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Internally Displaced Persons in Nepal

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Background

Nepal has been in an internal armed conflict since 1996 between the Communist Party of Nepal (Maoist) and the government of Nepal. The internal armed conflict started in the remote hill district, Rolpa and has rapidly reached nearly all of Nepal's 75 districts. The Informal Sector Service Centre (INSEC) reports that 10,985 people have lost their lives till date.¹ This figure includes agricultural workers, teachers, political workers, police personnel, students, civil servants, social workers, business persons, health workers, army personnel, journalists, law professionals, prisoners and other civilians. In addition, the conflict has heightened human rights abuses, economic dislocation and displacement of thousands of people caught between the Maoists and the security forces.

The UN Guiding Principles define Internally Displaced Persons (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 recognized state border.²

Situation of Internally Displaced Persons

In the past, people have been internally displaced in Nepal due to development, economic or natural disasters. Since 1996, armed

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conflict between the state forces and the non-state party, i.e., the Communist Party of Nepal (Maoist) fighting a "People's War", has become a prime cause of internal displacement in Nepal. 'Operation Romeo', launched by the state in 1995 in Rolpa district, forced about 6,000 people to leave their homes in search of security. The highest concentration of IDPs is believed to be in the Dang Valley and other neighbouring districts. With the escalation of the conflict in the country, especially after the imposition of a state of emergency in November 2001, the number of internally displaced people has increased dramatically from anywhere between 100,000 to 500,000.³ The likely number of IDPs is estimated to be around 100,000 to 150,000.

Among the IDPs a majority are known to be individuals whose political ideology and opinion are different from that of the Maoist. Hence, significant share of IDPs are cadres of mainstream political parties such as United Marxist-Leninists (UML), Nepali Congress (NC) and Rastriya Prajatantra Party (RPP) whose individual vulnerable situations have caused them to leave their rural homes. Additionally, fairly large numbers of civilians are being displaced due to fear of being forcibly recruited into the Maoist cause under their 'one person from each household' policy in place in some districts. This policy requires that one person from each household has to join the Maoist armed forces. If this policy is not adhered to, families are tortured and evicted. Other factors that contribute to civilians leaving their homes are: kidnapping of a family member; 'unreasonable' donations; harassment by both parties; fear of being accused as a spy by either side; destruction of homes and property; confiscation of land by the Maoist; looting; the Maoist 'one son policy'; and whole timer policy to join the Maoist cadres.

While the conflict has been on-going for the past nine years, the issue of IDPs and their status and situation has been recognized only in recent years.⁴ While some NGOs, INGOs and bilateral organizations have conducted research on the situation of IDPs, most of the work has remained at a superficial level and the true number of IDPs has continued to remain difficult to ascertain. This can be attributed to various factors, including the difficult topography of the country; the porous border between India and

Nepal; the lack of reliable registration mechanisms; the lack of any systematic monitoring or tracking of population movements by national authorities or by international organizations; IDPs moving in or merging with their families and friends in rural areas or the capital; fear of retribution by the Maoists and the military; and the government's unwillingness to acknowledge displacement due to its military actions.

These are the foremost reasons for the continuing difficulty and failure in determining accurately the actual numbers of IDPs in Nepal. Examination of data from various sources provides an overview of the scope of displacement. Depending upon the source, estimates vary considerably from 100,000 to 500,000.⁵ The SNV/INF (Netherlands Development Organisation/International Nepal Fellowship) research indicates that IDPs are leaving due to pressure and violence from both sides in the conflict. Sometimes men moved as a result of pressure from their families who were concerned for their safety. Sometimes the decision was instant, as in the case of threats or killings. Sometimes it was planned ahead and carried out in a manner to avoid suspicion.⁶ Ms. Ati Budha of village Jumla said:

'For the last eight years, we did whatever they asked to do (referring to the Maoist). We gave them our money, cattle, food grains and shelter. Now they are saying that help was nothing and are asking for our body, our life. They want to involve us in the war physically. We came here with the hope that the situation will improve and we will be able to go back.'⁷

There are a number of other reasons why people are leaving their homes, including the destruction of basic service infrastructure such as education and health posts which the Maoists have widely targeted, and severe food shortages in some districts due to the transport blockades periodically imposed by the Maoists and lastly, the government policy of cutting the food supply to 'known' Maoist affected areas. This has all contributed to high unemployment, disruption in businesses, and general breakdown of law and order and the resulting lack of security.

Resettlement and Rehabilitation

Rehabilitation programmes for IDPs are challenging under any condition. But when there are no appropriate or realistic classification and registration mechanism in place, compounded by the fear of retribution from both the warring sides, rehabilitation programmes face formidable challenges. The government appears to lack direction in dealing with the issue of IDPs. Its various organs seem to be uncertain on their responsibilities and/or they lack cohesion, leading to a denial of the issue or of the problem itself. The government did initiate rehabilitation and compensation programmes, but they have been mostly ad-hoc and haphazard, with little long term planning.

Under the Ganesh Man Singh Peace Campaign, the government provided NRs 100 per day (US\$1.30) per head per family (maximum of 3 members per family) of IDPs. The funds for this programme ran out in June 2002. Information obtained seems to suggest that IDPs with political connections have been able to benefit from this programme. Families displaced by the security forces are denied of this benefit since the eligibility is defined as a person who has been displaced due to the murder of a family member by the Maoist.

Furthermore, many IDPs are unaware of government assistance. Even if the IDPs were aware of rehabilitation programmes, the process of verifying their status required them to go back to their original homes to be certified. This was often very time consuming and entailed dangers such as the fear of retribution from either side. This was another major reason why IDPs remained silent and hidden.

The Integrated Security Development Programme, where communities participate together with security forces to work on development works, was set up in seven Maoist-affected districts. The government considers this programme to be potentially beneficial to IDPs, but to what extent both the military and IDPs collaborate and to what extent it has been implemented is unclear.

The Immediate Package Programme for displaced persons attempted to integrate the roles of government departments. The Ministry of Women and Social Welfare gave interest-free loans of

NRs. 5000 available for 200 women and 1000 orphans from 18 affected districts. They also provided NRs. 1000 per child per month for food, shelter and education, which the IDPs claimed they did not receive. The Ministry of Labour is providing skills training to 25 women from affected areas and the Ministry of Health plans to coordinate a health and education programmes involving local NGOs.

The above information suggests that the government's response has been limited and selective. Even where IDPs have been recognized under the restrictive eligibility criteria, they report of not having received due compensation. There appears to be no long-term implementation of a holistic approach in working with the IDP problem.

Ten new governments have come into power since the conflict started. Each new government has left its imprint on the rehabilitation programme. On the other hand, donor organizations have preferred to assist in places where displacement has occurred rather than focus directly on the IDPs themselves in order not to further marginalize already marginalized groups/regions such as Dalits or economically disadvantaged groups.

The worst affected by the displacement are women and children who face particularly difficult and unsafe conditions. Many of the displaced children have no access to education. Many are forced to live in the streets, temple grounds, or find work as domestic help or other forms of labour. In such circumstances, they are easy targets for sexual and other forms of exploitation. Many also end up in orphanages or institutions, which are poorly operated with no national minimum standards to regulate these institutions.

The effect of the conflict on women has been two-fold. The situation of women needs to be understood in the context of women's status in Nepal, which is a conservative and patriarchal society, where women are still perceived as second class citizens by the judiciary and society at large. As the men fall prey to killings, or leave for safer places, more and more female headed households are emerging. Women are having to go outside the confines of their homes seeking employment for their survival. With little or no education and meagre skills, these already vulnerable women with

limited rights are forced to enter hostile environments in their desperation for work to support their families. Many face sexual harassment, rape and violence.

In conclusion, it appears that not only have rehabilitation programmes been *ad-hoc*, haphazard and limited, the beneficiaries of rehabilitation programmes have mostly been those with political connections.

Problems with Registration

Till date, no comprehensive and systematic registration system for IDPs has been instituted. The district offices have taken some initiatives, but these have not been as successful as can be hoped. To be classified as an IDP, one has to return to the place of origin to be registered as an IDP at the office of the Chief District Officer. This policy is fraught with risks, not only due to financial reasons, but also because it puts people at further risk of being suspected of being a 'spy' for the security forces and/or of retribution from any one of the warring sides. This makes it difficult for IDPs to access the rehabilitation programmes. The registration of IDPs becomes even more difficult when many IDPs choose to hide or live with relatives or friends and many more cross the porous border into India to escape prosecution or to find employment.

Thus, unless a systematic and comprehensive registering mechanism is in place and until monitoring of IDPs crossing the border between India and Nepal is undertaken, the number of IDPs is hard to determine and implement relevant and effective rehabilitation programmes for them.

Legal Mechanism for Internally Displaced Persons

Legally, IDPs are recognized under the 1990 Constitution of Nepal and the 1995 Civil Acts Law, but these provisions apply to IDPs as a result of developmental projects, economic opportunities and natural or man-made calamities. The constitution is silent on the legal rights of conflict induced IDPs. If refugees have rights in another country, then IDPs should be entitled to no less rights than their fellow citizens. There is no disagreement that IDPs in Nepal are Nepali citizens. Hence, it is the state's obligation and duty to treat IDPs not only as any other ordinary citizens under its

jurisdiction, but also to provide more sensitive and comprehensive protective mechanism due to their vulnerable situation.

IDPs, as "citizens", should be entitled to enjoy all the fundamental rights guaranteed under Part III of the Constitution of Nepal as other citizens in addition to the right to equal protection and legal treatment against the violation of such rights. Right to equality and equal protection before the law as provisioned by Article 11 and the prohibiting statement of Article 11(3)⁸ entitle IDPs to special protection. 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. Furthermore, IDPs also have the right to continue their education in the places where they have been settled. Further they have the right to follow their traditional culture and religion, right against exploitation, right against forceful expulsion from the country, right to privacy, and right to residence. The obligation to protect these rights and creating conducive environment to enjoy these rights are responsibilities of the government, according to the Constitution.

Various other laws protect right to equality and justice as well. Major among them are the Civil Rights Act of 1955, which provides Nepali citizens with the right to equality including some other rights related to fundamental human rights. Though right to equality and equal protection are recognized under Nepali laws, they are not coherently organized. Even though there are specific provisions that are available for the protection of IDPs, there is no legal mechanism that can pressure the government to respect and protect the rights of all IDPs in order to relieve them from their daily suffering caused by displacement and to ensure their rehabilitation and resettlement.

International Human Rights Treaties

The government of Nepal is primarily responsible for addressing the issues of IDPs in the country. As a member of the United Nations and a party to all important UN international treaties⁹ and human rights mechanisms, Nepal is obligated to protect the fundamental rights of IDPs. Furthermore, the Nepal Treaty Act of 1990 states that where there are inconsistencies between Nepal's law and the ratified international human right treaties, the treaties

will take precedence. According to the UN Guiding Principles on Internally Displaced Persons 1998, the government of Nepal is also obligated in solving the problems faced by IDPs, to protect their rights and provide basic necessities (i.e. emergency rescue and emergency aid including shelter).

Though these Principles are not legally binding on Nepal, they are duly recognized by the international community and are considered to be a customary international law. Furthermore, they incorporate the principles of binding international human rights treaties, many of which Nepal has ratified. The Principles have given a very precise and internationally accepted definition of internally displaced persons.¹⁰

The Geneva Convention states that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed outside 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.

The International Covenant on Economic, Social and Cultural Rights¹¹ recognizes the right of an IDP to social security including adequate standard of living for himself and his family inclusive of food, clothing, and housing. Furthermore, it specifically mentions right to work, health, education and to take part in cultural life. The International Covenant on Civil and Political Rights¹² likewise recognizes the rights of IDPs to inherent right to life and no one shall be arbitrarily deprived of his life; and the right to liberty of movement and freedom to choose his residence. The Convention on the Rights of the Child¹³ recognizes the rights of IDP children to special protection.

Strategic and Special Provisions

The rehabilitation of IDPs, reunion with their family members, return to their original homes, and provision of compensation for lost properties are the responsibility of the state. Although there is no legal institutional arrangement or coherent policy on resettlement of conflict-induced IDPs, it is the responsibility of the government to make suitable long-term provisions for the

displaced and to resettle them in a new environment or send them back to their place of origin. It is obvious that there is lack of a mechanism to address IDPs-related issues in ordinary life or specific situations induced by conflict.

To some extent, the government has recognized IDPs but only those who are displaced as a result of Maoist activities. IDPs as a result of military actions have not been recognized till date by the government. This means that a portion of the IDPs displaced due to military actions are not eligible for accessing rehabilitation programmes.

Until a more comprehensive law can be created and passed by the state, policies need to be developed that recognize the rights of all citizens including those displaced due to conflict and as a result of the activities of either of the warring parties. Furthermore, policies on humanitarian assistance and resettlement need to be systemized, transparent and accountable and reach out to *all* IDPs. The need for systematic registration is urgent to enable all IDPs to access programmes for basic services such as education, health, shelter, safe drinking water and sanitation. For registration to be achievable, the state needs to work with the international community by securing their environment and protecting and recognising all IDPs, including state-induced IDPs. The civil society and international community also need to explore the possibility of negotiating the return and resettlement of IDPs with the Maoists.

Post February 2005

After the February 1, 2005 takeover by the King, the media has been highlighting the cause of the IDPs more frequently. But the focus is still on the Maoist-induced displacement. This has also coincided with the Special Rapporteur's visit to Nepal recently, which may have resulted in the INGOs and international development agencies shifting their attention to the issue. However, strategies on how to work with IDPs have not been developed or explored comprehensively. The issue of security and safety of reintegrating IDPs has not been given its due emphasis. In addition, pressure has not been enforced on the state to recognize the state-induced IDPs.

Since the takeover, the Association of Sufferers of Maoists Atrocities in Nepal (ASMAN),¹⁴ has increasingly raised its voice to draw attention to the condition of its members by organizing various advocacy campaigns for assistance; networking with NGOs, government and international organizations; and holding sit-in programmes.¹⁵

The representative of the UN Secretary-General on Human Rights, Walter Kalin made his ten-day visit to Nepal in April 2005. He called for greater assistance for thousands of internally displaced persons in Nepal whose suffering remains largely overshadowed by the nine-year-old Maoist insurgency. He said that many of the displaced people needed protection and assistance, describing the caseload as "overlooked and neglected"¹⁶. The UN official has also called on the international community in Nepal to develop a comprehensive strategy to respond to the human rights and humanitarian needs of the IDPs and to find long-term solutions for the IDPs in Nepal. But the government there is yet to formulate any policy or initiate programme to address the IDP situation after February 1, 2005.

Conclusion

The situation of IDPs is deteriorating by the day. There are limited resources and humanitarian base for IDPs. They do not have access to basic needs such as education, health and sanitation. There is dire need for psycho-social support for them. There is an urgent need to have in place emergency humanitarian assistance with particular reference to women and children. Attention also needs to shift to longer-term impacts and needs of IDPs.

There is no government will to resettle the conflict induced IDPs. As a result, most of them are living on the roads and river banks. This situation exposes women and children to prostitution and trafficking. Due to lack of a resettlement policy, there is crisis of identity among them.

The need to work with IDPs is being recognized, but NGOs and international community are still deliberating on how to go about it. Lack of their sense of security needs to be addressed seriously before starting any long-term rehabilitation. Neither the state nor the Maoists have given any indication to address this

issue seriously. The civil society, on the other hand, has not been working together to create a single strong voice for demanding recognition of and support to the IDPs. The problem is further exasperated by the topography of the country, extreme poverty and political uncertainty.

Notes and References

¹ INSEC (2005), www.insec.org.np, visited on 13 January 2005.

² UN Guiding Principles on Internal Displacement, paragraph 2 of Introduction.

³ The true number of IDPs is extremely difficult to ascertain. The number varies depending on which document or organization you refer to. There are many problems in getting information on the true number and situation of IDPs, which are discussed further in the paper.

⁴ Since work on IDPs is very limited and in most cases *ad hoc*, the issue has started gaining prominence or recognition from around 2003 only.

⁵ Norwegian Refugee Council/Global IDP Project, September 2004, *Profile of Internal Displacement: Nepal*, Geneva: <http://www.idpproject.org>.

⁶ Norwegian Refugee Council/Global IDP Project, September 2004, *Profile of Internal Displacement: Nepal*, Geneva: <http://www.idpproject.org>, p. 31.

⁷ Taken from K. Nepal, 31 March 2005, *Current Status/Situation of Internally Displaced Women*, paper presented at FWLD and UN, Workshop on the Impact of the Conflict on Protection of Women in Conflict', 31 March 2005, Lalitpur.

⁸ Article 11(3) guarantees that the state shall not discriminate citizens among citizens on the grounds of sex, religion...

⁹ Nepal is party to over 18 international human rights instruments. The main ones being ICCPR, ICESCR, CEDAW, CRC, CERD and CAT.

¹⁰ Please refer to introduction for definition of IDPs under the UN Guiding Principles.

¹¹International Covenant on Economic, Social and Cultural Rights: Articles 11, 12, 13 and 15.

¹² International Covenant on Civil and Political Rights: Articles 6, 12(1) and 23(1).

¹³ Convention on the Rights of the Child: Article 20 (1), (2).

¹⁴ From field discussions it seems that this is the only NGO established for and by the Maoist victims. As far as NIP is aware, there are no such organizations for state-induced IDPs.

¹⁵ In May 25, 2005, after the sit-in programme they handed over a letter of memorandum to a senior Human Rights Advisor of UNDP. The memorandum sought support for families displaced by the conflict. They demanded to be declared as internal refugees. However, the government has not yet recognized them as displaced persons. The government is supporting them as conflict-affected people. On May 14, 2005, ASMAN set a temporary tent at Ratna Park in the main city centre of Kathmandu. The police intervened and arrested women, children, and elderly persons who were participating in the sit-in campaign. However, they were released on the same day.

¹⁶<http://www.irinnews.org/report.asp?ReportID=46783&SelectRegion=Asia&SelectCountry=NEPAL>.