

Limits of the Humanitarian: Studies in Situations of Forced Migration

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Preface

[While forced migration is the central theme of the three studies presented here, what brings them together between the covers is their discussion of the limits of the humanitarian gaze represented primarily by the national policies followed towards the victims of forced migration and secondarily through the lens of the typical cameraperson who shoots them as a stranger. As “forced migration” turns into a public issue with the beginning of the new millennium - thanks to the efforts of the UN, other multilateral bodies, and various public forums of the victims – the humanitarian gaze becomes overwhelming, in the process making the victim an object of charity and protection. The victim’s transformation into such an object coincides with a surge of national and international policies showered on them. In India for instance at least half a dozen draft national policies of rehabilitation have already been prepared, and a bill to address the problems faced by the victims of displacement induced by communal violence is in the pipeline for ratification by the Indian Parliament. While humanitarian care and protection, as these studies reveal, partly address and alleviate the sufferings of the victims, they also strengthen the power of the caregivers including that of the nation-states, the huge corporate organisations of non-governmental agencies, and the multilateral institutions working like big companies. Care has truly become a new form of power that holds out the promise of delivering the victims into safety, security, and freedom, and reintegrating them into newer and hitherto unknown social bodies. While in the first two studies the discussion remains implicit, the Kolkata case shows how the victims turn the gaze on the cameraperson and the lens of the camera turns into a site of contest between what the stranger constantly seeks to frame and ‘colonize’ and the way the gaze is turned back by the victims. Camera as the study reflects can be more than a mere instrument of colonization: it can serve as an instrument of subversion also. The stranger’s encounter *with* the victims finally remains what it is - the ‘with’ as an indissoluble remainder.

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Essay 1

The Policy of the Government of Nepal towards the Internally Displaced Persons

Shiva K Dhungana

"Both parties express the commitment to allow without any political prejudice the people displaced due to the armed conflict to return back voluntarily to their respective ancestral or former residence.... and rehabilitate and socialize the displaced people into the society" (Comprehensive Peace Accord, 2006).

1. Background

Globally, the crisis brought about by the incidence of forced displacement, especially the poor ones in the developing countries, has reached an alarming stage. They are among the most vulnerable victims and constitute arguably the largest at-risk population in the world (Global IDP Project 2005). People all over the world are constantly being forced to leave their home and hearth for many reasons: natural calamities, human-made disasters, state sponsored population transfer, giant commercial projects, major infrastructure development projects such as dams and national parks and wildlife reserves, terrorism, abuse of human rights and threat of violence from state and non-state forces (SAFHR, 2005) as a result of political, ethnic, religious or other conflicts. Most of the developing countries of Asia and Africa are facing the problem of population displacement and its consequences in their socioeconomic and political development. In the past few decades, the countries of South Asia are also undergoing the serious problem of displacement of their large population, mainly because of the political, religious, ethnic conflict or state of lawlessness, partition of country and major development projects such as the dams and other commercial and infrastructure projects.

Displacement is generally characterised as the movement of people from one place to another owing to different reasons (Bharttarai 2001). When the displacement is motivated by voluntary choice for better opportunities or looking favourable conditions for the future, it is called voluntary displacement and is also taken in the general framework of the migration phenomenon that is taking place since the early evolution of human civilization. On the other side, the displacement that is influenced by some external factors forcing people to leave their native places is termed as involuntary displacement. Such an involuntary displacement gives birth to a term called Internally Displaced Persons (IDPs). Internally Displaced Persons (IDPs) as defined by the United Nations' Guiding Principles on Internal Displacement (1998) are:

Those persons or groups of persons who have been forced or obliged to flee or leave their homes or place of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalized violence, violations of human rights or natural or human-made disasters, and have not crossed an internationally recognized state border.

In general, people who leave their homes because of discrimination, harassment or threat of violence and cross international borders are recognized as refugees under the 1951 UN Convention on Refugees. The international community recognises their right to seek asylum and accepts the responsibility of rehabilitating them in safe countries. But there is no international convention or covenant that protects the IDPs or accepts the responsibility to rehabilitate them. They remain the sole concern of the state of which they are citizens. Though the international community has been concerned about the condition of IDPs and has developed guidelines and principles for their protection and rehabilitation, these remain mere recommendations. The international community has no right to intervene in the internal affairs of any state. Hence, the situation of IDPs in many countries is far worse than that of refugees and they are forced to live a miserable life. Uprooted from their homes, separated from their family and community networks, and shorn of their resource base, internally displaced persons suddenly find themselves stripped of their most basic means of security and survival (Mooney 2004).

While an estimated 25 million people are displaced worldwide by conflict, the number of people uprooted by development projects, is estimated to be much higher. A study published in 2000 estimated that between 40 and 80 million people were forcibly displaced by that time due to large hydroelectric projects alone. Other development projects forcing millions of people to evict from their home each year include urban infrastructure projects, expansion of transportation networks, mines, oilfield exploration and even national parks and wildlife reserves (Global IDP Project 2005).

In the past few years Nepal is also facing serious crisis brought about by the forced displacement of population because of variety of reasons. Though the country 'recorded' the problem of population displacement in as early as the 1960s, it was not acute until the mid 1990s as the number of IDPs was not very big and their economic and security vulnerability was not severe, at least in the government's view. However, with the birth of Maoist insurgency in February 1996 and the recent ethnic-based movements in eastern hills and south-central plains of Nepal, the magnitude and vulnerability of the conflict induced displacement has been more acute than that of the development induced displacement in Nepal. Therefore, this essay focuses on the situation of conflict-induced displacement in Nepal, without ignoring the situation of development-induced displacement in the country.

As already mentioned, the political and ethnic conflicts surfacing in Nepal over the last decade have resulted in a large segment of population being forced out of their home, it is very relevant to discuss the history of conflict and its contribution to the generation of large volume of population displacement in Nepal.

2. History of Violent Conflict in Nepal

The history of Nepal's political conflict dates back to the first half of the 20th century when democratic political parties in Nepal led by Nepali Congress launched an armed struggle against the autocratic Rana oligarchy¹ that ruled Nepal for 104 years since 1847 to 1951. The armed

¹ Rana regime was established by Jung Bahadur Rana with the help of a bloody coup in 1847. The Rana regime tamed the successive Kings inside the palace and they were made to follow every instruction from the Rana Prime Ministers.

conflict ended with the overthrow of the Rana regime in 1951 with the support of a newly independent India.

The second spread of violent conflict in Nepal was launched in early 1970s, when a group of communist cadres who were influenced by Charu Mazumdar and his Naxalite Movement of India. The communist rebellion was named Peasant's Movement and particularly targeted the landlords in eastern Nepal. However, this armed struggle ceased to exist within few years of its birth, as the then Royal Government brutally suppressed it and killed or arrested almost all the leaders and the activists of the rebel group. Many people were displaced as a result of the armed attack by the rebels as well as brutality of the state security forces. However, there is no authentic record on the magnitude of people displaced as a result of the armed struggle.

The third wave of violent conflict started in the mid-nineties. The violent conflict erupted in the name of 'Maoist People's War' has its root on the century old feudal social, economic and political structure of the country. The feudal structure was led by the 238-year old autocratic/absolute monarchy backed by a group of elites of major ethnic sections of Nepali society. The feudal structure promoted socioeconomic and political marginalization of a large section of Nepali citizens for centuries, which caused a serious sense of dissatisfaction and disenchantment among the marginalized section for years. However, the deprived and economically weaker section did not get enough voice and space to express their protest until the autocratic Panchayat System² was demolished by the 'People's Movement' in 1990.

Once the multiparty parliamentary democracy was established in Nepal, every citizen harboured huge expectation to fulfill their socioeconomic aspirations from the newly installed political system and the political parties, especially the Nepali Congress and the Communist Party of Nepal-Unified Marxists and Leninists (CPN-UML)³. However, the ruling Nepali Congress and the CPN-UML (the then main opposition in the parliament) could not develop minimal democratic culture among themselves. The Nepali Congress which formed the government with absolute majority in the parliament could not deliver good governance; nor could it foster goodwill towards smaller political parties, especially the United People's Front-Nepal (UPF-N), which was third largest party in the parliament with nine members in the House of Representatives (HoR). The new political order developed after 1991 parliamentary election was characterized by instability, corruption, and patronage, and no single government was able to make headway in addressing Nepal's continuing economic underdevelopment and deep-seated social inequalities (Seddon 2002).

The government, as early as 1991, started to exhibit its hostility towards small radical communist parties; some of which were not very much convinced with the achievement of the political transformation of 1990. With the intensified state-backed Nepali congress's hostility towards the cadres of UPF-N in remote districts such as Rolpa⁴, Rukum and other mid-west hills, the disenchantment of the UPF-N towards the newly installed democracy grew sharply. This

² The Panchayat System is so-called 'party-less democracy' imposed by King Mahendra in 1960, when he dismissed the democratically elected government and took control of the executive power of the country in his hand.

³ CPN-UML was formed in 1991 by the merger of two communist parties CPN- Marxist and CPN-Marxist and Leninist. This party has its root in the Peasant's Movement of 1970s, which presented itself to the general public as a party of the poor.

⁴ Rolpa district turned out to be the so-called capital of the Central People's Revolutionary Council, self-declared government of CPN-M.

made the small but locally popular communist faction even more skeptical, and led the party to boycott the mid-term parliamentary election in 1994. They started to organize various awareness activities under the title "Si-Ja" cultural campaign⁵ to convince local people to fight against the government (and Nepali Congress). However, they faced many obstructions from the Nepali Congress cadres and successive arrest and torture from the state security forces. This is the time when the conflict induced displacement started to take place in Nepal. It is reported that at least 6,000 cadres of UPF-N had to flee the districts to avoid the police brutality in the name of 'Operation Romeo' in November 1995 (INSEC 2005). Many people who suffered during Operation Romeo joined the Maoist movement to take revenge of the repression.

The UPF-N, condemned the 'barbaric repression of the people of Rolpa and Rukum by the Nepali Congress Government' (Seddon 2002) and submitted a strong 40-Point Demand on behalf of the Communist Party of Nepal-Maoist (CPN-M) on January 1996. The list of demands took into account the interests of the impoverished Nepali majority on issues of nationality, democracy and livelihoods (Dhungana 2006d). The UPF-N threatened that if their demands were not met in two weeks, they would be forced to adopt the path of armed struggle against the existing state power. When the then Prime Minister started his 'State Visit' to India on 11 February 1996, the CPN-M interpreted it as the rejection of their demands by the government and declared 'armed struggle - to 'liberate the poor and marginalized from what it called oppression by a feudal class' - on 13 February 1996, days before the expiration of the deadline.

Later, as the CPN-M grew into a formidable force in Nepal and the state unleashed deadlier operations like 'Operation Kilo Sierra 2'⁶, joining the movement or fleeing the village was the only prospect for most youths in the region. Remaining neutral meant being seen as enemies of both the warring sides. Sangraula (2005) writes:

As state authorities were gradually chased away from villages to district headquarters, the villagers faced only two choices, both very difficult: leave the villages or support the Maoists. Those with physical means left, and those without stayed and supported the Maoists either verbally or by sending an able-bodied member of their family to the Maoists as what the rebels call "Whole Timer". As the war's toll increased, Maoists ran short of recruits and every family in the villages was required to send at least one "Whole Timer" to serve the rebels.

The people in the villages were trapped between the atrocities of the Maoist forces and the state security forces as both the party wanted loyalty from the villagers, especially the youths. This made many people to leave the villages for fear of persecution from both the warring parties.

Within five years time, the insurgents were virtually able to capture 80 percent of the country's territory – especially the rural areas. Few would have imagined that an insurgency

⁵ The "Si-Ja" cultural campaign was named after two local hills *Sisne* hill of Rukum District and *Jaljale* Hill of Rolpa District and it mobilized local youths to organize cultural programmes, political meetings and awareness programme among the poverty-ridden community.

⁶ Operation Kilo Sierra 2 was undertaken by the Nepal Police in 18 districts of the country for over a year during 1998. Although Nepal Police denied throughout the existence of such an operation, from mid-1998 onwards the killing of Maoists and their supporters escalated to reach the highest point ever in the last five years of the People's War. If Operation Romeo had concentrated its fire on a particular area in the western hills, Kilo Sierra 2 was spread out across the 'Maoist-affected' regions of the country. It is not entirely clear, but Kilo Sierra 2, i.e., KS2, is said to be an anagram of the radio code S2K, or Search to Kill (Thapa 2001).

started in remote hills by 100 cadres with home made guns and local knives (*khukuri*) would evolve within a decade into a guerrilla-strength of 36,000 and more than 50,000 militias (Dhungana 2006d).

When the Maoists abandoned the first round of talk with the Government on 23 November 2001 and subsequently attacked various targets of civilian and military installations, the government imposed the State of emergency on 26 November 2001 by giving full authority to the security forces (read the then Royal Nepal Army) to take whatever action necessary to curtail the insurgency. This introduced the brutal torture to the civilians on suspicion of being members or sympathizers of the Maoists. Such a brutal security operation and similar brutality from the Maoists forced hundreds of thousands of people from rural hills to leave their places for safety and security, which increasingly continued until the end of the Royal Regime⁷ in April 2006.

During the ten years (1996-2006) of fighting and related violence triggered by the state as well as the rebels, more than 13,000 lives have been lost of which almost two-thirds (8,371) were killed by the state security forces and remaining (4,970) by the Maoist rebels (INSEC 2007, INSEC 2006, INSEC 2005a; INSEC 2005b)⁸. The data show that more than one-fourth (3,528) of the entire casualties took place during the 10-month long State of Emergency, i.e. 26 November 2001 to 31 August 2002. More than 400 innocent children were killed during the ten year period (INSEC 2007, INSEC 2005c) and hundreds of children and women have become victims of landmine blasts and crossfire between the Maoists and security forces (NCBL 2006), not to mention the trauma faced by the families who lost their loved ones in the fighting. More than 900 people are made to disappear by the State (828) and the Maoists (105), their whereabouts are not yet known (INSEC 2007).

The loss of physical infrastructures is estimated to be worth US\$250 million per year (Mahat 2003; DFID 2002a; DFID 2002b). Another estimate shows that the infrastructure loss is estimated to be worth 8-10 per cent of national GDP (Sharma 2004) that comes to be around Rs.18-20 billion per year. The conflict has caused internal and external displacement of people. Nearly 400,000 rural families have been displaced internally while hundreds of thousands of others have crossed over to India in search of safety and livelihood (Ra and Singh 2005). The legal as well as illegal labour migration to India, Malaysia, Gulf countries and other parts of the world has accelerated in the past few years. The youths are desperate to go abroad to get employment, to escape the forced recruitment and conscription into the Maoist militia and possible atrocity of the state security forces on suspicion of being Maoists. Such desperation for exiting from the national boundary at any cost has brought severe consequences to those fleeing the country where they are compelled to involve themselves in 3-d's (dirty, dangerous and disgraceful) work including slavery and sex trade (Dhungana 2006b).

⁷ King Gyanendra dismissed the democratically elected, but caretaker, government in October 2002 and ruled the country through a puppet government, while he virtually took control of the executive power of the country on 1 February 2005 and declared himself as the chairperson of the Council of Ministers.

⁸ The latest database as of 31 December 2006 provided by Informal Sector Service Centre (INSEC) shows that the death toll has reached 13,347. INSEC monitors human rights violation in all 75 districts of the country and is the only source of authentic information regarding the human rights violation in Nepal.

3. Forced Displacement in Nepal

The history of involuntary internal displacement in Nepal is associated with project-induced displacement that began in the 1960s. Forced displacement due to acquisition of land has been a regular feature of the infrastructure development process in Nepal. People were displaced by construction of roads, irrigation schemes, hydropower projects, airports, national parks and wildlife reserves. In comparative terms national parks, wildlife reserves and water resource projects have displaced more people than other types of projects in Nepal. In these early days land parcels were taken away from the farmers as and when needed without any coherent acquisition plan (Dixit 1994).

Some of the major hydro-electric projects that caused involuntary displacement in Nepal are the Karnali Chisapani Project (60,000 people), West Seti (14,500 people), Pancheshwor (15,000 People), Koshi High Dam (75,000 people), Kali Khola (40,000 people), Marsyangdi (17,000 People), Burhi Gandkai (6,000 people) and Uttar Ganga (60,000 people) and Kulekhani (3,000 people) (Dixit 1994, Pandey 1998) and Trishuli (5,600 people⁹) (Bhattarai 2001).

Similarly, the declaration of national parks and wildlife reserves also contributed to the displacement of population from the territories included in the boundary of those parks and reserves. The Bardia National Park (120 families), Rara National Park (331 families), Koshi Tappu Wildlife Reserves (1,287 families) and Shukla Phant Wildlife Reserve (4,319 families) have significantly contributed to population displacement. But, there is no information on the population displacement caused by many other national parks and wildlife reserves including the Chitwan National Park, the largest in the country.

Many displaced families were resettled by the government in different locations under 'land for land' packages. However, many of them could not stay there for long because of low soil quality and infertility (Bhattarai 2001) and other socio-cultural and livelihood difficulties and were forced to move to other parts of the country. No official information is available about their recent status.

Natural disaster has been another persistent cause of involuntary displacement of people since time immemorial in a country with rugged mountains and high hills where every summer brings many cases of landslides and flash floods where poor people living in the remote villages and river banks are displaced. Many of them never get to go back to their villages as the landslide and flood make the place permanently inhabitable. After the floods of 1954, resettlement activities were started by the Nepal Resettlement Company (1963) and Nepal Resettlement Department (1968). Approximately 72,000 families were resettled in Jhapa, Nawalparashi, Banke and Bardia district until 1985. However, these resettlement efforts were far from successful because of the procedural limitation, lack of opportunity outside the land, inadequate land size given to the families, usurious debt arising out of failed monsoon, crop failure, floods etc, and poor infrastructures provided to the displaced families (Dixit 1994). However, many families affected by natural disasters in the remote areas hardly received any compensation or logistic support for their relief, rehabilitation or resettlement and were left to face the music on their own.

⁹ A total of 937 families were displaced. The number of people is calculated roughly considering 6 persons per household.

Various media and OCHA¹⁰ reports claim that the number is quite large and many of them cross over to India in search of safety and livelihood. In the monsoon of 2007 alone, more than 200,000 people have been displaced (Nepal Samacharpatra, 30 July 2007), of which many might not be able to return to their home in future.

There are more than 50,000 *Kamaiyas* (bonded-labourers), who were declared free by the government in 2000 and their outstanding family loans with the rich landowners were written off. They were working generations after generations¹¹ in the land of the landlords to pay the interest of the inter-generationally transmitted loans and bondage, without being paid the wages. The government promised them to provide small parcels of land for their livelihood, once they were released from the slavery of the masters. However, the promise remained a mere 'lip service' and they are fighting for their survival and organizing sit-in protest in Kathmandu even today. The government does not seem to be bothered to fulfill the promise of 'reasonable' resettlement and leaving them to live in the wilderness of poverty and frustration.

Trafficking has been another cause of forced displacement in Nepal. It is estimated that up to seven thousand Nepali girls¹² are trafficked to India every year, primarily for prostitution, and that 200,000 Nepali women, mostly aged between ten and twenty, work in Indian brothels (UNIFEM 1998, The Asia Foundation/Horizons 2001, Dhungana 2006c). The open border enables traffickers to easily transport innocent victims from Nepali hills to India, where brothels in Mumbai and other cities are eager to buy them – especially teenage girls believed to be HIV negative. The rise in the number of people desperate to leave the country during the ten-year long conflict has widened opportunities for traffickers. The mechanism to combat trafficking in Nepal, thus far, has been unable to curb the ever-growing crime against humanity.

The birth of Maoist rebellion in Nepal gave birth to serious population displacement in Nepal. The forced displacement of people still continues even after the formal ending of the Maoist rebellion as the 'anti-hill (origin) people' ethnic-violence erupted in Southern plains of Nepal. The ever-increasing criminal gangs (in the name of Madhesi¹³ people's right) are issuing ultimatums to the government employees of hill origins as well as ordinary civilian dwelling in the region for generations (*Kantipur Daily*, 17 July 2007). Some of the government employees are already murdered for not listening to the ultimatum over the past few months.

The displaced people could simply be divided into two groups. The first group is the internally displaced one, which is, by definition, called IDPs globally. But the second group consists of those who are displaced through the open border to India and their status is a tricky one. By the 1951 UN Convention on Refugees, these people are Nepali refugees in India, but they are never given the status of refugees in India and the Indian authority never keep track of records of how many Nepalis cross the border and live in India. The 1950 Treaty of Peace and Friendship between Nepal and India stipulates that the Nepali people can travel to India (so do the Indians to Nepal) without any documentation and theoretically share the same legal rights, with the exception of voting, as citizens. This provision of the treaty nullifies the chances of the Nepalis

¹⁰ OCHA report for the period 2004-2006 suggests that 14,000 families in 2004 and more than 37,000 families in 2006 were displaced by monsoon floods and landslides in different parts of the country.

¹¹ Some people even estimate the number of bonded-labourers to be as high as 200,000. However, there is no reliable source to verify this.

¹² The data is not based on empirical study and has not changed since it was first quoted in 1986. The actual data could be much higher in the context of increased trafficking in the specific context of conflict.

¹³ Nepali people of Indian origin.

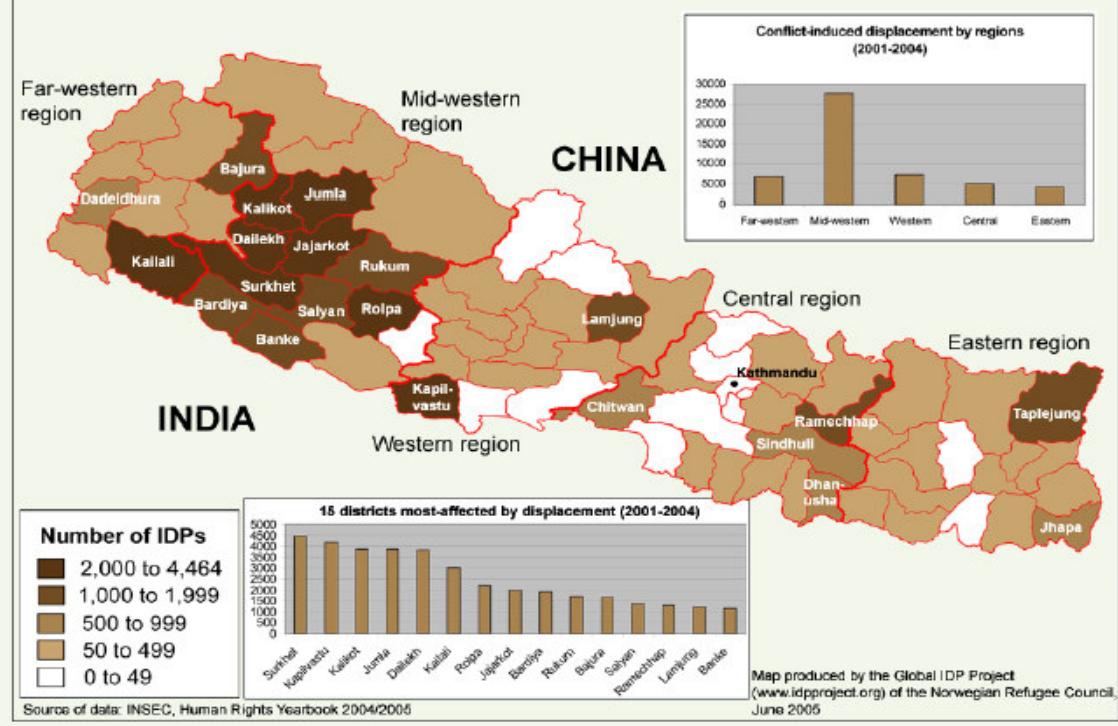
fleeing the conflict to India to be considered as the refugees and they remain in the 'state of statelessness' in India. This paper discusses both categories of displacement in an attempt to draw attention to the complexity of the conflict-induced displacement in Nepal.

4. The Nature and Extent of Conflict-induced IDPs in Nepal

Data from different sources indicate that a significant number of people have been displaced over the last few years. However, the governments before April 2006 did not clearly acknowledge the existence of displaced persons in Nepal. Nor they developed an explicit definition of the term "displaced persons". The then government chose to define the conflict induced displaced as "victims of conflict" placed within a narrow and ridiculous understanding of who these victims should be. The 'Victims of Conflict Fund' set up by the then His Majesty's Government of Nepal defined the 'displaced persons' as the people who are victims of Maoist violence or whose family members are murdered by Maoists (Rai 2005), completely ignoring those victimized by the security forces and forced to leave their home. As a consequence, the majority of IDPs were excluded from assistance and the term "IDP" became a negative label designating a small group of displaced closely linked to the state. This perception further complicated the registration as well as assessment of the scope of displacement very difficult. The Human Rights Action Plan 2004 covers to some extent the question of the displaced persons. However, this document, too, fails to clearly define 'the displaced persons' (NHRC 2004).

In the absence of globally accepted definition, comprehensive registration of IDPs and of any systematic monitoring of population movements by national authorities or by international organisations, it is difficult to provide any accurate estimates on the total number of people displaced since the conflict started in 1996, or for that matter of people currently displaced. The estimation of conflict induced displacement in Nepal is one of the most complicated tasks compared to the estimation of IDPs in other conflicting countries, because of the existence of 'open border' between Nepal and India and age-old practice of seasonal and long-term economic migration, especially from the western hills of Nepal. However, many national and international NGOs and UN agencies have tried to estimate the approximate number of IDPs in Nepal. The following figure presents the general picture about the vulnerability of the IDP status by districts based on the number of IDPs until 2004. However, the scenario significantly deteriorated after Royal takeover in February 2005, where government brutality against the ordinary people reached an all time high, contributing to large population exodus from the villages, particularly from the hills in western Nepal.

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



Source: Internal Displacement Monitoring Centre (www.internal-displacement.org)

The Maoist insurgency and associated events forced a large segment of population from rural Nepal to move out of their usual places of residence. Though the conflict induced displacement started even before the declaration of people's war by CPN-M in early 1996, the number of IDPs started to soar up after the breakdown of the peace talks and imposition of State of Emergency by the then Sher Bahadur Deuba Government in November 2001. It is estimated that up to 200,000 people have been displaced since the conflict started in the mid-1990s. Most of the displaced have either flocked to the main urban centres or fled to India (Global IDP Project 2005) through its 'porous' open border that stretches to almost 1800 kilometres along the plain land. It is debated that the number of displaced people going to India is as high as those displaced within Nepal. Some reports have even suggested that the number of displaced persons may rise up to somewhere between 300,000 and 600,000 and those displaced to India may total as high as one million (UN 2005; HRWF 2005; Shrestha and Niraula 2005, iIDMC 2006), whereas the government sources claimed (until April 2006) that there were only 8,000 IDPs officially registered. These data may be mere guesses and manipulations by researchers or organizations based on their small surveys or observation visits carried out in specific pockets, there is no doubt that a large number of people are displaced within and outside the country whose number is yet to be estimated in the absence of a nationally representative survey. The estimation of number of IDPs between 1,00,000 to 2,00,000 has been internationally recognized. The estimated figure of

212,985 – 272,600 compiled by Caritas Nepal (2006) based on the data collection of IDPs living in the district headquarters seems to be comparatively more authentic than rest of the estimates. Following table presents the IDP estimation made by different organizations till date.

Table 1: IDP Statistics Available from Various Sources Until October 2006

Date	Source	No of IDPs	Remarks
Aug 2006	Caritas	212,985-272,600	Only covers IDPs living in the district headquarters
May 2006	UNHCR	200,000	
Feb 2006	Caritas	350,000	
Jan 2006	CHR	At least 100,000	Between 100,000 and a few hundred thousands
Nov 2005	UNFPA	400,000	
July 2005	MOHA	18,666	Only includes those displaced by Maoists
Jun 2005	ILO/CWIN	40,000	Children displaced since 1996
May 2005	MOF	300,000-600,000	
Apr 2005	INSEC	50,000	Only covers period 2001-2004
Sep 2004	ADB	2.4 million	Cumulative figure since 1996, including displacement to India
Aug 2004	Government	> 100,000	
Aug 2004	NMVA	> 50,000	Maoist victim IDPs in Kathmandu valley
Jan 2004	CSWC	350,000-400,000	Based on the identification of 160,000 IDPs in 5 districts
Mar 2003	GTZ/INF/SNV/cie	100,000-150,000	-
Apr 2003	EC/RRN	500,000	Includes forced migration to India
Jan 2003	UNDP/RUPP	80,000	Only cover 2001-2003 extra migrations to urban areas.
Jan 2003	MOHA	7,343	Only includes those displaced by Maoists

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

4.1 Causes and Types of IDPs

INSEC (2005) explicitly mentions that after the escalation of violence followed by the declaration of the first State of Emergency¹⁴ in November 2001, the problem of internal displacement spread all over the country with varying magnitude. People were forced to flee their homes as a result of the intensified violent conflict, receiving death threat, threats of extortions; fear of being recruited by the Maoists in their People's Liberation Army (PLA) and Militias under their "One Household,

¹⁴ There has been one more state of emergency imposed during Prime Minister Deuba's Government on May 2003 and one more under the direct rule of King in February 2005.

"One Militia" policy, fear of being arrested, brutally tortured and even killed by the security forces in suspicion of being Maoists' sympathizers, fear of kidnapping and torture by the Maoist in suspicion of being the government spy for the security forces, fear of being caught in the crossfire between the Maoist and the security forces, destruction of infrastructures such as the schools and health posts, which the Maoists have widely targeted¹⁵, cessation of livelihood opportunities as a result of full fledged war and others. Further, severe food shortage in many mountain and hill districts due to the transport blockades periodically imposed by the Maoists, security problem faced by the porters, seizure of the food items by the Maoists, and the government policy of restricting the supply of food items to 'known' Maoist affected areas in the name of depriving the Maoists from having enough food to eat. Such a scenario contributed to generating high unemployment, disruption in business and lack of security as a result of breakdown of law and order situation. People are also forced to flee their homes and hearths because of being falsely implicated by the rebels and the government security forces for spying on behalf of their enemies, because of the murder of their family members by one of the warring parties, using (by force) of vehicles, phones, and other accessories by the rebels and brutal actions taken by the securities forces for letting the other party use them, locking up homes and destroying them by the rebels, and increased brutality by the security forces especially after the imposition of the first State of Emergency in 2001, increased cases of human rights violation, especially that of women and girls by the security forces (INSEC 2005).

A survey carried out by Calcutta Research Group (CRG 2006) in Rajhana IDP Camp and surrounding districts found out that more than three fourth (76.5%) of families interviewed are displaced because of conflict whereas rest of the families are displaced by natural disaster (5%), army occupation (1.7%) and other reasons (16.8%). The reasons for displaced discovered from the survey are burning of houses or house padlocked and property seized by Maoists, house rented by the police for office purpose and consequent Maoist intimidation, not being able to pay extortion money to the Maoists, family members kidnapped, tortured or killed by Maoists or the security forces, receiving life threats from the Maoists, children killed by either Maoists or security forces, receiving death threats from both warring parties, among others (CRG 2006). Similar reasons were found by NHRC research carried out in Dhanusha of central Terai (Joshi & Poudyal 2006) and SAFHR research carried out in Kathmandu and Birendranagar with additional causes such as the political party affiliation, family members of police or army or Maoist cadres and government employee..

Caritas (2006) in its survey of IDPs residing in 73 out of 75 district headquarters found that "Insecurity such as death threats, food insecurity as a result of food blockades, absence of security agencies along with dehumanized way of killings, maiming, physical beatings, torture and intimidations, alleged charges of being informer/spy, hindrances of children's education and disturbances to school operation, extortion by Maoists and to some extent by the security forces, activities by Maoists/security forces in disguise, confiscation of land and house and killing of livestock, harassment such as forced demand of food and shelter, regular search and torture operations, aggravation to the family members of either side, lack of access to health services, particularly the emergency support system, loss of existing jobs and unavailability of other employment opportunities along with forced conscription have contributed to abrupt

¹⁵ As many as 141 health posts and hospitals have been put to arson or bombed by the Maoists and almost one hundred health workers were either brutally tortured or murdered by the Maoists and security forces (Dhungana 2006a)

displacement of civilian population. Harsh working conditions encountered by combatants and child soldiers are also the reasons for defection leading to uninformed displacement."

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

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

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

Thus, there is a clear demarcation among the IDPs in Nepal. The former category is more concerned with their personal security in the place of origin and destination, thus can be termed as possessing "security vulnerability" as livelihood is not a problem for them even in the place of destination, and rather was receiving security threat from both the warring parties depending on who the perpetrator was forcing them to be displaced. In contrast, the later category is more concerned with their personal security at the place of origin and economic security at the place of destination and can be termed as possessing "economic vulnerability" as they do not have any sources of livelihood in the place of destination unlike their elite counterparts. The relief package is more necessary for them rather than those with security vulnerability, who need more government protection on personal security.

With the eruption of violence in eastern and central Terai, certain castes of hill origin people dwelling in the region have been victimized by the different political and criminal groups belonging to Madhesi¹⁶ community. The recent one-week ultimatum and death threats issued by

¹⁶ The word "Madhesi" is used to describe Nepali people of Indian origin living in the central-south plain areas of Nepal. Some Madhesi intellectual explains this as the people migrated to Nepal from the ancient 'Madhya Desh' (Central State) of India.

various factions of Janatantrik Terai Mukti Morcha¹⁷(Terai People's Liberation Front) have terrorized the local people of hill origin and employees and many of them are leaving the region for their safety and security. It is believed that hundreds of people have been displaced from the region already and this might be the beginning of the bigger crisis (IRIN 2007).

4.2 Patterns of Displacement

It is found that IDPs generally believe that the cities and towns perceived as safer destinations. Cities and towns are also perceived as the platform for better education, and employment opportunities and better access to health services. Easier access and approach to government agencies and human rights and humanitarian and relief agencies have also resulted in alluring them to the urban centres. Young men in particular have moved to India, both for safety as well as for acquiring better opportunity of employment (Caritas 2006). Similarly, everyday more than 500 youths travel to third countries for foreign employment and an equal number of youths leave the country through unofficial/illegal routes as estimated by the Department of Employment and Labour Promotion (DoELP) (The Himalayan Times, 30 July 2007) even after the peace process is coming closure to safe landing. The increased trend of people moving out of the country, especially from the hill districts, is continued until today¹⁸. The trend started during conflict does not seem to be in the mood of slowing down. In general the major pattern of conflict-induced displacement in Nepal consists of following steps or options.

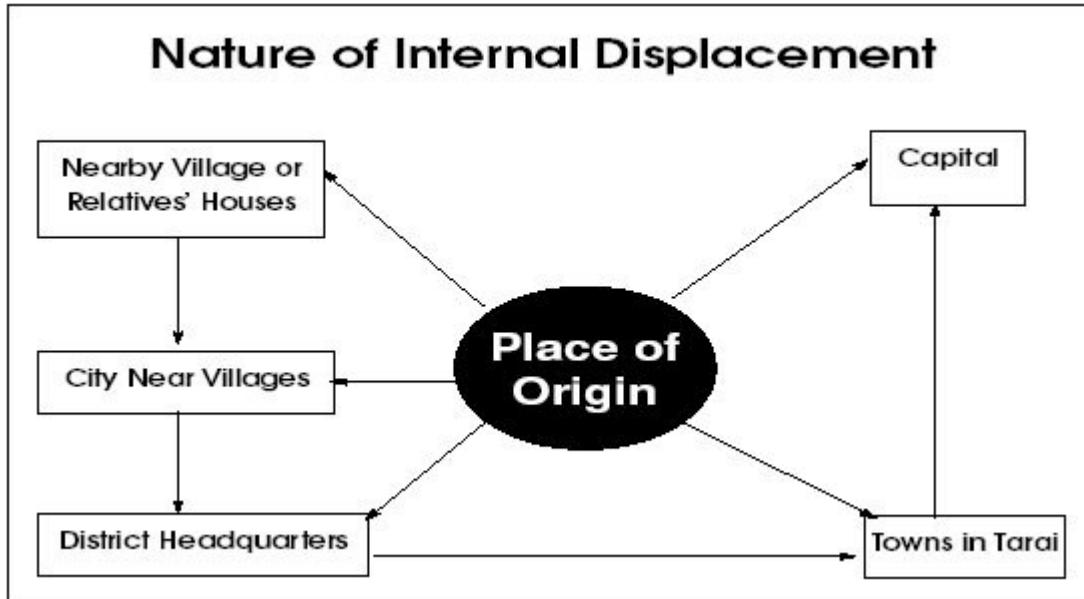
- Village to nearby town
- Nearby town to district headquarters
- District headquarters to regional centres
- Major cities of the country
- Capital city of the country
- India
- Third countries

The last two moves of the displaced people do not fall within the accepted definition of the IDPs and are in the "state of statelessness", especially those crossing the border to India.

¹⁷ Janantantrik Terai Mukti Morcha (JTMM) has three factions led by Jai Krishna Goit, Jwala Singh and Bisfot Singh. Besides there are more than 10 criminal groups emerged in central Terai such as Terai Cobra, Madhesi Tigers, Nepal Defense Army etc (IRIN 2007).

¹⁸ *The Himalayan Times National* recently reported that as many as (average) 561 youths left the country each day for foreign employment during the fiscal year 2006/07.

The Flow of Internally Displaced Persons has been Described by the Following Figures



Source: INSEC Human Rights Year Book, 2004

5. People Displaced to India

Migration to India has been an increasingly common survival strategy for communities in the hill and mountain regions of Nepal over decades of Nepal-India relations. This has increased dramatically over the past few years. Monitors at the border estimated that between November and December 2003 (the normal period of peak migration) over 1200 people were crossing the border everyday in Nepalganj alone. In previous years, the numbers would have been 200 to 300 maximum. A much higher proportion of women and children were also observed, although majority of the migrants were still men (Nepal IDP Research Findings 2003). Some 120,000 displaced Nepalis crossed into India during January 2003 alone – fleeing both forced recruitment by the Maoists and RNA (Royal Nepal Army) attacks, Indian Embassy officials have said (ICG 2003:2, Thapa, 2003: 155). Between 10,000 and 16,000 displaced children reported to have crossed the Indian border in only three months, between June and August 2004 (Rai 2005). And at the end of 2002, some 8,000 people crossed the border every week, according to media reports and NGOs working in Nepalganj¹⁹. This major influx was prompted by difficult living conditions and fear of being caught in the crossfire in rural areas (*The Nepali Times* 19 December 2002).

Records at the border crossing at Gaddachauki in Kanchanpur district, far western Nepal, showed that within the 30 days between 14 December 2002 and 14 January 2003, 10,000 Nepalis crossed over to India. Across the border at Banbasa, India, the border police recorded more than 100,000 Nepalis going over to India between mid-September 2002 and mid-January 2003²⁰. Though the statistics do not clearly reflect the magnitude of displaced population to India, it

¹⁹ Many of them are commuters.

²⁰ Himal Khabar Patrika, 15-29, January 2003

definitely highlights the seriousness of the problem and urgency required to carry out the study on the situation of those displaced to India.

These statistics give an approximate scenario of flow of displaced Nepali people into India. The number might be much larger than we have presented here. The flow of so many people should have been a matter of grave concern for the Indian Union Government and state governments at a time when they themselves have high unemployment rate. It would have waxed the number of unemployed youth and heightened the problem of security. On the other side of the coin, the wages of the unskilled needy immigrants is reported to have been very low. There are reports of continued harassment of the Nepali immigrants by the Indian police. The number of Nepali women as sex workers in the Indian market is certainly on the rise in absence of other alternatives for existence and is vulnerable to HIV/AIDS and other STDs and communicable diseases. Singh et al (2005) argue that the incidence of HIV/AIDS has increased in the western part of Nepal, which is experiencing large number of voluntary and forced migrants to India, Malaysia and Gulf countries. Sex traffickers have shifted their trade from central hills and mountains to mid-west and far-west Nepal (which are hotbeds of insurgency) taking undue advantage of the socioeconomic conditions borne by the conflict and violence. While the number of people infected with HIV/AIDS has risen, the prevention and awareness work has declined in Nepal as a result of the conflict (Singh et al 2005). Save the Children Norway's recent study revealed that the 19 percent of the female sex workers stated that they have been pushed into the sex trade directly because of the conflict. The health status of the IDPs is equally miserable. They are vulnerable to sex trade and HIV/AIDS infection (Rijal 2005).

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

The displaced people through the open border to India have not received any status of refugee in India and they are ignored, exploited, harassed and considered as unwanted threat to the local population. There is no reliable information regarding their living condition and other plights they are suffering in India. Further, the exodus of hundreds of thousands of people from the villages of Nepal to India as a result of the armed insurgency has created a panic among the peoples in some bordering states (Roka 2006).

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

Hence, the debate on IDPs in Nepal is incomplete unless those displaced to India are also brought into the framework of the discussion because there is high probability that majority of the

displaced to India would return to their native places, once the peace process proves sustainable. Further, the Nepali government is also turning a blind eye on those displaced to India as it has reduced the burden of managing the IDPs in Nepal, which could have developed into an explosive situation for the government to handle.

6. Problem of IDPs

The IDPs in Nepal and those displaced to India face many difficulties and challenges to their survival and livelihood. The major problems faced by the IDPs in Nepal include, but not limited to, lack of unemployment for survival, lack of food, lack of health and sanitation facilities, lack of education facilities for those who were going to school before being displaced, lack of proper shelter which is a serious concern especially in the winter season and lack of security as many of them are considered as spies/enemy of the ‘people’s war’ or (so-called) ‘terrorists’ or their sympathizers by the Maoists cadres and the security forces respectively. The research carried out by Calcutta Research Group (CRG 2006) reveals that

The major problem faced by elderly IDPs were lack of food, adequate shelter, clothing, deteriorating health conditions, lack of employment because of physical weakness, lack of skills required for the urban jobs compounded by illiteracy and depression because of the discriminatory comments by the locals.

A research carried out by Caritas Nepal in 2006 also reveals that:

Many IDPs suffer from feeling of helplessness, depression, irritability, sleep disorders, alcoholism, addiction, gambling, and post-traumatic disorder. From being respected as landlords, merchants and traders of their respective places, they have now become anonymous.

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

The IDPs in Nepal are still facing serious problems while returning to their native places despite the fact that the Comprehensive Peace Accord has already been signed between the Government and the CPN-M and the rebels have already joined the Interim Government. There still remain many problems in the process of smooth and dignified return, resettlement or reintegration/reconciliation with the native or host communities. Theoretically, the Twelve-Point Agreement between the Seven Party Alliance and the CPN-M and the signing of the 25-Point Code of Conduct already opened the door for the IDPs to return home. However, the continued abuses committed by the Maoist cadres in many districts and conditions imposed by their cadres; the absence of the government in the villages; the prolonged and shaky peace talks and the confusion remaining over the possibility of having election to the Constituent Assembly²¹ has discouraged highly vulnerable group of IDPs from returning home. Further, the (re)action of the

²¹ Many responsible ministers and leaders of eight parties are expressing their doubt regarding the government's ability to hold the election on November, putting the blame, partly on the Maoists, and partly on the Terai violence.

Young Communist League (YCL)²² in many districts has created panic among those who were displaced because of the fear of Maoist persecution during the conflict.

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

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

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

7. Government Response to the Problem of IDPs

When the then HMG Nepal noticed the problem of IDPs, it set aside some funds through the national budgets as well as some special packages broadly defining IDPs as the victims of conflict. It is said that the government provided daily allowances to those IDPs from the fund allocated in the Ganesh Man Singh Peace Campaign²³ in 1999. This marks the beginning of the government's attention towards the conflict-induced IDPs in Nepal. However, there is no official information whether this fund really reached the genuine IDPs or just distributed to the political party affiliates in an arbitrary manner. The figure in the following page illustrates the government efforts in addressing the issue of IDPs. Despite such effort, the highly unjust definition of IDPs during that time nullified the minimal government attention to address the

²² The Maoist Youth Organization comprises large majority of former combatants.

²³ Late Ganeshman Singh was the supreme leader of Nepali Congress who led the 1990 People's Movement. His decision of not accepting the post of Prime Minister was highly respected by all sectors of society.

plight of IDPs and the government was severely criticized by the NGOs, civil society and the international community. Even the current democratic government does not seem to be committed to solving the problem of IDPs in Nepal, not to mention the Nepalis displaced to India. There was no national policy on IDP until then and the government was dealing with the issue on ad-hoc basis.

The Twelve-Point Agreement between the Seven Party Alliance (SPA) and the CPN-M, for the first time, acknowledged the problem of IDPs in principle. Article 5 of the Twelve-Point Agreement signed in November 2005 specifically mentions:

The CPN-M has expressed its commitment to create an environment allowing the political party activists of the democratic parties displaced during the course of the armed conflict to return to their homes and live with dignity, return their land and other properties confiscated by their cadres and carry out their activities without hindrances (Twelve-Point Agreement 2005, INSEC 2005:2).

In response to the concern of the international community, the then government issued a National IDP Policy on 9 March 2006, but as with previous document, the latest failed to comply with international standards²⁴ as it only recognized as IDPs those displaced by the actions of Maoists (IDMC 2006). Even after the success of the April 2006 People's Movement and the repeated request of the civil society, NGOs and international community, the eight political parties failed to realize the gravity of the problem and never made IDP problem an inherent component of the peace process.

²⁴ Article 4.1 of the National IDP Policy, March 2006 has provision for 'Identification of the Conflict Displaced Person or Family', which stipulates:

- i) Joint family dependent on the person killed by the terrorists
- ii) Dependent family of the of the person kidnapped and subsequently disappeared or declared dead by the terrorists
- iii) Persons who have received serious threats or have been forced out of their villages after their property was seized by the terrorists
- iv) Persons or families who have been mentally or physically tortured by the terrorists
- v) Persons or families who house has been destroyed by the terrorists
- vi) Persons who have shunned terrorist activities and surrendered but can not live in the place of their residence from the security point of view
- vii) Dependent families of innocent persons killed during encounters
- viii) Persons who have been displaced due to damages to their property during clashes.

Highlights of Nepal's State Commitments and Programs on Conflict-induced IDPs

<p>Working Committee to Study 'Maoists' Activities and Solutions', 1997</p> <ul style="list-style-type: none"> Recommendation for government concepts regarding rehabilitation of displaced persons. 	<p>Ganesh Man Singh Peace Campaign, 1999</p> <ul style="list-style-type: none"> Victims of Conflict Fund, 2001; Immediate Relief Package Programme, 2002; and IDP Rehabilitation Program, 2003
	<p>Tenth Five Year Plan (2002-2007)</p> <ul style="list-style-type: none"> Strategy to rehabilitate conflict victims including those displaced and affected
	<p>Code of Conduct, 2003 (During the Talks with Maoists)</p> <ul style="list-style-type: none"> Assisting return to respective homes and peaceful rehabilitation of displaced
	<p>Concept of Forward-looking Reforms, 2003 (During the Talks with Maoists)</p> <ul style="list-style-type: none"> High priority to the works related to the rehabilitation of the victims and displaced people; guaranteeing the rights of the displaced persons to return their homes or to the places of their choice; and setting up monitoring body to determine whether rights of the IDPs are being respected
	<p>25-Point Commitment, 2004</p> <ul style="list-style-type: none"> Guaranteeing rights of the displaced persons to return their homes and ensure right to return to their domicile or to the places of choice
	<p>NHRAP, 2004</p> <ul style="list-style-type: none"> Protection and assistance to the victims of and those displaced by armed conflict for their repatriation and rehabilitation
<p>Common Minimum Programme, 2004</p> <ul style="list-style-type: none"> Programme of rehabilitation of violent conflict-affected and displaced persons and reconstruction of physical infrastructures will be implemented with high priority Special package of rescue and relief of those violence and conflict-victims and displaced persons will be carried out 	<p>Budget of Fiscal Year 2004/05</p> <ul style="list-style-type: none"> Immediate relief to the displaced suffering from the problems of food and shelter Effective rescue and compensation to the displaced families Forward systematic settlement for homeless and inhabitants living in the vulnerable places Prompt rehabilitation of IDPs
	<p>Relief Package, 2004 (Approved by the Meeting of Council of Ministers on 1 October)</p> <ul style="list-style-type: none"> Free education up to secondary level, Rs. 1,000 (\$13.3) for materials for displaced children Skill development and income generating training for one female member of displaced family Cash reimbursement of medical bills up to Rs. 5,000 (\$66.7) for displaced people over 60 years of age for treatment in government hospitals Trainings in respective District Headquarters; one time small cash allowance before participating trainings or engaging an employment; soft loans after the training Rs. 300 (\$4.0) monthly allowance for displaced elderly who don't have anyone to support
<p>21-Point Programme, 2005</p> <ul style="list-style-type: none"> Those affected by conflict and those (Maoists) that have (and desire to) surrender(ed) will be trained and prepared for employment at home and abroad 	<p>Budget of Fiscal Year 2005/06</p> <ul style="list-style-type: none"> Vocational training to IDPs Mechanism for protection and development of affected children Arrangement for the basic public services to the displaced Priority to IDPs in labor intensive public construction works Waiving of land revenue for the registered conflict affected people

Source: 'Informal: Special Issue on IDPs, Vol 19, No 2 & 3, September & December 2005'. Kathmandu: Informal Sector Service Centre (INSEC): P 18

Article 18 of the 25-Point Ceasefire Code of Conduct (CCC) signed by the SPA Government and the CPN-M has committed to:

Provide help in the rehabilitation of and extend cooperation to displaced people to return to their respective homes in a peaceful, comfortable and respectable manner.

Similarly, Article 19 makes a commitment on the return of properties of the IDPs which stipulates:

The CPN-M will return the properties of the leaders of political parties, activists and civilians, which were seized, locked up or prohibited from being used during the period of the conflict, to concerned persons or their families. Problems arising while returning the properties will be resolved through mutual agreement (CCC 2006).

Article 3 of Section 4 of the Eight Party Agreement signed on 8 November 2006 specifically mentions about the rehabilitation of the IDPs. It stipulates that:

The government carries out special programmes to rehabilitate the people who have been displaced due to the conflict; to provide relief in case of destruction of private and public properties; and to reconstruct the destroyed infrastructures (Eight Party Decisions 2006).

The Comprehensive Peace Accord (CPA) signed by the Government and the CPN-M in its Article 5.2.8 ensures the rights of return of IDPs. It stipulates that:

Both parties express the commitment to allow without any political prejudice the people displaced due to the armed conflict to return back voluntarily to their respective ancestral or former residence, reconstruct the infrastructure destroyed during the conflict and rehabilitate and socialize the displaced people into the society.

Similarly, Article 7.3.3 ensures the freedom of movement of IDPs as well as their right to return or reintegration. It stipulates

Both parties shall respect and protect the individual's freedom to move freely and right to choose a place to reside within the legal periphery and also expresses commitment to respect the right of the people who have been displaced to return home or to live in any other place they choose (CPA 2006).

The Section 12, Article 1 and 3 of the Interim Constitution of Nepal 2007 also guarantee the Right to live with dignity and freedom to travel and settle in any part of the country without any obstruction (Interim Constitution of Nepal 2007).

The Section E, No 157 of the Budget Speech 2007 specifically mentions about the relief and rehabilitation of IDPs. It says:

A guaranteed environment will be made to all internally displaced people (IDPs) to return to their homes. The relief package will be provided to rehabilitate IDPs, which includes expenses for transportation, educational relief, house repairs and construction, and foods. Similarly, an interest free agriculture credit of for five years will be provided to enable them to cultivate first crops (MoF 2007).

Hence, the provisions in the Interim Constitution 2007 and all agreements between the government and the CPN-M have provided protection mechanisms for the right to return, resettlement and reintegration of IDPs. After four months of the formation of the Eight Party Interim Government, there are no concrete steps towards reintegrating the IDPs into their native places. The government has adopted the national IDP Policy 2063 BS (2007 AD) on April 2007. However, the government does not seem to be in a hurry to institute policy implementation mechanisms and guidelines. However, the National IDP Policy 2007 has been able to incorporate the spirit of the UN Guiding Principles on Internal Displacement. With the endorsement of the

IDP Policy in February 2007, 'the mandate to deal with the issues of IDPs has been shifted from the Ministry of Home Affairs to the recently formed Ministry of Peace and Reconstruction. The Ministry has set up a Directives Formulation Team to implement the IDP policy and has asked the international community for the technical support' (UN/IASC 2007). However, the government has not been able to internalize the gravity of the plights of IDPs and its possible implications for the upcoming election of the Constituent Assembly and have, so far, failed to develop an effective implementation mechanism to materialize the spirit of these documents into action.

The response of the government to the crisis of the internal displacement is described as discriminatory, lacking direction, insufficient and sometimes nonexistent. There have been claims that the government assistance for displaced people has only been accessible to those with political connections. Researches find out that those funds were accessible to well-connected political affiliates, bureaucrats, and their clients more than to the "ordinary citizens" (Caritas 2006). Many of the recipients have undergone "security vulnerability" rather than "economic vulnerability", thus, depriving the economically vulnerable to access the government relief package.

8. Maoists' Response to the Problem of IDPs

The UN Guiding Principle on Internal Displacement, 1998 clearly stipulates that "all displaced persons have the right to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country", but the security forces (during the King's autocracy) and CPN-M did not honour the UN provision in practice. The OHCHR has expressed deep concern about an emerging pattern of selective 'approval' process. In many parts of the country, the Maoist cadres have established three categories IDPs which serves as the basis of the 'approval process'. While IDPs belonging to the third group - those who quietly left in anticipation or in fear of the conflict - were welcome to return, those belonging to second group - those accused by the Maoists of some 'wrongdoing' had to accept conditions imposed by the Maoists before being allowed to return. These included paying a 'donation' or appearing before a 'People's Court' to explain their displacement and apologise for actions committed before being displaced. IDPs belonging to the first group are seen as responsible for 'serious crimes' and not welcome back (UNHCR et al. 2006; OCHA 2006). An overwhelming area of the country is still under the influence of Maoist' youth group Young Communist League (YCL) and the government presence is still confined to the district headquarters or urban centres. This makes the situation even worse for the IDPs for their safe and dignified return as they have to be totally dependent on the pleasure of the Maoist cadre's permission. An estimated 68 percent of the Village Development Committee (VDC) secretaries (who are supposed to be the government representative at the village level) are currently displaced, mainly in the district headquarters where they wait for the Maoists to approve their return (iDMC 2006). This situation has further worsened as the VDC secretaries belonging to Hill origin are ordered to leave the Terai region of Nepal by one of the radical Madhesi groups, Janantratik Terai Mukti Morcha (Jwala Singh) (*Kantipur Daily*, 17 July 2007). Hence, the near absence of the government mechanism outside district headquarters has led to lack of protection and reconciliation mechanisms and provisions for basic support service and facilitation for the returnees. Hence the

burden has been taken up by the local NGOs to facilitate the return and reintegration of IDPs, with limited authority and resources.

Despite CPN-M central leadership's commitment to return ownership of seized lands to the rightful owners, land seizures continued, including in Bardia, Kailali and Kanchanpur as well as many other districts. These seizures are carried out by CPN-M sister organizations, Tharu National Liberation Front (TNLF) and All-Nepal Peasants' Association (Revolutionary) (UN/IASC 2007). Further, the Maoist youth organization Young Communist League (YCL) is also obstructing the return of the IDPs in Many places as their hegemony in the locality still continues. Hence, the commitment expressed by the Maoist leadership through various documents has not been fully implemented at the local level, which is further aggravated by the lack of credible local security mechanism to guarantee the security of the IDPs and facilitate the return process starting from the place of displacement all the way to the place of origin.

9. International Response to the Problem of IDPs

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

To contribute to the safe and sustainable return of the IDPs, UNHCR has been organizing and conducting various programmes – with support from OHCHR, OCHA, the National Human Rights Commission and the Norwegian Refugee Council - such as workshops, awareness campaigns through locally-based programmes and media. Various NGOs and INGOs have been involved in providing integrated assistance to returnees, with particular focus on mid-western region of Nepal, which contributed to producing the largest number of IDPs during the conflict. Further, when the Ministry of Peace and Reconstruction requested the international community for technical assistance, OCHA, on behalf of the IDP Protection Working Group, has requested for a Protection Capacity (ProCap) secondment of a senior protection officer to work with the government for three months (UN/IASC 2007). This monthly meeting of the IDP Protection Working Group is chaired by OHCHR and UNHCR. Its members are from the UN, NGOs, INGOs and donor agencies. The meeting provides a platform for in-depth and wide discussions on protection issues related to displaced persons in Nepal. This includes assessment of needs, planning and strategy development, identification of key partners, standard-setting and information sharing on the protection concerns of displaced persons (UNIP 2006). Hence, the UN and other international agencies are coming out to support the IDPs in their relief, rehabilitation and protection whereas the local NGOs, both local and international, are assisting in their return, reintegration and legal assistance. However, all such efforts are not very effective as there is almost a lack of governance in most parts of the country and there is lack of protection mechanism supported by integrated reintegration approach.

10. National IDP Policy 2007

The National IDP Policy 2007 (2063 BS) is the first concrete step towards addressing the problem of IDPs in Nepal. The national policy has been formulated in coherence with and supplementary to the Foreign Aid Policy 2002, Poverty Reduction Aid Strategy, Millennium Development Goals (MDGs), Comprehensive Peace Accord (CPA) and National Development Programmes adopted by the Government of Nepal. The Policy is guided by the International Treaties to which Nepal is a party and a Universal Declaration of Human Rights (UDHR); UN Guiding Principle of Internal Development; constitutionally conferred fundamental rights; universally accepted principles of social as well as natural justice and equality; and the Comprehensive Peace Accord (CPA) signed between the Nepal Government and the CPN-M as well as all party agreements related to the issue of IDPs (National IDP Policy 2007).

National IDP Policy (2007) defines an IDP as:

A person who is living somewhere else in the country after having forced to flee or leave one's home or place of habitual residence due to armed conflict or situation of violence or gross violation of human rights or natural disaster or human made disaster and situation or with an intention of avoiding the effects of such situations.

The national definition of IDPs has carried the spirit and content of the definition given by the UN Guiding Principles on Internal Displacement (1998) except the term 'situation of violence' instead of 'situation of generalized violence', which runs the risk of bringing wide range of population into the categories of IDPs whenever there is violence in the country, regardless of the scale of violence. This definition, for the first time, has incorporated the rights of people displaced by the natural or human made disasters and development projects. In this sense, this definition could be called holistic in nature compared to other ad-hoc documents or the IDP Policy formulated in March 2006, which tried to address the problem of a small group of people who were close to the state machinery or victimized by the Maoists.

The IDP Policy 2007 is guided by three broad objectives which basically intend to i) adopt preventive and curative measures on a long-term basis, ii) provide relief, benefits, and facilities by developing integrated and coordinated mechanism, and iii) create conducive environment for safe, voluntary and dignified return and support construction and rehabilitation, of social and economic infrastructures for their settlement and other locations.

The policy has 13 different strategies to address the problem of IDPs in the short-term as well as long term. These strategies include putting the IDP issue in the priority of national development, developing appropriate institutional mechanisms of the government to coordinate at the vertical as well as horizontal level across all sectors of society nationally and internationally, developing institutional capacity of the government, non-governmental and community organizations/institutions along with that of the IDPs themselves. Similarly, it intends to collect and mobilize the technical and financial resources to support the IDPs with transparency and efficiency, undertaking the activities of development-construction and reconstruction, necessary security measures and social services to minimize the problem of displacement and mobilizing formal and informal groups of IDPs, based on their skills, in the relief and rehabilitation programmes.

The policy also paves the way for incorporating strategies for minimizing internal displacement to the overall policy package to be adopted by the Government of Nepal. The policy also intends to create an environment that ensures the IDPs to use prevalent fundamental and

human rights without any hindrances and also incorporates provisions for formulating special targeted programmes to assist the vulnerable groups (such as women, children, orphans, elderly, incapacitated and others) with special risk. The policy has a strategy of developing IEC mechanism to minimize the negative effects which may arise in the future as a result of internal displacement, formulating and implementing appropriate rehabilitation plan to encourage voluntary return of IDPs and strengthening capacities of government and non-governmental organizations working in the field of IDPs for better implementation of the policies.

It has devised 31 different policies under three broad categories of human rights protection, relief and rehabilitation. The human rights protection category incorporates policies that ensure the fundamental rights of IDPs as provided by the constitution of the country, Universal Declaration of Human Rights and other treaties on human rights to which Nepal is a party. It also has policy of protecting IDPs from all types of discrimination, harassment, slavery, exploitation, homicide, violence and disappearances, physical and material insecurity and their right to cast vote in the current place of origin. It further intends to protect people, especially the dwindling and marginalized groups such as indigenous inhabitants and minorities from displacement, except in the case of greater public and national interests.

The relief category has devised policies related to immediate relief including temporary inhabitation followed by shelter, security, food grains, and health facilities with action oriented and pro-active approach. The policy ensures a prioritized response to the need of the vulnerable groups such as the orphans, children, pregnant women, single women, mothers with small children and disabled and elderly persons. Social services such as issuing of necessary document related to identification and property ownership, schooling of children, medical attention during and after displacement, promoting economic and social status of IDPs through training and education to start employment or self employment. It also intends to involve the IDPs themselves in decision making and programme implementation process while addressing the problem of IDPs and developing programmes to support them during displacement and after return.

The policies related to rehabilitation basically focus on providing assistance to conflict induced IDPs for their return to native places, settle in the place of displaced or rehabilitation on other part of the country whereas assistance will be provided through targeted programmes to those displaced due to natural disasters with appropriate security mechanism in the places of rehabilitation. The policies also include provisions for making necessary arrangements for return of the properties and assets forcefully seized by any party to conflict. There will be provision for subsidized loan as well as assistance for purchasing land for the people displaced due to natural disasters. The participation of IDPs, especially women, will be given priority during the return process and necessary mechanism will be developed to facilitate reconciliation in the societies.

The document has identified 24 programmatic areas for the implementation of the strategies and policies discussed earlier, which starts from the registration of IDPs. Major focus of these programmatic areas include temporary housing, recommendation for employment, skill training for foreign employment, formal and non-formal education support, safety during return, support for income generating activities, facilitating research and study in the field of IDPs, advocacy for preventing displacement, counseling and mobile health services, providing seed money and post training support, financial support to elderly and incapacitated persons, providing leasehold forestry to IDP families, capacity building of government employees responsible to implement the policies, especially at district and village level and providing nutritious food to displaced children and information update on IDPs. However, most of the programmatic areas

are vague and are theoretical in nature. The programmatic areas do not really indicate how such programmes will be formulated and implemented and where the money comes from.

The policy document has given the responsibility of implementation, monitoring and evaluation role to the Ministry of Home Affairs. The document makes provision for the Central Steering Committee headed by Home Minister, Central Programme Coordination Committee headed by Chief Secretary of Nepal Government and Secretary of the then Peace Secretariat, and the District Programme Coordination Committee headed by Chief District Officer. After the creation of Ministry of Peace and Reconstruction, the responsibility of looking after the issue of IDPs has been shifted to the later. However, there has not been any change in the policy document yet regarding the change of leadership in the issue. Further, the institutional mechanism developed to implement the policy gives the implementation authority to the district level authority of Ministry of Home Affairs and the question of coordination of the two ministries at the centre remains unanswered whereas the mechanism through which the Ministry of Peace and Reconstruction monitors the progress at Home Ministry Officials' work at the district level remains unclear.

The policy document has also devised some mechanisms and criteria for identification of IDPs displaced due to various reasons through a IDPs Identification Committee at the district level headed by the Chief of the Local Peace Councils or Local Peace Committees. However, in the absence of the earlier proposed Peace Councils or the Peace Committees, this committee is also chaired by the Chief District Officer. The identification criteria have been developed - based on the definition of IDPs as mentioned in the policy document.

11. Judicial and other Mechanisms

For most of the time during conflict, majority of the IDPs were looked as the enemy of the state authority. They were not given fair treatment, not to mention the special treatment. There were hardly any cases filed leading to the protection of the rights of the IDPs. There are no specific legal provisions to protect the rights of the IDPs till date. Most of the promises have remained as mere lip services. All the government authorities and the judicial organs of the state are dealing with the issues of IDPs or victims within the general framework of the legislations related to the human rights violation and criminal offence. However, many IDPs were not willing to identify themselves as IDPs because of possible stigmatization created by the state; there was rare chance that their plights would reach the judiciary.

The recently endorsed National IDP Policy calls for some specific legislations and implementing mechanisms to protect the social, political, economic and other fundamental rights of IDPs. However, there are no formal attempts to put such necessary legal provisions in place. Even after seven months of endorsement of the National IDP Policy 2007, the government has not been able to come up with implementation guidelines to convert the policy into practice.

The National Human Rights Commission (NHRC) considers the guarantee of human rights of IDPs as one of its most important responsibilities and has given high priority to the issues of human rights violation of IDPs from the very beginning. In its Strategic Plan (2004-2008), the Commission has given priority to IDP problem and included it as the first strategic objective. The strategic objective says:

To continue the investigation, research and documentation of the cases of internal displacement, human rights violation, disappearances of civilians based on the complaint

received by the commission and recommend for the appropriate legal action against the perpetrators as guided by the investigation outcome.

Further, with the increased magnitude of internal displacement and the cases of violation of human rights of the IDPs as a result of the Maoist rebellion in the past few years, the Commission established a Focal Point within the Protection and Monitoring Division to pay special attention to the protection and promotion of human rights of IDPs.

The Commission, till date, has carried out regular awareness campaign on the rights of IDPs, monitoring of the IDP camps and other IDP settlements in different parts of the country, organize interactions among concerned national and international organizations on issues of IDPs and prepare the database, facilitate the flow of information related to IDPs through press conference, press statement, e-bulletin and website. It is also active in receiving complains regarding the HR violation of IDPs, investigate the cases and recommend to the government for appropriate legal actions. Further, it is promoting different stakeholders to coordinate their activities related to the relief of the IDPs and is working towards increasing awareness about the special rights of IDPs as well as the UN Guiding Principles on Internal Displacement across the country. However, due to the government inability of appointing the chair and commissioners due to inter-party political bickering, the recommendations made by the commission have not been enforced for more than a year. This is a serious concern and illustrates the government's indifference towards protecting the human rights of civilians, especially the IDPs.

12. Relevance of UN Guiding Principles

Though the first and foremost responsibility of protecting the rights of IDPs rests with respective governments and local authorities, the international community and the UN are always attentive to how they could best support in enhancing their protection in vulnerable situations. While the national governments were not highly equipped to devise protection mechanisms and address the emerging crisis brought about by the increasingly violent conflicts in developing countries, the UN took an initiative in late 1980s to devise a protection mechanism within the UN system. As a result, in April 1998, the UN Secretary General's Special Representative on IDPs presented to the United Nations Commission on Human Rights a set of Guiding Principles on Internal Displacement. The Commission unanimously adopted the resolution and took note of these principles. The Guiding Principles on Internally Displaced Persons (IDPs) consists of 30 principles to address the problems of IDPs and they have been divided into introduction and other five sections: General Principles, Principles Relating to Protection from Displacement, Principles Relating to Protection during Displacement, Principles Relating to Humanitarian Assistance and Principles Relating to Return, Resettlement and Reintegration.

The UN Guiding Principles on Internal Displacement are not binding legal instruments for any country comparable to a treaty. However, they are based on and consistent with international human rights, humanitarian and refugee laws in analogy (The Brookings Institution 1999) and the unanimous endorsement of the resolution related to it clearly commands a moral authority in all the member countries of the UN System. Thus, the Guiding Principles can play a significant role in raising awareness of the needs of IDPs, mobilizing support within the humanitarian community and helping find solutions when confronted with the protection and assistance needs of the internally displaced (OCHA 2004).

However, the spirit of the guiding principles has not been easily adopted by the national governments in the developing countries in Americas, Africa and Asia (The Brookings Institution 1999) and Nepal is no exception to it. The gravity of the problem of internal displacement was felt as early as in 1995 when people were displaced by the politically motivated coercion of the then Nepali Congress Government started. Before that people were not aware of the problem of displacement even if the development-induced and disaster-induced displacement were recorded as early as 1960s.

The first attempt by the government of Nepal to pay attention towards the problem of conflict-induced IDPs was to form a Working Committee to Study 'Maoist Activities and Solutions' in 1997 which was followed by the launching of the Ganeshman Singh Peace Campaign in 1999 based on the recommendation of the 1997 Committee. Since the committee was mandated to study the Maoist excesses, it did not pronounce anything about the excess carried out by the security forces towards the civilians as well as the Maoist cadres. This paved the way for a biased and unethical perspective of the then government on the issue of IDPs in Nepal.

Since the government and the Maoists were hell-bent on violating the human rights of ordinary citizens, especially the poor and the marginalized such as the women, children, Dalits and indigenous people, the relevance of 1998 UN Guiding Principles on Internal Displacement had been of little relevance until the ceasefire was declared in May 2006. Further, the current violent activities carried out by some ethnic-based criminal outfits in Southern Terai have also blatantly violated the human rights of people in Terai region. As already mentioned, the pre-April 2006 Government completely ignored the definition conceptualized by the UN Guiding Principles and formulated a highly one sided and politically motivated definition, excluding more than 90 percent of IDPs. The CPN-M has also classified IDPs in three different groups violating the human rights of a person's freedom of mobility and survival, thus ignoring the spirit of the UN Guiding Principles. However, the country has just entered into a new phase after the successful signing of the Comprehensive Peace Accord in 21 November 2006; a new hope among the IDP community and other individuals and organizations working for their relief and rights has emerged. As a result of the rapid progress in the peace process and the strong pressure from the national and international community, the government has implemented a new IDP policy in Nepal in tandem with the spirit of the UN Guiding Principles. Let us hope that the National IDP policy 2007 will ensure the dignified return, reintegration or resettlement of the IDPs scattered in different parts of the country as well as in neighboring country. However, the attempt of the Policy to include all scales of violence in the framework of the definition of IDPs runs the risk of every migrants being put into the category of IDPs, if ever she claimed to be.

13. The Challenges Ahead

The political changes in the past few months in Nepal have brought many positive developments in the situation of IDPs in Nepal. The Twelve-Point agreement between the Seven-Party Alliance (SPA) and the CPN-M as well as the Comprehensive Peace Accord (CAP) between the Nepal Government and the CPN-M has special clauses that intend to deal with the problem faced by the IDPs in the country. Many people believe that the problem of IDPs will be solved automatically as the peace process moves ahead. However, the challenges remain unless and until the

forthcoming interim government comprising the SPA and the CPN-M pays specific attention to the problem of IDPs.

Due to the lack of comprehensive IDPs registration process as well as the proper (government or non-government) mechanism to monitor the return process, no accurate figure is available on either displacement or return. At this moment, the UN IDP Protection Sub-group estimates that there are still between 50,000-70,000 people remain displaced within the country (iDMC 2007), not to mention those displaced to India who might be equally willing to return to their homeland to live a safe life and take part in the upcoming constituent assembly election.

Displaced people are highly vulnerable. They suffer from discrimination, experience significant deprivation and are frequently impoverished. Furthermore, the IDPs suffer from inadequate living standards. The UN Secretary General's Special Envoy on IDPs mentioned in his mission report that human rights problems and violations faced by IDPs in Nepal are related to: poor security and protection; discrimination; inadequate food, shelter, health care, access to education for children; lack of personal and property identification documents; and gender-based violence, sexual abuse and increased domestic violence.²⁵

The process of displacement has affected men, women and children as well as different sections of society in different extent. There has not been any research to look deeper into these issues of IDPs and their problems from the perspective of the social strata and gender. Unless these aspects are looked into seriously, the debate over IDPs remains incomplete.

With the signing of the CPA, unanimous endorsement of the interim constitution by the parliament and the formation of the interim government including the CPN-M, the return of IDPs to their native places has already started in many districts. However, the IDPs who have already returned or who want to return to their villages are facing many difficulties. Those who have returned to the villages are, in some cases, considered by their neighbours as returned criminal (Bharadwaj et al 2007). Many returnees have suffered a loss of social respect and have difficulties in reintegrating themselves with the people who were not displaced. Many political party cadres and the local elites are categorized by the local Maoists as "Third Category IDPs" (so-called enemies of the people and the 'party' (read CPN-M) and continue to be unwelcome in their native villages. The perceptions (real or perceived) of those who remained in the villages during the conflict regarding those that left further complicate the smooth reintegration of IDPs (Bharadwaj et al 2007). There is a common perception among local people that the IDPs are now enjoying a financial support and benefits while those who stayed in the villages throughout the conflict and suffered the atrocities of both the warring parties get nothing²⁶. In the absence of the elected local governance authority²⁷, there is no local level mechanism to facilitate the reconciliation process among the IDPs and the villagers and there is no means for addressing these perceptions and disputes. As a result, the IDPs are also bearing the feeling of revenge against those who forced them to leave their villages²⁸. This might create a serious situation of confrontation in the villages in the days to come.

²⁵ www.un.org/News/Press/Docs/2005/hr4830.doc.htm

²⁶ Based on the interview with ICRC Protection Delegate in Nepal.

²⁷ There has not been an election of local government bodies once the five year term of the elected representatives expired in July 2002.

²⁸ Based on the group discussion in NGO representatives from Jumla, Kalikot, Humla and Mugiu districts in Nepalgunj on 13 January 2007.

The IDPs are not receiving enough financial or logistic support they need for their return. Even if the Government of Nepal has already announced that the IDPs need to register themselves to the District Administration Office so that they will be entitled to Rs5000.00 per family as transportation support for their return, this provision has not been started yet in the district except the Kathmandu Valley and some other urban areas. Further, there is no proper mechanism to monitor the IDPs who received the financial support from the government to confirm whether they have really returned to their places or not.

When the IDPs left their places, many of their houses were burnt by either the rebels or the security forces and their household assets were either destroyed by fire or taken away by the perpetrators or the neighbors. Many have lost their homes and land, and those whose homes have been returned are empty of all household items. They also do not have any livelihoods opportunities. Their land is being tilled by some other people in the villages with the permission of the rebels. It is not that easy to get back their land, which is already occupied by others. Without basic tools, utensils or a harvest to sustain them for the coming year, these IDPs are unable to return home. Though there is agreement between the SPA and the CPN-M that facilitates the return of the confiscated land to the real owner, the agreement has not been fully followed by the local Maoist cadres in the villages when it comes to the property of the politicians or local elites. There is nobody to compensate the household assets destroyed or taken away by the villagers or the security forces or the rebels.

The political parties and their cadres (other than the Maoists) have not been able to return to their villages in real sense until today, even if the election of Constituent Assembly approaching rapidly. Some of the other political party cadres who tried to organize mass meeting have been disturbed, beaten and publicly humiliated by blackening-the-faces and putting garlands of shoes by the Maoists cadres in some of the hill districts (*The Rising Nepal* 2 April 2007; *Kantipur Daily* 31 August 2007). The Maoist cadres still carry the feeling of hegemony and still do not tolerate other party cadres to disagree with them in any issues in the villages (Bharadwaj et al 2007). Once the political parties return to the villages, there might be serious confrontation among the Maoists and other political party cadres during the Constituent Assembly election. Further, the usual practice of 'criminalization of politics' by all political parties during election may cause further violence and possible displacement.

Despite the encouraging political developments, including the agreement reached between the Government and the Madhesi People's Rights Forum (MPRF)²⁹, there has not been any provision for the protection of newly displaced population from the Terai region and there does not seem to be an end to violence as many secessionist ethnic and/or criminal outfits³⁰ are resorting to violence against the people of Hill origin and forcing them to leave the Terai region (IRIN 2007), where they are dwelling for generations after generations. It was expected that the agreement between the government and the MPRF will address the ethnically based displacement from the Terai region. However, all such hopes turned into despair, when both parties did not feel

²⁹ Also called Madhesi Janaadhikar Forum in local language.

³⁰ such as Janatantric Terai Mukti Morcha (Goit), Janatantric Terai Mukti Morcha (Jwala Singh), Janatantric Mukti Morcha (Bisfot Singh), Madhesi Mukti Morcha, Madhesi Tiger, Terai Cobra Group, Madhesi Mukti Force, Terai Tiger, AASK Group, Tharu Mukti Morcha, Terai Virus Cleaners, Azinger (Python) Group and others.

any need of addressing this issue to protect people's right to live in their place with dignity and safety. Further, the strong opposition of the 22-Point Agreement between the Government of Nepal and MPRF by one faction of MPRF and the CPN-M has generated serious concern on the sustainability of the agreement which indicates towards potential of inter-ethnic violence and possible further displacements in the coming days.

As already mentioned, the government has already endorsed the National IDP policy 2007 with the consent of the Eight-Party Alliance. Similarly, the 'rehabilitation of IDPs and other conflict victims' remains as the second important priority of the government which is being addressed through a Peace Fund established under the Ministry of Finance (UN/IASC 2007). However, there remain many challenges in implementing this policy to actually serve the interest of the large number of IDPs living unaccounted in many parts of the country. One of the serious challenges the government is facing is that there is no proper mechanism to implement it effectively. The IDP Policy was formulated in the leadership of Ministry of Home Affairs and the proposed policy implementation mechanism/structures are meant to be led by the local offices of the Ministry of Home Affairs in the absence of the local governance mechanism. However, the government has recently decided that the entire affair of IDPs will be looked after by the newly formed Ministry of Peace and Reconstruction (MoPR) (former Government Peace Secretariat). This decision seems to have created a conflict of interest between the two ministries. The lack of local offices of the MoPR at the local level might make it dependent to the local offices of the Ministry of Home Affairs. It remains to be seen how these two ministries will be coordinating in the future to implement the IDP policy into action and whether the MoPR would monitor the local IDP Policy implementation structures directly or through the Home Ministry in the centre. There is room for corruption when the same mechanism is made responsible for implementing, monitoring and evaluation of the projects. Further, the government bureaucracy and the political leadership do not possess a fair knowledge on IDP issues. There is an urgent need of preparing IEC materials on IDPs and orientation and training to those people as well as the security sector, specially the police, who are slowly returning to the villages with the consent of the eight political parties.

The government has been quite slow in preparing ground for the effective and efficient implementation of the IDP Policy. It has set up the Directives Formulation Team to implement the policy and a few international experts have already been involved in formulating the directives, but nothing has come out yet. Many of the provision of the policy are vague and theoretical in nature. Unless a concrete and simple implementation directives and programmes supported by accessible and efficient implementing structures at all levels is put in place without further delay, the entire intention of the policy turns out to be meaningless. The government and eight political parties are busy in political bickering and inter as well as intra-party fighting, their indifference towards the plight of IDPs could easily be understood.

Considering the importance of the forthcoming Constituent Assembly election in November 2007 in articulating the sociopolitical destiny of the people of Nepal, the right to vote by every Nepali citizen has been a serious issue. Article 8.1.11 of the National IDP Policy 2007 stipulates that all IDPs are entitled by law to vote. However, the policy does not clarify whether the IDPs have right to stand as a candidate or whether they should vote in their place of origin or current place residence (Ghimire 2007). The latest IDP policy has not been able to incorporate the voting rights of IDPs guaranteed by the IDP policy 2006. Section 5.4.2 of National IDP Policy 2006 provides that 'IDPs shall be provided the opportunity to cast absentee ballots in their current

place of residence for their original constituency' (Grace 2007). It is unfortunate that the current election law still applies provision of 1990 Constitution, which prohibits voting from outside the place of permanent residence. A simple act of the Legislative-Parliament, preferably in the context of broader election law, would have been sufficient to guarantee the realization of this right. However, it seems that it is too late for such effort to be made and all the IDPs in Nepal will be deprived of their right to vote guaranteed by the National IDP Policy 2007 and there is a chance that the IDPs will remain excluded from the constitution making process.

Similarly, the National IDP Policy has called for an urgent provision of necessary mechanism to maintain reconciliation in societies to create peaceful environment, which has not been in place yet. The promise of personal and institutional capacity building of governmental and non-governmental organizations working in the field of internal displacement has not materialized yet to any visible extent. The strategy of formulation and implementation of 'appropriate rehabilitation plan' has not been materialized yet. The need of personal security of all, especially that of IDPs has not been met, because of the lack of government ability of re-establishing the formal security mechanism at the country side and existing hegemony of the Maoist affiliated YCL and their control of local security of the villages. The dissemination of IEC materials regarding the Guiding Principles, IDP Policy and other related documents including those related to the fundamental rights of the IDPs has not been produced and distributed in a required extent to generate awareness among the general people. No efforts have been made by the government to change the popular perception of the IDPs among ordinary citizen developed because of the former definition of IDPs formulated by the autocratic government as well as the National IDP Policy 2006.

Many of the promises made by the government have remained a mere lip service till date. The compensation package, other than the Rs5000.00 for travel cost, announced by the government has not reached the IDPs family. The promise of returning of the land and physical properties/assets of may IDPs have not been fulfilled yet, because of the lack of cooperation of the CPN-M and especially by its sister organizations such as Young Communist League (YCL), Tharu National Liberation Front (TNLF), and All Nepal's Peasant's Association (Revolutionary) (UN/IASC 2007). The government seems helpless in addressing the issue unless the CPN-M will be brought into confidence and will be convinced to do so. With the election of Constituent Assembly nearing and the level of political rivalry intensifying, there is little chance that the government will be able to solve the issue in the near future.

The national and international NGOs are contributing to provide relief and return process. However, such an effort also seems to be not well coordinated and targeted. Even, the UN's IDP protection sub-group has recognized the need for a coordinated effort to generate a consolidated picture of needs and responses and improved development and implementation of common strategies to address the human rights violation of IDPs.

14. Conclusions and Recommendations

The success of April Movement of 2006 and subsequent ceasefire, the signing of the Comprehensive Peace Accord (CPA), formation if interim legislature, promulgation of interim constitution and the formation of interim government have all contributed to creating conducive environment for facilitating the return, resettlement and reintegration of the IDPs in Nepal. When the UN and the local civil society raised their serious concern about the issue of IDPs in Nepal,

the government formulated and endorsed a National IDP Policy 2007, which is a cornerstone towards addressing the problem of IDPs in Nepal. However, there is always other side of the story, too. With fresh violence and tensions emerging in the Terai belt and some of the eastern hills, a new dimension of internal displacement is also emerging and constantly threatening the continued peace process and posing a challenge to all involved in addressing the problem of IDPs in Nepal.

It is quite clear that the large, but fully unaccounted, number of IDPs in Nepal are living difficult lives in various urban areas and district headquarters. The government, the Seven-Party Alliance and the CPN-Maoist, all have pretended to give attention towards the cause of the IDPs but have never paid full attention to address their plights. The issues of IDPs being one of the serious components of the sustainable conflict transformation, the government and the CPN-M have never showed their intention to make it one of the major components of peace process. Even if the international community is getting ready to pour sizable amount of financial resources, the government has not been able to develop an effective mechanism to channel that money for the relief, safe reintegration of IDPs into the native communities and their protection once they are returned. As a result, the international community is confused in breaking the ice on facilitating the return of IDPs into their native places.

Hence it seems, sometimes, that the recent IDP Policy has come as a compulsion of the government as a result of the pressure of the UN, international community and the national civil society rather than a commitment. The indifference shown by the government and its actors and the lack of further building on the implementation part of the policy justifies such a claim. The lack of implementation plan, allocation of sufficient financial resources and, on top of that, the absence of the governance at the local level has hampered in generating conducive environment to address the problem of IDPs. The government has also succumbed to the Maoists on IDP issues as it seems to accept the IDP categories defined and their returns conditions imposed by the Maoists. The Maoists have also violated the spirit of the Twelve-Point Agreement between them and the SPA and the Comprehensive Peace Agreement (CPA) signed between themselves and the government by not allowing all the IDPs to return their home freely regardless of political ideology, economic status and their 'wrongdoing' (as they say) in the past.

Further, the whole country is in deep slumber regarding the plight of those displaced to India because of the conflict. Those displaced to India are living a difficult life as nomads in many bordering cities and are suffering harassment, exploitation, torture, blackmailing, and are forced to prostitution and 3-D (dirty, dangerous and disgraceful) works for survival. These people are also vulnerable to various kinds of communicable disease including STDs and HIV/AIDS. This is an area that the Nepali society should pay attention with authentic research and documentation. These Nepalis are waiting to return to their native places should the peace process culminates into a success.

In conclusion, the IDPs in Nepal and outside are really "overlooked and neglected" by all stakeholders of the society, indeed, as described by the UN Secretary General's Representative on the Human Rights of IDPs, Prof Walter Kailin in April 2005. Thus, following recommendations have been identified for efficiently addressing the issues of IDPs in Nepal.

- There is an urgent need for coming out with mechanism to implement the IDP Policy into practice to look for the durable solution of the problem.

- All the subjective programmes incorporated into the IDP policy need to be converted into concrete and targeted projects, which directly benefit the IDPs living in any part of the country under any circumstances.
- There is a need for identifying the security vulnerability and the economic vulnerability of the IDPs and addressed such vulnerability with priority.
- There should be serious effort in convincing or lobbying with the CPM (Maoist) and its cadres as well as affiliated organization to honor the agreements as well as their commitment for peace and allow all IDPs to return their home with dignity and safety.
- The government needs to fulfill the provisions made into IDP policy regarding the livelihood and skill training and their involvement in the decision making process while designing and implementing projects and allocate sufficient financial resources for this purpose with proper transparency and accountability.
- Realizing the lack of awareness among the ordinary citizens and prevailing misconception about IDPs, there is an urgent need for launching a massive and effective campaign on generating awareness about the problem of IDPs and their rights through various means of communication/IEC materials.
- The government needs to be serious in providing the voting rights to all IDPs in their place of residence. The Parliament should immediately change the existing legal mechanism provided by the 1990 constitution and instruct the Election Commission to this effect. If this is not possible immediately, the Eight Party Alliance should come with an interim provision based on a political level decision and instruct the election commission to this effect.
- There is also need for formulating special legal provision to protect the human rights of the IDPs in all stages of displacement.
- The government should come up with a holistic National IDP Rehabilitation Plan that seeks for the long term solution of the internal displacement caused by all means.
- The government needs to form a special task force to study the problem of internal displacement emerging in the eastern and central Terai and address it before it becomes too grave a crisis to handle causing ethnic violence. The provision of respecting the rights of hill origin people by Madhesi community should be included as a component of the peace agreement signed by the MPRF and the Government.
- There are research reports that indicate towards increased incidence of human trafficking among the displaced communities. The government needs to develop special task force to regulate such crime against humanity. Such a task force should comprise civilian and security officials and needs to be stationed at strategic border points across the Nepal-India open border. The responsibility of the task force should be to help in preventing trafficking from Nepal as well as facilitating the return of those who were displaced to India and are willing to return to Nepal.
- The government needs to come out with strong measures to facilitate the return of the properties and assets of the IDPs and provide financial support to those whose houses and household assets have been destroyed by either of the warring parties after forcing them to leave the village. There is an urgent need that the government authority should reach the IDPs to provide various legal documents to IDPs which were lost or damaged during their displacement.

- There is a possibility of seeking help from Indian NGOs or the local governments in launching a campaign to motivate people displaced to India to return to their villages, so that they can exercise their right to vote and contribute in making the new constitution.
- There is an urgent need of creating locally owned and inclusive mechanism that could help facilitate the return, rehabilitation and reconciliation process at the local level. The Peace Committees proposed by the Ministry of Peace and Reconstruction (MoPR) could be the best instrument to this cause should they be made inclusive and apolitical.
- The stakeholders of all institutional mechanisms responsible for implementing, monitoring, and evaluating internal displacement projects needs to be educated on the issue of IDPs and their needs as well as rights.
- It is advisable that the monitoring and evaluation responsibility be given to some other mechanism other than the one responsible for implementation so that possible mismanagement of the fund could be minimized.
- There is an urgent need for providing special health check-up facility to all IDPs with focus on STDs, HIV/AIDS, reproductive health related problems among women and girls.
- Last, but not the least, there is a serious need for a comprehensive/holistic research covering all dimensions of the problem of IDPs, with special focus on rehabilitation, reintegration and reconciliation aspects. Only then, the intention of UN IDP Protection Sub-group to generate a consolidated picture of needs and responses can be identified and effective programme intervention could be implemented.

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Essay 2

Finland's Immigration Policy and its Dilemmas¹

Priyanca Mathur Velath and Nanda Kishore

“In the field of migration there is no objective measure for when a country is ‘full’ and accordingly when immigration becomes a security threat; whereas Switzerland lives reasonably well with almost 20 per cent foreigners, Finland already has a problem with less than 1 per cent foreigners. Not surprisingly Finland’s attitude was reflected in its extreme reluctance to accept refugees from Kosovo in spring 1999” (Nadig 2002). As Europe increasingly ‘securitises’ its migration problems, its Nordic nation Finland grapples with its own unique immigration policy issues. Earlier seen as an almost ‘isolated’ island untouched by European and global migration streams, the small country of Finland, with its entry into the European Union in 1995, has today become an attractive destination for both economic and forced migrants. Today, with only 114,000 foreigners amongst 5.2 million people, Finland has “over the last 50 years transformed itself from an agriculturally oriented culture into a competitive, technologically advanced information society with least corruption and best competitiveness rate of any country in the world” (Tanner 2004).

Historically a land of voluntary and economic emigration, today Finland is witnessing increased immigration simply because of such favourable economic, technical and social developments, “increased knowledge about Finland as a stable and socially developed country with few incidents of racial violence, lack of a well-established and hostile far-right and further asylum entry restrictions in other Western Countries”. Immigration is an issue over which there isn’t usually much political debate in the country (Tanner 2004). It is quite surprising and horrifying to note that Europe has been waging ‘war on refugees’ (Fekete 2005). Migration even though it is forced becomes securitized as immigration is increasingly seen as a threat to the cultural and social fabric of European states. Unlike the war on terror, which has been declared repeatedly, this war is largely conducted tacitly.

Finland Within the European Union

One cannot discuss Finnish refugee or migration policy without placing it in the EU context. Through the Maastricht and Amsterdam Treaty, the EU has been gradually moving towards efficiently integrating a sub-national refugee policy by making asylum and migration policy a core topic in the EU policy-making.² Since the mid-80s what has characterized the EU has been

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² All the member states promised that their cooperation in this political area would take the highest priority and that they were willing to give up a part of their national sovereignty. A central objective of the EU is a

the significant changes in the asylum policies of its member states. “At the level of the nation state, asylum policies have become increasingly restrictive both in terms of immigration controls and provisions and services available to asylum seekers during the asylum determination process. At the same time, there has been pressure on and from the EU institutions to harmonize asylum policy” (Block 2000). The EU has tried to harmonise the definitions and practices surrounding asylum-seekers and their families. But this process has been very difficult, quite unpredictable and in most cases the outcomes have been very strongly criticised by the NGOs (Lepola 2006).

In the European context, Migration policy attains its continued importance not just because the migrants continue to arrive on our doorstep, but also because no risk free solutions present themselves to this phenomenon (Thomas 2006). The continued disparity between liberal and restrictive policies in discourse and practice reflects interplay between various risk considerations arising from migration policy itself.

At the Tampere Summit in the fall of 1999, the European Council had set as a goal the harmonisation of member countries’ asylum and immigration legislation based on the situation at the country of origin. This ‘spirit of Tampere’ or the 1999 agreement to formulate a comprehensive and balanced immigration and asylum policy was sought to be revived during the second Finnish EU presidency during 2006 though after so many years there were a host of new issues to be confronted (Kynsilehto OneWorld.com). “During its Presidency, Finland seeks to open discussion on how to increase burden-sharing and solidarity in respect of illegal immigrants and asylum-seekers in the EU. Increased burden sharing and solidarity form an integral part of the enhanced migration management in the Union. Other significant parts of the same process include the development of the common European asylum system and common European rules on legal migration, in addition to the proposal for a border management strategy,” said Finnish Minister of the Interior Kari Rajamaki at the informal ministerial meeting of Justice and Home Affairs in Tampere on 21 September, 2006 (EU Press Release 2006).

However, Finnish polices bear the mark of their own national characteristics. “Finnish refugee and migration policy is moving towards multiculturalism, following the development of the EU immigration policy” (Koivukangas 2003). Typically in all other European countries asylum matters fall under one Ministry but in Finland, the Immigration Department of the Ministry of the Interior, the Ministry of Labour, and to a lesser extent, the other ministries such as Ministry of Foreign Affairs are responsible for drafting laws and other important regulations concerning immigration and citizenship. While the Ministry of Labour handles asylum-seeker reception and post-asylum integration policy and enforcement³, the Ministry of Interior’s Foreigner’s Department handles other asylum related policy decisions. Also, while the Ministry of Interior’s Directorate of Immigration is responsible for application decisions and asylum interviews, it is the Ministry of Foreign Affairs and the local police that have been given a smaller role in executive operations.

controlled immigration through fluent decision-making supported by open and active communication nationally and internationally.

³ It also has a significant say in refugee quotas.

The Past and the Present

Today, interestingly, contrary to other EU countries, asylum applications to Finland are on the rise and the total number annually ranges between 2000 and 3000. The period between the end of the nineteenth century till the 1930s saw the first wave of economic immigrants to the Finnish capital city of Helsinki and other towns comprising Swedes, Russians, Central Europeans, Tartars and Jews. The 1970s witnessed the arrival of refugees from both Chile and Vietnam into Finland. The collapse of the Soviet Union in 1991 also saw a corresponding rise in immigrant entry into Finland. The number of 2636 asylum seekers in the 1980's jumped to 3634 new immigrants in the year 1992 alone (Teirmaa 2006). The Somalis started arriving in the late 1980s and today comprise the largest refugee group, followed by the ex-Yugoslavians and then the Iraqis Bergman 2007). However, a point to be noted is that though Finland remains primarily a land of emigration than immigration, a record number of foreign nationals, 3,651, in all, sought asylum in Finland last year and according to the Directorate of Immigration (UVI) the number exceeded last year's figure by 13 percent or 430 cases (Sanomat 2007). Still, Finland's overall number of asylum-seekers is one of the lowest in EU and Europe. In 1990 the number of foreigners living in Finland was only 0.4 per cent of the population (21,000) and in 2002 this had increased upto only 1.9 per cent. In 2002, there were 3,334 decisions of asylum made by the Directorate of Immigration of which only 591 were positive (Koivukangas 2003).

Being a signatory to the United Nations Declaration of Human Rights, the 1951 Geneva Refugee Convention and its 1967 Protocol, for the past 15 years Finland has been accepting its quota of 750 refugees offered by the UNHCR, granting them refugee status and then resettling them in municipalities by granting residence permits to those who have applied for international protection. The quota is typically meant to protect people from the Middle East's most conflict-torn areas and the government typically fulfills the quota through selecting vulnerable refugees from the region's refugee camps (Tanner 2004). In the last decade, the number of people seeking asylum in Finland has fluctuated between 700 and 3,400 and Finland has tried to help those in need, for example, by "participating in the circumstances that promote exile through participation in the prevention of circumstances that promote exile through participation in the operations of the UN peace corps, by using development cooperation funds for areas with refugees and by accepting refugees."⁴ During the last few years there has been an increase of asylum seekers arriving in Finland from Eastern European countries.

Tanner (2004) cites three interesting statistics that illuminate the "relatively strong impact of today's immigration". 1) The number of foreigners living legally in Finland without citizenship increased four-fold between 1990 and 2003 2) The number of foreign-born Finnish citizens and residents doubled between 1991 and 2003, from 77,000 to 159,000 (3 percent of the total Finnish population) 3) The number of residents whose first language is not Finnish has tripled between 1992 and 2004, from 43,000 to 128,000.

The Law and the Legal Process

Since early 2003, any asylum seeker entering the European Union has been forced to register in a EU fingerprint database, Eurodac, accessible to all national immigration authorities. This system

⁴ Website of the Finland Directorate of Immigration - www.uvi.fi/netcomm/

has been seen as a prerequisite for the proper functioning of the Dublin convention by preventing multiple asylum claims within the EU. Early steps in implementing this system were taken in 1992, yet technological and political obstacles postponed ratification until 2000 (Thomas 2006). Within its short life span it has become role model for similar surveillance and control technologies, such as Schengen information system and visa information system.

Immigration law in Finland primarily draws its source from the Aliens Act and the Nationality Act. The original Aliens Act of 22 February 1991 (378/1991) which applied to “alien’s entry into and departure from Finland and to their residence and employment in the country”⁵ was amended recently in 2004. The purpose of this new Act is to “implement and promote good governance and legal protection in matters concerning aliens...to promote managed immigration and provision of international protection and respect for human rights and in consideration of international agreements binding on Finland.”⁶ Earlier the deciding authority was the appropriate Finnish mission but currently, it is the Directorate of Immigration in Helsinki that makes all decisions concerning residence permits. This new Act may have loftily claimed to ‘unify and simplify different procedures and guarantee equal rights for everybody’⁷ but it has also been accused of being unsuccessful and problematic. Under it the new temporary residence permit or the so-called –‘B Permit’ can be granted to a person who is ineligible for asylum but cannot be deported. The law had tried to give these people some kind of an official status as in other European countries they end up otherwise staying illegally. Most of the Iraqi, Afghani or Somali asylum seekers in Finland who are granted the B-status as they do not have well-founded fear of persecution. But they cannot be deported as not just would that result in non-Refoulement but as there are also technical problems like no flights to send them back in.⁸ Thus instead of refugee status they are given this B status that leaves them in a state of limbo and in a very problematic position from a human rights point of view. The institution of asylum does not take into account ‘multi-founded fear’.⁹ The huge numbers of B permit holders and their obscure rights¹⁰ have left authorities befuddled. “The consequences of the Aliens Act come close to being a violation of constitutional rights”, says Jorma Kuuluvainen, Director of the Pernio Reception Centre (Sanomat 2005).

The Asylum process in Finland is based on this Aliens Act and although the common objective of the EU is to create a consistent asylum process in the Union area, presently procedures vary from state to state. First, applications are made at the Finnish border or territory for the need for international protection (*owing to serious violations of human rights in applicant’s home country or country of permanent residence*) to the police or the border guard. The asylum seeker must typically register with the closest reception centre from their point of entry. So while the petitioner’s application is being processed he/she is accommodated in a

⁵ The Finnish Aliens Act 22.2.1991/378 accessed on www.legislation.org/upload/old/

⁶ The Finnish Aliens Act (301/2004, amendments upto 1158/2006 included). Ministry of Interior, Finland, www.finlex.fi/en/laki/kaanokset/2004/

⁷ Samuel Simo, ‘The New Aliens Act has Changed Finnish Permit Procedures’, CIMO, www.cimo.fi/dman/

⁸ Interview with Markus Mervola, University of Tampere, Tampere, February 2007.

⁹ Ibid.

¹⁰ B-Permit holders are recognised by no other system but reception centres; they do not get a social security number as are not recorded in to Finland’s Population Register; are ineligible for a job or education – only are granted a maintenance subsidy along with necessary health care.

reception centre. Those asylum seekers whose identity and travel route cannot be established can be detained in police custody for up to four days and detention could also be imposed if there is reasonable cause to believe that the asylum seeker may commit a crime or go into hiding. While attempts are made to clarify such discrepancies, the custody could last from a few days to up to two months (with the continuation of custody being reviewed every two weeks). Fingerprints can be sent to other EU countries for comparing and investigating if the asylum seeker had been to several EU states. If it becomes clear thereby that the asylum seeker had for e.g., sought asylum first in another country say Sweden, then he is usually sent back to Sweden for the asylum process (Teirmaa 2006).

Then the Directorate of Immigration and the police conduct the asylum interview. With a positive decision, the asylum-seeker is either given a refugee status or a residence permit and then he is provided with a place within a municipality and his integration within the Finnish society begins. In the case of a negative decision an appeal can be first made to the Helsinki Administrative Court within 30 days and then again to the Supreme Administrative Court if need be. But if the decision had been made in a ‘speeded-up’ process or an accelerated procedure then the threat of deportation looms very realistically within 8 days. Finland has only one detention centre in its capital city of Helsinki.

Reception Centers in Finland

Finland has 15 reception centres all over its territory where asylum seekers can stay during the entire process of their application being processed, including the appeal period. They are run either by the state, the Finnish Red Cross or the municipalities. We visited the Reception Centre for Asylum Seekers in the city of Tampere situated at Pohjolankatu 25A. Most of the asylum seekers coming to the Tampere Reception Centre were mostly Afghans, Somalis and Iraqis. The Tampere Reception Centre can house only around 150 asylum seekers but the staff admitted that they provided services to around 200 asylum seekers out of which around 50-60 asylum seekers also lived outside on their own. Here, along with free housing they are also given a living allowance (around 400 euros).¹¹ Usually in these reception centres families get separate rooms but single people may have to share living quarters. We visited the common kitchen where asylum seekers cook their own meals and also saw the rooms being used by a Somali family.

At the reception centre asylum seekers are also provided with medical examinations and necessary health care they are provided support measures like legal counselling on asylum seeking and also other counseling and information on Finnish society. The Reception Centre staff helps them to contact the Refugee Advice Centre that provides legal aid and advice. We also learnt at the Reception Centre that there was a crisis prevention centre at Osvitta, which provided help and support for problems relating to personal adaptation, family problems or traumatic experiences. Counselling and discussions could also be had over the phone and personal volunteers could also come and counsel if needed. Here a note may be made of a study that very rightly pointed out how western doctors and asylum-seeking patients were not connecting in most

¹¹ This allowance is based on the basic supplementary social allowance granted to nationals, though its amount is reduced by 15 per cent for an adult and 20 per cent for a child on account of the accommodation and other service provided in the reception centre. Those staying outside the reception centre can also avail of this allowance.

of their medical encounters and could be working at cross-purposes because if the widespread presence of transnational dissonance on such critical matters (Koehn 2005).

Though asylum seekers in Finland are not entitled to any child benefits or student financial aid, their children are entitled to attend Finnish comprehensive school and adult asylum seekers are also free to apply for a place in any school, institute or university. Since November 2002, after filing an asylum application an asylum seeker can work for three months in Finland without a work permit. Work related training activities are also organised within the Reception centres like language tuitions in Finnish or Swedish. Other work activities proposed in the centre can include a whole range of jobs like organising children, hobbies, cultural activities and repairing and cleaning the reception.¹² An Asylum seeker can also go and attend work-related courses like on computers or handicrafts outside the centre if needed. On many occasions asylum seekers have also organised training activities in the centres themselves. A programme named 'Becoming Visible Development Partnership' (DP) has not just been assisting asylum seekers in Finland with different learning and employment opportunities but has also alongside been trying to increase their visibility and acceptability in Finnish society. Paivi Sinkkonen, a project coordinator at the Tampere Reception Centre rightly pointed out that, "Asylum seekers are not only the target group of the DP. There is also a need to challenge attitudes and educate the Finnish public as well as the media who are misinformed about asylum seekers."¹³

The Case of a Sri-Lankan Asylum Seeker

We spoke at length to Rajkumar Sabanadan, a man of Sri-Lankan origin who had fled his homeland because of the political strife there and sought asylum in Finland. He reiterated that the burden of proof always falls on the asylum seeker who is more than often viewed as a problem to the society. "Every single person has to submit documents to police for verification and personal application to the guards...when an asylum seeker comes; you are told that he himself is a problem to society. In the first interview they are not interested in what is the problem. They are interested in your identity, nationality and the entry route. They just want to make sure that you are the person whom you say you are, they want to see if you hold any official documents and the problem is that the asylum seeker usually does not hold any official documents. The asylum seeker has to first register with the police and then the police send them to us". "Around 20-25 per cent of them are locked up. They can be locked up in the police station for three days or three months."

Today Rajkumar is a Finnish citizen and a senior counselor at the Tampere Reception Centre. He had entered Helsinki by boat – had earlier landed in Turku, had waited there for 4 months and then was transferred to Tampere. His wait continued till 1997 December. A deportation decision was made on his application, he pleaded, it went to the High Court and a 3:2 decision was made in his favour by 5 judges. As he was studying so he was advised to apply for residence permit. All social services were paid by the state and even his education was free. In 1998 January he was given a student permit. He has two degrees today, one in health care and another in social sciences. Currently, he is also studying Administrative Studies. His first job was

¹² 'Social Conditions of Asylum Seekers', Refugee Advice Centre, www.pakolaisneuvonta.fi/

¹³ 'Making Asylum Seekers More Visible', EQUAL,
www.ec.europa.eu/employment_social/equal/data/document/

at a supermarket as a cleaner where they cut fishes and meat and then as a security guard for a while. In 2000 autumn he worked as field researcher at the University of Tampere. For about 6 months he worked as a night worker at the Tampere Reception Centre. After that he began to work as a counselor and 3 months ago he was moved higher up to the post of Senior Counselor. Today in the Centre he is just below the Director and personally supervises the work of 7 counselors and 2 night workers. As Rajkumar says, “It is funny that 3 years ago I was a client at this Centre and today I have authority. But it is not so easy to use it over my colleagues as I was their client earlier. I am a foreigner and clients feel that it is both good and bad.” In 2000 March, he got ‘A’ status – i.e. permanent residence permit and in 2006 after 6 years he was able to apply for Finnish citizenship. Just a couple of weeks ago he was granted that and now he has a Finnish passport.

Rajkumar also added that this Centre had two units but the one in Multisilta had to close down as they had to reduce workers. He said, “Most of our clients, say 70 per cent of them come through another country say a Schengen country. The Europeans have also taken to this new Dublin Agreement according to which if you get caught in the third country where you have sought asylum, you will be sent back to the first country. Because once you seek asylum, your fingerprints are taken and put into a centralised computer system. So once you come here and seek asylum, the police officer will take your fingerprints and put them into the system and it will tell you in a few minutes whether you have earlier sought asylum in another country. If yes, they will start the process of sending you back to that country. The idea is to send a person back within 7 weeks but sometimes it takes upto two or three months. Last year around 70 percent of our clients were Dublin cases.”

The criteria of deciding who to give asylum to “I personally see it as a very holistic thing as it depends on who is the asylum seeker, who is the interviewing officer, who is the police officer, what is the state in the country of the asylum seeker, and what is the political stand, meaning that this year we may decide to give asylum to Afghans whereas next year let them wait.”...”At the end of the day Finland is a highly controlled society”. His words only echo the real situation on the ground.

Problems

One of the biggest problems that stare at the face of Finland is the reality that by the year 2011 nearly 700,000 Finns will retire. The declining birth rate, ageing population and forecasted shortage of labour has fuelled a lively debate whether increased migrant intake can resolve the problem. “An active immigration policy has been preferred as the answer to the needs of the business and society at large” (Wallenius 2001). But the answer is not so simple as Finns have not taken so easily to foreigners. Unemployment figures may be only 8 per cent nationally but amongst foreigners it is as high as 30 per cent. This clearly shows that immigrants are still seen as undesirable competitors in the labour market (Koivukangas 2003). The Finnish government has approved an immigration policy programme that aims at expanding its labour force by promoting the immigration of more workers to Finland in the near future (People’s Daily Online 2006). Thus in the coming years policy making in Finland will not be an easy task as immigration policy decisions will be closely tied to population trends while Finnish labour unions want to put a break on the free movement of labour.

Even today to a large extent, the passport represents a symbol of the ‘monopoly of the means of the movement’ sought by all the European states. But the obvious question arises is that how can a refugee who is affected by war or affected by a terror strike can produce when human beings themselves are destroyed? The argument gets its strength by the fact that no one will move out of his country if he or she is living in the best atmosphere of democratic set up but the movement happens only when their life is threatened and the well-founded fear finds its place. In such a situation it becomes ridiculous for a nation to ask for the passport with those who come to seek asylum. Besides, as immigration flows become more flexible incidents of human trafficking and illegal immigrations have only increased. “Moreover, in Finland, the varied composition of migrants, refugees, asylum-seekers, displaced persons, ordinary migrants and family members – places unique pressures on policy makers and citizenry alike.” (Koivukangas 2003). What has added to the complication is that in Finland proper distinctions have not always been made between individuals based on the reason for their migration.¹⁴

The problem with the Finnish asylum system is that it contains many Dublin cases and many say that the Dublin system is unfair. The Dublin Convention, which determines the member states responsible for the examination of an asylum request, despite often being hailed as a responsibility-sharing instrument, should not be regarded as an effective burden-sharing mechanism (Thielemann 2003). The way Finland hands out temporary residence permits has also given rise to a host of other problems like people disappearing. As discussed earlier, the inability of the system to return rejected asylum seekers creates a deadlock. The huge numbers of B-status immigrants, who are left in a limbo, have been termed as the ‘freaks of Finnish Immigration Policy’.¹⁵ The fact that in Finland an asylum seeker can be deported with 8 days of a negative decision is much criticised as 8 days is too short a time to get legal help or appeal.

The Finnish refugee policy has also been criticised as being restrictive and other neighbouring countries have reacted sharply to the fact that asylum-seekers in Finland are so few in number. Criticising Finland’s small refugee quota, the then United Nations High Commissioner for Refugees, Rudd Lubbers, had said in 2001 that, “We are a bit concerned that Finland’s refugee figures are very low. The question is what kind of a signal Finland wants to give to the outside.(Teirma 2006). There have been suggestions that in Finland the decision of closing reception centres could be reconsidered and those emptying premises could be used to accommodate the people arriving in southern Europe for the time span when their application is being processed. “The principle of social solidarity could be applied in this way”(Kynsilheto OneWorld.net).

The laws need a closer look and already there has been much criticism of the new Aliens Act as amended in 2004. The lacunae in policy can be understood if seen from the perspective that Finland’s immigration policy is still very young. But as the EU moves towards a common immigration and refugee policy, changes will be more than welcome. In fact since the Tampere European Council in 1999, “In reality, little besides paying lip-service has been done to tackle the structural problems in the immigrants’ country of origin that necessitate a medium-or long term approach. Nor has a consistent, concrete, community-wide integration policy taken form. By

¹⁴ “For many Finns, ‘immigrant’ meant the same as ‘refugee’. This was due to the decades long period of introversion during which the most significant and publicly noted immigrant groups were refugees from Chile and Vietnam in the 1970s” – Tapio Wallenius

¹⁵ The Finnish TV-2current affairs programme *Silmennakija* in March 2006 termed the 300 B-status people living in reception centres so.

contrast, new practices have been implemented in the first category, reinforcing restrictive and security oriented immigration policies. In practise, this has meant an intensifying policy of externalization”(Belguendouz OneWorld.net). “What perhaps undermines the EU’s credibility the most is the inadequate level of its own asylum policy...while the number of asylum seekers within the EU has decreased by half from 2001, attitudes towards them have become harsher, Finland is no exception: they are habitually accused of abusing the system, an allegation which no doubt stirs up racism and xenophobia. One example of Finland’s tightening attitude is the policy of issuing Somalis, Iraqis and Afghans, for instance, only temporary residence permits. The UNHCR recommends that all those fleeing Somalia be rendered international protection”(Laajapuro OneWorld.net). To add up to this the general issues affirmed by the Tampere Council (full respect of Geneva Convention, full respect of “*non-refoulement*“ principle, a policy encouraging people to live together in peace and prosperity in EU) has made positive marks and let international institutional observers and NGO’s foresee following fair and satisfactory Directives and plans. However the fear was that the European Council might seek the lowest common denominator and had included asylum seekers quite on the same level of illegal immigration to make external European borders more and more difficult to be crossed, in order to keep the number of asylum seekers as low as possible. In its dossier about Tampere Council, ECRE expressed its hope to see a commitment from the Tampere Summit to broader and more profound efforts between Member States, as a necessary prerequisite for a truly proactive, human rights based, and comprehensive asylum policy (The ECRA Tampere Dosier 2000): that is, ECRE wished to see a full and inclusive application of the 1951 Convention refugee definition, a guaranteed access to protection in the European Union, an application of immigration controls that respected the right to seek asylum and it also hoped that EU Member State would be perfectly aware that immigration and asylum are distinct issues so that the fundamental rights for those in need of protection to seek asylum in the European Union, would be safeguarded.

The will expressed in Tampere of establishing an harmonization among Member States concerning a common and efficient asylum system has failed: we assist more and more frequently to “old” Member State shifting responsibility of managing asylum applications to the “new” Member State, still unable to manage them (around the 70% of world refugees are hosted by poor and developing countries¹⁶).

The Common European Asylum System established in Tampere should have included, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also have been completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection and with measures of temporary protection for displaced persons on the basis of solidarity between Member States. The European Council stressed the importance of consulting UNHCR and other international organizations. In the longer term, Community rules should have

¹⁶ Comments of ECRE on *Future Orientation for an Area of freedom, Security and Justice*, CO4/09/2004/ext/RW.

led to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union.

Eeva Puumala, a researcher at TAPRI and University of Tampere expresses her concern and she throws a different light on the Refugee issue being obsessed with the “International Relations Theories”. When we discuss Finnish asylum policy and the EU at large the issue she raises stands tall among the others as most of the EU members are concerned about the internal security and the invasion of the immigrants on the native culture. She expresses that “can we, in our quest for alternative methodologies for IR, explore and come up with new ways of seeing and also dealing with them and ourselves? To me the importance of the issue is related to the discursive and corporeal practices of ‘othering’ which lies at the centre of the discipline, and which shape our notions of belonging and excluding. These questions are crucial with regard to how knowledge about the issue of immigration is produced and used. In order to cope with increasing amount of border-crossings, national communities need to develop not only alternative institutional and organizational practices but also epistemological stances that would take into account the intersections of self/other, belonging/displacement and home/migration and not rely on exclusive narratives of us versus them (Puumala 2006 unpublished). To me this is a question of being open to the other and daring to be vulnerable in front of the other (Behar 1996).

As always at the end what suffers is the dignity of the migrant as a human being. Finland is only one illustration of how restrictive asylum policies today refuse to address the real problems that migrants, who have to flee their home in order to save their lives, face. Policies leave gaps through which the need for providing international protection to those who require it slips. They need to become more rights-based in their approach and translate the principles that they contain within them into action. Terms like ‘terrorism’, ‘security threat’ and ‘illegal’ are largely becoming excuses to deprive migrants of their right to a dignified life. Any harmonised cohesive EU migration policy in the future must fundamentally ensure the human rights of immigrants and asylum-seekers.

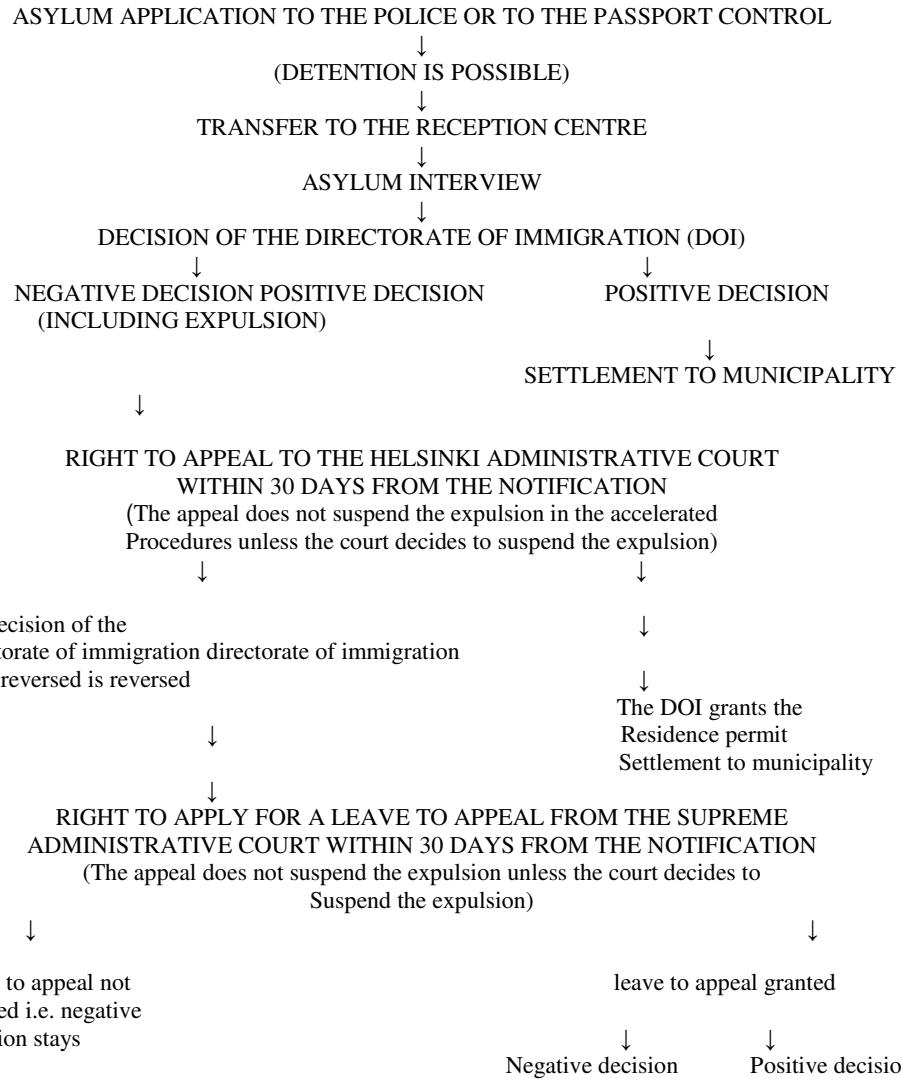
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Appendix I

Asylum Procedure in Finland



If the Supreme Administrative Court grants leave of appeal, the Directorate of Immigration can appeal the Administrative Court's decision that has rejected or amended the Directorate's decision.

Refugee Advice Centre 4.6.2004

Essay 3

What is it to be Many?

Iconic Migrant and the Gaze of the Stranger

Eeva Puumala

The title of this paper is a critique of Western philosophy and ontology as presented by a French post-structuralist and philosopher Jean-Luc Nancy. In his words (Nancy 2000: xiv), “we have not even begun to discover what it is to be many”. This essay is my attempt to start my own way into this discovery, and thus I must start with a personal narrative – my first contact with Calcutta, as it was still called at the time.

I was a child of some 6 or 7 years sitting on a sofa in our living room. The TV was open, probably after a TV show for children, and there was a little piece of news about Mother Teresa. I remember looking at this small-sized woman wearing a white nun outfit. She was shown to take care of the poor and the dying of Calcutta, feeding them and caring for them. She, or actually her way of touching other people with care, respect and kindness, made an impression on me. At the end of this piece of news, the reporter told that it is possible to take part in her work in Calcutta also in Finland: they needed warm blankets to distribute them to women, men and children who lived on the streets. The powerful idea of people without any place to go but the street made me start my own needlework – a quilt – to be sent to this far away place called Calcutta. I managed to finish merely five or six pieces, but for some reason I still can remember this minor news item in the Finnish media. I could not imagine that some twenty years later I was to go to Kolkata myself.

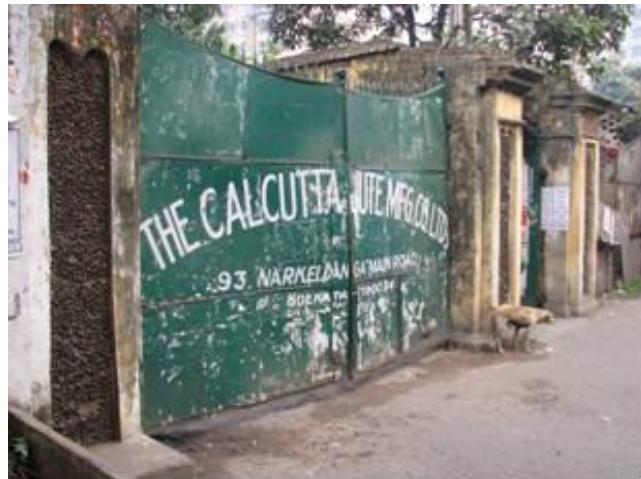
My first contact with Kolkata was, I assume, a rather typical one. It is a city made famous and known by Mother Teresa, absolute poverty and deprivation. It is a rather bleak image, which has given the city a certain label as a city of despair. One could banally note that Kolkata is much more than that. It has been called almost by all names one can think of: soul city, unintended city, city of joy, multilayered city, city of migrants, city of palaces, chance erected city, primate city, living city, city of dreadful night. The list could go on. It is all this, I assume, and much more. I fell in love with this city.

After participating on the Fourth Winter Course on Forced Migration organised by Mahanirban Calcutta Research Group, I was offered the chance of exploring and exposing myself to this city of migrants. As my Ph.D. is focused on the issue of asylum seekers in Finland, I was keen on taking another perspective on the tricky issue of migration. Let me be clear: migration in Europe and in South Asia do not compare. The scale of people moving and the mentalities used to govern this thorny phenomenon are totally different in these two contexts. Migration evokes different connotations; and as I was to find out, I was practically blind to the migration and migrants in Kolkata. My eye lacked, and still lacks, the ability to distinguish between different migrant communities and even between a Bengali and a migrant. I am not proud to say this, quite the contrary, but to some extent my vision is totalising, or at least totally incapable of spotting the subtleties of being when the whole city is mind-blowing and represents a new, unfamiliar mentality. Due to these facts, this text will represent more like a dialogue between my personal (in)experience and theoretic-methodological views of conducting research in the framework that the city of migrants offered. This, thus, is a stranger’s look on the city.

I mentioned that there are differences between migrations in India and Finland. In the Finnish context, which is my interpretative framework, and with my disciplinary background, migration means usually immigration. The movement of people inside the country of course counts as migration, but is not theorised very much as migration in the terms of political science. Thus, when starting my journey into the city of migrants, I was expecting to “find” immigrants from neighbouring countries, not internal migrants. I was expecting a simpler picture, but I should have known that in Kolkata there is no one truth to be found. Thus, with the kind help of Dr. Ranabir Samaddar and V. Ramaswamy, I explored both kinds of migrations. There were jute mill workers in Alambazar, and former jute mill workers in Narkeldanga.



Picture 1 The jute factory in Alambazar



Picture 2 Jute factory in Narkeldanga



Picture 3 Port and dock area, Watganj



Picture 4 Entrepreneurship in Tangra

There were railway workshop and port and dock area workers. There were pavement dwellers and migrant settlements where refugees from outside West Bengal lived. And, of course, there was Tangra, Chinatown, with the nearby Armenian Church. Simply put, there were migrations all around. Maybe with my feeling still inspired by the kindness and respect that I saw Mother Teresa showing, I took my camera and wanted to find joy, hope and future in these areas, which are homes to the less well-off migrants – Tangra being the exception to certain extent in terms of the original migrant community.

A Note on Methodology: Ephemeral Encounters Through the Lens

As noted above, this text will assume a dialogical character. In this sense, it can be viewed as a photo-essay of (ephemeral) relationships, or more philosophically, it is a representation of Jean-Luc Nancy's ontology of being with (Nancy 2000). By ephemeral encounters I mean those seemingly trivial, passing moments with different people, places, and groups in our daily lives. In Granovetter's terms these encounters form part of "weak ties" (Granovetter 1973). Each of us meets on a daily basis other people whom we do not know, and will never know personally, but for a short time a relationship is developed between us and these people we meet. This relationship might take on the form of an informal discussion on the street, on a bus stop, in train, and so on. These relationships concretise what Nancy calls the inseparable part of being, the "with".

This statement might offer nothing new for a reader educated outside the European Enlightenment project. European thinking is plagued with individualism and the question of the subject (see Chakrabarty 2000). This essay is not an exception in terms of the question of subjectivity, but with regard to individualism, I seek to follow a different path inspired by community, not individuality. As Jean-Luc Nancy (2000: 29–30) states in terms of being:

That which exists, whatever this might be, coexists because it exists. The co-implication of existing is the sharing of the world. A world is not something external to existence; it is not an extrinsic addition to other existences; the world is the coexistence that puts these existences together. [...] [I]f Being is being-with, then it is, in its being-with, the “with” that constitutes Being; the with is not simply an addition.

This dimension of the “withness of being” is what I discovered during my exposure to the city. My Western, that is European, way of thinking was challenged in the streets of Kolkata, by the people I met. During the walks, I was for the first time in my life made conscious about my being coloured. This, again, might sound like a triviality, but in European intellectual traditions white does not quite count as a colour. This mentality, although it was not intellectually a revelation to me, has been described by Frantz Fanon (1986), Edward Said (1987) and Richard Dyer (2004) among many others. Now I have been stared because of my colour, children wanted to touch me because of it, and they have laughed at my complexion. Through these encounters, however fleeting they were in time-span, I have come to understand my way of being, and the way I and “the other” are with one another. Nancy (2000: 34–35) theorises this withness further in a following manner:

The one/the other is neither “by”, nor “for”, nor “in”, nor “despite”, but rather “with”. This “with” is at once more and less than “relation” or “bond”. [...] Being is with Being; it does not ever discover itself, but it is near to itself, beside itself, in touch with itself, its very self, in the paradox of that proximity where distancing and strangeness are revealed. We are each time an other, each time with others. “With” does not indicate the sharing of a common situation any more than the juxtaposition of pure exteriorities does.” (Nancy 2000: 34–35)

This withness I approached through the lens, by taking photos of these localities, which have considerable migrant communities. I am fully aware of the immense discussion about the camera as a means of subjugation, colonising and objectivation, but in this case the camera, which I was very hesitant to use in the beginning, provided me with an invaluable means of communication. It helped me establish relationships and to bond with people with whom we had no language in common. In any case, I asked people for permission, before taking their portrait, which gave them a chance to represent themselves in the way they wanted to be seen. After my taking the photo, I showed the picture to my model, which created a lot of laughs, gestures – moments of bonding. My overall experience was overwhelming: I had not expected such hospitality and kindness from the people, or their curious attitude towards my presence in these localities. No matter where I walked, there were always 5–15 children running after me out of curiosity.

For a Western traveller, like myself, one of the most eye-catching features was the complete mixing of the private and the public. Walking in the street means that one is walking simultaneously in somebody’s yard, living- or dining-room, bathroom. People are brushing their teeth, cooking, sleeping, raising their children, eating and washing laundry in the streets.



Picture 5 Morning chores in Narkeldanga

For this reason, wandering the lanes of Narkeldanga, Alam Bazar and even the centre of the city, felt at times uncomfortable to me. Seeing a family of four spreading their blankets on the pavement and cuddling up to sleep at a busy intersection where the pollution burns my throat was not easy. However, this is only the other side of the coin: simultaneously it surprises me to see how determined these people are with leading their lives to the fullest, rejoicing the good moments, and how they are interested in my presence and thank me for taking an interest in theirs. Our contact remains at a very trivial level, the relationship does not continue after the immediate encounter, but these contacts leave marks to both parties. This mark of two bodies, persons, coming together sticks to my skin, and reminds me of the coexistence of the world.

Iconic Migrant and The Gaze of the “Other”

After these methodological reflections, let us return to the migrant side of the city. Who is a migrant? Is there such a thing as a second-generation migrant? Who are the natives, to what place, and can a migrant status be “hereditary”? To term ‘somebody’ as a migrant is tricky, for I believe, we are all migrants. Very few of us have lived in a single place, but still we might not term ourselves as migrants – especially if the migration has happened inside a country. The seemingly eternal epistemological question of the migrant touches upon the same issue as Manas Ray writes about in his article “Growing Up Refugee: On Memory and Locality” (2000). At best this question can lead to different stories of origin cumulating together and to the construction of a new identity. If, however, the label “migrant” is forced upon a community from the outside, it makes him/her an icon, an abstraction and separates their being from the immediate experience and life-world. There is a very true risk of colonising, created by the will to knowledge (Foucault 1977), the migrant in both of these approaches. Discovering the singularity of a migrant or abstracting migrant into an icon are perhaps opposite strategies of this will to knowledge, but nevertheless their colonising effect on the individual in motion is similar. The reason why I still decided to write under the title “iconic migrant” is twofold. Firstly, my using photography somehow implies the will to discover the singularity of the people living in migrant communities in Kolkata. My photos bear the possibility of being translated into icons, but at the same time the

task of discovering the “city of migrants” carried with it the risk of reifying migrant identity to the people I met, especially when there was no shared language in which they could contradict my reading them as migrants. Thus, the wording “iconic migrant and the gaze of the other” asks the reader to carry in mind the power relations embedded in these ephemeral encounters.

Having said this, in the latter part of this article, I will try to find and follow another approach of the issues of identity and subjectivity. Therewith, I would like to invite the reader to look at these photos from a different perspective – how do these photos represent the witness of being? How are we with each other in these pictures? Who is looking at whom and who is the object of gaze? I hope that the pictures represented so far and those yet to come convey a sense of respect – but that is ultimately for the reader to decide. The people in these pictures are just that, people, human-beings, and thus their similarity to myself – and to the rest of us – despite the different positioning in the world captures me in these photos as well (see Edkins 2005). It all boils down to the question of recognition of the other in me, and myself in the other – and most of all each other together, with one another already in the singularity of our being.



Picture 6 Namaskaar!

Thus, the epistemological question of the “migrant” shows itself not to be a question of establishing a bond between “the rest of us” and “the migrant”. What it is, and here I am citing Edkins (2005: 383), is an ontological and political question of “how have we come to consider ourselves separate in the first place”. During my walks, after the initial sense of displacement and loss of all familiarity, I began to explore the ways in which I am involved in these lives that I do not know, in these circumstances totally new to me. It is this trip that I still continue while looking at these photos of migrant communities: “the look becomes evidence of a world that unfurls itself less *before* me, as a spectacle, than *across* me like a force that opens my eyes in the eyes of the picture” (Nancy, cited in Edkins 2005: 366). The discovery of the migrant subject has, then, turned into an effort of discovering subjectivity “in the relation between internality and externality” (*ibid.*)— in myself and in these photos. The exploration into and the effort to contextualise the city of migrants has left me decontextualising myself.

Initial task...: exploring the city of migrants

It almost goes without saying that the question of migrations and migrant workers in Kolkata is immense. It is intertwined with questions of economy, politics, culture and development (Chatterjee 1997: 186–187). Especially the flow of rural migrants to the urban centre has had massive socio-cultural consequences to Kolkata and its development and formation (Palit 1973). Refugee flows and flows of migrant labourers have changed and made the city what it now is – a city in constant transition. But, surprisingly enough for me, it seems that the migrant communities are quite segregated; the migrations and migrant communities do not mix. To me, modernity and tradition are living hand in hand, with each other, in Kolkata. Stagnation and progress, poverty and wealth, absence and exuberance exist side by side, moving in the city resembles moving from one world to another – every place is particular and singular, but yet somehow despite its unfamiliarity to me the city seems at the same time familiar and comforting. Maybe it is exactly this mélange – the city as a place of the mélée (see Nancy 2000: 145–158) – that characterises my explorations into the city as a city of migrants. For example former jute factory workers, or their offspring, now sustain themselves with various forms of entrepreneurship. It is not rare for a migrant to establish a small-scale “business” on the streets of Kolkata. This practice seems to have led to a situation where more or less formal booths and diverse services abound together with all other sides of life. There is no clear difference between a shop and a home – sometimes the home is a *chai* shop, and so on.



Picture 7 Fruit vendors in Alambazar



Picture 8 Fish in Cossipore



Picture 9 Constructing Narkeldanga

In the issue of migration and migrant communities it is of ultimate importance to consider the questions of citizenship and social justice, as well. The figures of migrant and citizen are closely connected in politics, and this connectedness is most bluntly visible in terms of rights – or social justice, if one takes on a wider perspective. Many rights are connected to having citizenship, but one also needs to have access to claiming these rights effectively. In this regard, I believe, Kolkata can function as a prime example, for many of these migrant communities live their lives somewhere in the blurry line between legality and illegality, or extra-legality. Life in a bustee is often life lived outside effective citizenship rights – even though many migrants in the city of Kolkata are citizens. This vulnerability is then further exploited. (see Sen 1976) Somehow it seems that the city depends on the poor, but the city is not for the poor. But these “poor” do not need victimising, they do not ask for my pity, but instead what they do in this particular migrant community is that they show me what it is to be many. They accept me to be with them, share their dailyness with me. Again, this statement calls for further clarification, which I want to give in a form of personal narrative. This is from my trip to Howrah, to the school Talimi Haq⁴⁷. After a ferry ride from Babughat to Ramkrishnapur, and an over-priced cycle rickshaw ride during which I got to amaze the cow dung cake covered walls, to the Raunaq *pan* shop, I get my first glance at the surroundings of the Howrah jute mill.

⁴⁷ I wish to thank sincerely V. Ramaswamy who kindly provided me with the opportunity to acquaint myself with the school and all the wonderful people there, and Dr. Ranabir Samaddar who initially put me in contact with him.



Picture 10 Bathing in the Hooghli



Picture 11 Hand printed organic fuel

I was told that jute mill workers live in this area, which is vast and filled with small lanes, sideways and bigger lanes. Besides private homes, there are small shops where one can purchase *chai*, pastries, food, and all sorts of everyday things, there are places where people prepare and embroider sarees, ironing places etc. The place is full of life. In the streets there are children playing, dogs running or sleeping, goats and I even spot one cow. Then there are people working, washing pots and pans and their clothes, which hang almost everywhere drying. The houses can be even 3 or 4 stories high, some smaller, some bigger. There are also one-storey buildings, which have brick roofs. The houses are built so close to one another, that there is absolutely no space between the rooftops; this is said to be one characteristic of a poor area. The size of the houses is also very small in terms of the number of people living in them. In many cases, I am told, the houses are too small for the whole family to sleep in, in which case the men sleep outdoors, on the stairs or the pavement. While following my guide, I encounter a small girl whose

sandal has broken down; with the other one still in her left foot she tries to put the other back on in her right one. But as the upper part of the sandal is torn, it obviously does not stay on, but when she lifts her foot, the shoe remains on the pavement. She looks very discontented, and tries again. The brick houses arise on our both sides, as we make our way deeper into the community. In the narrow side alleys I soon lose all consciousness of direction. Children greet us with hellos, and want to shake my hand. A big group of children is also following us, to see where we are going. Also adults greet, and return the smile. When we reach the school I am offered *chai* and samosas. My outfit – a green *kurta*, matching bangles, and a *bindi* – evoke discussion, and my hosts compliment me on my look. Some of the older children want to talk to me, and ask how come I am there. The children want to know where I come from, my name, what kind of food I like, what I do for my living, and what kind of flowers I like. They also tell me their names, favourite fruits (mango scores most points), flowers (rose gets all the votes) and what they would like to become when they grow up. Some mention that they would like to be doctors, but I meet also two policemen, two engineers and a cricket player.



Picture 12 Lesson in hygiene in Talimi Haq

For me, in Kolkata everything is plural, many and multiple, but at the same time singular, unique and particular. There is no migration for me to discover, or a migrant profile to be created, not in the framework to which I am accustomed to in Finland and Europe. Instead, I am forced to look at the question of community, and what it means to be many. My task of exploring the city of migrants turned into a soul searching trip – in Nancy's (cited in Edkins 2005: 383) terms, into a task to engage with “the way we are all beyond and before ourselves”. This task is not actually so far from the original one, as it might seem, for ultimately with-being is about community, and

politics. Citizen and migrant are both politically constructed subjectivities, that could in Foucault's terms be understood as techniques of power and governmentality. What if, as Edkins (2005: 383) inspired by Nancy's ontology writes, the state attempts to destroy community? The idea of sovereign states as a basis for identity, rights and belonging, is easily translated into considering ourselves, living in different states and regions, as separate. The community is not to be understood as one big happy family, or to similarity and being the same. Community is about being-with, and as Nancy (2000: 154) states, "the *common*, having-in-common or being-in-common, excludes interior unity, subsistence, and presence in and for itself". Being with is not a matter of being "one":

Prior to "me" and "you," the "self" is like a "we" that is neither a collective subject nor "intersubjectivity," but rather the immediate meditation of Being in "(it)self," the plural fold of the origin (Nancy 2000: 94)

...and what became of it: exposing the subject

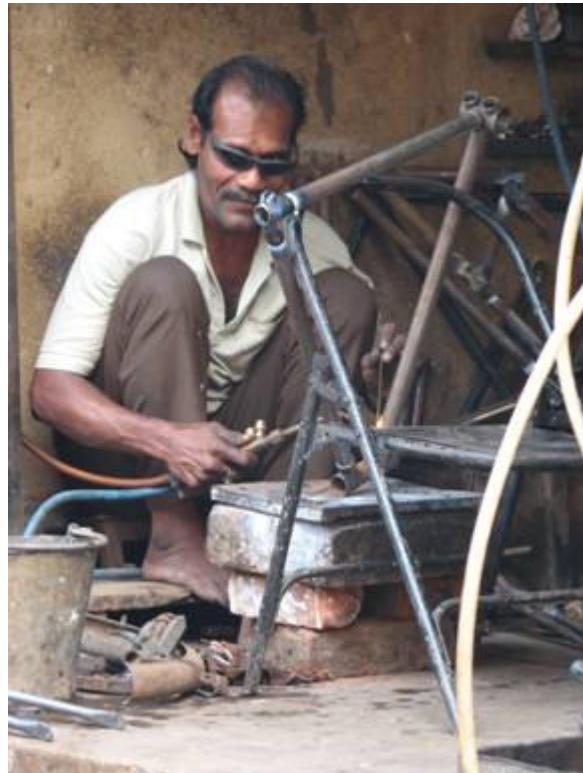
According to Nancy (2000: 84) "the ontology of being-with is an ontology of bodies, of every body, whether they be inanimate, animate, sentient, speaking, thinking, having weight, and so on". This ontology, and the question it raises – what is it to be many – are about exposing subjectivity. These questions further beg us to consider the apparent separateness between us. The task of taking these photos, and the willingness of people to pose in them, exposed me (and hopefully also you, who are reading this) to our engagement with each other.

The detail catches one's eye in these photos: what are these people doing, how are they dressed, who are they? Some people chose to look straight to the camera, but all show dignity and self-esteem in the pictures. They show themselves openly and with their attitude demand me to take them seriously. (see Edkins 2005) This is what makes these photos portraits, not snapshots taken in colonising spirit. Taking these portraits demanded exposing my own subjectivity to scrutiny too. I had no right to victimise them, which is a common Western tradition, nor belittling or downplaying them. Thus, I asked their opinion of the photo and if they seemed to be discontented, we took another picture. They wanted to expose themselves at their best, as they are and as they wanted to be seen. The nature of these photos makes them portraits of a sort – portraits framed in the setting of Kolkata's diverse localities, which often are called migrant communities.

The youngest of my models must be somewhere around three-years-old, and the elder ones are in their 40's or 50's. They represent many kinds of professions: vendor, welder, tailor, shoemaker, carpenter, and of course the children at their work, playing. They are all working, caught in their daily activities, but it is not the work that gets one's eye, it is the person working. You might look at their clothing, their bare feet, try to figure out where they are, from which locality, and where they have come from. But the most powerful element in these pictures is their face, their expression and openness to my exposing them. Before having their portraits taken, they might have lowered their sunglasses, straightened their sari, taking a different pose, or picking up their tools to show themselves at their work. They took me seriously; they took pride and time in posing to me. As the children, of whom Edkins (2005: 362) writes, my models too hold themselves upright and dignified. These portraits were not taken to evoke compassion, concern, pity or sympathy. In the strict sense of the word, these photos were not actually taken, but they presented themselves to me, as the people in these portraits are in their mundane

business, not detached from their subjectivity (see Edkins 2005: 363). These photos were taken to question our differences, and to make me as a western individual to look at these people, and to find the similarity in each other. Thus, looking at them makes me question: who am I? Who are we? Their look, gaze – not mine – is the most powerful element in these pictures.

As Edkins writes, each person is present in the portrait as him- or herself. Not as a migrant, labourer, man, woman – they are presented in their full subjectivity, as individuals. Yet, even in this singularity, we can see ourselves along, or beyond these portraits. This is, claims Nancy (in Edkins 2005: 365), because the portrait produces the subject. This applies to both the photographed subject and to the viewer – we are left face to face with each other, not as objects, but as subjects. At least I cannot remain separate from these portraits.



Portrait 1



Portrait 2



Portrait 3



Portrait 4



Portrait 5



Portrait 6



Portrait 7



Portrait 8



Portrait 9

The gaze of these exposed subjects confronts, and exposes, the viewer. Their look makes us think and rethink ourselves, our positions and identities. These workers' similarity to me, although at first there is none, is eventually striking. These children's similarity to children everywhere; their curiosity, playfulness and openness can be found in the eyes of Finnish children, too. They remind me of myself when I was a child – who once saw Mother Teresa on TV. I see myself in these children, and in the adults I can see traces of myself in the future to come. The appearance of myself in the eyes of these people was an odd sensation, as I was expecting to find strangers, unfamiliarity and otherness. Thus these subjects, by acceding to my request to photographing them, exposed my subjectivity. In opening their selves to me, I also opened myself to them. In a sense, we presented ourselves to each other (also Edkins 2005: 363).

In fact, in Nancyan philosophy, we *are* not, but we *happen* constantly with regard to one another (Nancy 2000:156). Thus, we are always beyond ourselves, with each other. This is what these portraits of people, taken on the streets of Kolkata, in its migrant quarters, have shown me. This is what the honest straight-forward look, and the coyness in my models' eyes tells me. It is this look that makes myself happen time after time, each time a tad different, responding to the person looking at me with my being. By stating this, I do not wish to reduce us all into sameness, or being *as* different. Quite the contrary, instead of reducing the question of subjectivity into sameness, or essentialising our difference, it is important to embrace our singular plurality – our being different, but still in common. The mutual gaze, the one of the iconic migrant and myself as a stranger, questions “the stability of everyday existence” (Edkins 2005:367) and leaves me with traces and hints what it can mean to be many.

My Kolkata: The City Scented of Tandoori Masala

After philosophical contemplations, let us still return to *Talimi Haq* for a while to explore this issue of witness and the happening of the self in practice:

Darkness is beginning to fall as I look out through the classroom window-opening. Children's kites rise high above the rooftops of these small brick buildings. Smoke from the cooking fires burning outside on the lanes spread their smell around the classroom where it mixes with the scent of *tandoori masala*. They have made a deal with a big company to pack it, after which it will be shipped to Germany and Italy to be sold. This is part of fair trade; they will earn 7 paises for each bag. The teachers and the children have been working for days now (they like to sing while working), and so far have managed to finish 3518 bags out of 13000. Three tea spoonfuls into each bag, then weighing, sealing and labelling. It takes time to complete even one bag, not to mention the lot of them. I participate in the work, not accomplishing much, but trying all the same. I am offered another cup of *chai* with cookies this time. The strong scent of masala makes me sneeze time after time, which in turn amuses my hosts and the children. Our activities are suddenly interrupted by the praying call from the near-by mosque. The women cover their hair and one of the girls starts walking around the two rooms with burning incense in her hand. The fragrance blends with those others floating in the room. I feel happier and more serene than I have felt in a long time. After work finishes, I play with the children as they want to hold my hands and spin around. I tell them about Finland, which for them was a non-existent country till a few minutes ago. Then it is time for a small picnic, where we share the food everybody has brought sitting on the floor in a circle, talking and laughing.

My time in Kolkata was short, and the encounters with many people shorter still. But the accumulation of these ephemeral relationships somehow made me question what being many can be at its best. The exposure of my own subjectivity to a mentality different from my own showed what community can mean, and how being-with unfurls in spite of different identity labels that we attach to us or are attached by others. The gaze of a stranger turned to be a gaze into myself, as a singularly plural and plurally singular. Now that I buy *masala* I wonder who has packed it, and how for that short time I could be with those wonderful people myself. And, to the extent that we really are many, I am still and always will be with them. This is the mentality that comforts me here in Finland, on a cool and dark September afternoon like this when rain is pouring down.

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