were expected to give birth during the following month, and over 900 would need surgery to handle pregnancy-related complications. This was just one example of why data that only takes into account individuals and households cannot assess specific needs of the displaced. Similarly, lack of accurate data disaggregated by age is a major impediment in assessing the needs of children and the elderly and those with physical and mental disabilities and makes efforts to adequately respond to their needs very difficult.

Inclusive decision-making

One of the consistent features of the decision-making process across Pakistan in situations of internal displacement, irrespective of the causes or phases of displacement, has been the near absence

¹³¹ 'OCHA says running short of funds for IDPs', *Dawn*, June 5, 2009, (<http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/ocha-says-running-short-of-funds-for-idps-569>).

of consultation with IDPs regarding the decisions and policies affecting them.

Matters such as selecting locations of camp sites, choice of relief items, declaring affected areas safe for return and prioritisation in reconstruction of infrastructure are overwhelmingly determined by high level policy decisions. Displaced populations, whether in camps or in host communities, are excluded from decision-making regarding matters central to their daily lives. Absence of consultation and lack of inclusive decision-making undermine effectiveness of overall humanitarian assistance and heightens chances that the needs and concerns of the affected populations may be ignored or wrongly assessed. At times, this exclusion may have been deemed justifiable for the sake of prompt emergency response or efficient management of relief efforts.

Even where some degree of participation has been sought from the uprooted persons, women have often been left out despite their specific protection and assistance needs. A continuous and conscious focus is required to ascertain that women have easy access to information, especially in social settings where women hesitate to communicate with men on account of conservative norms.

Had input been sought from the displaced in at least some recent displacement settings, camps for them could have been set up as close to the affected population's original habitat as possible. In 2009, the IDPs fleeing the conflict in the Swat District learned during their flight that at the peak of summer the Government had set up camps in the intensely hot Mardan and Swabi Districts of Khyber Pakhtunkhwa. The displaced persons were unaccustomed to such heat and did not even have appropriate clothing for the weather.

Pakistan's practice of housing uprooted families from a single village or community in different camps in a random manner causes disruption of traditional social structures and the displaced find themselves isolated from family and social and community networks they have traditionally depended on. Children displaced from places like Swat lost contact with friends from school, because families from the same village were given shelter in different camps.

Consultation with the affected population on such matters could not only have given them a chance to demand that people from the same community or village are lodged in the same camp — which would have allowed them to maintain social and community bonds — it could also have helped in identifying militants from their native areas seeking refuge in the camps.

Lack of access for the affected population to reliable information to make informed choices is another area that needs to be urgently addressed.

Asking stakeholders for their priorities and making decisions accordingly gives ownership of decisions to the people and contributes to durability of solutions and sustainability of rehabilitation work.

Meaningful participation of IDPs, particularly affected women, must be ensured in planning and implementation of all aspects of their return or resettlement to take their concerns into account. One way to achieve such participation can be the introduction of an effective complaint registration mechanisms for all displaced individuals, irrespective of gender.

Host communities

An important facet of the recent large-scale displacement in Pakistan has been the excessively high reliance of the affected population on local communities for shelter and support.

The UN refugee agency compared the 2009 exodus from Swat in scale to the massive displacement in Rwanda in the 1990s. Returning from a trip to Pakistan in May 2009, the head of UNHCR António Guterres called the displacement crisis “one of the most dramatic of recent times”¹³² as relief workers were “struggling to keep up with the size and speed of the displacement”.¹³³

The main difference with African refugee crises such as Rwanda, however, was that only a minority of the people displaced from Swat were housed in camps set up by the Government or humanitarian organisations.

Only 15% of persons freshly displaced from Swat were sheltering in official camps in May 2009, while most were living in cramped conditions, squeezed into the houses of friends or relatives, with as many as 85 people in one house, with limited or negligible access to safe drinking water and sanitation.¹³⁴ In some instances the population of villages and towns doubled within a very short timeframe with the influx of the displaced. High population density, lack of safe drinking water, sanitation and privacy added to the problems of the affected populations.

¹³² ‘UN: Swat could be worst refugee crisis since Rwanda’, Mail & Guardian Online, May 19, 2009, <http://www.mg.co.za/article/2009-05-19-un-swat-could-be-worst-refugee-crisis-since-rwanda>.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

UNICEF's Director of Emergency Programmes Louis-Georges Arsenault had stated at the time: "In Pakistan we face a unique humanitarian challenge, since the vast majority of the displaced are seeking shelter in host communities which are far more difficult to reach with basic services than in the camps."¹³⁵

There were reports of the displaced populations in host communities in Mardan and Swabi districts facing health-related problems including diarrhea.¹³⁶

The displaced staying out of official camps created logistical hurdles in the delivery of even subsistence assistance to a scattered community, as well as increased demand for healthcare services, sanitation and water, causing additional strain on the local infrastructure, which was often inadequate even for the needs of the local population.

Sometimes the affected families could not register at camps because they lacked the necessary identification documents required for registration. Making issuance of identification documents easy at camp sites could yield results in this regard.

The communities hosting the displaced in the recent displacement crises were often not very rich themselves and simply lacked the resources to offer support or shelter for long. In such situations, the Government and humanitarian actors need to focus more attention on supporting the host communities by assessing their needs and the capacity of the local infrastructure. Otherwise, a perception may take root among the host communities that the affected families'

¹³⁵ 'UNICEF: Children and women displaced by conflict in Pakistan need urgent and ongoing support', July 3, 2009, http://www.unicef.org/pakistan/media_5245.htm.

¹³⁶ 'Rapid assessment of IDPs in host communities in Mardan and Swabi Districts', Save the Children Alliance, May 31, 2009, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MINE-7SQ4K4?OpenDocument>.

presence has diminished the former's ability to access services and that they have been excluded from any support even though their financial circumstances may be as bad as or even worse than the displaced persons they support.

Restrictions on free movement

Displaced individuals have historically not been considered right-holders either by the Government or the people of Pakistan and offering support to them is seldom seen as acknowledgment of their entitlement and often as a favour or downright charity. *Mohajir*, the Urdu word for refugee, is considered a derogatory term. Denial of many rights to displaced communities has been most apparent in the case of Afghan nationals forced to flee to Pakistan after the Soviet invasion of their country. Pakistan is not a signatory to the 1951 Refugee Convention. Afghan refugees managed to work and otherwise participate in the economic activity in Pakistan, but it was mainly on account of Islamabad's leniency and not because the refugees had any claim to enforceable rights. IDPs in Pakistan have at times been seen as outsiders by the local and provincial Governments and the people.

In October 2007, a nationalist political party had vowed to oppose "tooth and nail" a reported Government plan to settle around 80,000 displaced persons from the Bajaur Agency, in FATA, in Balochistan. The party said that bringing more 'outsiders' to the province, where the presence of a large number of Afghan refugees had "long been described as the main source of growing religious fundamentalism and suicide bombings", would create a "demographic imbalance in the Baloch-majority province".¹³⁷

¹³⁷ State of Human Rights in 2007, p. 203, Human Rights Commission of Pakistan, 2008.

Identity-based violence against ‘outsiders’ and curbs on the displaced population’s movement emerged as key recent challenges in Pakistan, especially amid military operations in the country’s Northwestern parts.

In 2009, the majority of the displaced population from the militancy-hit regions of Malakand and FATA found that their efforts to seek safety elsewhere in the country and their right to freedom of movement and choice of residence was curtailed by militants’ action as well as Government policies.

Their efforts to move to major urban centres in other provinces—often motivated by a desire to flee violence or to enhance their prospects of finding employment—encountered what may be called organised resistance.

The provincial Governments of Sindh and Punjab in particular denied the IDPs from the northwest of the country the right to liberty of movement and to free choice of their place of residence.¹³⁸ The curbs were largely based on speculations that the militants in the northwest were predominantly ethnic Pashtuns, and might be

¹³⁸ MQM against IDPs settlement in Sindh, *The Nation*, May 23, 2009, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Karachi/23-May-2009/MQM-against-IDPs-settlement-in-Sindh>; MQM wants IDPs restricted to special camps, *Dawn*, May 23, 2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/metropolitan/12-mqm-wants-idps-restricted-to-special-camps--bi-02>; Muttahida supports JSQM strike call, *The Nation*, 22 May, 2009, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Karachi/22-May-2009/Muttahida-supports-JSQM-strike-call>; IDPs being barred from entering Punjab, Sindh: Muqam, *Daily Times*, 22 May, 2009, http://dailytimes.com.pk/default.asp?page=2009\05\25\story_25-5-2009_pg7_16; JSQM, MQM oppose setting up of IDP camps in Sindh, *Daily Times*, 22 May, 2009, http://www.dailytimes.com.pk/default.asp?page=2009%5C05%5C22%5Cstory_22-5-2009_pg12_2; MQM wants no influx of IDPs in Sindh, Zardari told, *Pak Tribune*, 23 May, 2009, <http://www.paktribune.com/news/index.shtml?215175>; Punjab not to allow IDP camps, *The News*, 21 May, 2009, <http://swatvalley.org/index.php/news/punjab-not-to-allow-idp-camps>

hiding among the massive Pashtun populations uprooted from the conflict-hit areas. Instead of screening the displaced for terrorists, trucks full of displaced families were turned back at the provincial borders. Rights were essentially juxtaposed with the need for security and security was seen as the overriding concern. Such treatment is bound to further enhance feelings of alienation and disempowerment among the affected population and affect their ability to relocate, seek employment or otherwise participate in economic activity.

The arbitrary restrictions were a violation of fundamental rights guaranteed by the Constitution of Pakistan,¹³⁹ and of Article 12 of the ICCPR, which Pakistan had signed in April 2008 and ratified in June 2010.

Even a judiciary generally seen to be enthusiastic about taking *suo motu* notice in matters of ostensible public interest did not take note of the denial of such basic rights. Action was also absent at the political level to promote empathy with the affected population. The failure to deal with political and economic reasons for the tensions among the local and displaced populations remains an area of grave concern.

Preventive measures

Pakistan has often failed to take proactive measures to prevent displacement from occurring and, at times, to cushion the displaced from the impact.

¹³⁹ Article 13 of the Constitution of Pakistan states: "Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof."

Natural disasters may strike without a warning and individuals and Governments have to cope as best they can. However, displacement induced by most other causes is often not quite as inevitable.

The massive displacement from FATA and parts of the Khyber Pakhtunkhwa province following violent actions by militant extremists occurred years after civil society first started expressing concerns over growing religious intolerance, and demanding effective writ of state, political participation, respect for human rights and de-weaponisation in those areas. Timely action to counter extremism and intolerance - apprehending the perpetrators and rehabilitating those indoctrinated to pursue violence in the name of religion - could have prevented many of the problems now being addressed mainly, and at times exclusively, through military operations.

In the last few years, there have been increasing signs of the Government relying solely on its security forces to address frictions, instead of addressing economic and social concerns, including issues of representation or control over resources.

Military means may in some circumstances help as a last resort against violent extremism and terrorism, particularly through intelligence and more targeted operations, but they must not be the sum of the Government's response to such challenges.

Furthermore, the Government has not only failed in preventing displacement caused by non-state actors, but indiscriminate use of force by the security forces in operations against insurgents in populated areas has contributed to deaths and displacement of civilians. Specific concerns have converged around reliance on aerial bombardment and artillery shelling in populated areas such as Swat and parts of FATA.

The post-military operation concerns in Swat include treatment of individuals suspected of involvement in acts of violence, and their families. There are particular concerns that actions such as punitive demolition of houses, expulsion of families of suspected militants from towns, unacknowledged detention and extra-judicial and revenge killings would fuel further intolerance, conflict and displacement. The Government has frequently highlighted the people's unanimous backing for the military operations against extremist militants. The anti-militant action continues to enjoy broad public support in Pakistan but continuing civilian casualties, and deterioration in the conditions of the displaced or the returning population could undermine that support.

The significance of decisive and timely action in preventing displacement cannot be emphasised enough. In January 2010, a massive landslide blocked the Hunza River in Gilgit Baltistan, burying the village of Attabad. Nineteen people were killed, around 3,000 displaced and a further 25,000 people were stranded upstream. Four days after the landslide, the chief secretary of Gilgit-Baltistan had said it would take "about three weeks" to release water from the lake.¹⁴⁰

Rather than proceeding straight away to clear the blockage at a time when the cold temperatures meant that glacial melt was some way off from contributing substantially to the lake, the Government chose to construct a spillway, which would only become operational when the water level rose to around 360 feet. It was planned that the discharge of water would erode and eventually clear away the blockage, draining all the water in the lake.

¹⁴⁰ 'Hunza river water rises 4 metres in 24 hours', Dawn, 9 January, 2010.

As summer peaked and more glaciers melted, the water level shot up. Though the lake started discharging water in the last days of May, increased inflow from melting glaciers kept the water level in the lake from falling. By that time, the rising water had inundated several villages and led to displacement or evacuation of the population of around 40 villages.

Also in May, the chairman of the NDMA said that flooding from the lake could affect 40,000 people.¹⁴¹ By mid-June, the Hunza lake had stretched to 25 kilometers and showed few signs of draining anytime soon.¹⁴²

On 21 July, the Federal Government considered carrying out controlled blasting to lower the water level in the area,¹⁴³ something it had dismissed several months earlier despite demands by the affected population. The Government also did not agree to the affected population's demand for rehabilitation by allocating them alternative land.

Until the end of November, the displaced population continued to lead an uncertain life in relief camps and at houses of friends and relatives and the suffering of the stranded population upstream also seemed set to continue for the near future. A breach was likely to cause substantial damage downstream. Such a threat would have been virtually non-existent if the blockage had been opened in the months before high temperatures accelerated glacier melting, increasing inflow in the lake.

¹⁴¹ 'Hunza flood could affect 40,000 people: official', Dawn, 18 May, 2010.

¹⁴² 'Water level in Hunza lake creeping up', Dawn, 13 June, 2010.

¹⁴³ 'Water level to be lowered by controlled blasting', The Nation, 22 July, 2010.

The January 2010 landslide in Attabad had occurred after considerable warnings. In the first week of February 2003, the inhabitants of the village noticed a ‘crack’ in the ground above their village.

Richard Hughes, a consultant for Aga Khan Cultural Services, wrote after visiting the area in 2003:¹⁴⁴

The crack was traced uphill through steep scree slopes and it became progressively larger until reaching the mountain rock face. It then swung back downhill until intersecting with the Hunza gorge cliff edge and where the crack also passed through some houses... [i]t was decided to vacate many houses down slope of the cracked ground, [as] it has all the signs of being an incipient large landslide... Attabad is in an extremely remote location where incredible dynamic mountain building and erosional processes are continuously at play. Life here is, at best, precarious. A small magnitude earthquake a long way off has the capability to further trigger dramatic landscape changes, which further makes life very risky. Living in such hazard-prone environments has increasing risks, as the population expands and good quality/safer agricultural land becomes less available or too expensive to buy.

The cracking [of] the ground running up and around a large scree and boulder debris flow is a real natural landslide phenomena and a major cause for concern. The original crack width is getting locally larger but it appears not to

¹⁴⁴ Attabad Landslide - Hunza Valley, Northern Areas Pakistan, report of Richard Hughes, consultant for Aga Khan Cultural Services, pp. 1 & 6, <http://www.istructe.org/EEFIT/files/Attabad%20Landslide.pdf>.

be getting longer. It was a correct decision to move people away from the potential disaster area as there are no ways to stop a rotational landslide of the scale indicated by the crack plan. Monitoring the crack (with instrumentation) and the affected area locally (by observation of the environment) are the best ways forward for predicting a growing problem or noting a new stable situation. Management of the situation now would play a major role in efficient situation/disaster recovery. The first aim is to ensure that people safely live well away from below the area that would be affected, the second is to instigate safety systems for allowing for some continued use of the fields so essential for the well being of the villagers and the third is to have possessions and farming resources stored away from the area so there are minimal losses if the slope was to catastrophically fail.

Several factors are supportive of there being no future slope failure: It is encouraging to note that apparently no slumping or heaving ground movements have taken place at the toe of the slope. The boulder character and rough rock-head surface through which most of the movements have so far occurred could help in resisting a sliding action. The ground would appear to maintain a fairly stable temperature and moisture regime. However, it must be stressed that at the moment there is local dynamic situation, with distant aftershock and potential amplification effects still occurring that may lead to a local disaster.

In the Hattayan District of Azad Kashmir, a breach in Zilzala Lake, a body of water created by the 2005 earthquake in a manner similar to the Hunza lake, washed away 30 houses in February 2010.

In another year and another part of the country, in Turbat in Balochistan's Kech District, tens of thousands of persons displaced by floods in 2007 blamed the Government for their plight. They claimed that the unprecedented devastation was caused by the reverse flow of rivers from the Mirani Dam reservoir which had been recently constructed, as the structure prevented the rivers from draining. Many of the victims would have left the area months earlier if they had been compensated for their land. The Water and Power Development Authority had decided to pay full compensation to the affected people for houses, orchards and land in areas up to 264 feet ASL through the Provincial Government. But the Provincial Finance Ministry determined that areas above 244 feet ASL- the level of the dam's spillway - qualified for only partial compensation. The affected population refused to vacate their villages until paid in full. The huge backflow created waves large enough to hit areas up to an elevation of 271 feet ASL, devastating 40 villages and rendering nearly 70,000 people homeless.¹⁴⁵

Devastation and displacement wrought by floods has become an annual ritual for the people in scores of districts across Pakistan. In several districts of Balochistan and South Punjab, the annual destruction caused by the floods is even more ironic because people in these areas have to brave a drought for the remainder of the year.

The number of IDPs in the country shot up between July and September 2010 after massive flooding affected 20 million people. The floods caused large-scale devastation across the country and forced 7 million people to leave their homes.¹⁴⁶ The impact of the floods was especially devastating in the Swat valley, where residents

¹⁴⁵ State of Human Rights in 2007, p. 212, Human Rights Commission of Pakistan, 2008.

¹⁴⁶ 'Fresh Pakistan floods displace 1 mln more people', Reuters, August 27, 2010, <http://www.reuters.com/article/idUSSGE67Q0DB20100827>.

were still trying to recover from a mass exodus of population the previous spring to escape Taliban atrocities. Rescue and relief were made particularly difficult in Northwestern Pakistan where the infrastructure suffered extensive damage and around 300 bridges were washed away, thereby impeding access to the flood-hit zones. In Khyber-Pakhtunkhwa, officials had just a few hours to act and had little understanding of the damage the unusually strong torrent would cause. Absence of early warning systems to announce flood alerts and intentional flooding of some areas by Government officials breaching river embankments, apparently to protect the lands of powerful landowners at the expense of others, have been blamed for much of the displacement, destruction of property and loss of life by the floods. A judicial inquiry into the breach of embankments is now under way.

For most of the flood displaced, the period of displacement was relatively brief and they returned to their home areas as soon as floodwaters receded, usually in around a month's time. However, tens of thousands were living out in the open as over 1.9 million houses had been damaged or destroyed across the country, more than 1.1 million in the province of Sindh alone. Irrespective of the duration of displacement, many of the flood displaced faced post-return problems similar to conflict IDPs, in particular on account of destruction of houses, and communication, health and education infrastructure as well as diminished livelihood prospects at least in the short term after the floods caused extensive damage to crops and livestock in Pakistan's agricultural heartland.

Governments all over the world would have struggled with the scale of the floods that hit Pakistan in 2010, a calamity acknowledged by the UN to be more severe in scale than the 2005 Pakistan earthquake, the 2004 Asian tsunami and the 2010 Haiti earthquake combined.

However timely warnings, informed decision-making on breaching of embankments, and preventing agricultural activities and at times construction of unauthorised houses close to river banks or in *katcha*, or riverine areas, could have reduced the extent of damage, casualties and displacement. Adequate focus on disaster mapping, and assessment of vulnerabilities caused or exacerbated by climate change could also play a significant part in preventing the damage.

Many gaps became apparent as relief work for the flood-affected population got under way.¹⁴⁷ Failure to address the needs and concerns of the flood IDPs in a prompt manner may trigger future waves of displacement and migration from the affected areas, mainly towards major cities, increasing the burden on the urban infrastructure and depriving the uprooted families of family and community support networks.

First and foremost, Pakistan needs to have a conscious focus on preventing displacement by anticipating risks and planning its response accordingly, rather than proceeding in a reactive manner. It must have preventive strategies in place through early identification of threats and close and continued assessment and monitoring of risks. It must also try to mitigate the effect on the affected population in cases where displacement is unavoidable.

Expeditious and appropriate response to a displacement crisis not only alleviates the affected population's suffering, but it is also crucial in preventing future crisis by denying a foothold to extremist groups seeking to increase their support and further their agenda by filling the vacuum often left by the State in the provision of assistance. There have been numerous reports of such groups providing food

¹⁴⁷ 'HRCF finds gaps in response in flood-hit areas', HRCF Press Statement, 23 September, 2010, <http://www.hrcf-web.org/showprel.asp?id=169>.

and non-food relief items to the displaced people, following the 2005 earthquake as well as other natural disasters before and since.

Any Government in Pakistan can benefit from the Guiding Principles in planning to prevent displacement. In particular, it needs to have a deliberate focus at all times “to prevent and avoid conditions that might lead to displacement of persons”¹⁴⁸ and must ensure that “[p]rior to any decision requiring the displacement of persons... all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects”.¹⁴⁹

Additional vulnerabilities

Although enforced displacement exposes all affected individuals to a range of vulnerabilities and a sense of disempowerment, women and children often suffer more than most during and after displacement, particularly in conflict-induced displacement. In addition to age and gender, health conditions, physical and mental disabilities and perceptions of affiliation with sectarian, ethnic and religious minority groups have also compounded the problems of the displaced in Pakistan.

¹⁴⁸ Principle 5, UN Guiding Principles on Internal Displacement.

¹⁴⁹ Principle 7(1), UN Guiding Principles on Internal Displacement.

Gender

It is well established that displaced women may face specific risks and involuntary “displacement can expose women and girls to a range of factors which may put them at risk of further violations of their rights”.¹⁵⁰

As the security situation had worsened in Taliban-controlled areas in the Northwest in 2008, conditions had become difficult for women even before the actual displacement occurred.¹⁵¹ The Taliban had banished women from the public sphere, even barring them from leaving their homes. In most of these areas, they were only allowed to leave their homes for medical treatment if chaperoned by male relatives. Women’s access to education also suffered disproportionately, as most of the educational institutions bombed by the militants in the Swat region were girls’ schools. Even where the buildings remained intact families barred girls from attending schools for fear of their safety after threats by the Taliban.

Even a cursory analysis of the enforced displacement crises in Pakistan in recent years demonstrates that displaced women have had unequal access to assistance and protection and that the needs of women and girls, especially those living with host communities, have generally not been assessed.

Assistance gaps had been particularly glaring for unaccompanied women and female-headed families, where male relatives had been killed, accidentally separated, stayed behind to look after the family property or left for urban centers to look for employment.

¹⁵⁰ Conclusion No. 105, UNHCR Executive Committee, 6 October, 2006.

¹⁵¹ Swat: Paradise Regained?, Human Rights Commission of Pakistan, July 2010 p.22, www.hrcp-web.org/pdf/Swat-Paradise-Regained.pdf.

The process of registration of the displaced population was itself blamed for causing considerable inconvenience, assistance gaps and denial of shelter to women. The conflict-induced displacement from the country's northwestern parts had occurred in many areas where women had not obtained their NICs due to lack of education or threats by militants. In many tribal areas, families did not allow women to apply for NICs since the cards bear names of the applicant and the families did not want the names of women known outside the household. Since NICs were a mandatory requirement for registration of the displaced, the lack of NICs meant that women were less likely to be able to exercise their rights or access assistance and protection. Women without NICs were not registered or housed at camps, nor were families headed by such women if all the other members were minor children and therefore not yet eligible to acquire NICs. Women who had misplaced their NICs during their flight were issued copies by mobile teams, but those who had not had their NICs made in their native areas were not entertained.

Such response is contrary to the course suggested by the Guiding Principles. Principal 20 (2) states: “[T]he authorities concerned shall issue to them [internally displaced persons] all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.”

Though at some places registration staff at camps included women, female-headed families and women even in camps were not approached separately through female staff either at the registration or assistance stage. Gender stereotypes and conservative cultural

norms meant that women often hesitated to contact men to draw attention to assistance or protection needs. It is important to ensure an enabling environment in camps so that women feel able to raise their concerns.

Promotion of and facilitation with regard to livelihood opportunities for displaced or returning women continue to be ignored at the policy and implementation level. There is a need for special emphasis to address livelihood needs of displaced or returning women, especially in instances of female-headed households or where male family members have been killed or gone missing.

The displacement crises also offer Pakistan an opportunity to promote gender equality not merely to the extent of subsistence assistance but also with regard to reiterating their rights through constructive entitlements, and engagement in the decision-making process, facilitation with regard to livelihood opportunities and access to health and education.

International human rights instruments, particularly women-specific instruments such as CEDAW, can also support measures for the protection, empowerment and rights of women and girls in situations of displacement.

Humanitarian action in Pakistan in general needs to be more firmly grounded in the principle of gender equality and women need to be equally consulted and engaged in the decision-making process.

Age

Children, on account of their young age, are more exposed to the difficulties and risks associated with displacement. According to UNICEF, nearly 50% of the estimated 2 million displaced in Pakistan in July 2009 were children, many of them in urgent need of health and educational services, nutritional support, access to clean water and sanitation, as well as protection.¹⁵²

Children in the country's Northwest have been most vulnerable to the effects of the Taliban insurgency, before, during and after their displacement. Loss of family members and exposure to horrific violence has left many struggling with a sense of uncertainty, insecurity and fear.

Rights organisations and relief workers have reported that difficult journeys in search of safety following involuntary displacement from Swat and the tribal areas caused among children an impending fear of being captured or killed by militants.¹⁵³ The traumatic experiences have left them with severe mental distress. However, measures to address psychological needs of children, or those of the uprooted population at large, remain a neglected area.

Even though Pakistan has not made the Guiding Principles part of domestic legislation, children are guaranteed many rights under the national constitution and under the CRC, which Pakistan has signed and ratified.

¹⁵² 'UNICEF: Children and women displaced by conflict in Pakistan need urgent and ongoing support', July 3, 2009, http://www.unicef.org/pakistan/media_5245.htm.

¹⁵³ Swat: Paradise Regained?, Human Rights Commission of Pakistan, July 2010, p. 22, www.hrcp-web.org/pdf/Swat-Paradise-Regained.pdf.

Concerns have been raised about children's vulnerability to trafficking and sexual exploitation amid reports of children's separation from their families during the massive flight of the civilian population from Swat. In the context of involuntary displacement and even otherwise, the absence of an effective child adoption regime and foster care are yet to get the attention they deserve. Ensuring implementation of articles 20 and 21 of the CRC would be particularly useful in order to protect displaced children.

Hundreds of thousands of children had to discontinue education for the duration of their displacement from Malakand and were exposed to bloodshed and loss of family members during the conflict. Militants had bombed the schools in Malakand even before large-scale displacement began. In addition to discontinuation of education, the children also had to live with destruction of their schools, murder of teachers and, in case of displacement, loss of their friends.¹⁵⁴

Though NGOs offered education to children in many camps for displaced people, there was little official oversight of the curriculum. Also lacking were efforts to ensure that education was directed at development of peace, tolerance and respect for human rights. Such focus of education assumed increased importance in the context of displacement in Pakistan's Northwest, caused by intolerance, militant extremism and denial of basic rights, particularly freedom of belief and expression. Pakistan's obligations under Article 29 of the CRC also make it mandatory for the State to ensure that the education given to children conforms to such minimum standards. In Pakistan, even among displaced children some are more vulnerable than others. A girl child is more vulnerable than a boy. Children with disabilities, including those who have lost their limbs during

¹⁵⁴ *Ibid.*

conflict or natural disasters, have further specific needs. Special measures to assist children with physical and mental disabilities and to alleviate their suffering at the time of flight and during the various phases of displacement have been conspicuous by absence.

Proactive measures to meet special needs of children, shielding them from the impact of displacement and provision of a child-friendly atmosphere in general must form the basis of policies formulated to address internal displacement crises.

Religious belief

Non-Muslims and minority Muslim sects faced particular difficulties as forced displacement from conflict areas occurred following violence by militant extremists who claimed to be acting for implementation of their version of *Shariah*. Although members of religious minority communities were often threatened specifically on account of their religious beliefs, specific protection measures, especially to prevent displacement, were not in evidence.

In April 2009, the dilemma of Sikh families living in Orakzai Agency, one of the seven tribal agencies of the FATA, made the headlines when the Taliban ordered them to pay Rs 50 million as *Jaziya*, a tax imposed on non-Muslims who live under Muslim rule. Ten of the 15 Sikh families living in the Ferozkehel area of Lower Orakzai left the tribal agency within a week of the Taliban's demand.¹⁵⁵ Later the same week, the Sikhs reportedly paid Rs 20 million *Jaziya* to Taliban in return for 'protection'.¹⁵⁶ Media reports suggested that the Taliban also released a Sikh community leader and vacated the community's houses after the *Jaziya* was paid. The

¹⁵⁵ 'Sikh families leave Orakzai after Taliban demand *jizia*', Daily Times, 15 April, 2009.

¹⁵⁶ 'Sikhs in Orakzai pay Rs 20 million *jizia* to Taliban', Daily Times, 16 April, 2009.

Taliban announced that the Sikhs were now free to live anywhere in the agency and no one would harm them. They said that the Sikhs who had left the agency could return to their houses and resume their businesses in Orakzai. There was no indication that the Government had taken any action in response to the threats or made any assurance to the threatened Sikhs. Media reports in June 2009 also suggested that militants had demanded Rs 6 million as *Jaziya* from the Hindu community of the Battagram District in Khyber Pakhtunkhwa.¹⁵⁷

In August, 500 Ahmedi families displaced by floods from Dera Ghazi Khan, Muzaffargarh and Rajanpur Districts of southern Punjab were denied relief goods and shelter by Government officials and local clerics on account of their faith. The displaced families were reportedly expelled from a Government school in Dera Ghazi Khan and from rented lodgings elsewhere in southern Punjab following clerics' pressure, who had issued edicts that the affected Ahmedis must not be provided help.¹⁵⁸

Christians in Punjab have also complained about discrimination in relief operations. District officials in Sukkur observed Sikhs and Hindus being pushed away from food distribution points. In Karachi the complete lack of religious sensitivity led nearly 600 Hindu flood victims to stage a protest after they were given beef to eat.¹⁵⁹

¹⁵⁷ "Taliban' demand *jizya* from Hindus in Battagram', GEO TV, 28 June, 2009.

¹⁵⁸ 'The politics of relief: Aliens in their own land', The Express Tribune, 18 August, 2010, <http://tribune.com.pk/story/40435/the-politics-of-relief-aliens-in-their-own-land/>.

¹⁵⁹ 'Discrimination in flood relief,' The Express Tribune, 17 September, 2010, <http://tribune.com.pk/story/50822/discrimination-in-flood-relief/>.

Particular vulnerabilities faced by minority communities have not elicited any specific response from the State. The only recent official acknowledgement of specific protection needs has been the expression of concern by the National Assembly Standing Committee on Minorities in May 2009, over displacement of families of religious minorities from the troubled areas of Khyber Pakhtunkhwa and FATA.¹⁶⁰

Psychological care

Displaced persons of all ages struggle to cope with psychosocial issues associated with displacement, which often aggravates existing physical and psychological problems and almost always prevents the affected population from accessing healthcare services they had traditionally relied upon.

However, the provision of psychosocial services for the affected population, even in conflict-related displacement, remains a dire and largely neglected need in Pakistan.

Even though some UN agencies and local NGOs working in Swat are providing psychological support, sufficient resources have not been dedicated to the issue. Many individuals in Swat have reported continuing psychological trauma of their own or of other family members. Depression, anxiety, nightmares, and suicide ideation have been cited as some of the common symptoms, often following the loss of a home or a family member.¹⁶¹

¹⁶⁰ 'NA body voices concern over minorities' displacement', Daily Times, 5 May, 2009.

¹⁶¹ Swat: Paradise Regained?, Human Rights Commission of Pakistan, July 2010, pp. 22-23, www.hrcp-web.org/pdf/Swat-Paradise-Regained.pdf.

While feelings of insecurity, helplessness, fear and stress are common among displaced children and adults alike, the impact has been most pronounced on the mental health of children. A large number of children in Swat witnessed acts of violence by the militants including bombing of their schools and murder of their family members and teachers. Many have developed depression and other psychological conditions, and need counseling.¹⁶²

According to the mental health programme of the Federal Ministry of Health, a majority of the children displaced in the wake of the military operations in Khyber Pakhtunkhwa was aged between three months to 11 years and complained of problems including depression, phobias, acute stress disorder, post-traumatic stress syndrome and sleep disorders.¹⁶³

Psychological needs of the affected population from FATA largely remain unknown, because of the security situation in the area and also because provision of psychological support is very low on the priority list in situations of internal displacement.

The dire need for systematic psychological assistance during displacement and after the cause for displacement has subsided cannot be met until the overall response to the healthcare needs of the affected population includes mental health in its fold.

Compensation for losses

The importance of early payment of compensation to the affected people can hardly be overstated. Compensation for damages is crucial for the displaced persons to return to their communities and

¹⁶² *Ibid*, p. 23.

¹⁶³ 'Children developing behavioural problems', *The News*, 20 May, 2009.

rebuild their homes and lives. The Government routinely extends to victims of disasters and calamities compensation under laws such as the West Pakistan National Calamities (Prevention and Relief) Act, 1958. Financial compensation for those displaced because of acquisition of land by the Government for public purposes, is governed by the Land Acquisition Act, 1894.

Following the 2005 earthquake, Rs 175,000 in Government compensation was given to those families whose houses were destroyed, and Rs 75,000 to those with damaged dwellings. The Government also gave Rs 100,000 as compensation for death, but only compensated one death per family. Compensation of Rs 50,000 was given for injuries causing permanent disability.

There were complaints that some of the destroyed houses had been assessed as damaged and their residents were only given Rs 75,000 as compensation.¹⁶⁴

Other problems included people being unable to open bank accounts without identification cards; banks being inaccessible to the mostly rural, uneducated population; families sharing accommodation having been excluded, as only one payment was made per dwelling; homeowners, rather than tenants, were compensated; and feudal landlords, allegedly colluding with local officials, had been collecting money “on behalf” of tenant farmers under the threat of eviction. Compensation was not paid for lost livestock, businesses, shops and livelihoods.¹⁶⁵

¹⁶⁴ ‘Pakistan Earthquake Reconstruction On Track,’ AFP 4 October, 2006, http://www.google.com.pk/url?q=http://www.terradaily.com/reports/Pakistan_Earthquake_Reconstruction_On_Track_999.Phtml&sa=U&ei=JQLqTJm7FZHNswamupCvAw&ved=0CBAQFjAA&usq=AFQjCNHO0zEQ0Yh7KAlSY6cOO8RJgMyN6g.

¹⁶⁵ When disaster strikes: the response to the South Asian earthquake, June 2006, Integrated Regional Information Networks, June 2006, <http://www.irinnews.org/InDepthMain.aspx?InDepthId=6&ReportId=34373>.

In February 2010, the Government assured the National Assembly that every registered IDP of Khyber Pakhtunkhwa and FATA will be paid compensation for damages according to the laid down procedure. Rs 25,000 had earlier been paid to each registered displaced family from these areas.¹⁶⁶

However, details of the plan for compensation for damage to houses in the conflict-hit zones of the country or how the plan was progressing were yet to be made public in November 2010. In June 2010, reports had emerged that damage to totally or partially destroyed houses had been assessed in Buner, Upper Dir and Swat Districts of Khyber Pakhtunkhwa and at least estimates of damages had been calculated in Bajaur and Mohmand regions in FATA. However, the same had not happened in Upper Swat and Lower Dir, Shangla, Hangu and Kohat Districts in Khyber-Pakhtunkhwa and South Waziristan, Kurram and Orakzai agencies in FATA. The HRCP had urged the Government to consult representatives of the affected people during the decision-making process to ensure that their concerns were addressed and explain to the people what mechanisms had been put in place to ensure accountability and transparency.¹⁶⁷

Concerns regarding corruption, incompetence and lack of transparency have frequently been raised about assessment and assistance/compensation for damages. Such concerns were once again aired during the distribution of Watan ATM cards among victims of the 2010 floods. The Government had decided to provide Rs 20,000 to each flood-affected family through the cards.

¹⁶⁶ Pakistan: Govt committed to rehabilitate every registered IDP: Kaira, Associated Press of Pakistan, 10 February, 2010, http://www.app.com.pk/en/_index.php?option=com_content&task=view&id=96131&Itemid=1.

¹⁶⁷ 'HRCP urges inclusive, transparent compensation plan for conflict-hit areas', HRCP Press Statement, 24 June, 2010, <http://www.hrcp-web.org/showprel.asp?id=138>.

As of 26 October 2010, about 6.9 million people (994,678 families) had been processed for Watan Cards. Nearly 14.5 billion rupees had been disbursed to beneficiaries in Punjab, Khyber Pakhtunkhwa and Sindh. The compensation scheme was also being set up in Balochistan. Some key issues pertaining to the registration process included exclusion of affected families due to the lack of NICs and lack of information for affected populations, and reports of demands of bribe by the registration staff.

The Sindh Chief Minister in October 2010 acknowledged complaints about Watan Cards. He said some ‘middlemen’ were involved in getting Watan Cards from the affected people on a 50% share basis. Addressing all district coordination officers of the province, the Chief Minister said that there must not be harassment, baton charge or any other excess against any flood-affected person trying to get a Watan Card.¹⁶⁸ Similar reports were received from Punjab as well.¹⁶⁹

The Provincial Government of Sindh was criticised in October 2010 after it announced that it will not give Rs 100,000 to each displaced family as it had earlier promised.¹⁷⁰

In May 2010, the Prime Minister announced a compensation package for the people affected by the Hunza landslide.¹⁷¹ According

¹⁶⁸ Qaim asks for not harassing IDPs, Pakistan Press International, 6 October, 2010, <http://www.onepakistan.com/news/local/karachi/66696-qaim-asks-for-not-harassing-idps.html?print>.

¹⁶⁹ Watan Card protests take new turn, The Express Tribune, September 17, 2010, <http://tribune.com.pk/story/63644/watan-card-protests-take-new-turn/>; ‘HRCP finds gaps in response in flood-hit areas’, HRCP Press Statement, 23 September, 2010, <http://www.hrcp-web.org/showprel.asp?id=169>.

¹⁷⁰ ‘SDF flays Sindh govt over IDPs issue,’ The Nation, 13 October, 2010.

¹⁷¹ ‘PM announces relief package for Hunza,’ Dawn, 27 May, 2010.

to the package, based on an assessment made by the NDMD, Rs. 200,000 were to be paid to those who lost land, Rs 400,000 for houses destroyed, Rs 160,000 for houses damaged and Rs 100,000 for submerged property in three villages. The affected families were also to get free wheat and flour for two months and Rs 5,000 per month for six months.

Agriculture was severely affected in Swat amid the military operation, particularly along main roads where the security forces banned the cultivation of maize, one of the main crops in the area, and cut down orchards to deny hiding places to militants. No compensation had been given until the end of November 2010 to the farmers and orchard owners, or to owners of houses, hotels and *hujras* occupied by the army across Swat because of their strategic location.¹⁷²

It is essential to put in place an independent system to oversee distribution of aid and compensation. The Government must find a monitoring mechanism which is in the hands of representatives of the people of affected areas.

Return, land rights and livelihood restoration

Availability of economic and livelihood opportunities is often among the biggest concerns of the affected population, second only to issues of personal security. Persistent lack of economic prospects in the native areas of the displaced persons can not only discourage returns but can also trigger secondary or multiple waves of involuntary displacement.

¹⁷² Swat: Paradise Regained?, Human Rights Commission of Pakistan, July 2010, p. 24, www.hrcp-web.org/pdf/Swat-Paradise-Regained.pdf.

Recent natural disasters and armed conflicts in Pakistan before the 2010 floods had largely affected areas where tourism, trade and some degree of agriculture were the mainstay of the local economy.

The displaced population from Northern Pakistan largely had to depend on assistance from NGOs or charities or on generosity of host communities for the most basic necessities throughout their displacement. An overwhelming majority returned to their native areas with their life savings lost and opportunities to support themselves almost non-existent. Many returned to destroyed homes or to agricultural land or houses occupied by the security forces. All these factors would have a bearing on sustainability of returns.

Before the exodus of the civilian population from Swat, the economy of the scenic region depended almost exclusively on tourism. But tourists have now stayed away for years due to violence and human rights violations by militants and during subsequent military operations. Continuing acts of terrorism by militants, and numerous military checkpoints in Swat mean that a tourist-friendly environment is still absent. Though small businesses have recovered to some extent, mainly on self-help basis, a massive effort is needed to stabilise the region through economic rehabilitation, by creating jobs and rebuilding the infrastructure.

Arbitrary deprivation of property and restrictions on use of agriculture land in Swat have emerged as major challenges for the returning populations, particularly on account of curbs on what crop owners or agriculture land close to main roads can sow in their land. The use of agriculture fertilizer in bomb-making by the militants in parts of FATA has led to the security forces imposing curbs on its sale and movement, resulting in additional difficulties for the farming community in the region.

Though the January 2010 landslide and blockage of the Hunza river did not cause any damage or displacement upstream of the lake, it blocked the Karakoram Highway, Pakistan's only land link with China, and cut off the areas upstream from the rest of the country. The local economy has lost billions of rupees as trade and tourism activities have come to a halt. There has also been a lack of items of daily sustenance, and prices have skyrocketed. A determined effort to address the impact on the local economy is vital to ensure sustainable return of the displaced population in Swat and prevention of further displacement in Hunza.

Although most of the flood displaced in 2010 were able to return after a few weeks or months of displacement as waters receded, many of the flood displaced faced post-return problems similar to conflict IDPs, in particular on account of destruction of houses, and communication, health and education infrastructure as well as diminished livelihood prospects at least in the short term after the floods caused extensive damage to crops, seed stocks and livestock in Pakistan's agricultural heartland. Revival of infrastructure is vital not only for reinvigorating economic prospects but also to ensure that further displacement does not occur in the flood-affected areas.

The uprooted population of conflict-hit areas has been reluctant to return to their native areas for a number of reasons. Since displacement in 2008 and 2009 had mainly occurred as a result of Taliban atrocities and amid military operations against the militants, the Government apparently considered that the operations would be successful and complete only after the displaced had returned home. In some conflict areas, the authorities encouraged the uprooted population to return to their original place of domicile in 2008 and 2009, even before the areas had sufficiently stabilised. At times that resulted in the returning families being forced to flee their native areas more than once after realising that the security situation had

not improved sufficiently. In the last few years, instances of families being uprooted multiple times in this manner have been reported from Swat and the tribal region of Bajaur. In June 2009, the displaced population from Mingora, in the Swat valley, was informed that it was safe to return amid reports that militants had placed landmines in Swat which posed not only immediate danger but also long-term consequences for these populations.¹⁷³

In September 2009, the ICRC said that unexploded bombs and landmines were a big threat to civilians in the war-hit zones of the Frontier and FATA and added that landmines could be found at least in 20 places across Swat which needed to be cleared at earliest.¹⁷⁴

Many displaced persons from Bajaur Agency refused to return to destroyed homes and give up whatever little relief and assistance they were getting at the camps. All these factors would have a bearing on sustainability of returns.

On 19 April, FATA Secretary (security) Tariq Khan said that the Bajaur Agency that had been notified as a conflict zone had been de-notified and all IDPs from the area were free to return home, saying that the formal return would begin on 30 April. Return of the Mohmand IDPs was already underway when Bajaur was declared a conflict-free zone and out of the 5,500 displaced families registered from Mohmand 1,900 had returned. The FATA Secretary

¹⁷³ 'Pakistan: Taliban, Army Must Minimize Harm to Civilians,' Human Rights Watch, 18 May, 2009, <http://www.hrw.org/en/news/2009/05/18/pakistan-taliban-army-must-minimize-harm-civilians>; 'Campaign Denounces Taliban Use of Landmines in Pakistan's Swat Valley,' International Campaign to Ban Landmines, 20 May, 2009, <http://www.icbl.org/index.php/icbl/Library/News-Articles/Universal/pr20may2009>.

¹⁷⁴ 'Beware of unexploded mines, warns ICRC,' Dawn, 18 September, 2009, <http://news.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/18-beware-of-unexploded-mines-warns-icrc-am-01>

said there would be no forced returns. He said the Government wanted the people to return to their home areas as it was better for them to build their houses rather than living in camps in miserable conditions.

As thousands of families returned to Bajaur, threats from Taliban resurfaced, as letters distributed in various areas of Khar and Mamond subdivisions of Bajaur warned the security forces to stop the operation.¹⁷⁵

In April 2010, Mehsud tribal elders opposed conditional return of South Waziristan IDPs to their native area, saying that they had been asked by a senior military officer at a *jirga* that the tribes would have to furnish guarantees, and take collective responsibility for the law and order situation in the area. Under Frontier Crimes Regulation, the local tribes are obliged to protect Government installations and officials, ensure road security and take action against anti-state elements in their respective areas.

The Government is not only under an obligation to create conditions that allow IDPs to return in safety and with dignity to places of their habitual residence but must also ensure that they have access to accurate information to enable them to make informed decisions in a voluntarily manner and that they get to choose the timing of their return.

In conflict scenarios, concerns of women, particularly widows, often revolve around income and basic needs as they rely on other family members, usually their fathers or brothers, for housing, food and other basic needs. The situation of those that lack support from other family members is even more dire, as is that of women from religious

¹⁷⁵ Taliban “reappear” in Bajaur Agency, Daily Times, 16 June, 2010.

minority communities. Irrespective of the cause of displacement, there is a need to focus on facilitating not only traditional means of livelihood for women, such as embroidery, sewing, clothes making, etc., but also other income generating activities, for example, training and support for livestock rearing, agricultural farming and exploitation of gemstones, or any other suitable prospects available locally, to sustain their livelihoods.

Inclusion of programmes for livelihood support and training for women as integral components of the overall strategy concerning the return of the displaced and other affected populations is bound to improve sustainability of returns and preempt displacement. Such components must also not lose sight of the fact that not everyone can be an entrepreneur and provisions must be made for those who cannot start their own businesses for any reason.

Pakistan does not have a specific mechanism for expeditiously addressing land disputes or claims about land rights. The civil courts where such claims are taken for determination are notorious for slow pace of the adjudication process. Land rights have emerged as an area of specific focus after the 2010 floods washed away markers that could help distinguish boundaries of agriculture land holding and destroyed land ownership record maintained by the revenue department on a large scale. There is an urgent need to put in place a mechanism to address any conflicting claims on land in an expeditious manner to ensure that the problems of returning displaced populations are not compounded.

All these measures have price tags. Amid a global financial crisis, and with its economy beset by terrorism and diversion of considerable resources to take on the militants, Pakistan is in desperate need to raise financial resources to rehabilitate the displaced population. International assistance, both in the form of financial aid and

relief goods, proved crucial in the aftermath of the October 2005 earthquake. However, the international financial crisis has caused a reduction in support even for the emergency humanitarian needs of the more recently displaced in Pakistan.

In the short-term - until Pakistan's economy improves sufficiently to afford the cost of reconstruction of basic infrastructure in conflict areas and assist the displaced and the returning populations - international aid has a crucial role to play. That is all the more crucial because of the impending risk that economic concerns of the returning displaced population may add to perceptions of disempowerment and alienation and offer a foothold to extremist militants who may try to gain support by providing assistance and playing on the population's frustration with the Government.

Conclusion

The magnitude and frequency of internal displacement crises in Pakistan in the last few years has far exceeded worst-case projections and the trend is likely to continue. However, the official response has generally not been equal to the challenge, largely being reactive and characterised by a failure to formulate a comprehensive approach that focuses on preventing internal displacement, and where displacement is inevitable mitigating its effects on the affected population, and finding durable solutions once the cause of displacement subsides.

Immediate humanitarian assistance is crucial in internal displacement situations, but the focus needs to move beyond emergency response. The affected populations have specific needs throughout the various phases of displacement and these needs often continue long after the initial displacement has come to an end.

Displacement gives rise to particular vulnerabilities for those affected, necessitating special measures for assistance and protection that correspond to those vulnerabilities. The impact of involuntary displacement is often most severe on the most vulnerable and marginalised people.

Two of the most neglected and crucial areas are the need to ensure that women do not face assistance and protection gaps on account of their gender, and that IDPs are consulted and their concerns addressed regarding all aspects of decision-making that affect their lives and that they have adequate and timely information to make informed and voluntary decisions.

The factors that have caused internal displacement in Pakistan are complex and cannot be addressed by a one-size-fits-all approach. However, consistent focus on some minimum essentials is imperative. The foremost among them is the urgent need to see IDPs as holders of rights and to understand and publicise that their rights do not disappear when they are displaced and that those rights include the right to receive protection and humanitarian assistance from the authorities.

Many of these elements are already covered by international human rights instruments that Pakistan has ratified. However, failure to implement those commitments through domestic legislation has deprived the displaced people of the expected benefit. Factors of additional vulnerability often create further hurdles in meeting basic assistance and protection needs, further exacerbating vulnerabilities and a sense of disempowerment. Ensuring enforcement of human rights instruments specific to women and children can support measures for their protection, empowerment and rights in situations of displacement.

Incorporating the Guiding Principles into domestic legislation and ensuring their implementation will also enhance the ability of the displaced persons to invoke their rights.

Recommendations

1. The State must develop a framework for assistance and protection of the displaced and for safeguarding their rights rather than dealing with internal displacement crises in a reactive manner only. It must make use of the Guiding Principles in developing national laws and policies based on them.
2. Those tasked with caring for the displaced must learn that the needs of displaced persons are never identical. Proactive measures must be taken to assist and protect individuals with particular needs and additional vulnerabilities on account of their religious belief, age, gender, health, or physical and mental disabilities.
3. Official data on IDPs in Pakistan must not merely cite the number of displaced individuals and that of families/households. Data disaggregated by age, gender, etc. is of vital importance to assess specific needs of the displaced.
4. The response in displacement situations must be rights-centric rather than focusing merely on emergency or immediate needs of the displaced.
5. There is an urgent need to improve mechanism for disaster management and mitigation. Implementation structures must be devolved right down to the village level in order to improve administration, implementation and efficiency of the exercise.
6. The prevailing exclusion of IDPs from decisions and policies affecting them must end and the opinion of the affected population must be actively sought and given importance.

7. Humanitarian action in Pakistan needs to be more firmly grounded in the principle of gender equality and women need to be equally consulted and engaged in the decision-making process. Displaced women must also have easy access to accurate information.
8. Proactive measures are vital to meet the special needs of children, specifically shielding children from the impact of displacement and providing them a child-friendly atmosphere must form the basis of policies formulated to address internal displacement crises.
9. Difficulties faced by minority communities on account of their religious beliefs must elicit a specific and appropriate response from the State.
10. The overall response to the healthcare needs of the affected population must include mental health in its fold and systematic psychological assistance should be provided in all phases of displacement.
11. All efforts must be made to ensure that loss or absence of identity documents does not prevent displaced individuals from access to protection and assistance.
12. Attention should be paid to supporting the host communities by assessing their needs and the capacity of the local infrastructure. In situations where the affected people have found shelter in host communities assistance must be provided on the basis of need and should not merely be confined to the uprooted population.

13. The Government must not bar citizens from any part of the State. The State must ensure that all citizens, including the internally displaced, continue to freely enjoy the right to freedom of movement and choice of residence. Political and economic reasons for tensions among the local and displaced populations, xenophobic tendencies and identity-based discrimination and violence against 'outsiders' must be addressed.
14. Pakistan direly needs a conscious focus on preventing displacement by anticipating risks and planning its response accordingly. Preventive strategies must be put in place through early identification of threats and close and continued assessment and monitoring of risks. Early warning systems to announce flood alerts would go a long way in preventing or limiting the annual damage caused by flooding. All efforts must be made to mitigate adverse effects on the affected population in cases where displacement is unavoidable. The Government can benefit from the Guiding Principles in planning to prevent displacement.
15. An independent and transparent system should be put in place to oversee distribution of aid and compensation for the displaced population. The mechanism for monitoring such a system must be in the hands of representatives of the people of the affected areas.
16. Land rights and livelihood restoration are issues of vital importance which must be given due importance in order to facilitate returns and to prevent repeated involuntary displacement.

Report on the SAHR Pakistan National Consultation on IDPs

1. Introduction

The SAHR National Consultation on Durable Solutions for Internally Displaced Persons in the context of Shrinking Humanitarian Space was held on 13 December 2011, at the HRCP committee room. The summary of the main discussion and recommendations is presented below. The objective of the discussion was to engage on the issue of the Guiding Principles and come up with suggestions for implementation of these principles and improvement in their effective implementation.

The discussion opened with an introduction of SAHRs work in the region. SAHR has become a platform for human rights activism as the activists can raise their visibility at a global level. SAHR's research is not academic but is policy and advocacy oriented. The Chairperson indicated the research done under SAHR should be taken to another level by engaging with a larger audience.

The members want SAHR to emerge as an organisation to create a South Asian civil society. This requires engagement with the State, not just through criticism of State conduct but focused on building a platform to resolve national level issues. SAHR's decision to engage with SAARC is a step in the right direction. There is no inter governmental body other than SAARC who has recently started engaging on social issues [exemplified through the anti trafficking charter for women and children]. SAHR would like cooperation from the State on this issue and has sent a statement to SAARC, raising issues commonly consented upon. SAHR must

also collaborate with other regional organisations such as Forum Asia who are documenting similar issues.

The Chairperson stated that while SAHR has a thin Secretariat, it has a very strong bureau and membership. SAHR needs resources through donors or think tanks that are interested in running South Asian movements. The organisation is not interested in doing projects but bringing a change at the regional level by providing a platform for human rights activists. The region cannot rely on inter governmental bodies that are attempting to bring more regional capacity. As economic, political and civil rights are all intertwined and violations stem from a combination of these rights, SAHR can take a lead in maintaining consistency in interest to create a regional civil society. Membership can play a key role in this.

However, care has to be taken to ensure that international standards do not become diluted in the name of regional standards. Governments look for ways to shy away from international mechanisms and regulations. Regional mechanisms should not be used as an excuse to not follow international mechanisms.

2. Key Discussion Points

1. The case of IDPs presents a peculiar situation in light of international law. Traditionally international law has dealt with States and not individuals. Individuals are considered only in special cases where people are not under any State, or in cases of crimes against humanity or on the issue of refugees. It is the State that enters into a human rights convention and the basic responsibility of enforcing these rights lies with the State. Refugees are considered as people who cross a border and on doing that they become the responsibility of the international community such UNHCR. IDPs are refugees

who do not cross borders. And thus are not entitled to refuge by UNHCR even though these people face refugee like conditions either in the wake of natural disasters, conflict or displacement because of development projects such as dams

2. Who is an IDP? How do we define them and what are their rights? There was hence a need for the Guiding Principles. The Guiding Principles were formalized with three basic sections;
 - a) rights and guarantees of people not to be forced to become IDPs
 - b) protection and assistance during the period of displacement
 - c) return and resettlement and reintegration into the society.

The Guiding Principles are applicable to all citizens and not just the Government

3. It was unanimously felt that all stakeholders should work together to operationalise the Guiding Principles and locally apply the laid down standards. As SAHR has basically been involved in regional advocacy it must focus on standardizing the Guiding Principles at a regional level.
4. The recent influx of disasters (floods, tsunamis and earthquakes) in the region has opened up windows of opportunity in flood inflicted areas, for instance to strengthen civil administration. However, until now, civilian capacity to deal with disaster and conflicts has not been enhanced. Civil society has not been able to deal with the crisis and distribution of timely relief remains a problem. In the case of Pakistan, adequate steps are not taken even after repeated disaster. There is no satisfactory mechanism for data collection.

- a) One of the key problems in disaster management has been a lack of coordination amongst different actors for disaster management.
 - b) Secondly, influencing the State also takes time. Civil society must continue to consult and engage with other key players in the private and public sector.
 - c) The issue with NGOs is that they are trying to work beyond their capacity. Najam Chaudhry's report on IDPs for SAHR raises this issue, but mitigates the criticism.
5. Pakistan has hosted the largest number of refugees in the world. Pakistan is also on the Executive Committee of UNHCR. Pakistan has not ratified the convention on refugees. Pakistan has no law or statutory law to deal with refugees or IDPs. There is no legislation to ensure that UN guidelines are complied with. Therefore it is very easy for the Government and military to manipulate the administrative orders. IDPs cannot invoke the jurisdiction of corpse. Afghan refugees remain powerless and conflict IDPs are treated the same way.
 6. In Pakistan a major offence was launched in Swat without any assessment of how many people would be displaced. The military operation (like all military activities) was very confidential. The region of Mardan and Swat ended up absorbing 90% of the IDPs.
 7. There are serious questions about the safety of IDPs when they return, as their livelihood opportunities have been destroyed in most cases. There was also a great threat that conflict will return to these areas. Assistance has mostly been

provided for moving out. People have often refused to return because either they were not adequately compensated or it wasn't safe to return to these areas.

8. Displacement has also affected host communities. They don't figure in the scheme of things either with the Government or international humanitarian organisations.
9. Special Rights: There are special rights for widows, pregnant women, the disabled and children. There must be a separate focus for assisting children in IDP camps. Discrimination comes from neglect of their rights. There is some response to these concerns. The NDMA is becoming more proactive and a gender and child cell is being created at the NDMA to include a rights based perspective in their policies. Child disappearances during these disasters have not been uncovered. Children are being kidnapped and their body parts are being sold. The Child Protection Bureau has been taking children away from the affected areas and they were not registered properly. The case is the same with women who now feel very vulnerable in their camps, particularly at night without adequate security.
10. What happens to international and national obligations in the case of devolution? The basic observation is a lack of policy framework. *Ad hoc* measures have been highly militarized. Although the national Government has the responsibility for managing IDPs, it becomes provincial in some cases leading to confusion. For instance in the Mirani dam case compensation has been decided but there are issues with who takes authority, federal or provincial. All rights according to international and national laws emphasize and compel the recognition that provinces are very much a part of it. Provinces

are just as responsible. In this regard it is recommended that the CCI must assume the role of ensuring the provinces take on the responsibility. Secondly, district Governments need to be strengthened particularly following devolution-DDMAs should have more capacity. Disaster management should come under the scope of CCI as international treaties come under federal Government domain.

11. FATA presents a unique case, where policy and implementation in this region is difficult. PDMAs are present in other regions but not in FATA. Registration of IDPs in the region remains incomplete. More than 7,000 people are there at the moment without tents or shelters. Almost three to four families are sharing a tent. They prefer living with host families. The Khyber agency has seen the destruction of its education system. In the case of the Bajaur operation in 2008, some refugees traveled to Afghanistan. The Government didn't declare that or acknowledge how many people had fled to Afghanistan. Implementation of relief is also very difficult as humanitarian agencies are not allowed to go there
12. In the case of the NDMA there is a legal framework but it is weak. The National Disaster Management Ordinance was implemented in response to international commitment in 2005. A total of 168 countries have committed to having a comprehensive framework pushed forth by the experience of the earthquake. Although it must be given a lot of credit for handling recent large scale disasters such as the 2010 floods, Government efforts still need to be complemented with efforts from the civil society. The NDMA is criticized for not having reached the masses. **Accessibility needs to be improved by the NDMA – The presence of all bodies should be enhanced and the NDMA should work with rights**

activists. The **National Disaster Management Commission**, under the NDMA Act 2010, is as equally representative as the CCI, with the Prime Minister as the head and is the apex policy-making body.

13. What about the participation of those involved in risk mitigation policies and are working in areas in policy formulation by the NDMA? What is the policy on coordination between the NDMA and civil society – any report on impact assessment? The NDMA submits annual reports to the Parliament and makes them available on the website, including response briefs specific to each disaster, that have been coordinated. The NDMA comes in if the districts or provinces request, and it comes at the national level and launches international appeals if the disaster is large scale. Coordination is a problem at both ends with civil society and the public sector. Representation of civil society is low in decision-making processes. **It is recommended that there must be an evaluation of the policy framework to see where civil society can make interventions.**
14. It is also generally noticed that it is most often a political decision to engage with foreign organisations at the moment in the face of disasters. **It is recommended that we should have a criterion to call for international assistance. It cannot be just political discretion.**
15. Some of the Government policies are in violation of basic human rights and hence it is not only an issue of resources. The PDMA policy on relief work is complex. Women alone cannot go without a *mabrum* (male guide). Most organisations have to take permission in the form of a No

Objection Certificate for relief work to which the NDMA response is necessary for ensuring that duplication is avoided.

16. **Coordination and monitoring mechanisms should be strengthened and there should be some protocol for this.** Local administration shouldn't be deprived of authority and run parallel programs. Civil society sometimes also contributes to the confusion.
17. UN, INGOs or NGOs are the organisations that mostly deal with IDPs. At the level of field implementation, very few are aware of the Guiding Principles. **We need to create awareness about the Guiding Principles and disseminate information to the Government departments and NGOs.** Social welfare departments, the PDMA, especially dealing with IDPs and returnees, need to have their capacity built around the implementation of these guidelines.
18. In the case of return, provincial Governments are often reluctant to take in IDPs. Forced return is also wrong. No operation is endless but one needs to have a strategy and it cannot be at the whim of donors. After the Swat operation a lot of people moved to Karachi, where housing was not available and there is the same problem in Lahore. But there are security concerns with this as well which can be served within the human rights framework. **Short term planning is needed to ensure a mechanism for economic empowerment.** Livelihood is taken away and economic empowerment becomes difficult, therefore there needs to be provision for, or assistance with means of livelihood.

3. Key Recommendations

1. Make a working group of 8 people – invite them again before June 2012 –and take it further through SAHR at a regional level.
2. Form a working group to ensure that legislation and policy making is aligned on UN guidelines – practical implications of the rights in the field. How the right is being violated? This mapping needs to be done.
3. Review the legislative and policy framework from the rights perspective and in particular access of human rights defenders in areas where the problem exists.
4. Proper framework of coordination and consultation between actors involved in disaster management or any of the issues of IDPs. Prioritization needs to be done through different phases– we are talking about IDPs not just disaster management.
5. We not only looking at the existing rules, regulations and mechanisms. We need to make further suggestions for the rules and regulations to help us develop criteria for making decisions in different areas such as defining vulnerability.
6. Civil administration and disaster management authorities should be consistently resourced and the NDMA should assume a coordinating rule.
7. Look at statutory authorities and constitutional bodies – how they define common concerns.

8. Identify key and relevant authorities and diminish overlapping efforts which shifts responsibility.
9. Accountability mechanisms on IDP issues is important through parliamentary committees.
10. Determine which constitutional authority is responsible to issue warnings for creating IDPs – which law applies to the operation undertaken causing displacement.
11. Redressal principle/mechanism should be developed.
12. IDP camp managers should have security training and be able to detect security risks.
13. Registration should be well defined and solid – IDP identification should be easier and more efficient.
14. Psychological rehabilitation is often ignored and it needs to be focused upon.

The working group:

1. Kamran Arif, (SAHR),
2. Asad Jamal (Lawyer),
3. Afridi (Intermedia)
4. Naeemullah (Hayat Foundation)
5. Nighat (ASR),
6. Naqi Hussain (HRCP),
7. Humaira Shaikh (Shirkat Gah),
8. Mumtaz Mughal (Aurat Foundation)
9. Bushra Khaliq
10. Mehsud – (contact person at the NDMA)

Annexures

Pakistan and Key International Human Rights Treaties

Treaty	Signature	Ratification/ accession(a)
International Convention on the Elimination of All Forms of Racial Discrimination	19 September 1966	21 September 1966
International Covenant on Economic, Social and Cultural Rights	3 November 2004	17 April 2008
International Covenant on Civil and Political Rights	17 April 2008	23 June 2010
Convention on the Elimination of All Forms of Discrimination against Women		12 March 1996 (a)
Convention on the Rights of Persons with Disabilities	25 September 2008	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	17 April 2008	23 June 2010
Convention on the Rights of the Child	20 September 1990	12 November 1990
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	26 September 2001	
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict	26 September 2001	

Main Displacement Crises in Pakistan (2002-2010)

Year	Cause	Number of IDPs
2002	Mass displacement from border villages in Sindh and Punjab due to tensions with India	450,000-550,000
2005	Military operation in Waziristan tribal area	50,000
2005	Earthquake in Azad Kashmir and NWFP	3,500,000
2005	Floods in southern Punjab and NWFP	250,000
2006	Displacement from Balochistan's Districts of Dera Bugti and Kohlu	84,000-100,000
2007	Taliban actions and military operations in Swat, FATA and in parts of Balochistan	1,000,000-1,100,000
2007	A cyclone and floods in Balochistan and Sindh	400,000
2008	Conflict in FATA	600,000
2009	Conflict in Malakand and FATA	2,700,000
2010	Floods	7,000,000
2010	Conflict in Malakand and FATA	1,200,000

The SAHR National Consultation on Durable Solutions for Internally Displaced Persons in the context of Shrinking Humanitarian Space

To Suggest

Means of Operationalising the United Nations Guiding Principles
on Internal Displacement in the specific context of Pakistan

Agenda 13TH Dec 2011

Time/Duration 11:00 – 11:15	Introduction of SAHR and SAHR's focus and project on IDPs by Hina Jilani (Chairperson SAHR) Introduce the brainstorming on 6 areas of concern under UN guidelines
Time/Duration 11:15 – 11:40	Brief Presentation of an overview of the UN Guiding Principles on Internal Displacement - Kamran Arif (Bureau Member, SAHR)
Time/Duration 11:40 – 12:15	Presentation on; <ul style="list-style-type: none"> • the SAHR Chapter's background paper on IDPs' and, • the Issues the IDPs face at present and, • a review of the past responses, both of the humanitarian community and the Government to the key Issues surrounding IDPs
Time/Duration 12:15 – 2:00	Suggestions to operationalise the UN Guiding Principles within the country
Time/Duration 2:00	LUNCH

List of Participants

- Hina Shaikh – SAHR
- Asad Jamal – Lawyer
- Husain Naqi – HRCP
- Rao Abid Hamid – HRCP
- Naemullah – Hayat Foundation
- Islam Gul Afridi – Intermedia news network
- M Zeeshan – Godh
- Amjad Imitaz Sheikh – Idare-e-Taleem-o-Aagahi (ITA)
- Sahiba Irfan Khan – SPARC
- Nighat Khan – ASR
- Mohammad Tahseen – South Asia Partnership (SAP-PK)
- Farooq Tariq – Labor Party
- Bushra Khaliq – Women’s Initiatives for Self Empowerment (WISE)
- Naazish Ata-Ullah – HRCP/SAHR
- Ume Laila Azhar – HomeNet Pakistan
- Humaira Shaikh – Shirkat Gah
- Mumtaz Mughal – Aurat Foundation
- Hina Jilani – SAHR
- M. Idrees Mahsud – NDMA
- Kamran Arif - SAHR

SRI LANKA

Background report – Internally Displaced Persons in Sri Lanka: Legal Framework and Key Issues

(By Bhavani Fonseka and Mirak Raheem)

Despite a long lasting conflict and several natural disasters including the Tsunami of 2004 there is no specific national legislation that comprehensively addresses the rights of IDPs. A few individual statutes that were enacted with relevance to IDPs deal with certain specific issues affecting IDPs but fail to address the overall situation of IDPs in a more comprehensive manner. While there is a trend towards adopting IDP-specific legislation and policies, and such a move seems positive, a closer analysis of the current situation raises questions as to the positive impacts of such efforts, including the failure to enact and implement. The focus on institutionalising IDP issues has also led to the establishment of a number of mechanisms, resulting in a surfeit of actors, including such *ad hoc* structures, mandated to address IDP issues.

The number of IDPs in Sri Lanka has dramatically decreased over 2009-2010 which could provide the authorities with a justification to officially announce the end to the IDP problem. However, the problem of displacement persists in different forms, including that of protracted IDPs, refugees, 'officially resettled' IDPs unable to return to their properties, and returnees facing challenges in rebuilding their lives and making return sustainable. In framing a response to

the continuing problem of displacement it is imperative that the Government and other actors involved in humanitarian work need to engage in stock taking exercise to assess progress in addressing displacement and lagging issues. Beyond dealing with the displaced from the conflict, it is apparent that there have been and are other populations of displaced and that there could be new populations of displaced into the future, hence the need for a comprehensive policy framework will not fade away even if durable solutions are found for all conflict related IDPs. It needs to be noted that Sri Lanka, which has witnessed waves of displacement due to both the conflict and natural disaster, has had limited success in learning the lessons of past experiences and continues to repeat past mistakes in relation to displacement, returns, resettlement and the protection of IDPs and returnees.

This chapter seeks to map out key issues pertaining to the rights of IDPs in Sri Lanka. Given the scale and varied nature of the IDP problem, it is challenging to provide a comprehensive yet brief overview. Hence, this document will focus on some of the more significant aspects of the problem

Section 1: IDP Categories in Sri Lanka

Section 2: Constitutional and Legal Framework for IDPs and Returnees

Section 3: Government Institutions

Section 4: Return and Resettlement of IDPs

Section 5: Most vulnerable categories of IDPs

Section 6: Land and IDP Issues

Section 7: Compensation

It needs to be noted that this chapter was compiled in December 2010, hence covers developments up to that period.

Section I: IDP Categories in Sri Lanka

The concept of IDPs has been a late development in international humanitarian law even though displacement within State boundaries has been a reality for most countries which have experienced conflict and war. Even while the concept of IDPs requiring specific assistance and protection has gained significant recognition, there continue to be problems relating to the official recognition of displaced persons as IDPs. Displacement in Sri Lanka has resulted from a variety of natural and man-made disasters, including the 25 year old civil war, the tsunami of 26 December 2004, periodic floods and development projects. While the State has tended to recognise the need to provide specific assistance to displaced persons, the recognition of individual /specific populations of IDPs has proved to be a challenge.

As of December 2010 the bulk of IDPs are the result of the war.

As of 9 November 2010 the Government of Sri Lanka has declared that there are only 17,183 IDPs remaining in the country, as compared to 280,000 at the end of the war in May 2009.¹⁷⁶ This population of IDPs is referred to as ‘new IDPs’ i.e. those displaced between late 2008 and the end of the war from the Wannai (areas controlled by the LTTE) where they were trapped by the LTTE and the war, and were subjected to a variety of violations, including large-scale civilian casualties, attacks on hospitals and severe shortages in essential supplies and services. This situation resulted in deepening the humanitarian crisis in Sri Lanka, which had escalated with the outbreak of large-scale fighting between the Government and the LTTE in July 2006. The vast majority of IDPs were able to leave the

¹⁷⁶ “Menik Farm Zone-4 closed -Vavuniya IDPs drop to 16, 025”, Official Website of the Government of Sri Lanka, 9 November 2010.

Wanni only in the last two months of the war, April and May 2009. Having escaped the battle zone, the majority of the new IDPs were detained in closed IDP camps in the North of the country by the Government and were denied their freedom of movement. Almost all of these new IDPs are Tamil in ethnicity.

In addition to the updated official figure of IDPs, there are other populations of displaced persons, including those who are staying with 'host families' (usually friends and relatives) and those who have been suspected of being LTTE cadres (rehabilitees). There are also small numbers of IDPs who have been officially resettled (hence lose their official recognition as IDPs) but have been unable to return to their homes and sometimes even their villages, and are effectively still displaced, living in other sites, with host families or in transit centres, and have been referred to as examples of 'transferred displacement'. They are unable to return to their own land due to military restrictions including areas being declared high security areas, presence of mines, secondary occupation and other issues. In a context where the Government has stringent criteria to classify who falls within the category of an IDP, some of those stranded are not recognised as IDPs.

Furthermore, there are other populations of war-related IDPs. In its official statistics of IDPs the Government fails to mention the old IDPs who number approximately 180,000-200,000 persons. As evidenced by statements by various actors in Government, it does seem that the Government does recognise the fact that there are populations of displaced, in addition to the 'new IDPs' and even provides rations and forms of assistance to some of these other IDP populations. Nonetheless, the Government desisted from including them into the figure of official IDPs. This has numerous ramifications including in such instances of providing official assistance and in ensuring durable solutions. While some caseloads

by their sheer size and access to political representation are able to make their demands heard, other smaller populations of old IDPs are not so fortunate. This population of protracted displaced includes Muslims forcibly expelled from the Northern province by the LTTE in 1990 (roughly numbering 100,000), Tamils from areas in Jaffna district that have being declared out of bounds for security reasons – generally referred to as HSZs (roughly numbering 60,000), and additional IDPs from all three main ethnic communities from the North and the East (where much of the civil war was fought) and border districts. As noted in the next section, return for this old IDP population is complicated by a variety of factors some of which are negatively affected by the lack of due recognition. An additional population of displaced fled Sri Lanka during the years of war to other countries as refugees. India currently hosts some 65,000 refugees¹⁷⁷ of Sri Lankan origin. There does not seem to be an official initiative to provide information and encourage mass returns by the Sri Lankan Government and in its absence the main efforts of repatriation have been made by UNHCR and other humanitarian actors and there have been some spontaneous returns.

Displacement due to natural disasters is a frequent challenge in Sri Lanka. The capital and the surrounding areas were subjected to flash floods on 10th November 2010 resulting in around 236,938 displaced.¹⁷⁸ The single largest natural disaster in Sri Lankan history was the Asian Tsunami of 26 December 2004. While the majority of IDPs were able to return or were relocated and provided with permanent housing, there still exist small populations, particularly on the East coast, who are still living in temporary shelters, six years after the disaster, largely due to the inability of the State to provide alternate land. Infrequent flooding

¹⁷⁷ www.fmreview.org/FMRpdfs/FMR20/FMR2014.pdf

¹⁷⁸ “Two killed; 236,938 affected by floods”, Daily Mirror, 13 November 2010.

and landslides in various parts of the country also result in localised and sometimes more extensive temporary displacement and loss to and damage of property.¹⁷⁹

There are specific areas of development related displacement but apart from the Sampur HSZ/SEZ, the displacement tends to affect smaller numbers of persons such as the Kotmale Development Project,¹⁸⁰ urban development of lower income areas¹⁸¹ and road expansions.¹⁸² There are allegations of ‘land grabs’ where land owned and used by civilians have been taken over, either by the State or facilitated by it. For instance, the military has consolidated its presence in some areas of the North and East including Thirumurukandy in Mulaitivu and Ashraff Nagar, Addalaichennai and is preventing civilians from returning to their lands. In prime coastal areas on the East coast there are accusations that land has been given over to private developers and that fishing communities will lose access to their lands and livelihoods, but further investigations are required to look into each of these specific instances.

Official recognition is an important issue for displaced persons as with that acknowledgement comes protection and assistance. If a certain population is not recognised as IDPs they may not be eligible for state assistance and NGOs may not secure permission

¹⁷⁹ “Disaster situation declared in Nuwara-eliya”, The Official Government new portal Sri Lanka, 21 May 2009; “Cyclone Laila’s touch brought destruction in SL”, The Official Government new portal Sri Lanka, 20 May 2009; “Over 33,000 families living in Colombo District affected”, The Official Government new portal Sri Lanka, 19 May 2009; “Floods in Somawathiya Sacred area”, Daily News, 10 May 2010.

¹⁸⁰ “A visit to upper Kotmale”, Sunday Observer, 1 March 2009; “Kotmale power project: 489 get new houses”, Daily Mirror, 8 September 2010.

¹⁸¹ “Evicted residents’ protest”, Daily Mirror, 14 May 2010.

¹⁸² Priyanthi Fernando, Karin Fernando, Mansi Kumarasiri, *Involuntary Displacement and Resettlement : Policy and Practice*, CEPA, December 2009. “Over 400 residents to be evicted”, Daily Mirror, 02 March 2010.

to do work with them. As noted above, in addition to the issue of being recognised as IDPs, the categorisation has significant repercussions for the type of assistance provided. In general the State has a policy of providing basic assistance to IDPs but there are some variations between the assistance provided based on categorisation. For instance new IDPs were provided food assistance by the Government through the WFP based on nutritional needs, while old IDPs received rations from the State based on a costing set in the early 1990s. Thus, it is important for all actors to map out the various displaced populations and examine the assistance being provided to them to ensure equity, while noting that there may be differing requirements and time scales in terms of addressing these separate populations.

Section II: Constitutional and Legal Framework for IDPs and Returnees

While there is no single comprehensive piece of legislation addressing the main protection issues and needs of displaced persons in Sri Lanka, IDPs are afforded some protection through general provisions in the Constitution and IDP relevant and specific international humanitarian law. There have been efforts to develop IDP specific legislation but the initiatives appear to be stalled.

Fundamental Rights and Liberties of IDPs:

The Sri Lankan Constitution¹⁸³ includes a fundamental rights chapter that protects the rights of all citizens including the right to equal protection,¹⁸⁴ freedom of movement,¹⁸⁵ right to choose one's residence,¹⁸⁶ freedom of expression,¹⁸⁷ freedom from cruel, inhuman treatment¹⁸⁸ to name the most applicable. These rights can be restricted in certain situations including in the interest of national security, public order and protection of public health or morality by invoking the Public Security Ordinance, which empowers the President to declare a SoE and adopt ERs if he/she believes they are necessary "In the interests of public security and the preservation of public order."¹⁸⁹ In accordance with the Fundamental Rights

¹⁸³ The Constitution of the Democratic Socialist Republic of Sri Lanka (The constitution of Sri Lanka), 1978.

¹⁸⁴ Article 12, The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978

¹⁸⁵ Article 14, The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978

¹⁸⁶ Article 14 (1) (h), The Constitution of the Democratic Socialist Republic of Sri Lanka 1978

¹⁸⁷ Article 14 (1) (a), The Constitution of the Democratic Socialist Republic of Sri Lanka 1978

¹⁸⁸ Article 11, The Constitution of the Democratic Socialist Republic of Sri Lanka 1978

¹⁸⁹ 15. (1) The exercise and operation of the fundamental rights declared and recognized by Articles 13 (5) and 13 (6) shall be subject only to such restrictions as may be prescribed by

Chapter and ERs in Sri Lanka, all rights apart from those pertaining to the freedom of thought and conscience, including the freedom from torture are subject to restrictions based on national security. As a result Sri Lanka has witnessed the derogation of the rights framework, justified due to steps taken as a result of security. The ERs expand the powers of arrest and preventive detention and impact all citizens of Sri Lanka including IDPs. More than one year and a half after the end of the war, Sri Lanka continues to be under emergency rule.

In addition to the ability to arrest and detain, through ERs the Government has been able to create various high security zones forcing individuals into displacement and restricting their freedom of movement.¹⁹⁰ This specific aspect has been challenged in the Supreme Court in many a case including in the 2007 Sampur HSZ and IDP case with mixed results. In this case, the petitioners stated that since April 2006 many civilians in Trincomalee district had been displaced due to the continuing hostilities. As a result many were unable to return to and resettle in their own land, much of which had been owned and occupied by the civilians and their ancestors for many generations. The petition also highlighted that with the capture and occupation by the Government security forces, the civilians of the area should be allowed to return to their lands. It also pointed out that there had been accusations of civilians being forcibly resettled during several drives of resettlement which had taken place in the Trincomalee district. Though civilians were taken

law in the interests of national security. For the purposes of this paragraph “law” includes regulations made under the law for the time being relating to public security. Article 15 (1), The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978

¹⁹⁰ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of IDPs, Walter Kälin : addendum : mission to Sri Lanka (14 to 21 December 2007)*, 21 May 2008, A/HRC/8/6/Add.4, p 6, available at: <http://www.unhcr.org/refworld/docid/484d1d6f2.html>

to certain parts in Trincomalee, people had been unable to return to the Sampur area despite the land falling within the Trincomalee SEZ. The petition also highlighted the violation of the fundamental rights of civilians seeking to return to their properties in the said area as guaranteed under Articles 12(1), 12(2), 14(1)(g) and 14(1)(h) of the Constitution of Sri Lanka. However the petition was not granted leave to proceed by the Supreme Court of Sri Lanka. During the war, national security took priority over human rights making it increasingly challenging for IDPs and other civilians to exercise their fundamental rights.

Furthermore, access to justice also needs to be addressed. Even if it can be presumed that the IDPs are aware of their rights, which is not always the case, accessing the Supreme Court in Colombo within the set one month period for filing a fundamental rights petition is by no means an easy task. In addition, there are serious impediments for IDPs to access basic services and obtain compensation due to lack of required documentation.

As discussed above, the rights of IDPs and the framework for the protection of the rights in Sri Lanka needs improvement. The situation of the IDPs is further compounded by the dynamic situation of returns and the problems of classification of who is actually an IDP. What needs to be reiterated is that in the absence of specific national legislation for IDPs, the Constitutional and legal framework in existence applies to all IDPs. The classification of whether a person is an IDP or not should not prevent them from accessing the protection available to all persons in Sri Lanka.

International law in Sri Lanka

Sri Lanka has ratified numerous international instruments that provide for the protection and promotion of human rights. There are also instruments that ensure the protection of IDPs, including the ICCPR, ICESCR, the Guiding Principles, and the Pinheiro Principles on Housing and Restitution for Refugees and IDPs that Sri Lanka is subject to. Though the applicability of international law in Sri Lanka was questioned by the Supreme Court in the *Sinharasa Case* (2006),¹⁹¹ it is accepted practice that certain basic principles contained in customary international law apply in the Sri Lankan context regardless of ratification and accession. The right to be recognised as a person before the law,¹⁹² the right to participate in public affairs and the access to the services provided by the State,¹⁹³ the right of every child to have his or her birth registered and to have a name from his or her date of birth¹⁹⁴ are enunciated in the ICCPR.¹⁹⁵ However, these provisions are not treated in the same manner in the national frame work which has significant repercussions in terms of practical implementation.

The Geneva Conventions and the Additional Protocols provide the basis for the protection of civilians, humanitarian, medical and religious actors during conflicts and provides the framework for their continuous unhindered work in difficult situations including the establishment of peace zones and humanitarian corridors. It is

¹⁹¹ On 16 September 2006 the Supreme Court headed by the Chief Justice ruled that the Sri Lankan Government's accession to the Optional Protocol of the ICCPR was inconsistent with the Constitution of Sri Lanka.

¹⁹² ICCPR Act op.cit. S 2.

¹⁹³ *Ibid.* S 6.

¹⁹⁴ *Ibid.* S 5(1)(a).

¹⁹⁵ Ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

generally accepted that international human rights and humanitarian law provides the broad framework for the protection of IDPs, even though there is no specific international treaty focusing on IDP rights. The absence of Article 3 in the ratification created questions as to the applicability of key aspects in the Geneva Conventions pertaining to internal conflicts in the Sri Lankan context, despite it being customary international law.

Furthermore customary international legal norms recognise and provide protection for vulnerable persons and actors involved in humanitarian interventions. The Guiding Principles grants rights to IDPs and places obligations on key actors, especially national Governments, to ensure standards for assistance and protection during the various phases of displacement, including protection from arbitrary displacement, protection and assistance during displacement and for securing durable solutions.¹⁹⁶

IDP Specific Laws and Policies:

There have been a number of initiatives to develop laws and policies either specific to IDPs or with significant repercussions for them, but these processes have been stalled. The Ministry of Resettlement and the Resettlement Authority, working with the UNDP, developed a resettlement policy but a powerful actor within the Government ordered that the process be stopped in 2008. The IDP unit of the HRC developed an IDP Bill which was presented to the Human Rights Ministry on 8 August 2008 but this bill was never presented to cabinet. In addition, the Ministry of Disaster Management and Human Rights developed a Bill of Rights and a Human Rights Action Plan which was meant to set out targets and processes for addressing current human rights issues, including

¹⁹⁶ See Guiding Principles on Internal Displacement, <http://www.idpguidingprinciples.org/>

the IDP issue. As of December 2010 the status of these bills and policies is unclear. Overall, there are concerns that the processes to draw up this legislation have not been inclusive or participatory. Furthermore, there are also questions as to whether the Government is committed to passing and implementing these bills and policies, or whether the initiatives have a largely symbolic value to demonstrate the Government's concern at particular moments in time when the Government was under criticism for its human rights record, such as during the Universal Periodic Review in 2008 at the UNHRC when it put forward a series of commitments, including on IDP issues.¹⁹⁷

Protection of Internally Displaced Persons Bill, 2007¹⁹⁸:

The Government formulated the IDP Bill (mentioned above) in 2007 and had several consultations but it is unclear if this will go forward. The following sections are found in the Bill:

1. Registration of IDPs
2. Food Relief, shelter, water and sanitation
3. Health
4. Education
5. Right to participation and freedom of expression
6. Freedom of movement
7. Personal documents of IDPs
8. Voting rights

¹⁹⁷ See Voluntary Commitments made by the Government of Sri Lanka at UN HRC, March 2008 - http://www.un.org/ga/search/view_doc.asp?symbol=A/62/778&Lang=E

¹⁹⁸ Drafted in 2007 handed over to Minister Mahinda Samarasinghe, August 2008

9. Compensation for injuries , housing and property damages
10. Special provisions for the vulnerable groups
11. Welfare and protection mechanisms

Although the Bill is a good starting point to discuss the rights of IDPs, the future of the Bill is in doubt as it was introduced just prior to the visit of the UN Special Representative on IDPs, Walter Kaelin to Sri Lanka in December 2007 and there has been no follow up since then.

Voting Rights of IDPs:

The Sri Lankan Constitution recognises the right to vote as a component of the “Sovereignty of the People” as outlined in Article 3,¹⁹⁹ 4²⁰⁰ and 88.²⁰¹ In addition to the above, specific provisions on voting can be found in a series of election laws governing the procedures for conducting parliamentary, presidential, provincial and local authority elections,²⁰² and in the Registration of Electors Act 44, 1980 which governs the procedures for revising the electoral register every year.

¹⁹⁹ “In the Republic of Sri Lanka sovereignty is in the people and is inalienable. Sovereignty includes the powers of Government, fundamental rights, and the franchise.” (Constitution of Democratic Socialist Republic of Sri Lanka, 1978)

²⁰⁰ “(e) The franchise shall be exercisable by every citizen who has attained the age of eighteen years, and who being qualified to be an elector as hereinafter provided, has his name entered in the register of electors.” (Constitution of Democratic Socialist Republic of Sri Lanka, 1978)

²⁰¹ The article recognises that every person shall be qualified to be an elector unless he has not been duly registered, is not a citizen, is under 18 years of age, of unsound mind, subject to the imposition of a civic disability, or has been convicted of an offence or illegal practice. (Constitution of Democratic Socialist Republic of Sri Lanka, 1978).

²⁰² Presidential Elections Act 1981/1988, Parliamentary Elections Act 1981/1988, Provincial Councils Elections Act, 1988.

However, the IDPs face problems in practicing their right to vote due to the lack of necessary documents. All who are eligible to vote need to be registered in their respective electoral districts, which are compiled, maintained and updated annually by the Department of Elections.²⁰³ If a person is displaced from his or her home during the period when the household enumeration takes place or during the period of appeal/objections, that person will not be in the list for the next year. Therefore it was understood that thousands of IDPs who were displaced in 2007 were not included in the 2008 list and were ineligible to vote in the Presidential Elections in January 2010. During this election there were also concerns that returnees were confused as to where they had their vote: in the site of displacement or the resettlement site. In the current context there are concerns. In 2010 a voter registration was conducted across the country but with reports of low registration in the North and East both in the media and from election monitoring groups such as the CMEV and CAFFÉ the election deadline was extended until 30 November 2010. A census is to be conducted in 2011 which could have significant repercussions especially if IDPs and refugees have not returned and could result in particular areas losing representatives in parliament. It needs to be recognised that return is a long-term process, especially in the case of protracted displacement.

²⁰³ CPA, Elections and Minorities: Present Problems and Alternatives for the Future, April 2010

Section III: Government Institutions

While the State has the primary responsibility in supporting the displaced, local and international NGOs, the UN agencies and donors play a significant role in funding and implementing assistance programs to assist IDPs.

There are many ministries within the Central Government that deal with IDPs and IDP related issues. These include, but are not limited to the Ministry of Resettlement, the Ministry of Disaster Management, the Ministry of Land and Land Development, the Ministry of Economic Development and the Ministry of Defence, which in the post-war context has been given added tasks and an augmented role. Some of the members of parliament both from the affected area and outside, have been active in the displacement camps and the resettlement area, at least at a symbolic level, but their ability to influence and improve policy remains unclear. There used to be a Ministry of Human Rights and Disaster Management but this was phased out following the General Elections of April 2010, as if to underline the fact that the Government wanted to indicate the end of human rights problems in Sri Lanka. Even while there are a number of actors mandated with addressing displacement related issues, the level of involvement and role of each of these actors continues to change, which creates confusion and makes institutional development challenging.

Ministry of Resettlement

The Ministry of Resettlement's mission reads, "Expeditious and effective facilitation of the process of Resettlement and Relief, paving way for the persons displaced owing to man-made Disasters

to integrate into the Main Stream of Society” while its vision states “Towards normalcy from disasters”. It also has a list of objectives,

- Providing protection to the displaced people of the country by maintaining refugee camps and providing humanitarian aid and other relief.
- Re-settlement of displaced people staying in the country and those who have returned after seeking asylum in foreign countries at their native places.
- Creation of a suitable environment for the resettlement of displaced people at alternative places and provision of required facilities.
- Ensuring the provision of facilities by way of coordinating Government and non-Government organisations.
- Ensuring proper utilisation of resources provided by aid organisations and monitoring expenses made in this regard.
- Confirming strictly the resettlement process and getting the contribution of displaced people in the country and refugees for the development process of the country.
- Ensuring productive contribution to the sustainable development by minimising adverse effects occurred to economy, society and environment as a result of various disasters and strengthening process for the provision of disaster relief.

Although the Ministry survived the cabinet reshuffle in mid-November 2010, its role and scope of activities into the future is unclear.

Presidential Task Force on Northern Development

Appointed by the presidential directive of 7 May 2009, to handle the resettlement, development and security in the Northern Province, the PTF is mandated to prepare strategic plans, programmes and projects to resettle and rehabilitate IDPs, and develop economic and social infrastructure of the Northern province.²⁰⁴ There is no gazette notification establishing the PTF, hence its legality can be questioned.

The main activities the PTF is charged with,²⁰⁵ in the public realm include, *inter-alia* coordinating activities of the Government in support of resettlement, rehabilitation and development and to direct and review the implementation of the said programmes. Although the mandate of the PTF was limited to one year it continues to be operational and authoritative 20 months following its creation, and there is no document publicly available informing how long the PTF is to be operational. Although the PTF came in during an emergency period when the existing actors were overwhelmed with the humanitarian situation, questions are raised on the necessity of the PTF with its broad powers at this moment. District actors who are knowledgeable have been sidelined and their decision making powers centralised by the PTF. It is hoped that with the

²⁰⁴ Attempts by CPA to obtain a gazette or any other official document which sets out the powers failed.

²⁰⁵ “Presidential Task Force on Northern development”, 14 May 2009, accessed on 2 September 2010. http://www.priu.gov.lk/news_update/Current_Affairs/ca200905/20090514ptf_on_northern_development.htm.

transition towards early recovery, there is greater inclusiveness and transparency in decision making and that local officials who are best informed of the local terrain and issues are given the task of providing to the affected population. However this does not seem to be the case.

Human Rights Commission

Sri Lanka has a national HRC that is meant to provide a means of redress for victims of human rights abuses. The HRC has a special IDP Unit which deals with the specific problems of this group, including in assisting with documentation, establishing an effective human rights protection mechanism within the IDP project and support the existing mechanisms which are supposed to protect rights of the people, empowering IDPs/returnees to exercise, and protect and stand for their rights while building peace and harmony.²⁰⁶

The HRC that was meant to serve as an independent institution became increasingly politicised during the last five years, both in terms of the appointments of the commissioners but also its actions in dealing with violations. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the international body that regulates national human rights institutions - reduced Sri Lanka's HRC to the status of an "observer" due to Government encroachment on its independence in 2009. As a result, the commission no longer has the right to vote in international meetings and is not eligible to stand for election to the international coordinating committee.²⁰⁷

²⁰⁶ <http://www.idpsrilanka.lk/html/npdsproject.php>

²⁰⁷ Sri Lanka: Human Rights Commission Downgraded, 19 December 2009 <http://www.scoop.co.nz/stories/WO0712/S00986.htm>

Rehabilitation of Persons, Properties and Industries Authority

Set up under the Rehabilitation of Persons, Property and Industries Authority Act of 1987 to assist in the rehabilitation of persons, properties and industries affected by the communal violence of July 1983,²⁰⁸ the entity is vested with the power to acquire in any manner, and hold, take or give on lease or hire, mortgage, pledge and sell off any movable or immovable property. It also has the power to clear and re-develop property affected by communal violence which are vested in the State by virtue of a determination under section 22 of the statute or re-vested in the State under section 23 of the statute.²⁰⁹ The authority still exists and according to officials serving in the authority continues to make payments.

The Resettlement Authority

The Authority was set up in 2007 under the the Resettlement Authority Act, No. 9 of 2007 with the objectives to firstly resettle or relocate IDPs and Refugees in a safe and dignified manner and secondly to rehabilitate and assist IDPs and Refugees by facilitating their entry into the development process.²¹⁰ On analysis of the functions and powers of the Authority it is clear that it was intended as the central Government agency coordinating resettlement, relocation and rehabilitation of IDPs.²¹¹ Although this would have been a mode of rectifying the major flaws of the national framework to protect IDPs, the PTF on Northern Development seems to have usurped such functions, in turn rendering it redundant.

²⁰⁸ Rehabilitation of Persons, Property and Industries Authority Act, No 29 of 1987, Section 4 read together with S 26.

²⁰⁹ *Ibid.* S 5

²¹⁰ Resettlement Authority Act, No 9 of 2007, S 13.

²¹¹ *Ibid* Section 14 read with S 15.

Institutions for Disaster Management

The Sri Lanka Disaster Management Act, No. 13 of 2005 envisages the establishment of the National Council for Disaster Management, the Disaster Management Centre and several technical and advisory committees that are to be responsible for the preparation, co-ordination and management of disaster related programmes nationwide. Although this was introduced soon after the Tsunami of 2004, it has not played a critical role with conflict induced displacement and has been supplanted by the line ministries.

Urban Development Authority

An additional central government institution that could play a significant role in the future with regards to displacement is the UDA. It was established under the Urban Development Authority Act No. 41 of 1978 in order to integrate planning and implementation of economic, social and physical development of areas that fall under its purview. The UDA has considerable powers to acquire land, including private land, in areas which have been declared “Urban Development Areas”. With the new changes to ministries that were introduced after the parliamentary elections in April 2010, the UDA has been brought under the Ministry of Defence.²¹² There are no public reasons given for such a move and questions have been raised as to the reasoning behind this move in a post-war context. Although it is too early to comment on the move, there are fears that development projects may be initiated under the UDA under the guise of “national security” or other reasons by the Ministry of Defence without adequate information, consultation and transparency. The example of the Sampur HSZ and SEZ in Trincomalee is a good example of how

²¹² <http://www.uda.lk>

development can take place in secrecy with no consultation of, and information to, those affected or the public at large.

Section IV: Return and Resettlement: Challenges on the Ground

A key issue relevant to returns and resettlement is how the Government and other stakeholders define and use these terms. According to international standards, the term return is used to denote a person going back to their home and land. Resettlement on the other hand is generally used to mean being settled to a place other than one's place of origin. The Guiding Principles differentiates the two terms. Principle 28 provides for IDPs "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." In the Sri Lankan context many Government officials use the terms 'return' and 'resettlement' interchangeably without much thought to the implications of international standards. As noted in previous sections terminology and identification of populations has far-reaching repercussions. This has compounded a situation where upon returning to the district of origin, regardless of whether a person has returned to one's own home and land, there is an assumption that return is complete. As documented by CPA, the interchangeable use of terms in the local context has proved politically convenient for the authorities to down play the status of displacement and the numbers of IDPs.²¹³ The lack of clarity results in confusion as to whether those resettled have actually returned or are in effect cases of 'transferred displacement.' The term relocation is also used in Sri Lanka which is meant to indicate when a person or family has been moved to another area, not of their origin. Relocation has been

²¹³ Fonseka Bhavani, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, Centre for Policy Alternatives, September 2010.

carried out by the Government both with regards to displacement caused by natural disasters such as the tsunami and the conflict, when the Government has often declared the place of origin as off-limits.

In the last four years Sri Lanka has seen a number of large scale resettlement drives, both in the East and more recently in the North of the country. While the Government has put forward its mass resettlement programme as a model initiative, the process of returns and resettlement has been critiqued for various reasons including the disregard for the protection provided under international and national framework. Although lessons should have been learnt from previous returns and resettlement drives, measures by the Government return and/or resettle have taken place in a manner that is not compliant with certain minimum standards as per the Guiding Principles including informed voluntary return. In recent times with returns and resettlement in the North, there have been limited or no 'go and see' visits for IDPs to assess whether they are able to return to their lands. Throughout the years, most return drives have been politicised where political actors play a critical role. Recent years have also witnessed a significant role by the military, even resulting in instances of violence and intimidation towards IDPs who refused to return.²¹⁴ There have also been limited or no information for return, with IDPs not being provided an opportunity to make an informed decision whether to return or remain in displacement. Further, there have been coercive methods to move IDPs including the threat of cutting assistance if IDPs decided to remain in displacement. A key concern of a number of IDPs who are being resettled is security as they fear that they

²¹⁴ Fonseka Bhavani, Raheem Mirak, Trincomalee High Security Zone and Special Economic Zone, September 2009; A brief profile of the Trincomalee High Security Zone and other land related issues in Trincomalee District, May 2008.

could be subjected to intimidation or even violence in resettlement areas.²¹⁵

The official figures also ignore other forms of displacement in return areas such as those who have returned to their own land but continue to live under tents or temporary shelters as their homes are destroyed and those who continue to fear living in their homes during the night so are 'night time displaced'. The other group that needs attention are those who have returned to their own land but continue to be dependent on assistance as they are unable to restart livelihoods for a variety of reasons. Therefore, although Government figures may demonstrate that IDP figures are on the decline, in actual fact many of those who are declassified as IDPs continue to face hardship and sometimes continue to live in displacement like conditions. The old IDPs have been marginalised in the resettlement process as they were initially unable to secure permission to return in parallel to the new IDPs without an official explanation. There are concerns that 'resettlement' will be officially completed but a significant number of returnees will be unable to secure housing assistance as donors would have already moved out of the area. One particular population who could be affected are Jaffna HSZ IDPs, as the shrinking and the opening up of the HSZs has been proceeding very slowly. It needs to be noted that there are also other war-affected IDPs who are unable to return due to their areas of origin being demarcated exclusively for economic development. In Sampur, Eastern Trincomalee, a HSZ was established in May 2007 but now the authorities refer to the area as a SEZ. Roughly 6,000 IDPs in Sampur will not be able to return for this reason. It is not clear if this model of security/development land dispossession will take place in the

²¹⁵ Fonseka Bhavani, Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka, Centre for Policy Alternatives, September 2010.

North. The return of Northern Muslims and some of the other old IDP populations is proceeding slowly as there are stumbling blocks to their return including limited assistance to support their return, in addition to secondary occupation, lack of or limited basic services and livelihood opportunities.

There is an additional conceptual and practical problem to ending displacement as it is often collapsed to simply mean the process of IDPs moving back to their area of origin. The time period for the process is short term, hence assistance is for transitional shelter, rations for six months, non-food relief items and in some cases livelihood assistance and water and sanitation facilities. The Government's current approach is that whatever gaps following resettlement, will be addressed by development. While NGOs and donors recognise that the transition period is longer and requires significant assistance, the Government is less sensitive to the process of early recovery which is meant to bridge the processes of resettlement and long-term development which would better ensure sustainable livelihoods and basic community infrastructure. Such an approach stems from the broader political agenda of the present Government who wants to demonstrate to the domestic audience, international community and donors that Sri Lanka is speedily moving from a humanitarian situation to a post conflict development context. In this haste there is little regard for the needs and vulnerabilities of IDPs, returnees and other affected communities.

In the months following the end of war, a number of restrictions that impacted the lives and livelihoods of families have been relaxed, which has rapidly increased the post-war economic recovery process of families and communities. However, it is important to flag key problems faced by returnees even in cases where they have been able to reclaim their original homes. In certain cases their

pasture or grazing land or fishing waters may still be off limits, either due to the presence of mines and unexploded ordinance or because the land has been declared off limits to civilians. There are other livelihood problems relating to the lack and loss of farming and fishing equipment, the loss of animals including cattle and poultry, the destruction or disrepair of irrigation canals. To access certain areas farmers need to submit identification. To access paddy and grazing land in Vattamadu in the Akkaraipattu division the military requires farmers and grazers to submit their identity cards where they enter the areas. In the latter, particular areas are still off limits.

In addition, returnees may find the facilities in the areas of return, especially those most affected by the fighting or where civilian access has been denied for decades in a state of destruction and disrepair. This makes the process of rehabilitation more difficult as basic needs including education, health, access to drinking and irrigation water, access to markets and public transport may be limited which makes it more challenging for those wishing to return.

Protection is a critical concern for returnees, especially those resettling to areas captured from the LTTE, including parts of the East and the Wannu. The security fears relate to the high level of militarisation and the lack of independent actors to whom civilians can approach in terms of protection. There have been reports of abuse, including sexual abuse both from the East and the Wannu; a small number of these cases have been taken up in court while others have not been independently verified.²¹⁶ Law

²¹⁶ “6 SLA soldiers rape young mother in Visuvamadu”, TamilNet, 13 June 2010; “Sri Lanka soldiers remanded over rape of 9-year old Tamil girl”, TamilNet, 27 February 2010; Virakesari, 21 February 2010, pg 2; Thinakkural 21 February 2010, pg 1.

and order in the resettlement areas are largely in the hands of the military, and the police presence is being gradually expanded, while other local redress mechanisms such as the HRC and the National Child Protection Authority have limited capacity. While humanitarian agencies do have access to almost all areas, the humanitarian community is constrained in terms of providing protection services by the mandates of individual agencies, the unwillingness of the Government to allow agencies to carry out protection activities, and the fear of agencies to engage in protection activities, especially given the difficulty in security permission to work in the Wannu. While local and human rights groups face a significant burden in taking up these issues in terms of providing support to the victim they are also apprehensive of the repercussions they will face. There is a significant protection vacuum both in terms of addressing possible ongoing and past violations in resettlement areas.

Section V: Special Needs Categories

While IDPs as a category can be seen as a vulnerable section of the population clearly there are population groups within this category for whom special attention is required.

Orphans and other children

The conflict that persisted over three decades has given rise to a number of categories of vulnerable children needing different forms of care, assistance and treatment. All the children affected by conflict need to be resettled in their places of origin along with their families or provided alternate options if they choose not to resettle, and given specific education, health and recreational services to rebuild their lives. There are various categories of children that need different responses – the unaccompanied and orphans, the missing, the child surrendees and children who had been abducted and recruited and who have been released by armed groups like the TMVP and LTTE. It is the responsibility of the Government to adequately account for the numbers in each of those categories and lead a planned process of rehabilitation and reintegration that is in the best interest of these children. In addition to clarifying the numbers, the Government has to streamline its administration structures and empower its agencies at the local levels to address the massive task ahead, while ensuring that it provides NGOs and other civil society actors the space to carry out this task of rehabilitation especially in-community. While there are numerous actors – both formal and informal – dealing with child protection, problems persist in coordination, information sharing and possible duplication of efforts. Looking at the Government structures, it is clear that at least on paper there are structures in place to monitor child related issues. The problems are twofold – while there is a multiplicity of actors tasked with child protection there is confusion

regarding the exact roles and responsibilities of Government actors, and there are issues relating to the capacity of the actors on the ground.

One of the specific categories of vulnerable children is orphans. There are competing reports on the number of war related orphans in Sri Lanka. According to the Ministry of Defence in September 2009 1,036 orphans were sent to orphanages in Mannar and Vavuniya, and 200 orphaned children were to be sent to approved orphanages on the order of the relevant District Judges.²¹⁷ According to the statistics of the Northern Province Probation and Child Care Services there are 1,309 orphans and of them 388 are living in childcare homes while 921 are living with relatives. According to the same source the number of children who have single parents is 2,391. Within that number 564 are living in childcare homes while 1,827 are living with relatives or a parent.²¹⁸

The identification of a child as an orphan itself poses problems. Given that a comprehensive family tracing process has not taken place it is possible that some unaccompanied children have been identified as orphans (especially young children lacking documentation and being able to provide information on parents). Sri Lanka has a strong culture of institutionalisation with more than 15,000 children in institutions across Sri Lanka.²¹⁹ It is not unusual for children's homes to house children who have at least

²¹⁷ Ministry of Defence, "Resettlement under Uthurur Vasanthaya accelerates," 4 December 2009

²¹⁸ "Orphaned children in North forgotten", Daily Mirror, 23 July 2010

²¹⁹ These institutions include Remand Homes, Certified Schools, Receiving Homes, Detention Homes, Approve School, National Training Centers, Voluntary Remand Homes and Voluntary Homes. (Save the Children in Sri Lanka, "Home Truths: Children's Rights in Institutional Care in Sri Lanka," A Summary, 2006, P.1)

one or in some cases both parents alive.²²⁰ It is not unusual that there are cases of children who are ‘once orphaned’ (children who have lost one family member) who are placed in orphanages. In general it appears that the tendency within Sri Lankan society is to put ‘orphans’ into both state run and private orphanages as opposed to foster care with relatives.

The welfare of these orphans remains an issue to this date. These include issues of protection, education, skills development, health, nutrition, reintegration back into society among others, where the State needs to pay more attention. The Government has taken steps to open a few childcare homes in Vavuniya²²¹ and have re-united some IDP orphans with their respective families. According to the officials of Ministry for child development and women’s affairs, of about 286 IDP orphans, 220 have been settled with families.²²² However, much needs to be done to address the needs of these orphans. There are concerns about the standard and quality of the child care centers. Some of these child care centers are not even registered with the divisional secretariat or childcare department. In Vavuniya district only seven children’s homes have been registered while 28 homes remain unregistered.²²³

²²⁰ Save the Children in Sri Lanka, “Home Truths: Children’s Rights in Institutional Care in Sri Lanka,” A Summary, 2006, P. 2

²²¹ The Government, in June 2009, opened “Siriliya child care center” in Vavuniya for orphans. At present 230 Tamil orphans are accommodated at the center. (“Children orphaned by the war meet Sri Lanka President”, Colombopage, 1 October 2010).

²²² “Conflict leaves 89,000 widows” Daily Mirror, 30 September 2010.

²²³ “Large number of war orphans in the north”, Daily Mirror, 4 October 2010.

Widows and Female Headed Households

The issue of war widows is as old as the conflict itself. It is an issue that is not common only to the North and East, but is also a phenomena in the South as well. In the South, a large number of military personnel who were either killed or are missing in action left behind wives. While there is state assistance for such individuals, there are challenges especially for wives of personnel Missing In Action or the fiancés of personnel who remain unmarried. In the North and East there are a large number of widows of LTTE fighters and members of other militant groups and of civilians who were killed or disappeared. The sessions of the LLRC held in Batticaloa and Trincomalee in late 2010 once more highlighted the plight of the wives of the missing who were abducted, arrested or went missing who continue their search for their loved ones and demand the authorities take this issue up immediately.

There is no official statistic for the number of widows as result of the war, which in itself demonstrates the serious policy challenge in dealing with the issue. The statistics of the Ministry of Child Development and Women's Affairs shows that Sri Lanka has around 89,000²²⁴ war widows – 40,000 in the North and 49,000 in the East.²²⁵ The number exceeds 20,000 in Batticaloa district alone. Of the 20,000 widows in Batticaloa, 12,000 are below the age of 40 and about 8,000 have 3 children.²²⁶ The Centre for Women's Development, a Jaffna based women's organisation, claims that there are 26,340 widows in Jaffna, 5,403 in Killinochchi, 4,303 in Vavuniya and 3,994 in Mannar.²²⁷ Statistics of widows in Mullaitivu

²²⁴ <http://world.edu/content/sri-lanka-conflict-widows/>

²²⁵ <http://www.dailymirror.lk/index.php/news/6838-89000-war-widows.html>

²²⁶ *ibid*

²²⁷ Subash Somachandran, "Sri Lanka: War widows left in poverty", WSWS27 October 2010.

are not available. In Jaffna district 3,118 widows are under the age of 40 and 38 of them are fewer than 20.²²⁸ According to Government officials in Wannu district one tenth of families had lost their male bread winner in some divisions in the district.²²⁹

While there is a general reference to widows in the policy statements it is not been realised into policy. The Deputy Minister of Child Development and Women's Affairs M.L.M Hizbullah has made a number of statements on the number of widows in the North and East but the Government is yet to propose a comprehensive policy programme for assisting them. According to Hizbullah the ministry is unable to provide assistance to these widows due to lack of funding. Widows who can produce a death certificate for their husbands are entitled to receive Rs 50,000 as compensation. The remainder who are unable to do so are only given Rs 150 rupees a month.²³⁰

The larger issue of female headed households needs to be provided adequate attention and redress provided. Some of the major concerns include conducting livelihoods and assistance programmes to ensure that they can provide for their families and protection services so that they feel safe, particularly within their communities, in addition to ensuring their space and participation in community activities and decision-making.

²²⁸ *Ibid*

²²⁹ "One tenth of families headed by widows today", Daily Mirror, 13 September 2010.

²³⁰ Subash Somachandran, "Sri Lanka: War widows left in poverty", WSWS27 October 2010

Suspected LTTE cadres

A large number of individuals, at one point calculated to be 12,000 persons in May 2009, were held by the Government as suspected LTTE members. While some of these individuals were fighting cadres of the LTTE, some were individuals forcibly conscripted by the LTTE in the last few weeks of fighting. Some were those who served in an administrative capacity in the LTTE and others merely suspected of having connections with the LTTE. The Government announced that these individuals would have to be rehabilitated and undergo a reintegration programme. The Government put forward an “Action Plan for the Reintegration of Ex-Combatants” in October 2009 which provided a basic framework for rehabilitation and reintegration but the plan failed to provide a legal framework for the process and was not approved by the cabinet. At the same time the Government commenced the release of individuals from the rehabilitation camps. The Government has gone ahead with an *ad hoc* reintegration programme that lacks a legal framework and is not comprehensive, with training and vocational programmes for the rehabilitees in the various camps. It is believed that a certain number of those currently in “rehabilitation” will be prosecuted but it is not clear how this process will move ahead, including how the right of representation will be handled for these individuals. In addition there are concerns about their physical security, the lack of an independent actor such as the ICRC to monitor the camps, the lack of legal amnesty for those released and the limited reintegration assistance. As noted above a number of ‘child soldiers’ have also been provided rehabilitation under a separate programme. This had a limited legal framework and oversight mechanisms providing a degree of protection. By May 2010 the remaining 198 ‘child surrendees’ were released but their social and economic integration remain concerns that need to be addressed.

Section VI: Land and Housing

Access to land and property is a critical issue impacting displacement and return. Families who cannot access their homes are forced to undergo continuing displacement and suffering, as they are unable to return and rebuild their lives. Others who cannot access their farming or grazing land may be unable to recommence and re-build livelihoods, which could result in a variety of problems, including being unable to support families and find durable solutions. Land also has a tremendous economic and social value, so families whose access to their lands are restricted or curtailed may suffer continued economic and social hardship by being unable to take out bank loans by using land as security or use it for dowry purposes. At a community level, various restrictions on land could hamper the local economy, making it less self-sufficient and effectively disempowering communities. Obstacles to accessing land and property can also be an infringement of the rights of people.

Constitutional Framework and Powers over Land

The Constitution of Sri Lanka does not provide for an express right to land or property. However the Constitution does guarantee equality before the law, freedom of movement, choice of residence and other rights. The Directive Principles of State Policy advocates the “realization by all citizens of an adequate standard of living for themselves and their families including adequate food, clothing and housing, and the continuous improvement of living conditions.” The cumulative effect of all these provisions may suggest a right not to be arbitrarily denied the right to land, housing and property.

The 13th Amendment was introduced to devolve certain powers to Provincial Councils which were created by the Amendment. The

following land powers are reserved for the Provincial Councils: rights over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement. However all state land remains the property of the Central Government, thus its alienation is done under the seal of the President on the advice of the relevant Provincial Council. This limited devolution of land powers is undermined by the structure of the 13th Amendment that preserves the predominant role of the Central Government. Firstly, the Central Government retains power to override decisions of the Provincial Councils. Secondly, all projects involving several Provincial Councils come within the purview of the Central Government. Thirdly, Provincial Councils are financially dependent on the Central Government.

The 13th Amendment provides for the establishment of a NLC that is responsible for formulating national land policy. The 13th Amendment determines that where the distribution of allotments of state land occurs, it should be undertaken on the basis of national ethnic ratios. However, such allocation should not upset the demographic patterns or communal cohesiveness. When state land is distributed under various projects, priority should be given first to those displaced by the project, second, to the landless of the immediate area, and finally to the landless of the Province. However to date no NLC has ever been formed, as a result Sri Lanka has not had a mechanism to formulate a comprehensive national policy on land nor advise the Government on land policies.

Draft Land Policy

Sri Lanka is yet to enact a national land policy. The most recent draft dates back to 2005 which due to administrative delays is yet to obtain cabinet approval. CPA has been informed by government

actors working on land issues that there is an immediate need for a national land policy and though there has been a draft since 2005, very little has been done by political actors to introduce a national land policy. The primary focus of the draft National Land Policy is to lay out the overarching policy of the Government with regards to land. Some of the key points in the draft policy are:

- Identification of land resources and mapping of land
- Land distribution for activities in industrial, residential, commercial, social and religious areas:
- Land conservation and management
- Land development by way of granting leases
- Land acquisition
- Institutional arrangements
- Legal arrangements
- Establish entitlement to land
- Alienation of land to landless persons on highly transparent policy of land allocation

Land Use Policy

The Land Use Policy was passed in 2007 with the goal of ensuring that there is a rational utilization of land for food security, a high quality life, equity and ecological sustainability. The policy states that there is a need for planning to ensure that land is used in the most effective and productive manner for agricultural, livelihood purposes and to solve human environmental issues, especially in urban areas. According to the policy, productivity of fertile land in Sri Lanka has reduced due to improper land use and nearly 44%

of agricultural lands have been subject to land degradation. The plethora of small agricultural holdings that do not benefit from economies of scale, is another reason for low productivity levels.

The Land Use Policy is meant to provide a policy framework to ensure that there is proper land use which in turn provides for food security, economic development and the maintenance of the productivity of the land at a higher level. The Policy goes on to state that the State on behalf of the people will function as the “trustee” of land to enable the present and the future generations to use the land to sustainable basis. Land use will be based on the principle of zoning and the utilization of land will be based on its physical sustainability. The Policy is also to achieve other objectives including preventing the under use and improper use of lands, protect, conserve and manage all sources of water on states as well private lands, introducing a rational distribution of population and settlement in order to achieve a balanced regional development and orderly economic growth, minimize fragmentation of agricultural lands, prevent encroachment of lands, introduce effective reforms on land tenure policy to promote the efficient use of land resources, minimize the vulnerability of land to natural and human induced hazards and environmental hazard, promote gender equity in the ownership, utilization and conservation of land and preserve historical, cultural, religious, and aesthetic values associated with lands.

National Involuntary Resettlement Policy

This policy was established by the Government to address the adverse social and economic impact of land acquisition for development purposes. The policy applies to all development-induced land acquisition, and a Resettlement Action Plan needs to

be prepared where 20 or more families are affected. The procedure and protection of economic, social and cultural interests provided may be a useful model to be used in future resettlement programmes. In March 2010, a resettlement planning document was published by the Ministry of Highways and Road Development and Ministry of Local Government and Provincial Councils, highlighting the procedure or resettlement.²³¹

Mahinda Chintana 2005 and 2010

The *Mahinda Chinthana* (Presidential Manifestos) document 2005 contains a section on housing and land issues. The document states that every family should own a house and that 100,000 plots of land would be provided for the construction of houses. The document does not state whether this would be state or private land. It further goes on to add that four housing schemes (condominium property) would be implemented for public servants in Colombo and the suburbs. The document also states that 50,000 new houses would be built urgently under the *Ranaviru Gammana* concept as housing facilities for officers and soldiers in the security forces. There is no mention of the land ownership for such houses.

In the *Mahinda Chinthana* 2010 document that was introduced prior to the presidential elections held in January 2010 the incumbent President set out his policy for the next term. The document sets out several housing projects that would be given to soldiers who are disabled or to families or soldiers who died in action, where a 10 perch land is to be given for the construction of the house. It also provides that the above category of persons who were occupying

²³¹ Resettlement Framework: Northern Road Connectivity Project, Ministry of Highways and Road Development and Ministry of Local Government and Provincial Councils, highlighting the procedure or resettlement, March 2010, www.adb.org/Documents/Resettlement_Plans/SRI/.../42554-SRI-RF.pdf

state land without legal sanction or title as of 1st January 2010, will be given title deeds to such lands. The document also provides land to public sector employees and Government corporation employees who do not have houses, who will be given up to 10 perches of land. Further the document states that under the *Mahinda Chintana* agricultural land will be given to 100,000 farmers, and that 20,195 allotments have already been given away and permits have been issued for a further 32,063 allotments, while offer documents have been issued to yet another 38,277 farmers. Finally the document states that free agricultural land will be given to 100,000 farming families in the Northern and Eastern Provinces. No reference is made as to whether the land would be state or private land, nor does it mention any selection criteria.

While the goals set out in the policy document are welcome, it is questionable whether the Government has taken concrete steps to achieve all these goals, or indeed whether some Government promises can be met. The Government needs to take immediate steps to demonstrate its commitment to housing and land issues. One step in addressing these issues is to have a land policy which is based on a rights framework and takes on board the needs of the people.

Draft Housing Policy

Sri Lanka does not have an overarching housing policy. Though many attempts have been made to draft such a policy, the lack of political will and the constant changes in governmental policy with every change of government has made this a near impossible task, according to Housing Ministry officials. Despite the difficulty of the task, efforts are once again under way to draft a national housing policy. An Outline for Discussion on the National Housing Policy

sets out the past experiences on housing, issues related to housing development, objectives and strategies of the policy, and identifies key areas of reform. It is notable that one of the objectives of the policy is to ensure the right to housing rather than ownership of housing. Among the strategies proposed is for local governments to play a central role in the development of housing programmes through the provision of infrastructure facilities, building approvals and other needs. It must be kept in mind that the proposed policy focuses on housing development in general and does not deal with specific tsunami or conflict affected housing issues. The policy seeks to ensure access to affordable and decent housing for all families and to set up a contributors' National Housing Fund open to all individuals.

Implications of Development Projects and Military Expansions

There are various reports and allegations of State and private land being taken over for various development and military projects, resulting in civilians losing access to these land. While the State has the legal right to appropriate public land which has been given to individuals and private land for 'public purposes' it has the responsibility to ensure adequate compensation and to ensure that those affected are provided alternate homes, livelihoods and social support to re-build their communities, while at the same time, it should be trying to minimize development induced displacement/relocation. As noted above the establishment of the Sampur HSZ/SEZ has had a profound impact in terms of access of land, and there are fears that this model may be replicated in the North. The presence of official and unofficial HSZs in the north and reports of the military planning to build new or expand existing camps have intensified fears of the loss of private lands and of increased

militarisation of the North with possible demographic changes.²³² There are additional concerns about the manner in which development programmes such as the expansion of major roads have been carried out with shop fronts and houses being demolished in towns such as Kanthale in Trincomalee and Ottamavadi in Batticaloa. Residents in these areas acknowledge that most of the constructions on houses and shops or at least extensions to the original construction on the main street have been done illegally or that approval to construct beyond the road markers put by the Road Development Authority was secured through politicians rather than the relevant authority. The local Government authority is meant to provide alternate land. However, in certain cases, the alternate land, compensation and support for relocation is not readily apparent.

Conflict and Land

Conflicts related to land have significant implications for the displaced. This following section will highlight key aspects of this problem with reference to the Eastern Province.²³³ Over the course of the war, land problems were exacerbated owing to violence, displacement of entire communities, destruction and loss of documentation, occupation of land by armed actors and secondary occupation of land by displaced individuals. In the post war context, access to land remains a highly contested issue. The constitutional, legal and policy framework that governs land issues

²³² Fonseka Bhavani, *Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka*, Centre for Policy Alternatives, September 2010; Shamindra Ferdinando, "China facilitates setting up of permanent SF bases in North", 23 July 2010; Ranga Jayasuriya, "Tamil anxiety over Army camps changing demography in N-E", Lakkbima News, 25 July 2010; "Army to engage permanent formations in N & E", Daily Mirror, 28 June 2010.

²³³ The section on Land and Conflict is taken from Fonseka Bhavani, Raheem Mirak, *Land in the Eastern Province Politics, Policy and Conflict*, Centre for Policy Alternatives, Colombo, May 2010

is incomprehensive, unclear and ineffectively implemented. In this regard, the failure to fully implement the 13th Amendment is a critical factor that underlies land issues in the Province. At the administrative unit level, disputes over boundaries and attempts to change boundaries have led to accusations that civilian actors are in fact seeking to secure more land for certain ethnic communities over others. At the political level land issues have been used as a political tool to create wedge issues between ethnic communities. The high level of militarization in the province has meant that security restrictions, military occupation and the use of land by armed actors are preventing individuals from accessing land. In addition, there are ongoing issues in relation to land grabbing, encroachment, illegal land sales, and loss of legal documentation, which also prevent individuals from claiming possession to land.

Efforts to resolve land issues were made during the Cease Fire Agreement and the post-tsunami period. In the post war context, over a year following the end of the war, two national elections, and the Government enjoying an overwhelming majority in Parliament, no major reforms have been introduced to date. There are however, unconfirmed reports of impending constitutional reform including changes to the 13th Amendment.

During the conflict, violence was used to establish control over territory by various armed actors. Entire communities were forced into displacement and lost access to their land. Massacres, individual killings, destruction of property, riots and intimidation all impacted land use and control as well as relations between communities. During the war, many areas in the East saw an 'exchange' in populations as particular communities fled vulnerable areas and moved to areas which were dominated by their respective community, or even fled to other provinces. For example, the Batticaloa district, which was home to a small Sinhala population, now has barely a

fraction of that community, while towns such as Ampara which had a small Tamil population are now almost wholly Sinhalese. In some cases properties were abandoned and occupied by armed actors or even other civilians, in other instances these individual plots may lay unoccupied. Some individuals sold their properties under conditions of duress. In other instances the overall context of fear and insecurity encouraged individuals who were members of minority communities (be they Tamil, Sinhala or Muslim) to sell to individuals from the community that formed the majority in that area. In a post-war context land sales, especially those lacking documentation, are being contested and original owners or their descendants are claiming that there were no land sales or that they were made under duress.

The following are key administrative, legal and access issues that contribute to disputes on the ground:

- **Issues over land documentation:** Loss of documentation and inadequate documentation are key challenges to proving land ownership.
- **Failures in effective and fair administration:** Land documentation problems are complicated by ethnically partial and or corrupt authorities. For example the Batticaloa HRC has received complaints that original deeds to land may have been deliberately been lost or destroyed.
- **Landlessness:** There is a significant population in the East that does not have any legal title to land. Some occupy land; however, they do not have any legal title to the land. Previous owners of land are finding themselves landless because the Government has earmarked the land for other purposes.

- **War related abandonment or non-usage:** Land owners and users were forced to abandon their land due to the war. Those displaced may have ended up occupying someone else's land in another area, creating a host of issues relating to secondary occupation. Furthermore, many who sold land during the war are now contesting the validity of the sale, claiming that at the time their land was sold under duress.
- **Encroachment:** Encroachment is the illegal occupation and use of either state or private land. Sri Lankan law grants the rights to long-term encroachers on private land; however, no policy or law has been enacted by the Government on how land rights would be recognized in conflict affected areas. Encroachment is a significant issue in the East and is further complicated by the involvement of political actors that facilitate encroachment.
- **Land Grabbing and the involvement of powerful actors:** Land grabbing has been carried out by individuals, militant actors and the State particularly during the war but also after. In particular the State has been accused of land grabbing on the grounds of military necessity, development, tourism and land settlement. While the State may follow the legal process it may still amount to land grabbing when due process is not followed and alternative information and proper compensation is not provided.

Section VII: Compensation for losses

Restitution can be defined as the restoration of what has been taken away to its rightful owner while compensation is the provision of assistance including financial assistance for the loss or destruction of land, housing and other property affected by disaster. Restitution and compensation play a pivotal role in addressing the grievances of those who have lost land, property, houses and livelihoods and they are essential components of reconstruction, rebuilding and reconciliation efforts. The need for a comprehensive restitution and compensation processes and schemes are therefore vital in a post war context.

In the present context in the East and North, where resettlement is ongoing and there are reconstruction and development programmes being implemented, it is essential to look at how what has been lost can be restored and adequate compensation for loss and destruction can be possible. The lack of restitution or compensation packages has implications on the long-term development plans and political and social stability. Compensation needs to address loss and destruction, ensuring that there is conflict sensitivity, equity and transparency in how it is done.

In designing restitution and compensation schemes, greater attention needs to be given to vulnerable groups including single headed households, widows, the physically handicapped and those injured by the conflict. Given problems in the law, practice and societal prejudices women are vulnerable to the loss of property rights. Following the tsunami many women lost the rights to their properties as state-allocated land only allows for one signature and preference was given the male as the head of household. It is important to examine government policy on return, rebuilding and reconstruction efforts and to ensure that issues of compensation and restitution are dealt with through them.

Although the existing Sri Lankan legal and policy framework can provide for limited relief, there is no comprehensive national restitution and compensation policy that is in force to provide a framework for determining assistance. As a result, these issues have not received the attention they deserve, and those affected and aggrieved have not been provided the assistance and support they need in a comprehensive and equitable manner. The public debate on compensation itself is very limited. It is notable that in the mandate of the LLRC established by the Government of Sri Lanka the issue of compensation has been flagged. The need for uniformity in compensation has also been highlighted in public submissions to the commission.

While there are several humanitarian and development projects and programmes underway, involving Government, donors and humanitarian agencies, challenges remain in achieving durable solutions for IDPs and returnees. A notable absence with such return and resettlement projects is the absence of any policy or action plans with regards to compensation.

The current populations of IDPs are for the most part those affected by the conflict largely in the North and East of the country, while there are also those who were affected by the tsunami. Although large numbers of affected have been provided assistance including some form of assistance with their housing, property and livelihoods, this assistance has been for strengthening the process of return. While there is a general uniformity in terms of the basic assistance package for returnees, there have been reports of variance between various case loads of returnees. With the influx of funding and agencies that arrived soon after the tsunami, those affected by the natural disaster were provided assistance and even compensation much faster than those affected by the conflict. Due to political interference, lack of political will and bureaucracy, those affected by the conflict are in

some cases yet to receive compensation for their loss. There is a tendency among some displaced and even Government actors to view this assistance as being compensation.

The issues of compensation and restitution are also very relevant in issues of relocation of displaced persons where IDPs are unable to return and reclaim their original properties. On the specific problem of properties occupied by the military, house owners have been provided minimal rent and been provided assurances that the property will be returned in some individual cases, whereas in others even the assurance of the property being returned is still not clear and there is a lack of clarity of compensation in case of such an outcome. This is the case in the majority of Jaffna HSZs. In addition, there are questions relating to the compensation and restitution for land acquisition for development purposes, such as the Sampur SEZ which is legally still a HSZ.

Under current Sri Lankan law there is a process of compensation for land acquisition. The Land Acquisition Act, provides for compensation to be paid, when private land is acquired for a “public purpose” providing for a framework to decided on the payment of compensation and an appeals process for those who are aggrieved by the compensation package. There are issues in its implementation including adequate and fair compensation and adequate notification for the affected.

There is also the Sri Lankan National Involuntary Resettlement Policy of 2001 that is focused on development induced displacement and emphasises that displaced persons should be fully involved in the selection of relocation sites, livelihood compensation and development options as early as possible. Apart from this it further highlights that replacement land should be an option for compensation in the case of loss of land, and that in the absence

of replacement land, cash compensation should be an option for all displaced persons. It also provides that compensation for loss of land, structures, other assets and income should be based on full replacement cost and should be paid promptly. The results are unpredictable and prolonged due to unrestrained right of appeal.

This section has focused on compensation related to property, livelihoods and other economic aspects of IDPs and other affected persons but a critical area relating to the issue compensation is that of human life and limb. While compensation and assistance for the loss of a family member is clear policy for members of the armed forces, it is less coherent in the case of civilians. In September 2010, the chairman of the Rehabilitation Authority, E.A. Samarasinghe stated that Rs 100,000 would be paid as compensation to those affected by acts of terrorist groups, up to Rs 150,000 to public sector workers and Rs. 100,000 for a civilian whose property was damaged during the war.²³⁴ It has not been clarified in general how victims of acts committed by Government forces, such as aerial and artillery bombardment or gun fire were to be compensated and instead it seems to be more on a case by case basis. Family members of such victims even found it difficult to secure death certificates (which are essential for securing state compensation, at least in policy), let alone compensation. The Ministry stated that close to 250 people would be given compensation and that there were 25,000 applications for compensation that needed to be processed. It was also highlighted that applications are subjected to considerable delay in the provision of compensation.²³⁵

²³⁴ www.humanitariansrilanka.org/.../War%20affected%20IDPs%20get%20Rs.25%20million%20compensation.pdf

²³⁵ *Ibid*

Family members of those who were killed during the conflict are now able to apply for death certificates under the Special Provisions Bill which was taken up in Parliament on 9 November 2010.²³⁶ This Registration of Deaths (Temporary Provisions) Bill also enables next of kin to apply for death certificates.²³⁷ The Public Administration and Home Affairs Minister stated that special benefits would be provided for family members of missing public officials for whom payment of compensation and other benefits could not be given until they were issued with death certificates.²³⁸ The Bill is also aimed at registering those who have gone missing due to natural calamities

²³⁶ http://www.colombopage.com/archive_10C/Nov07_1289111511JR.php

²³⁷ http://sundaytimes.lk/101107/News/nws_05.html

²³⁸ *Ibid*

Conclusion

Given that displacement continues to be a problem on the ground, there is an urgent need to devise a series of policy measures to address the IDP problem in a comprehensive manner. However in order to do so the Government, political parties, international actors, humanitarian agencies and civil society need to recognise the nature of the displacement problem in Sri Lanka and the gaps in how it has been addressed so far. This is imperative to address the displacement from the war but also given that there could be new caseloads of displacement, including due to possibility of natural or man-made disasters and development, there is clearly a need for developing a policy framework to address the issue of displacement and durable solutions in a comprehensive manner.

Report on the SAHR Sri Lanka National Consultation on IDPs

Background Overview

Sri Lanka has experienced a long standing civil conflict and several natural disasters that have disrupted the lives of many people, however there is a lack of any specific legislation that comprehensively addresses the rights of IDPs. Sri Lanka has ratified numerous international instruments and the Sri Lankan Constitution²³⁹ also includes a detailed Fundamental Rights Chapter for the protection and promotion of human rights. However, these rights can be restricted in certain situations by implementing ERs “in the interests of public security and the preservation of public order”²⁴⁰ when a SoE is declared. As a result of ERs inhibiting individual rights, Sri Lanka has witnessed the derogation of the rights framework especially during the war where national security took priority over human rights making it increasingly challenging for IDPs to claim their fundamental rights.

The absence of any legal framework coupled with a lack of clear recognition of IDPs creates huge issues especially in IDPs gaining the necessary resources and support they require. The Sri Lankan Government statistics on IDPs only account for what is referred to as ‘new IDPs’ who are those displaced between late 2008 and the end

²³⁹ The Constitution of the Democratic Socialist Republic of Sri Lanka (The constitution of Sri Lanka), 1978.

²⁴⁰ 15. (1) The exercise and operation of the fundamental rights declared and recognized by Articles 13 (5) and 13 (6) shall be subject only to such restrictions as may be prescribed by law in the interests of national security. For the purposes of this paragraph “law” includes regulations made under the law for the time being relating to public security. (Article 15 (1), The Constitution of the Democratic Socialist Republic of Sri Lanka 1978)

of the war from the Wanni. The official figures ignore other forms of displacement such as those who have returned to their village but not their own land but continue to live under tents or temporary shelters, those staying with 'host families' or 'old IDPs' estimated at approximately 180,000 persons who have been marginalised. Therefore, although Government figures may demonstrate that IDP figures are on the decline, in actual fact many of those who are declassified as IDPs continue to face hardship and sometimes continue to live in displacement like conditions. This failure to gain proper recognition has significant ramifications for IDPs as they may not be eligible for state assistance and NGOs may not be able to secure permission to do work with them.

There have been many individual statutes and governing bodies set up to deal with specific IDP issues however it has only resulted in a multitude of *ad hoc* mechanisms with no single agency to coordinate unified action across disasters. Along with this have been a number of initiatives to develop laws and policies either specific to IDPs or with significant repercussions for them, but these processes have often been stalled. From the Ministry of Resettlement and the Resettlement Authority to the IDP unit of the HRC all developed policies and bills, most of which were never passed/enacted. This has raised questions as to whether the Government is committed to passing and implementing such an initiative, or whether they are largely of symbolic value to demonstrate the Government's concern as they have been under criticism for its human rights record.

The impact of these issues has contributed to the problem of maintaining the minimum standards, as per the Guiding Principles, required for addressing IDP issues. During recent drives to return and/or resettle, IDPs have had limited or no 'go and see' visits to assess whether they are able to return to their lands which has prevented them from making informed decisions. The increase

in military presence has also seen some instances of violence and intimidation towards IDPs with threats of cutting assistance of IDPs who refused to move. As well as IDP minimum standards, basic citizen rights have also been compromised and restricted for IDPs. The constitutional right to vote and land rights has been a challenge for IDPs due to the lack of necessary documents required and restricted access to their districts. For thousands of IDPs who were displaced in 2007 they were not included in the 2008 voting list and therefore ineligible to vote in the Presidential Elections in January 2010. Inhibiting their citizen rights has follow-on effects not only for individuals but the community as well. With the issues of land and property loss many IDPs not only experience continued displacement and suffering but it can create economic and social hardship which can hamper the local economy, making it less self-sufficient and effectively disempowering communities. This indicates how the ramifications for neglecting to address IDP issues can be far out reaching for the country as well.

There are a multitude of issues currently impacting the successful settlement of IDPs in Sri Lanka. While only a few have been indicated above it is clear that there is a huge gap in provision that should ensure the rights of IDPs are adhered to and the proper support and services provided. Sri Lanka, which has witnessed waves of displacement due to both the conflict and natural disaster, has had limited success in learning the lessons of past experiences and continues to repeat past mistakes in relation to displacement, returns, resettlement and the protection of IDPs and returnees. This is a matter that now demands to be addressed and action taken to deal with the growing issues now impacting IDPs.

Introduction to SAHR and aims of the IDP project

Shiranthi Jayatilaka, Executive Director, SAHR

SAHR is a democratic regional network of human rights defenders with a large membership base of individuals and organisations committed to the promotion and protection of human rights at both the national and regional levels. SAHR seeks to contribute to the realisation of South Asian people's right to participatory democracy, good governance and justice by strengthening regional responses, monitoring human rights violations, reviewing laws, policies and practices that have an adverse impact on human rights and conducting campaigns and programmes on issues of major concern in the region.

The organisation is now in its 11th year of existence and was conceived by leading human rights activists in the region like late Dr. Neelan Tiruchelvam, Asma Jahnagir, I. K. Gujral, Radhika Coomaraswamy to name a few. Since then it has grown to include individuals and organisational members across seven South Asian countries and now has a membership of around 300.

SAHR's programmes over the past decade have covered vital human rights issues in the region including minorities, refugees, IDPs, security laws and governance issues to name a few. SAHR was the first NGO to send a fact finding mission to Maldives during its democracy struggle under President Gayoom's rule. Likewise it has been active during Nepal's struggle for democracy and has contributed towards peace building between India and Pakistan after the Mumbai attacks. With regard to displacement, SAHR has been involved with the rights of displaced people for some time

such as the Bhutanese Refugees, Baluchistan IDPs in Pakistan and also the IDPs in Sri Lanka.

On the subject of IDPs in Sri Lanka, a fact-finding mission was undertaken in 2007, focusing on Trincomalee, Ampara and Batticaloa in the East, and Mannar and Puttalam in the North. At that time the usefulness of this report was that it not only set out the living conditions of displaced people but provided an analysis of the cause of displacement within the framework of human security versus militarisation. The fact finding team was drawn from South Asia to give the fact finding report more weight. This report was distributed widely and gained a great deal of media coverage locally, regionally and internationally.

Following the cessation of hostilities in Sri Lanka in May 2009, SAHR arranged for a meeting soon after, that is June 2009 between a team of social workers, who had access to the IDPs in the camps in the North, and human rights defenders from South Asia. This team of social workers presented a report, describing the experiences of families and individuals in the camps, highlighting some of their grave concerns. Based on this information an article drawing attention to the plight of IDPs in Sri Lanka was compiled by prominent Pakistani human rights activist I. A Rehman and with endorsements from a large number of human rights defenders in countries in South Asia it was disseminated to a wide group of civil society organisations, newspapers and authorities in South Asia.

The most recent phase in SAHR's IDP project is to hold national level consultations throughout the region, on seeking ways to have the Guiding Principles given effect to and implemented when dealing with IDPs. Consultations similar to the one held in Sri Lanka on 25 November 2011, would be held in other South Asian countries. In preparation for these consultations, SAHR

commissioned a background paper on IDPs in Sri Lanka authored by Bhavani Fonseka and Mirak Raheem which was presented at the workshop.

SAHR hopes that with the recommendations from this consultation, those concerned could begin lobbying political parties and other state actors to realise a humanitarian process of helping IDPs that meets international standards.

Session One: Context Setting

1. Presentation of SAHR Background Paper on IDPs

Mirak Raheem, Centre for Policy Alternatives

Legislations and Policies

One of the major issues facing IDP's in Sri Lanka is the lack of a legal framework or specific legislation focusing specifically on the protection of their rights. There have been numerous efforts to identify and codify IDP rights particularly over the last two years. Various pieces of legislation have been developed and are ready to be unfolded, including the Bill of IDP Rights, the Resettlement Bill and the Human Rights Action Plan. However these initiatives seem to have only provided a cover and do not deal with fundamental issues currently faced by IDPs with the draft of the IDP Bill that was developed in 2007 still left unimplemented. Therefore, it is seen to be vitally important that the Human Rights Action Plan is presented before the UNHRC in March 2012.

However, in addressing the lack of legal framework it is important to note the current Bills and Acts already passed that address issues such as man-made disasters, natural disasters and even development induced displacement. Basically, there needs to be consultation on how we can reconcile these existing policies and practices rather than investing in devising new legislation.

In developing any policy, however, there needs to be a strong emphasis in providing recognition and identification of those who are displaced. Who is an IDP? Ensuring there is recognition is a fundamental element which we still appear to struggle with and

that must be addressed within the next few months. The numbers of displaced have always been contested and will continue to be contested until this recognition is resolved. There needs to be an emphasis on how we can increase awareness among the politicians and the wider community of who IDPs are. If we cannot get recognition for them as IDPs in an official sense, is there another way in which we get recognition for them?

Institutions

After the 2004 tsunami and during the post-war period a series of institutions were established to address IDP issues. Of these was the Human Rights Ministry which was created during the height of the war but has since been phased out. This action has been viewed as a symbol that the human rights issues in Sri Lanka were over. How long would the Resettlement Ministry last? The Government could say there are zero IDPs in the country. The termination of such institutions should be analyzed for the lessons learnt and the legacy they left behind. There also needs to be channels created for sharing information and understanding of the best practices among the various institutions within the Government.

Here are some current issues taking place that must be addressed and durable solutions implemented:

- At present, there are less than 6,000 IDPs. However among the new IDPs displaced after September 2008, there are those who moved into their villages but are still living in displacement as their properties are being occupied.
- There are over 50,000 persons living with host families who have not been recognized as IDPs

- There are 'old IDPs' who were displaced in the 80s, 90s and those displaced before or during 2006. What is their status? For example, the Northern Muslims who have agreed to return and register themselves as returnees are still living in Puttalam or Anuradhapura. There needs to be recognition of this and analyses done into the reasons for this delay in returning.
- The right to their house and land has to be recognized. This relates to the much larger issue of land, land reforms, land policy, etc.
- Militarization and occupation is a serious problem that remains unaddressed in all areas.
- Development is very much related to the war as well. For example, in Sampur people were driven away due to violence and fighting in the area and the HSZ set up. Even though the war is over, the question remains as to whether these people can return as there are issues to address their needs and the coal power station. They have not been informed if they could return with issues still existing about which areas are being taken up for development.

2. Providing Humanitarian Assistance Within the Context of Shrinking Humanitarian Space

Mr. Greg Balke – (UNHCR Sri Lanka), representing the IDP Protection Working Group

The shrinking of humanitarian space is a phenomenon that all are witnessing. Rationally speaking, humanitarian space should be further opening, as we are two and a half years after cessation of

the armed conflict and this period should be identified as an early recovery stage.

Structural Restrictions

Humanitarian agencies have to work on a daily basis with restrictions imposed by the Ministry of Defense. By nature, humanitarians should be working with, and under the coordination of, civilian authorities of Government. However it is difficult to work exclusively with civilian authorities in the North. The first structural restriction with humanitarian space is that NGOs have to be registered with the NGO Secretariat which is a unit of the Ministry of Defense, and not a civilian Government authority.

Second, the PTF is a centralized *ad hoc* body, set up to coordinate all humanitarian and development assistance. Some question whether the PTF was duly constituted for its current role, but in any event, the PTF continues to be the strongest factor in defining humanitarian space, with their approval mechanism for individual projects. The future of these restrictions to humanitarian space needs to be discussed in relation to delivering humanitarian assistance.

There were abundant examples of NGOs and UN agencies working in the field and having their operations and daily programmes under the observation of civil affairs officers of the military. There are instances of military insisting on sitting with NGO officials when they undertake one-on-one legal counseling or civil documentation assistance or the delivery of non-food items. The legal role of the military is not clear in such activities as the delivery of birth certificates to former displaced persons, returnees or IDPs at Menik Farm. The military, however, continues to monitor such activities, as well as attempt to coordinate humanitarian assistance in some districts.

The humanitarian community has reacted through a united effort to elaborate common principles as to how to respond to military attempts to coordinate or otherwise influence humanitarian assistance. At the same time, the humanitarian community continues to cooperate with civilian authorities and welcomes their role in coordination, particularly at the local level.

Statistics on IDPs

There is an essential, difficult and inconclusive debate on the statistics or numbers of IDPs remaining. One important element of this discussion with regard to persons currently living with host communities (persons not in Menik Farm but not home or locally settled either) Are these persons still to be considered as IDPs or are only those not in closed areas considered as IDPs? The humanitarian community, using compilations of data provided by local authorities, understands there may be more than 50,000 IDPs still in host communities in the North. However, central authorities represented by the PTF informed that there are only 7,500 IDPs. There needs to be confirmation as to whether these numbers refer to only those persons coming from closed areas or not. The continued closure of several GN Divisions in the Northern Province, specifically in Mullativu and Jaffna, has to be taken up for discussion. This debate and discussion continues but it is difficult to determine the result of such discussions. As humanitarians in a returnee environment, we all have an interest in working primarily with civilian authorities at district level, thus assisting the restoration of normal civilian government structures rather than the continuation of an *ad hoc* central, hopefully temporary, mechanism for coordinating humanitarian assistance.

Future Implications

What does the future hold? Unfortunately, signals are very mixed. Although years have now passed since the end of the armed conflict, we all see the persistence of the military presence in the North, as well as their attempts to coordinate humanitarian assistance. When commanders are questioned, why the military? Why the PTF? Why not the local civilian authorities? The answer is often circular, expressing a lack of confidence in local civilian authorities. What sort of sign is that for the future of reconciliation and nation building?

In several areas of origin in the North, civilian IDPs are unable to enter, not due to the pace of demining, but because the military has not yet opened these areas for demining. There was a very recent movement of 77 IDP families from Menik Farm IDP camp to a relocation site in Mullaitivu district. These IDPs are from areas within Mullaitivu which remain closed. Many participating in a movement expressed that they ultimately preferred to go to their home areas, if they had been opened. What is the “voluntariness” of the choice made in that context? Unfortunately after years of conflict and living under military presence, earlier by the LTTE, now under the Sri Lanka Army, we are dealing with people who are deeply scarred. It may be some time before they feel able to once again step forward and state what their durable solutions and choices are to claim their human rights.

3. From Humanitarian Assistance to Early Recovery: Challenges and the Way Forward

Eigil Kvernmo – Norwegian Refugee Council & Zoe Keeler – UNDP

Early Recovery- Zoe Keeler

“Early recovery is an integrated approach to make the dividends of humanitarian action gradually sustainable. It includes all actors that can bring durable crisis recovery opportunities in-line with development objectives.”

Early recovery is not a distinct phase rather it is something that should be thought of at the very beginning of the humanitarian phase. Recovery begins in a humanitarian setting and is guided by the following development principles that build on humanitarian programmes and catalyse sustainable development.

- National ownership
- National capacity utilization and support
- Community empowerment, participation and decision making
- Conflict and disaster sensitivity
- Gender equality
- Speed and flexibility
- Transparency and accountability
- Building back better

Early recovery is not based on one sector or the responsibility of one partner or one organisation, but is multi-sectorial. It should be cross-cutting across all of the clusters such as livelihoods, housing, civil administration, agriculture, nutrition, education etc.

A common question that is asked is:

Where are we in Sri Lanka? Has early recovery started anywhere? Are there places where it is done really well and moving towards development?

There is no easy answer to this as it depends on where you are standing and what sector you are looking at. If we take the livelihoods sector in the North for example, we see some communities still depending on food assistance from WFP. However, we see other communities where families have been able to build up their subsistence level livelihoods and still others where livelihood opportunities are getting stronger with processing factories established and private sector linkages.

One of the challenges we face that makes it difficult across the sectors is the lack of data. There appears to be a lack of common agreement as to which indicators we should be looking for to assess the level of early recovery.

*IDP Protection Cluster-
Eigil Kvernmo – Norwegian Refugee Council*

Usually when the international community comes in with resources to respond to humanitarian disasters it is because the Government does not have the capacity or the will to deal with it. In certain contexts they have the capacity but not the will to do it. In other places, it is vice versa.

With early recovery coming in, the purpose is to restore the capacity of national institutes and communities and ensure sustainability of activities. The theory behind that is it would shorten the period it takes before they can restore their lives, bringing them up to normalcy at a faster pace.

The status and the scope

There has been much talk about where we are today in Sri Lanka, in the humanitarian phase or the recovery phase. Those in the protection sector have no common indicators and are therefore unable to determine where we currently are. An assessment done by UNHCR in Menik Farm on documentation needs of IDPs revealed that 200,000 persons needed some form of documentation from land documents, birth certificates and marriage certificates. At the moment we have only provided 1-2 % of that need. So for the protection sector there is confusion as to whether we are in the relief phase or the early stage of early recovery? It is equally important that indicators are formed for other sectors as well. There is a need for looking into the psychosocial needs of women and children affected by the devastation of 20 years of war.

Considering the specific contexts of local government mechanisms and the priorities of communities

Are we able to follow the impartiality principles, responding to the needs, not based on political, religious affiliations?

Who determines what the priorities are? Military? Civil administration? Communities?

Given the strong and expanding military presence in the Northern province and role of the Ministry of Defence in civilian administration matters, contributing to restoring and strengthening the capacity of national/local civilian bodies and augmenting their ownership of the protection activities is a challenge.

How do we ensure incorporating early recovery aspects and development principles in our work in the Northern Province today?

Will and Capacity

In dealing with national and local authorities, two aspects have to be considered.

- *Do they have the capacity?*
- *Do they have the will to provide protection to the population?*

Our interventions need to reflect this as well to ensure the impact and sustainability of our activities. In terms of the livelihoods sector the Government may have the will but in the protection sector it seems they don't have the will. Capacity issues may involve the Government lacking all the tools and knowledge on how to respond adequately to protection issues.

Early recovery in the Protection Cluster

How can we mainstream early recovery in the Protection Cluster? Who should do this? What would it entail? Should we put stronger emphasis on Human Rights as has been brought up here?

Legally speaking international humanitarian work ends shortly after the war is over. There might be some residual groups that still

cover international humanitarian work, but basically now we are in a phase where human rights work should be the primary instrument. There needs to be a rights based approach and a rights based strategy implemented. We should try to follow the development principles mentioned earlier and see to what extent we have been able to do it in the past in the protection cluster. Human rights are the key on which a strong focus is needed.

4. Discussion

The question and answer session took place with all speakers who presented in session one as well as general discussion from the audience.

Will and Capacity

- With respect to capacity or will, the Government should have the knowledge, as they have been doing this for the last 20 years. The crux of the problem is the lack of political will to do the right thing. The priority for the future is to strengthen civil society in Sri Lanka and ensure there is a stronger mechanism.

Documentation and Recognition

- Documentation which is a massive issue and has implications on the most vulnerable. This is non-confrontational and is not in the JPA and is an early recovery issue affecting the vulnerable. Can we decide that we would work together on this issue? Whatever organisation we belong to, can we commit to work together on the issue of documentation?

- Restitution, reparation and compensation were mentioned as potential avenues for gaining more recognition on the problems facing IDPs. Shifting the language and information from data and statistics on IDPs to more about assessment on those deserving reparation has to get into the agenda. The picture presented for the future is bleak in terms of building that recognition, looking at reparation, compensation, and a potential way forward. What is needed is to prioritize the vulnerable and needy. We need to determine mechanisms to gain assistance at individual levels, not projects or broad sweeping interventions, but recognize the harm done through the human rights violations through reparation and compensation.
- In the domestic context, there is a deeply psychological issue that needs to be recognized. For example, from the time resettlement started in April 2009, Northern Muslims and old IDPs were always asking for resettlement and they were not given permission to resettle even after the new IDPs resettled in resettlement areas. It is only recently that the Government has at least agreed to the principle that equitable assistance needs to be provided. Therefore, getting recognition is a struggle. With some of the caseloads including Jaffna HSZ and dealing with military related mistreatment, it will have to be something political. Local CSOs have a lot more to do. They have to do parallels with other communities including Sampur and Thirukkovil's displaced communities across the east including border areas.
- Recognizing ethnic prejudice within Government bureaucracy and facing the challenge as to why certain communities still cannot resettle and claim land.

Militarization

- Persistent militarization and closed GN divisions in the North. There are seven GN divisions in the militarized area that remain closed in Jaffna. Introduction of security zones in Jaffna was formally gazetted but others that remain closed are not. This is a significant obstacle in drawing a solution for those in closed areas. The legal status of these closures is unknown and IDPs are not able to determine or take decisions on if they should go or not go. There are conflicting messages from various authorities whether they should go and when. Information from the Government and final decisions regarding the future of these people are necessities.
- At times organisations deal individually in engaging with the military and may seek the support of others only in specific situations. The practical reality is that some may prefer to go into a project alone in certain situations.

Information Sharing and Coordinated action

- Collective action and bargaining with the Government are necessary as some NGOs may be weak and unable to make decisions. Leadership from donors / UN agencies and also at local level is vital to reduce the risk on speaking. There has been no collective effort bringing in NGOs, INGOs, UN and any other stakeholders. When are we going to stop providing humanitarian support? What is the UN stance on this?
- On the issue of a consultative approach to the approaches by the military, the consensus is that the only way forward

to change is by consolidation / consultation / a solidarity approach. This is a good point in time to rethink on humanitarian coordination of our work especially for national NGOs. The next version of the HCT or its successor must have more widespread representation from particularly the national NGOs. In the current HCT, district level humanitarian coordination is lacking at times.

- The LLRC report and what happens to old IDPs.
- Getting information is a challenge. Documentation has to move through the Government authorities, such as the Registrar General and government officials. The issue is how much can they do with only a certain number of people engaged?
- The ideal scenario is to have more regular reports on everyone's work drawing on every organisation's strengths. The challenge with the UNDP project is that it is entirely implemented through a line ministry very reluctant to engage with NGOs. We had the rare privilege of not having to go through the PTF for our work because it is very much a Government driven process with UNDP support. Within the structure of our project there is reluctance to get particularly national NGOs on board as it would jeopardize our privileged status of having access. There is need for some structural way of coordinating our work together. With activity and the justification for the IDP Working Group on protection reducing and the level of discussions getting less and less, what is the future? How can we share information?

Required action and ways forward

- The next few months up to March are critical with respect to displacement, development and a political solution for the North and East. Now is the time to put something on the table, because at least then the Government will have to respond. An approach at having international recognition is needed.
- In 2011 the JPA was packaged with a humanitarian push with elements of early recovery being mentioned and there was hope this would move forward. Yet there is much frustration with respect to the JPA for 2012. Are we just heading towards a document that can be signed off by all but with minimum impact? The JPA should be a document once signed, that we can stand by. Even though some early recovery projects have been coming up; justice work, capacity building in documentation, they have not been included. Recovery attempts in the North have been more *ad hoc* work and there's a get together and develop a framework.

Session Two: Different Displaced and Returning Populations

1. Muslim Returnees to the North

Sharmila Hanifa (Jaffna Civil Society for Equality)

“We speak of IDPs. If people have returned, why speak of IDPs?”

Status of Muslim IDPs

At present there has been no concept or policy formulated with regard to northern Muslims' return. The PTF is a problem with respect to psychosocial issues and even with PTF approval the UNHCR does not address Northern Muslims' issues. The biggest issue is that their return has not been acknowledged by the Government and those involved in resettlement. In December 2009 a collective return of Muslims took place with only rations provided to them. Since then, there have been no livelihood programmes or basic needs programs such as toilets, housing and other facilities which have been initiated.

Women

There have been a large number of women who have returned but their needs have not been considered. From the top government authority to the bottom level, it appears they do not want Northern Muslims to return. There is clear evidence to show there has been discrimination with the media having a significant role in creating this type of a problem.

Voting rights

The Muslim communities have been in displacement for 20 years in Puttalam and yet they were able to vote in their voting areas. With the new system in place they are neither able to vote in the areas they have returned. There was a separate administrative mechanism in Puttalam for the IDPs, however in Jaffna politicians say Muslim ministers will take care of their affairs not realizing they are from Jaffna.

Personal Account: Ms. Jueriya

Ms. Jueriya is from Mannar and has been displaced and living in Puttalam for 20 years which has caused huge issues. People, who don't want to go to their northern homes, are now pressurized indirectly by the Government to leave. Those who opt to stay in Puttalam are unable to get documents such as school certificates which create problems for children who are then born in Puttalam. There are no INGOs now and many of the NGOs are closing down which means support for the community is limited.

Voting registration is another issue as those who tried to register in Puttalam have been rejected. Those who really want to return are not returning due to fear they may not be able to vote in Mannar. Some are forced to register as Puttalam voters, which many refuse to do because it will mean they cannot return to Mannar. If they do register as Puttalam voters, they will lose their IDP status resulting in eligibility to compensation and any other assistance. This will also impact those who choose to settle in Puttalam.

There is a perception that Muslims in Puttalam think they will lose benefits if they go to Mannar. However this is the view of only 10% of Muslims with 90% of them longing to return. However they

may not want to return immediately due to lack of land and their children going to school in Puttalam.

The problem between Tamils and the Northern Muslims is huge. Earlier the problem for Northern Muslims was with the LTTE, but now we feel the Tamils do not speak to us from their heart. There is communal division which needs to be reconciled.

2. Vanni Returnees Policies and laws for the Vavuniya, Kilinochchi and Mullativu Districts:

N. Singham (Kurve Wustrow)

Current numbers and figures

Around 12,000 people reside in zone 0 and zone 1 which consists of 2,195 families. These families were to move to the Kombavil area however will continue to stay on for another six months. This issue remains that with welfare centers trying to close up how are we going to handle it? There are 5,320 host families in Vavuniya district with 17,000 members with an increase of Indian returnees. According to the UNHCR reports, during the last 6 months, 195 families with 480 members returned. Ex-combatants or people who were linked with the LTTE and those in rehabilitation camps returned to the places of origin or families but their numbers are not known.

Assistance given by agencies and the Government

With regards to those only returned and not resettled, none of the returnees met international or national level standards of their basic rights. Rs 25,000 worth of returnee packages were given by UNHCR

at the time of IDP's return. Some returnees received assistance but there are many others who may not get any assistance at all. There is a livelihood package and shelter assistance which is mostly covered by the INGOs and the UN. An update last week stated that on average 25% of returnees are living under a tarpaulin or temporary shelters, which is very dangerous during the monsoons. With respect to livelihoods, only 2/3 of the people are covered partially and 1/3 not covered at all. There is some organisational and government support through different programmes and interventions with respect to agricultural inputs, school assistance and some collective training such as vocational training.

Risks and challenges encountered

- Shelter is needed for 25% population living in temporary conditions. Permanent shelter is provided for only 30% of the population however they are not yet completed.
- Livelihood is still an issue for IDPs who have returned and also ex-combatants.
- Violence and organized crimes by certain groups linked to armed forces or other groups has become an issue with increased robberies taking place.
- There is restriction from the security forces even in conducting the International Hand-Washing day celebrations by children in Kanagarayankulam, and this was stopped. Restrictions have also been placed on Hindu and Christian temples, preventing them from using the bells during poojas and festive ceremonies. This was a special order given by security forces in the month of November

(this was the day former LTTE commemorate their heroes day)

What is being witnessed is the shrinking of humanitarian space resulting in each day going from bad to worse. There is also no official support or permission to support people who are in trauma and stress. This is the situation in a nutshell.

3. Displaced in the Eastern Province: The Forgotten IDPs

Ms. Sooriyakumari (OfERR)

New IDPs versus Old IDPs

There is no proper definition of IDPs, even by agencies they are referred to as old IDPs and new IDPs, differentiated and partitioned. However in the framework of recovery, one principle is equality or no partitioning. Presently, in the East, there are over 2,000 IDPs. Most are from Sampur's East and West areas, Kattaparichchan and Pudikudiirippu. We call them old IDPs and try and seek assistance but there are no funds for these people as old IDPs. Therefore, the definition of old and new IDPs poses a huge issue. People have been displaced even from Sinhala villages but the Government refers to them as refugee returnees, not IDP returnees. This terminology must be clearly defined and corrected.

Resettlement issues

- In Batticaloa 98% of displaced people have been resettled but what do we mean by resettled? We cannot visit people from Vakaraï or from Vavunathivu, who have been resettled

there. Whenever we do meet them, livelihood issues and concerns are often brought up. They would like to go back to the areas they lived earlier where they had some livelihood. Now even agriculture is a risk due to flooding. They are once again like IDPs even though they are resettled.

- When communities are resettled there needs to be parallel improvements to infrastructure such as schooling, transport and health to ensure better success. In the East, particularly in the rural areas of Batticaloa, there has been limited infrastructure improvement.
- For the IDPs in Trincomalee, their camps are in close proximity to their land, but they are unable to use it for agriculture. They do not receive any assistance from the Food and Agriculture Organisation because they live on private land. In Trincomalee, any assistance given has to be approved by the Divisional Secretariat and then it has to go to the Government Agent. Every month at the Divisional Secretariat meetings, assistance provided is critically questioned as to who approved it and if such assistance was in the work plan. Even if other ways of providing assistance can be found, the annual audit is then scrutinized and questioned for taxation and whether the expenditure has been scheduled and approved by the Government; if not 3% tax is charged.
- Many water and sanitation facilities have not been upgraded as agencies that were supplying water have now stopped.
- Education is also in a pathetic state. When the education department is approached regarding facilities, the response is that provincial approval is needed, however states the

governor is not willing to approve. This begs the questions of what is the future of these children?

- Sampur used to be the rice bowl of Trincomalee as it used to produce rice for the district and the surplus exported. Sampur fish also used to be sent directly to Colombo but now there is no deep sea fishing as they are unable to get the identity from the Navy.

There are some serious questions that need to be asked about the issues IDPs are facing:

- *Do these IDPs in the East have any forums to share their issues?*
- *How many of us go and meet them?*
- *How can we bring out their day-to-day survival issues?*

We speak of integration and sustainable development, but before that there needs to be peace. How can we link these without the people's participation?

4. High Security Zones and Displacement in the Jaffna Peninsula

Virgini Justin Anandam (Home for Human Rights)

HSZ in Jaffna, which the military has taken control of, has become a big issue which needs to be resolved. There is no gazette notification or no legal provision and therefore there is no legitimate rights for the military to occupy these areas. This is seen as militarization of the north in Sri Lanka. People have been battered for 30 long

years in the North and East and there is another challenge now in the North – militarization.

Issues of High Security Zones

- Militarization – Of all districts, Jaffna had the greatest concentration of HSZs. Approximately 16% of land was designated as a HSZ, allowing for minimal civilian access. After 30 years of war people are now forced to live with the military. People went through displacement, then they went through relocation and they have returned to *de facto* military occupation which is uncomfortable.
- There are environmental challenges and issues too due to HSZs. The limestone deposit in Kankasanthurai is being removed which is creating health and environmental hazards with water pollution as a result. Coastal areas are exposed to erosion with the sea water coming into the land. This has also seen a number of people go missing are from the coastal area.
- Female headed households have increased in numbers and are dependant on others for livelihood which is creating a major issue in the area. Women also feel there is no security for them.
- Due to land being occupied by the HSZs and the military, people have to move and live with relations that has also has led to cultural issues. People living in the Jaffna district used to give big dowries in the form of lands and/or houses but now this cannot be done due to the military occupation of

land. As a result, women are not been given in marriage and marriages are often delayed.

- Land Issues - In order to establish these HSZs vast amounts of private lands were expropriated by the army, mostly from individual owners. Approximately 16% of land was designated as a HSZ allowing for minimal civilian access in those places.
- The establishment of HSZs also resulted in the destruction of historical and religious monuments
- Displacement – Mass displacement occurred when these HSZ were first established and most of the people still have not been resettled by the Government. Over 26,000 people still have not able to return to their homes because HSZs remain operational. Many of those displaced are living with friends or relatives while others are still in the IDPs camps. People are unable to rebuild their houses or start business if they do not have access of their lands.
- Loss of employment - Maintaining a job is even more difficult for those people who were famers, since they relied on land (which is no longer in their possession). Fishermen's access to the sea has also been restricted.
- Security Issues - Many people have been officially resettled, does not mean that their lives are back to normal. Human security, especially the security of conflict affected women is a daily concern in Jaffna.

The situation has caused many people to be pressed into poverty with many community related issues arising. If people living in a

particular area are not willing to go, they should not be forced to go. There are many court orders given out for this but not honoured even though they are orders from the high courts.

Recommendations

- The Government should not force people to relocate.
- The Government should provide compensation for IDPs.
- Allow NGOs to operate more freely.
- Let IDPs pursue jobs that suit them.
- Greater freedom of movement should be permitted.
- Decreased militarization in IDP's land.
- Allow IDPs to file legal cases.
- Court orders on displacement cases should be implemented.

5. Discussion

The question and answer session took place with all speakers who presented in session two as well as general discussion from the audience.

Returnees from India

- There are two categories of Indian returnees, namely, spontaneous returnees and planned returnees by UNHCR. The latter are given Rs.20,000 on arrival. If they are a family of five they receive a further Rs.45,000 which is put into an account and then once they reach their destination and register, they will receive non-food relief items.
- There are no relief packages for spontaneous returnees who pay for their passage and come. If the Divisional Secretariat is good, they get absorbed into the list of returnees. The Grama Sevaka and the Divisional Secretariat try to register them for the WFP programme and they can receive assistance for six months. Most of them return for certain purposes such as land, documentation, families and school admissions but facilities such as shelter, livelihoods and other basics support is not provided. There is no IDP early recovery package for spontaneous IDPs as they are not on the priority list. OfERR is trying to work on an MoU where we can get the Government to develop an understanding on this issue.

Voter registration

- Voter registration in Jaffna is not possible due to new laws even though earlier they were able to vote for their places of origin. The last voter registration was done in 2008 but Northern Muslims registrations are taken up last and as a result many people do not get registered.
- In 2009 and 2010 when IDPs returned, there was a family card called 'A' card which became a big issue. People who went in 2009, immediately after the war, received this 'A' card. Right now in Jaffna there are 1,962 families with 8,116 individuals who have returned to Jaffna. Out of the 9,000 who are eligible to register only 1,200 people got applications to register.
- There is a new circular to say that people can vote in their area of origin irrespective of where they are living, even in foreign countries, but people are not aware of this and there is no awareness created on it.

Defining IDPs

- There is legislation in Sri Lanka to ensure adherence to the guiding principles on IDPs which all UN agencies, INGOs, NGOs, and Governments should abide by. People can seek protection where they wish, either in a camp or outside a camp as they certainly they have the same rights as any other person. The question is 'When do you cease being an IDP?' There seems to be the understanding that when you have returned, you cease to be an IDP and you use the term returnee which does not imply that you cease to be in a position of a resettled person. The international definition

is, you cease to be an IDP when you have restored the rights you lost when the crisis occurred. Therefore, when the Government declares there are no IDPs, it is not correct. “What are the conditions that exist on the ground for IDPs from Puttalam to return to Mannar?” It is not only basic facilities. It’s also their rights. There are international laws. Basic facilities and the right to return have to be recognized internationally.

Reconciliation and collaboration among IDPs and agencies

- The perception Tamils have is that the State has played a role in creating a rift between the two communities where Muslims were used as a buffer. Similarly, Sinhala communities returning to the North and East, at least some of them, are state sponsored and manipulated. The tension that exists can go back to a cycle of violence and, therefore, working towards long term reconciliation is needed.
- Caste prejudice / class / culture / religion – all these are issues we live with and as a civil society we are also trying to preserve our traditions, culture and religion. This is a huge problem even for organisations that claim to be non-racial. Even though we as CSOs say we work on human rights, the fundamental issue is that we have not dealt with it in our own communities. We need to come together irrespective of our differences. As NGO workers we need to consider how best to minimize such divisions and bring communities together. Then we become more powerful and we can empower people.

- International organisations also have a responsibility to bring these organisations together. It was also said that the UN, by working for specific communities as per their rules was creating divisions. Such rules create tension and turmoil among people.
- Divisions have been created by ethnic groups themselves. Therefore, tackle them in the areas that it occurs in. An example is the programme in Morawewa involving three ethnic groups that operated in spite of threats by Tamil groups. The programme ran during the war from 2006 to 2010 their products were brought to Trincomalee town by other ethnic groups. We never had any peace building programmes all we did was to bring all three ethnic groups together. Such activities like this should be promoted.
- One of the big challenges in this issue of assistance is that there is an acute level of polarisation, not just among government and communities. It is so embedded in civil society, INGOs, NGOs and religious authorities. That is something we have to tackle. Attitudes are such that both Indian returnees and Muslim returnees, when they go to claim assistance are told they were better off away from the conflict area. This is quite prevalent even within civil society.

Violence and sexual assault

- Rape cases are being reported in Kilinochchi and as well as other forms of violence however the Divisional Secretariat office has been instructed not to share any statistics. There are other forms of violence coming up and there is money allocated for development so what is our role in it?

- Part of the issue with sexual violence is that action cannot be taken on anecdotal evidence alone. The victim must be willing to cooperate and provide information as well as protection provided to the victim. Women are being exploited by those who wield power, whether it be the military or at times even INGOs. The situation has created a threat to the work of CSOs at a grassroots level as the Police had tried to collect information about the women who went to courts for a hearing.
- Sexual favors are also related to livelihood which makes the issue of livelihood and ensuring sustainability of income an increasing crucial issue to be tackled. Distributing material and giving other infrastructure assistance should lead now to livelihoods assistance.

Land and property issues

- Landlessness is an issue that concerns all IDPs even those in the Jaffna HSZs. When they return, how are they going to live? If they don't have land, what can they provide for their children? We now need to start looking at the nature of the problem and document the issue. We don't see a report at international level, but even at Sri Lankan level, we need to push harder at this.

Other

- A few people from the Menik Farm have complained to the HRC expressing their unhappiness and unwillingness to go to Kombavil. People need to decide to either to go or stay and they are undecided.

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- Another issue is foreign policy, humanitarian actors and human rights. It was mentioned that design of HSZs was done with the consent of India. Without talking about foreign policy or linking it with human rights, how are we going to tackle this as a forum here?

Session Three

Situation Analysis and Recommendations

Problems Faced

The following is a summary of the issues raised and problems faced in regards to the IDP situation in Sri Lanka.

- There needs to be clear recognition and acceptance of the status of IDPs and the state of displacement itself. What do we mean by resettlement? The lack of a clear policy also means that people are unable to access benefits. People don't want to return because they will lose the status of displaced and therefore cannot access benefits or assistance.
- Lack of coordination and collaboration between international and local organisations diminishing their power and the ability to bargain with state actors and the military
- Problem that exists on working with protection issues
- The lack of space to work on rights issues
- Militarization
- The existence of an extra-legal body like the PTF which does not have transparent strategies and changes from day to day.
- Lack of political will and the space to work on rights issues leading to the broader issue of breakdown of rule of law.

- Freedom of information; Right to information
- Role of the international humanitarian community – sometimes their engagements results in deeper issues such as power imbalance and local organisations' inability to get access to areas. The international community might not wish to collaborate with local organisations for fear of losing access.
- Vulnerable communities like women and the need for sustainable initiatives on livelihoods leading women to be vulnerable, exposed to exploitation and violence, rather than only tackling the outcomes like violence but also ensuring that they are economically empowered.

Ways Forward

From the information presented and the issues discussed the following recommendations were listed as action that can be taken now to address some of the IDP issues raised from the consultation.

- ***The National Human Rights Action Plan:***

There is going to be a lot of activity in the coming months until March. We know the National Human Rights Plan is being printed to be presented and supposedly has a section on IDPs. We have seen certain sections but we do not know what will be placed finally on the table. When the Action Plan is presented, civil societies have to engage, be ready to keep track and issue a statement. There are things that we can do.

- i. Those who participated in drafting the first version to issue a very strong statement if what they contributed is not reflected in the final version.
- ii. General civil society to make a collective statement. In such statements, numbers matter so the more organisations you can get on board, the better.
- iii. Engage with the Special Rapporteur on IDPs.

- ***The Kaelin Report 2008:***

A new Rapporteur has come in who has not engaged very much on Sri Lanka. Civil society could use this opportunity to take the recommendations of the Kaelin Report and ask for an update on each recommendation four years since its write up. This might be a way of alerting the new Rapporteur to Kaelin's report.

- ***Commitments made by Sri Lanka at the 2008 Universal Periodic Review on IDP and humanitarian issues:***

All of commitments in the Universal Periodic Review on IDP humanitarian issues are applicable today. Sri Lanka comes up for review in October 2012 on all these commitments made in 2008. This is an opportunity for local groups to engage in the process as they also can send in reports. We could consider this collectively or individually with the deadline being 30 March 2013.

Voluntary Pledges by Sri Lanka	Recommendations made by other states that were accepted by Sri Lanka
<p>Implementation of action plan for IDPs and conflict affected communities including host communities</p> <p>Comprehensive and uniform compensation policy for displaced and dispossessed</p> <p>Bill of rights to be drafted on the rights of IDPs having consulted all relevant stakeholders</p> <p>Sri Lanka to continue to protect and promote human rights and coordinate humanitarian assistance and facilitate the work of local and international agencies providing such assistance</p>	<p>Ensure access to humanitarian assistance for vulnerable populations</p> <p>Protect humanitarian workers</p> <p>Take measures to protect the rights of IDPs, including long term housing and property (housing and land) restitution policies that meet international standards</p> <p>Particular emphasis be given to increased information sharing as well as consultation efforts to reduce any sense of insecurity of the IDPs</p> <p>Ensure protection and security of IDP camps</p>

Lack of documentation:

- There was a meeting on ‘Women in Media’ primarily focusing on women and armed conflict. This was a follow up to the CEDAW report which the WMC submitted. They recognized the need for documentation and the current gap in this area thus requesting training to document effectively. They also wanted a central repository. They are in the process of developing it and speaking to various organisations to see how WMC could act as a coordinating organisation based in Colombo to try and improve documentation on women’s rights and issues. Organisations working in that area could follow up to see if they could become part of that process.

The audience also expressed their views and possible ways forward in addressing the IDP issues:

- ***Foreign Policy:*** One way is to use SAHR which is a network of South Asian actors. There are many activists who come from India, lawyers who practice in courts and those who are very active in society and engage regularly in the south block. Try to get some members from India involved in some of the crucial or critical issues.
- ***Advocacy and Awareness Raising:*** Find a way to get the media and political engagements on these issues. It could be a parliamentary speaker. How do you get international pressure put on the Government to respond? The Human Rights Action Plan – When is it going to be given to the people? How do we get people to respond domestically? Get the media involved.

Regional network - the National Thermal Power Corporation of India is going to sign the agreement for constructing the thermal power plant in Sampur. There must be a consultation process and those affected could have compensation. There is a possibility of forwarding a case in India.

Bring things to the attention of the international community as to why they are not doing anything. The HRC does not need to bring things to their notice.

There is space for the international community like the UN to look at issues that are very well known like Mullikulam or the Sampur issue. One way to take complaints to them is to ask what they have been doing about a certain issue that

our civil society has been facing. Challenge them on the basis of their mandate.

One of the institutions in which we have more leverage is the International HRC which is dragging their feet on some of the issues. For example, people are being forced into Kombavil area. We need to push the UN and the international organisations to get visibility for these issues.

- ***Local integration:*** This is important for Puttalam people. Why is it that people do not want to register or do not wish to go back to the North? This may not be the best choice for them. Do they lose compensation if they register in Puttalam and lose their IDP status? There may be other issues therefore local integration has to be focused.
- ***Indian housing scheme in Mannar:*** Relocation in some form is related to building housing schemes. Land is taken over by the military and India is building houses in the relocation areas. Indirectly it means if you fight for your land, you will not get a house. As a result, people are forced to resettle in a smaller area because they are getting a house. Systematic lobbying is needed with the Indian Government and other major players.
- ***Different Strategy:*** The UN agencies, like the UNHCR, UNHRC and Human Rights advisor, use a non-confrontational strategic way to go about their work, such as “the partner has said this to us. What was the general work going on in this area regarding this issue?” This is a good way to look for an opening in a very closed environment.

- ***Nation Action Plan:*** The 2nd version came out in November 2010. IDPs were not included in the seven active areas. It may be that the committee members were not sent the full version but this needs to be looked into and confirmed.
- ***Activists:*** The frustration and concern I have is the understanding especially by Indian activists on Sri Lanka. There is an ethnically based emotion particularly among activists in Tamil Nadu which may be also true with other activists. They still think of Sinhala against Tamils with no consideration for the Muslim community. Their excitement is about Channel 4 and the last phase of the conflict as if nothing ever happened before May 2009. They speak of only the 2009 IDPs, not the IDPs before that. The Tamil diaspora that was very interested when the war broke out is not very interested in IDPs now or about those who were displaced.
- ***Different situation Similar issues:*** Speaking of development displaced in the South. There are process issues / structural issues on how the Government treats the Southern Sinhala community. The scale of the issue may be different. This is to alert you to the process and the structure of how the Government bureaucracy understands issues. Hundreds of families from the Hambantota port area, including Muslim families have been dumped in another area as the State wants to develop a new administrative centre. Most of them are still living in incomplete houses. People who have owned one or two acres of land are given Rs 500,000 to build a house on 20 perches of land, which is not sufficient to build a house. Imagine the psychological state of these people in moving to smaller areas. Their livelihoods are affected as they had lived along the coast. Agricultural State lands of

about 1 ½ acres given to them have been abandoned due to logistical issues. They are also faced with wild elephant problems. Even after three years, they have no land deeds. There is lack of information and consultation. No one knows what is happening and even the politicians have no answers. The Divisional Secretariat says talk to the UDA or that the decision has been made in Colombo. While we look at minority issues, we need to focus on these issues too.

Annexure

Agenda

9.00 – 9.05	Introduction to SAHR and aims of the IDP project Shiranthi Jayatilaka, Executive Director, SAHR
Session One: Context Setting (Chair: B. Shanthakumar)	
9.05 – 9.20	Presentation of SAHR background paper on IDPs Mirak Raheem, CPA
9.20 – 9.30	Providing humanitarian assistance within the context of shrinking humanitarian space Greg Balke, UNHCR
9.30 – 9.40	From humanitarian assistance to early recovery: challenges and way forward Eigil Kvernmo, Norwegian Refugee Council & Zoe Keeler, UNDP
9.40 – 10.25	Discussion
10.25 – 10.40	Tea
Session Two: Different displaced and returning populations (Chair: Ms. Cynthia Veliko)	
10.40 – 10.50	Muslim returnees to the North Sharmila Hanifa, Jaffna Civil Society for Equality
10.50 – 11.00	Vanni returnees N. Singham, Kurve Wustrow
11.00 – 11.10	Displace in the Eastern Province, the Forgotten IDPs Sooriyakumari, OfERR

11.10 – 11.20	High Security Zones and displacement in the Jaffna Peninsula Sherine Xavier, Home for Human Rights
11.20 – 12.20	Discussion
Session Three: Strategies, way forward and expected challenges (Chair: Ambika Satkunanathan)	
12.20 – 13.20	Better collaboration between local and international humanitarian organisations Possible role for regional human rights networks such as SAHR Advocacy strategies
Lunch	

Frequently Asked Questions About Internal Displacement

[Available at <http://www.idpguidingprinciples.org/>]

Who is an internally displaced person ('IDP')?

IDPs are described in the Guiding Principles on Internal Displacement (Introduction) as: “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.” The involuntary nature of their departure and the fact that they remain in their own country are the two main elements determining who is an internally displaced person.

What is the difference between an IDP and a refugee?

According to the 1951 Convention on the Status of Refugees, a “refugee” is a person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” (Article 1, A(2))

A crucial requirement to be considered a “refugee” is crossing an international border. Persons forcibly displaced from their

homes who cannot or choose not to cross a border, therefore, are not considered refugees even if they share many of the same circumstances and challenges as those who are.

In addition, as the definition in the Convention on the Status of Refugees highlights, *refugees* are forcibly displaced as a result of persecution. Such persecution may be associated, for example, with ethnic or religious conflict. While *internally displaced persons* may flee for the same reasons, they, in contrast may also be displaced as a result of generalized violence or natural or human-made disasters and even development projects.

Unlike refugees, internally displaced persons do not need to undergo any process to determine their legal status as an internally displaced person. The term ‘internally displaced person’ is descriptive, reflecting the fact of their displacement and that they have not crossed an international border. Refugees, in contrast, have a special status in international law with rights specific to this status. In general, their entitlement to access these specific rights is based on a formal process to determine their status as a refugee.

Finally, the Convention on the Status of Refugees provides for individuals who meet particular characteristics to be excluded from the status of refugee. While the notion of ‘exclusion’ is a concept that exists in the field of international refugee law, it does not exist in international human rights law and not in relation to IDPs.

What rights do IDPs have?

While no international convention on the rights of internally displaced persons exists, they enjoy the same human rights as all other people within their own country of citizenship or residence.

These rights may be articulated in the domestic constitution and legislation as well as international human rights instruments and customary law. In situations of armed conflict, moreover, they enjoy the same rights as other civilians to the various protections provided by international humanitarian law.

The Guiding Principles on Internal Displacement restate in explicit terms the rights of IDPs that are implicit in the more general guarantees of existing international human rights and humanitarian law relevant to the internally displaced. The Principles identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

What do the Guiding Principles say?

Arbitrary displacement is prohibited according to the Guiding Principles (Principles 5-7). Once persons have been displaced, they retain a broad range of economic, social, cultural, civil and political rights, including the right to basic humanitarian assistance (such as food, medicine, shelter), the right to be protected from physical violence, the right to education, freedom of movement and residence, political rights such as the right to participate in public affairs and the right to participate in economic activities (Principles 10-23). Displaced persons also have the right to assistance from competent authorities in voluntary, dignified and safe return, resettlement or local integration, including help in recovering lost property and possessions. When restitution is not possible, the Guiding Principles call for compensation or just reparation (Principles 28-30).

When were the Guiding Principles adopted?

The Guiding Principles are a document prepared by experts. They were presented by the Representative of the Secretary-General on internally displaced persons to the UN Commission on Human Rights at its fifty-fourth session in 1998 ([E/CN.4/1998/53/Add.2](#)) as an addendum to his annual report ([E/CN.4/1998/53](#)). Since then, the heads of state and Governments assembled at the World Summit in New York in September 2005 have recognized the Guiding Principles as “an important international framework for the protection of internally displaced persons.” (G.A. Res. 60/L.1, ¶132, U.N. Doc. [A/60/L.1](#))

How were the Guiding Principles developed?

Led by the Representative of the UN Secretary-General on internally displaced persons, Francis Deng, the Guiding Principles were developed by a group of independent experts from all regions. Principal among the experts were Walter Kälin of the Faculty of Law at the University of Bern (Bern, Switzerland), Manfred Nowak of the Ludwig Boltzmann Institute of Human Rights (Vienna, Austria), and Robert Goldman of the Washington College of Law at American University (Washington DC, USA).

The first step in the process of developing the Guiding Principles was the preparation of a Compilation and Analysis of Legal Norms applicable to internal displacement. This compilation were presented to the Commission on Human Rights in 1996 ([E/CN.4/1996/52/Add.2](#)) with a supplement in 1998 ([E/CN.4/1998/53/Add.1](#)). A conclusion made by the experts in the Compilation and Analysis was that a restatement of the law would be needed to make it more

relevant to IDPs and to clarify gaps and grey areas. The Guiding Principles were developed in response to this conclusion.

A series of meetings was organized to bring together a wide range of experts from regional and international organisations, humanitarian and human rights NGOs, women's and children's advocacy groups, legal associations, and research institutions. It was at a conference of fifty international experts in Vienna in 1998, hosted by the Government of Austria, that the Guiding Principles were finalized.

What is the legal basis for the Guiding Principles?

In 1996, a study conducted by the Representative and a team of independent legal experts found that while existing human rights and humanitarian law provides substantial coverage for the internally displaced, there are significant areas in which it fails to provide an adequate basis for their protection and assistance (E/CN.4/1996/52/Add.2). The Guiding Principles were then developed, reflecting existing norms, but also seeking to clarify the grey areas and fill in the gaps identified in the earlier study. The legal basis for each of the principles contained in the Guiding Principles is set out in the Annotations to the Guiding Principles, written by Walter Kälin.

Are the Guiding Principles binding?

The Guiding Principles on Internal Displacement is as such not a binding instrument that could be ratified by States. However, the Guiding Principles reflect and are consistent with international human rights law and international humanitarian law, as set out in the Annotations to the Guiding Principles. To the extent that States have ratified the human rights and humanitarian instruments

upon which the Guiding Principles are based, they are bound by the corresponding principles. States also can opt, as some have done, to make them binding by incorporating them into their domestic law.

For whom are the Guiding Principles Useful?

Paragraph 3 of the Introduction to the Guiding Principles on Internal Displacement states that the Principles provide guidance to: ‘(a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate; (b) States when faced with the phenomenon of internal displacement; (c) All other authorities, groups and persons in their relations with internally displaced persons; and (d) InterGovernmental and non-Governmental organisations when addressing internal displacement.’”

For example, the Principles can be used in the development of a national legal or policy framework for the protection of IDPs. They can be used as an advocacy tool to inform national authorities of their general and specific obligations towards the internally displaced, to frame assessment and monitoring activities, as a tool to train all relevant actors in the rights of IDPs and the role of different actors in promoting and protecting those rights. The Guiding Principles can also be used to identify the various sectors and vulnerable groups about which specific data should be collected in order to ensure that targeted and effective assistance is provided.

Who has responsibility to protect and assist internally displaced persons?

National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction. (see Guiding Principle 3(1))

International humanitarian organisations and other appropriate actors have the right, and many argue the responsibility, to offer protection of and assistance to the internally displaced where their state is unwilling or unable to. Consent to such an offer should not be arbitrarily withheld by the state, and all authorities concerned should grant and facilitate the free passage of humanitarian assistance and facilitate unimpeded access to the internally displaced. (see Guiding Principle 25)

What is the mandate of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons?

The Representative of the UN Secretary-General on the human rights of internally displaced persons ('RSG'), Walter Kälin, was appointed at the request of the Commission on Human Rights to address the human rights issues of internally displaced persons. According to the Commission on Human Rights resolution establishing the position of RSG (E/CN.4/RES/2004/55), the mandate of the Representative is: (i) to engage in dialogue and advocacy with Governments and other actors concerning the rights of IDPs, (ii) to strengthen the international response to internal displacement, and (iii) to mainstream human rights throughout the UN system. The activities of the Representative include promoting and disseminating the rights articulated in the Guiding Principles on Internal Displacement, undertaking country visits, engaging Governments and other actors with regard to specific situations of internal displacement, sponsoring national and regional seminars, engaging UN agencies and departments, undertaking research on issues of IDPs' human rights, and reporting annually to the Human Rights Council and General Assembly.

Which UN agency is responsible for protecting the rights of IDPs?

No specific agency is exclusively responsible for protection and assistance of IDPs. However, according to the 'cluster approach' adopted by the Inter-Agency Standing Committee, the following agencies have been designated responsibility to coordinate the response in specific situations:

- in situations of *complex emergencies* - United Nations High Commissioner for Refugees ('UNHCR') as cluster lead for protection, emergency shelter and camp management and coordination and United Nations Development Programme ('UNDP') for early recovery;
- in *natural disaster situations* - camp coordination and camp management are the responsibility of the International Organisation for Migration ('IOM') and emergency shelter rests with the International Federation of the Red Cross ('IFRC'). Responsibility for 'protection' in disaster settings and in other situations requiring a protection response is to be decided through consultation among the three UN protection-mandated agencies (UNHCR, OHCHR and UNICEF) on a case-by-case basis.

What are the regional mechanisms for the protection of the rights of IDPs?

IDPs are protected by regional human rights conventions where they exist. This protection is particularly relevant for IDPs in Africa, Latin America and Europe, where their rights can be enforced in regional human rights courts.

Africa

The African Charter on Human and Peoples' Rights 1981 sets out general human rights principles applicable to all individuals, including IDPs. Additional instruments set out, for example, the obligations of the State towards women and children, including specifically in situations of armed conflict.

The African Union is in the process of developing a regional protocol on internal displacement. At the sub-regional level, instruments relating specifically to internal displacement exist, including the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and Model Law 2006 and the Protocol on the Property Rights of Returning Persons 2006, both of which are legally binding on any country that ratifies them.

Individuals, including IDPs, can submit individual applications to the African Commission which acts as an entry-point for the African Court on Human and Peoples' Rights. The African Commission has a Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa whose mandate includes: undertaking studies and fact-finding missions; engaging in dialogue with states and others; and developing strategies to better protect the rights of these groups.

Europe

The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and its 14 Protocols recognize general human rights, many of which have particular relevance for IDPs (e.g. right to property). IDPs have brought cases of alleged violations of the Convention to the European Court of Human Rights.

Recommendation (2006) 6 on internally displaced persons adopted by the Committee of Ministers of the Council of Europe, a regional human rights and democratisation organisation, recognises the application of the Guiding Principles and other relevant human rights and humanitarian instruments to all IDPs and highlights the application of particular human rights principles to situations of displacement in Europe.

Americas

The American Convention on Human Rights 1969 sets out general human rights obligations. The bodies that monitor implementation of the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. IDPs can submit individual applications to the Inter-American Commission, which, like its African counterpart, acts as an entry-point for the Inter-American Court and can make binding decisions. The Inter-American Human Rights Commission had a Special Rapporteur on displaced persons until 2004.

OAS resolution 2229 of 2006 calls on states to address the causes of displacement and, in the event that displacement occurs, to commit to providing IDPs with protection and assistance in accordance with the Guiding Principles. The resolution also urges states to consider adopting and implementing the Guiding Principles in their domestic law.

When does displacement end?

There is no absolute consensus as to when to stop considering someone an internally displaced person. However, in an effort to help address this question, the Inter-Agency Standing Committee has identified a framework by which to determine when displacement has ended (WO/0703/2072/7). This framework specifies both the processes through which durable solutions to displacement are found and the actual conditions of the returnees/resettled persons.

To summarize the benchmarks, when determining whether a durable solution to displacement has been reached it is important to consider whether:

1. the national authorities have taken appropriate measures to consult with IDPs and ensure their full participation in decisions regarding return or resettlement;
2. the national authorities have established the conditions conducive to safe and dignified voluntary return or resettlement;
3. formerly displaced persons are able to assert their rights on the same basis as other nationals;
4. international observers are able to provide assistance and monitor the situation of the formerly displaced; and ultimately
5. the durable solution is sustainable.

SOURCE: <http://www.idpguidingprinciples.org/>

15. (1) The exercise and operation of the fundamental rights declared and recognized by Articles 13 (5) and 13 (6) shall be subject only to such restrictions as may be prescribed by law in the interests of national security. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security. Article 15 (1), The Constitution of the Democratic Socialist Republic of Sri Lanka 1978

SAHR is a democratic regional network with a large membership base of people committed to addressing human rights issues at both national and regional levels. SAHR seeks to contribute to the realization of South Asian peoples' right to participatory democracy, good governance and justice by strengthening regional response, including regional instruments, monitoring human rights violations, reviewing laws, policies and practices that have an adverse impact on human rights and conducting campaigns and programmes on issues of major concern in the region.

SAHR comprises both institutional and individual members. An elected bureau works as the organisation's executive body while the membership committee oversees enrolment of members. The SAHR Chairperson and Co-Chairperson are Ms. Hina Jilani of Pakistan and Dr. Nimalka Fernando of Sri Lanka respectively. The Secretariat is located in Colombo, Sri Lanka. Chapter offices are located in Colombo, Dhaka, Kathmandu, Lahore and New Delhi.

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