

Ending the Displacement Cycle: Finding Durable Solutions through Return and Resettlement

Edited by
Nadeeka Withana



Regional Centre for Strategic Studies

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Return and Resettlement**

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Nadeeka Withana**



**REGIONAL CENTRE FOR STRATEGIC STUDIES
COLOMBO**

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Abbreviations

ARMM	Autonomous Region of Muslim Mindanao
ASEAN	Association of Southeast Asian Nations
BRA	Badan Reintegrasi-Damai Aceh (Aceh Peace Reintegration Agency)
BRR	Badan Rehabilitasi dan Rekonstruksi Aceh (<i>Agency for Recovery and Reconstruction of Aceh</i>)
BSPP	Burma Socialist Program Party
CMI	Crisis Management Initiatives
COHA	Cessation of Hostilities Agreement
CPA	Comprehensive Peace Agreement
CPN (UML)	Communist Party of Nepal (Unified Marxist-Leninist)
CRG	Calcutta Research Group
DDC	District Development Committees
DDP	Desert Development Programme
DILG	Department of Interior and Local Government
DSWD	Department of Social Welfare and Development
GAM	Gerakan Aceh Merdeka (Free Aceh Movement)
GDP	Gross Domestic Product
GOI	Government of India
HSZ	High Security Zones
IASC	Inter-Agency Standing Committee

ICRC	International Committee of Red Cross
ICBL	International Campaign to Ban Landmines
IDP	Internally Displaced Person
IDMC	Internal Displacement Monitoring Centre
INGO	International Nongovernmental Organization
IPRA	Indigenous Peoples' Rights Act
LTTE	Liberation Tigers of Tamil Eelam
MAF	Million Acre Feet
MDTF	Multi-Donor Trust Fund
MILF	Moro Islamic Liberation Front
MJF	Madhesi Jana Adhikar Forum
MNLF	Moro National Liberation Front
MOA – AD	Memorandum of Agreement on Ancestral Domain
MoU	Memorandum of Understanding
MW	Megawatts
NAD	Nanggroe Aceh Darussalam
NGO	Non-government organizations
NHPC	National Hydroelectric Power Corporation
NPA	New People's Army
NRC	Norwegian Refugee Council
NWDTA	Narmada Water Disputes Tribunal Award
OCHA	UN Office for the Coordination of Humanitarian Affairs

OPAPP	Office of Presidential Adviser on the Peace Process
PAMANA	Payapa at Masaganang Pamayanan (Peaceful and Prosperous Communities)
PAP	Project Affected People
RSG	Representative of the UN Secretary General on Internally Displaced Persons
SAARC	South Asian Association for Regional Cooperation
SARP	South Asian Solidarity for Rivers and Peoples
SEZ	Special Economic Zone
SLED	Sri Lankan Externally Displaced
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
UN FAO	Food and Agriculture Organization of the United Nations
UNHCR	United Nations High Commissioner for Refugees
UNMIN	United Nations Mission in Nepal
TISS	Tata Institute of Social Services
TNA	Tentara Negara Aceh (Aceh State Army)
TNI	Tentara Nasional Indonesia (Indonesian Military)
VDC	Village Development Committees
USDP	Union Solidarity and Development Party

Preface

This publication is the result of a workshop that was organized by the Regional Centre for Strategic Studies (RCSS) in January 2011 with the support of the Consortium of Non-Traditional Security Studies in Asia (NTS-Asia). RCSS has a long history of focusing on an array of non-traditional security issues such as terrorism, refugees, migration, climate changes, and internal conflicts in South Asia. It is also a founding member of the Consortium.

When we first planned this workshop, our initial idea was to focus entirely on conflict-induced displacement in South Asia. It was later decided to include two other aspects, disaster-induced and development-induced displacements, as there were large groups of people displaced due to these factors. It soon became evident that the existing body of literature on internal displacement had largely focused on causes of displacement and addressing issues with immediate humanitarian concerns. For this reason, RCSS decided to focus on the third phase of the displacement cycle, which involves finding durable solutions through return and resettlement. It was also decided to include several case studies from Southeast Asia, as the countries here share many similarities with countries in South Asia.

In April 2010, these ideas were submitted in the form of a proposal to NTS-Asia which had called for applications for sub-regional workshops focusing on non-traditional security issues in Asia. It was with the financial support of the NTS-Asia grant that the RCSS was able to hold the workshop titled “Ending the Displacement Cycle: Finding Durable Solutions through Return and Resettlement” on 28–29 January 2011 in Colombo, Sri Lanka.

The overall objective of the workshop was to evaluate the policies implemented by South and Southeast Asian states pertaining to the return and resettlement of IDPs displaced due to internal conflicts, natural disasters and development projects. The resource persons of the workshop were invited from India, Sri Lanka, Nepal, Singapore, Indonesia and the Philippines and they presented papers addressing these issues in their respective countries. The workshop was attended by academics, researchers and individuals from the UN and other aid agencies working on issues of displacement. The workshop also provided a forum for both practitioners and scholars to interact and share ideas.

The workshop comprised four sessions where seven authors presented their papers. Session one covered the International Guidelines and Frameworks Pertaining to IDPs; session two was on Sri Lanka and Nepal; session three looked at the Southern Philippines and Aceh, Indonesia; and session four covered the development-induced displacement in Myanmar and India. The sessions were chaired by myself, Mr. Shiam Vidurampola, Mr. Joe William, and Mr. Sunil Bastian respectively. Following the presentations, there were extensive discussions between the participants and the authors, the essence of which has been incorporated in the chapters of this book. The book chapters largely follow the format of the workshop structure while the Introduction by Ms. Nadeeka Withana provides a contextual background as well as a summary of the ensuing chapters.

I am grateful to NTS-Asia, and especially Prof. Mely Caballero Anthony, without whose support this workshop and publication would not have been possible. I would also like to thank the paper writers for their invaluable contributions to both the workshop and this publication, and the workshop session chairpersons and participants for their incisive comments. A special word of thanks goes to Ms. Nadeeka Withana for editing the chapters in this book

and writing the introduction. Finally, I wish to thank the RCSS staff: Mr. Chaminda Hettiarachchi, Ms. Dharshani Dias, Ms. Kamani Perera, and Ms. Dilkie Koelmeyer for organizing a successful workshop and enabling the publication of this book.

Colombo
June 2011

Amal Jayawardane
Executive Director

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Paula Banerjee specializes in issues of border and borderlands in South Asia. She has published extensively on issues of gender, forced migration and peace politics. Her recent publications include a volume entitled *Borders, Histories, Existences: Gender and Beyond* (2010). She has edited a volume entitled *Women in Peace Politics* (2008) and co-edited books on *Internal Displacement in South Asia* (2005), *Autonomy Beyond Kant and Hermeneutics* (2007) and *Justice and Its Marginalities* (2009).

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1

Introduction

NADEEKA WITHANA

Displacement in South and Southeast Asia

Displacement of populations within state borders has emerged as one of the most pressing humanitarian issues facing the world today. While there is no legal definition of an Internally Displaced Person (IDP), the UN Guiding Principles on Internal Displacement define IDPs as:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.¹

The causes of displacement vary and, as described in the definition, can be caused by internal conflicts and natural disasters. Another major cause of displacement has been large-scale development projects. The above definition provides for “human-made disasters,” while Principle 6 of the Guiding Principles specifically states that every individual has the right to be protected against being arbitrarily displaced and that this includes displacement “in cases of large-scale development projects which are not justified by compelling and overriding public interests.” Hence, those individuals displaced due to

¹ Guiding Principles on Internal Displacement, Introduction, para 2, p. 1.

development projects can also be considered IDPs.²

Home to highly diverse populations, South and Southeast Asian countries have seen large-scale displacement of people due to all of these factors. Having gained their independence from European colonial rulers in the aftermath of World War II, most of these states have been struggling with democratization, economic development, state structuring and the formation of national identities.³ In this turbulence, nearly all of these countries have been plagued with protracted conflicts in the form of civil wars and insurgencies, where both state and non-state actors have been responsible for the displacement of populations. While conflict-induced displacement steadily increased worldwide over the past decade, the situation has been especially grim in these two regions. For example, according to the Internal Displacement Monitoring Centre (IDMC), the largest increase in IDPs between 2008 and 2009 was seen in South and Southeast Asia, where there was a 23-percent increase in the number of people displaced due to conflict and violence.⁴

Destructive natural phenomena have also caused large-scale displacement in the two regions. According to the definition afforded by the UN, a disaster is “a serious disruption of the functioning of a society, causing widespread human, material, or environmental losses which exceed the ability of the affected

² Principle 6 of the Guiding Principles on Internal Displacement states that every individual has the right to be protected against being arbitrarily displaced and, that this includes displacement “in cases of large-scale development projects which are not justified by compelling and overriding public interests” (see Guiding Principles on Internal Displacement, Section 1, General Principles, p. 3).

³ Joseph Chinyong and S. P. Harish, “A Brief Overview of Internal Conflict in South and Southeast Asia,” *Asia Retreat 06*, Centre for Humanitarian Dialogue, p. 22.

⁴ “Global Overview of Trends and Developments in 2009,” Internal Displacement Monitoring Centre, May 2010, p. 8.

society to cope using its own resources.”⁵ Natural disasters can also be divided into three sub-categories: sudden-impact disasters (floods, earthquakes, volcanic eruptions, tidal waves, etc.); slow-onset disasters (droughts, famines, environmental degradation, deforestation, etc.); and epidemic diseases (cholera, malaria, respiratory infections, etc.).⁶ Countries in South and South Asia have, at some point, been affected by natural disasters falling into each of these categories.

As large scale sudden impact disasters such as the 2004 Tsunami or the 2005 earthquake in Kashmir tend to gain worldwide attention, affected countries are able to receive funds and other forms of support to deal with these situations. Apart from carrying out humanitarian assistance in the immediate aftermath of the disaster, these funds have also contributed towards the resettlement of affected populations. However, their efficacy varies greatly from country to country. For example, some countries such as Indonesia have been successful in resettling most of those affected by the 2004 Tsunami, although in a number of the other countries, those affected continue to remain displaced. It is also noteworthy that slow onset disasters seem to gain less attention, probably due to the fact that they are not as dramatic. Nonetheless, unable to cross international borders due to poverty or lack of opportunities, these populations also continue

⁵ UN Disaster Relief Organization, 1992, *An Overview of Disaster Management*, New York: UNDRO. In December 1991, UNDRO was incorporated into the newly-established Department of Humanitarian Affairs (DHA), which has since become the Office for the Coordination of Humanitarian Affairs (OCHA): W. Courtland Robinson, “Risks and Rights: The Causes, Consequences, and Challenges of Development-induced Displacement,” An Occasional Paper, Brookings Institution–SAIS Project on Internal Displacement, May 2003, p. 9.

⁶ Keith Holtermann, Erik Gaull and Ray Lucas, 1998, “Disaster Dimension,” in Saade Abdallah and Gilbert Burnham (eds.) *The Johns Hopkins and Red Cross/Red Crescent Public Health Guide for Emergencies*, Baltimore: Johns Hopkins University in Robinson, *ibid*.

to remain displaced within state boundaries.⁷

Although not as prominent, development projects carried out by South and Southeast Asian states have also been a major cause of displacement. According to estimates of the World Bank, in India alone about 25 million people have been displaced due to development projects over a period of 50 years.⁸ Between 1996 and 1998, about 300,000 people in the Shan State of Myanmar were relocated by force and not allowed to return, as the Myanmar and Thai governments aimed at constructing the Tasang Dam.⁹ For the development-displaced, return is not an option as their lands and properties are generally used for large-scale projects. Nonetheless, unlike with natural disasters and internal conflicts, development projects also provide states opportunities to take adequate measures toward long-term resettlement and compensation of the people affected, as displacement is an inevitable consequence of development projects. However, as pointed out by Michael Cernea in his research on development-induced displacement for the World Bank, significant numbers of people displaced from their lands and habitats due to development projects have not received compensation for their losses, leaving them poorer and more vulnerable than prior to their displacement.¹⁰ It is also noteworthy that indigenous populations

⁷ Joanna Kakissis, "Environmental Refugees Unable to Return Home," *New York Times*, January 2, 2010:

<http://www.nytimes.com/2010/01/04/world/asia/04migrants.html> accessed March 30, 2011.

⁸ Robinson, "Risks and Rights," p. 13.

⁹ Centre for Housing Rights and Evictions, "Displacement and Dispossession: Forced Migration and Land Rights: Burma," *COHRE Country Report*, November 2007: p 87:

http://www.cohre.org/sites/default/files/burma_displacement_and_dispossession_-_forced_migration_and_land_rights_nov_2007.pdf accessed March 30, 2011.

¹⁰ "Development-induced Displacement," Training on the Protection of IDPs, Internal Displacement Monitoring Centre: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/C753862FA2CF8B7CC1257115004752ED/\\$file/](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C753862FA2CF8B7CC1257115004752ED/$file/)

and minorities—who are generally the more vulnerable groups of society—have been disproportionately affected by this form of displacement. In India, for example, despite being just 8 percent of the national population, tribal people made up 40 percent of those who were displaced due to development projects.¹¹ Similarities can be seen in Myanmar where the Karen, Mon and Tavoyan tribes have been displaced by large-scale infrastructure projects,¹² and in the Philippines where the ancestral lands of the Ibaloi, an indigenous people, were acquired to construct the San Roque Dam, but were not properly compensated for it.¹³

Why Focus on Return and Resettlement?

The displacement cycle can be broadly divided into three phases: the cause of flight/displacement, the period of displacement, and the final phase which is return and resettlement which would end the cycle.¹⁴ As with most developing countries, the IDPs in South and Southeast Asia have either remained in a situation of protracted displacement or found themselves in vulnerable situations due to inadequate support for return or resettlement. With no viable means of escaping from these circumstances, displaced populations have become increasingly marginalized politically, economically and socially. Their lack of or limited access to justice, power and education has meant that they continue to be some of the most vulnerable segments in society.

Protection%20from%20module%20handout%20development%20displacement.pdf accessed April 7, 2011.

¹¹ Robinson, “Risks and Rights,” p. 11.

¹² “Development-induced Displacement.”

¹³ Hozue Hatae, “San Roque Dam Project,” Friends of the Earth, Japan, Housing & Land Rights Network, Habitat International Coalition: <http://www.hlrn.org/img/violation/Japanese%20funded%20dams2006case.pdf> accessed March 30, 2011.

¹⁴ “Protection of Internally Displaced Persons,” Inter-Agency Standing Committee Policy Paper, New York, December 1999, p. 3.

Due to the advocacy of international humanitarian organizations and the media, the plight of IDPs has received considerable attention over the past decade. However, perhaps due to the urgency following displacement and partially due to pressure from the international community and humanitarian agencies, most Asian states have given more attention and resources to addressing the immediate needs of IDPs in the first two phases of the cycle than to focusing on the long-term measures needed for ending displacement. Addressing issues of protracted displacement have either been reduced in priority or completely ignored over time. From a conventional security perspective it may be argued that states lack an incentive to urgently address the issue as these groups would not pose a direct conventional security threat to their respective states or for neighbouring states the way refugees do. However, from a human security perspective, which emphasizes the rights of individuals, there is an obligation of individual states, regional organizations and non-state actors to ensure the human security of these populations.

Ending the Displacement Cycle

Unlike with refugees, there are no specific legally-binding instruments on IDPs. However, the 1998 UN Guiding Principles on Internal Displacement, which are based on existing international human rights and humanitarian laws, provide some guidelines as to how displacement can be ended.¹⁵ Principles 28–30, which stipulate the rights of IDPs and responsibilities of the relevant authorities pertaining to return, resettlement and reintegration, identify three possible solutions to ending

¹⁵ As mentioned earlier, the Principles are broad enough to include development-induced displacement as well. However, it should be noted that the World Bank's Operational Policy on Involuntary Resettlement OP4.12 also provides guidelines on avoiding displacement or minimizing the impact, when displacement is unavoidable due to development projects.

displacement: return of IDPs to their former homes, resettlement in the areas to which they fled, or resettlement in another part of the country. The Guiding Principles further specify the conditions which need to be met when physically resettling IDPs, which are that return or resettlement occurs voluntarily and in safety and dignity, with non-discrimination, and that assistance be provided for recovery or with compensation for property and possessions lost as a result of displacement.¹⁶

As IDPs do not have a legal status, there is no consensus on when an individual ceases to be an IDP. The UN Guiding Principles also do not conclusively state when displacement ends, merely stipulating that “displacement shall last no longer than required by circumstances” (Principle No. 6).¹⁷ According to the Framework for Durable Solutions for IDPs which was adopted by the Inter-Agency Standing Committee (IASC) Work Group (first in 2007 and later adopted as the amended version in 2009), internal displacement does not generally end abruptly, even when the cause of displacement, e.g. a natural disaster or internal conflict, ceases to exist.¹⁸ In the case of development-induced displacement, contingencies need to be made beforehand to ensure that those affected are provided proper restitution. Nevertheless, ending displacement is a process during which an IDP’s need for specialized assistance and protection diminishes over time and when the displaced individual can enjoy his/her human rights in a non-discriminatory manner vis-à-vis citizens

¹⁶ Erin Mooney, “When Does Internal Displacement End?” *Forced Migration Review*, May 2003, p. 5.

¹⁷ UN Guiding Principles on Internal Displacement, United Nations Office for the Coordination of Humanitarian Affairs, *OCHA-Online*: <http://reliefweb.int/sites/reliefweb.int/files/resources/AB752ABEA5C1EFFCC1256C33002A8510-idp.html> accessed March 30, 2011.

¹⁸ “Framework for Durable Solution for Internally Displaced Persons,” in *When Displacement Ends*, Brookings Institution- University of Bern Project on Internal Displacement, June 2007, p. 10.

who were never displaced.¹⁹

Response to Displacement in South and Southeast Asia

Both the Framework for Durable Solutions and the Guiding Principles on which it is based emphasize that the primary responsibility for IDPs remains with individual states. Hence, the success or failure of measures implemented to end displacement is predicated upon the policies adopted by their respective states. As implementation of weak and poorly-planned policies can be as harmful as inaction, there is a need to closely evaluate the return and resettlement policies in these countries to understand their weaknesses and potential drawbacks. In doing so, it would also contribute to formulating more effective responses which would contribute toward finding a durable solution to internal displacement. Hence, the primary aim of this book is to look at the return and resettlement efforts in several South and Southeast Asian countries and to draw from these experiences. The countries focused upon are India, Indonesia, Myanmar, Nepal, the Philippines and Sri Lanka. All these countries have populations that have been displaced due to natural disasters, ethnic conflicts and development projects.

In Ch. 2, “International and Regional Guidelines for IDP Return and Resettlement,” Samir Kumar Das lays out the current landscape of displacement in Asia, specifically focusing on the international and regional responses to the question of IDPs. He first traces the emerging landscape of internal displacement caused by natural disasters, development projects and violent conflict. After touching on the various new initiatives on ending displacement, the author elaborates on a number of challenges and dilemmas underlining these new initiatives and their implications.

¹⁹ Ibid.

Case studies in the next three chapters each focus on conflict-induced displacement in Sri Lanka, Nepal and the Philippines. In Ch. 3, “Restitution and Long-term Reintegration: Sri Lanka’s Post-war Scenario,” R. A. Ariyaratne looks at the efforts made toward restitution and long-term reintegration of populations displaced by the civil war in Sri Lanka. He first traces the complexities involved in profiling IDPs where there is confusion in tabulations between the large group of IDPs that were displaced over several decades and the nearly 300,000 that were displaced during the final phase of the war. While the author commends the Sri Lankan government for trying to deal with the complexities of resettling this large group, he also points out that most of the displaced released from the IDP camps by the Sri Lankan government have not been resettled, with many being either relocated to other parts within the same province or sent to other camps. Overall, as Ariyaratne points out, the resettlement process has been hampered by a number of factors such as limited resources, need for de-mining of land as well as the long-term process of building the socio-economic conditions of the areas that were affected by the war. Focusing next on the reintegration process, Ariyaratne points out that physical vulnerability of protracted displacement is made worse with victims being exposed to hostile attitudes in the public eye where they have been associated with the ‘enemy.’ He adds that even in cases where property has been restored to former owners, the diminished socio-economic opportunities would yet again force them to move elsewhere. Concluding, Ariyaratne stresses that any form of long-term integration for the Sri Lankan IDPs needs to be intricately linked to finding a political solution to the ethnic issue.

In Ch.4, “Ending the Displacement Cycle: An Experience of Nepal,” Nishchal N. Pandey focuses on the situation in Nepal where, after a two-decade-long conflict, the Maoist rebels have come to power. In terms of the policies formulated to address the issue of IDPs, Nepal has made some progress in giving an all-

encompassing definition of who qualifies as an IDP, officially committing to registration and the maintenance of records and making legal provisions for voluntary return. However, as Pandey elaborates, the problem lies with the actual implementation of the policy commitments made on paper. Due to weak local governance structures, there is still a lack of proper documentation of IDPs in rural areas. The ruling Maoists also perceive most of those who were displaced in the rural areas as the bourgeoisie that supported the former government and hence may not necessarily have the motivation to assist these IDPs. Overall, the drafting of the new Nepali Constitution seems to have taken precedence over implementing the policies drafted on addressing issues of IDP return and resettlement. The lack of data and a comprehensive profile of the IDP populations (the number of children, elderly, etc.) have also had a negative impact on the work of other actors such as NGOs, whose planning efforts have been hampered. With its limited mandate, the United Nations Mission in Nepal (UNMIN) was also unable to obtain time-bound commitments from the parties in government. In addition to this, there is also the issue of IDPs not wanting to return to the rural areas from which they were displaced due to lack of economic opportunities as well as due to fears of the fighting restarting.

In Ch. 5, “When Should Return and Resettlement Begin? The Experience of the Philippines,” Ruth R. Lusterio-Rico looks at the situation in Mindanao, Southern Philippines, where the primary cause of displacement has been the years of fighting that has taken place between the Philippine government and the Moro Islamic Liberation Front (MILF). The IDP issue has been compounded by clan wars as well as government counterinsurgency operations targeting the New People’s Army. In addressing the question of when return and resettlement should begin, Lusterio-Rico points out that in the case of the Philippines, a key problem has been that the government has been relying on the IDPs themselves to make the final decision on whether to return or not. This has been

further complicated by the fact that the government itself has been unable to offer a clear framework or guidelines to assist the IDPs with making this decision. Further, without specific criteria, there is much ambiguity on the number of IDPs who remain displaced. The government has recently launched a program called Payapa at Masaganang Pamayanan (PAMANA, or Peaceful and Prosperous Communities) which aims to empower communities, but the success of this program remains to be seen. Overall, however, solving the IDP problem has been greatly linked to addressing the conflict in Mindanao; hence any long-term solution is predicated upon finding a lasting solution to the conflict and addressing its root causes.

In Ch. 6, “Disaster-induced vs. Conflict-induced IDPs: Successes and Failures of Post-Tsunami Resettlement Efforts in Aceh,” Riefqi Muna looks at the situation in Aceh, Indonesia where displacement occurred due to a protracted conflict as well as the Asian Tsunami in 2004. Muna elaborates on how the fighting between the Indonesian government forces and the Free Aceh Movement or GAM (Gerakan Aceh Merdeka) caused a displacement of populations for a period of over 30 years and changed the structure of that society as well. However, the exact number of people displaced due to conflict remains unclear. For some, the displacement was temporary, as once the counterinsurgency operations which were carried out in sweeps were over, the displaced could return to their homes. As Muna points out, the earthquake and Tsunami on 26 December 2004 which resulted in vast loss of life and devastation to infrastructure altered the dynamics of the conflict, resulting in both parties agreeing to a peaceful solution. It also provided the Indonesian state with the necessary mandate to address the issues pertaining to displacement caused by the natural disaster as well as the conflict (such as the integration of former GAM members). The large amounts of funds collected in the aftermath of the Tsunami as well as the two official bodies set up by the government to

tackle the return and resettlement of IDPs has largely seen positive results. However, as Muna highlights, these have largely been limited to physical resettlement and the government still has to address the larger cultural, social and economic issues, which further complicates the situation in Aceh.

The last two chapters of the book focus on development-induced displacement in Myanmar and in India. In Ch. 7, “The Role of External Actors in Development-induced Displacement in Myanmar,” Alistair D. B. Cook looks at development-induced displacement in Myanmar. As Cook explains, with the change in the economic ideology of the junta, which resulted in more international actors investing in various development projects in the country, the underlying causes of displacement in Myanmar have also changed. Prior to the change in economic ideology, the primary cause of displacement was the internal conflict between the military junta and the opposition. However, after the change in ideology, the major cause of displacement has become the various development projects carried out by international actors (states as well as multinational companies) and to some extent cross-border trade with neighbouring countries. However, Cook points out that it is difficult to make a clear distinction between conflict-induced and development-induced displacement due to the fact that all the development policies in Myanmar support the military regime. Furthermore, even when there are relatively peaceful periods when conflicting parties enter into ceasefire agreements, displacement continues to occur as land is confiscated for development work. Hence, obtaining compensation for those affected also remains a complex issue. A few foreign companies have implemented corporate social responsibility strategies in some affected areas. However, Cook asserts that the continuing trend of selling off state assets to the private sector will diminish the ability of those forcibly displaced to return to their lands and re-establish their communities.

In the final chapter, Ch. 8, “Report on Development-induced

Displacement in India,” Paula Banerjee looks at the situation of the development-displaced in India. Banerjee first gives an overview of the Sardar Sarovar Dam project which is one of the most prominent cases involving large-scale displacement in India. As Banerjee points out, despite the official provisions recognizing the rights of those affected, the actual rehabilitation of the displaced has been limited. Next, Banerjee provides an overview of the situation in Northeast India where development projects continue to affect large numbers of people, mostly tribal populations which lack financial and political clout. However, as the author notes, increasingly, at least some of these local populations have been organizing themselves to protest against those development projects that would have a negative impact on them if carried out. Looking at the gender dimension, Banerjee highlights the adverse impact that loss of land has on tribal women. Due to the intrinsic link between tribal women and their land which affords them economic security, the loss of land has been detrimental to the livelihood and status of tribal women. Concluding the chapter, Banerjee addresses issues pertaining to the draft Rehabilitation and Resettlement Policy of the Government of India. Among other issues, the author highlights that while the draft does guarantee rehabilitation, it does not view the right against being displaced as a value in itself. Hence, if a non-displacing or least-displacing alternative cannot be found, the draft does not guarantee that the development project will have to be stopped in the interest of the affected individuals’ right against displacement.

Conclusion

Overall, as highlighted in the chapters, the measures taken by these states toward ending displacement has varied across the regions. The approach of most of these states toward return and resettlement has been haphazard. Even in states where the IDP

policy has been formulated in accordance with the Guiding Principles, the actual implementation has been ineffective. A recurring point in most of the case studies has been the limited attention paid to taking a rights-based approach when dealing with return and resettlement. On the issue of voluntary return, for example, the freedom available to the IDPs in Sri Lanka to choose when and where they want to return/resettle remains ambiguous. In Nepal and the Philippines, where voluntary return has been the official position, the actual implementation has not been very effective. In both cases, the lack of proper guidelines, limited information available to the IDPs to make this choice, as well as weak governance structures at the local level have contributed to this situation. Even in India, where democratic institutions are comparatively stronger, national interest has taken precedence over the right against displacement.

Overall, much of the focus on return and resettlement has also been limited to the physical movement of the IDPs rather than concurrently fulfilling the long-term needs of these displaced populations. States and humanitarian agencies have had limited success in making the areas to which displaced populations return and resettle more conducive for living in the long term, which makes finding a durable solution to displacement even more difficult. Also, each of the respective states' responses to return and resettlement has been sidetracked as the attention has quickly shifted to the plethora of political and economic issues affecting these developing countries.

International and Regional Guidelines for IDP Return and Resettlement

SAMIR KUMAR DAS

Introduction

While international and regional response to the question of IDPs has started being articulated and organized particularly since the late 1990s, the second half of the first decade of the new millennium seems to have been characterized by the growing realization that the older systems of response would not be adequate in handling the emerging realities. This paper proposes to begin with a broad outline of the emerging landscape of internal displacement, particularly in South Asia. It also makes a brief reference to the new initiatives embodied especially in the Framework of Durable Solutions for IDPs, which was adopted by the Inter-Agency Standing Committee (IASC) Working Group (2007 and 2009). The paper concludes with a reflection on the dilemmas underlining the new initiatives and their implications for our region.

The Emerging Landscape

Climate change, environmental degradation and ecological disasters are widely regarded as the agenda of internal displacement in the new millennium. These factors are said to represent the classic case of protracted displacement. Current estimates of the number of people, who will be obliged to move as

a result of all this by the year 2050, range from 25 million to one billion. Climate change has its impact on the landscape of population displacement insofar as: (1) it triggers off forced migration from coastal to inland regions and within inland regions depending on resource scarcity and availability; (2) the increase in migration not only exacerbates existing ethnic and religious conflicts but the conflicts also spread across state borders because of the ethnic linkages and affinities that cut across them; (3) the conflicts focus more directly on such critical and life-bearing resources as control of fertile land and water resources; (4) these also seriously undermine government control in large parts of the region.

Climate change knows no borders. The challenges of population movement resulting from global warming, for example, are unprecedented and cannot be met by the ratification of a treaty or policies devised on a national scale. These call for a global response, although there is a good deal of reluctance on the part of governments to extend IDP status to the people displaced by these factors.

The manifold manifestations of climate change such as rising sea levels, melting glaciers, droughts and floods were translating into a new pattern of conflict over resources, in particular water. To the extent that the people who are affected by climate change chose to resort to most radical means of adaptation, which was migration, they found borders getting fenced and their grievances dismissed. This entails permanent loss of habitat. The Intergovernmental Panel on Climate Change in its provisional 2007 report detailed a frightening future scenario for South Asia. In some countries, the argument that has of late gained ground is that since no country alone is responsible for the global plight, all the existing nation states have a responsibility of sharing the burden of climate IDPs or refugees. Pending the formation of an international regime on this issue the climate refugees enjoy a

“natural right to migrate” across borders and regions.²⁰ This has actually threatened to destabilize the existing order of nation states.

Large masses of people displaced by development projects initiated and undertaken by the newly decolonized states in the 1950s and 1960s shared the same nationalist consensus that had existed at that time, so much so that they (albeit with exceptions) seemed ready by all accounts to pay the “price” for the sake of the nation. With the rapid erosion of “developmentality,” that is to say, a strong nationalist consensus about development, it is no longer possible for the countries of South Asia to rule their people through the mediation of a developmentalist discourse. People affected by the projects way back in the 1950s have started organizing themselves only since the late 1990s while claiming what they consider as their due. The resurgence of their demands actually point out that the development-induced IDPs represent no less a protracted situation than the other categories. The choice has now become exclusive and the displaced persons prefer their own right to relief and rehabilitation—if not their inalienable right to home and cultivable land to the promise of developing the nation defined in official circles as an abstract collective—too abstract to be identified with any concrete group or community.²¹

Civil wars being mostly in the nature of mutually hurting stalemates represent protracted situations of internal displacement. Not all states of the region are equally powerful to exercise their authority over their territory and are in a position to decisively end these wars in a way that breaks the cycle of population displacement. This has often strengthened the case for global and external interventions.

There is an increasing realization among practitioners and academics alike, that massive and mixed migration flows common

²⁰ Dasgupta, “Adhikarer,” p. 28. Unless otherwise indicated, all translations from original non-English sources are mine.

²¹ For an elaboration of this point, see Das, 2004, pp. 113–43.

in South Asia elude existing definitions and protection frameworks. The situation we confront is not distinguished by neat and clear typologies of forced migration. The situation is characterized by massive and mixed migration flows, of refugees and IDPs and the distinction is getting increasingly blurred. Way back in the late 1990s, two of us at Calcutta Research Group (CRG) suggested a typology of internal displacement in the South Asian context and argued in favour of adopting a more nuanced and intricate policy that would take care of the distinctiveness of each of these types. We attempted to provide a comprehensive classificatory scheme that would not let any single IDP remain unclassifiable, if not unclassified.²² While the Rehabilitation and Resettlement Policy of 2007 in India is exclusively focused on development-related IDPs,²³ the International Committee of Red Cross (ICRC) position paper of May 2006 is confined to the issue of conflict-related displacement. Perhaps the time has come when we need to understand that real-life situations seldom resemble any of our ideal types. Displacement induced by development is deeply enmeshed in such factors as environmental disaster, climate change and global warming, acute resource crisis and resultant interethnic conflicts. Similarly, such commonplace distinctions made between IDPs and refugees, between “forced” and economic migrants have also lost much of their validity in recent years.

The guidelines for protection may have brought forth the agenda of internal displacement to the centre of public debate. But ethnographic records tend to point out that the impact of relief and rehabilitation measures meant for the IDPs, particularly the climate IDPs, is highly uneven in their distribution and, in fact, helps in creating fresh vulnerabilities.²⁴

²² Das, Chaudhury and Bose, 2000, pp. 48–57.

²³ For a critique of this policy draft, see Das et al., 2007.

²⁴ For an elaboration of this point, see Das, 2010.

New Initiatives

At the request of the UN Office for the Coordination of Humanitarian Affairs (OCHA), the Representative of the UN Secretary General on Internally Displaced Persons (RSG) Francis Deng began the process of developing a set of benchmarks to provide guidance on determining when an individual should no longer be considered to be in need of protection and assistance as an IDP. To develop the benchmarks, the RSG, in cooperation with the Brookings-Bern Project on Internal Displacement and Georgetown University's Institute for the Study of International Migration, later joined by the Internal Displacement Monitoring Centre of the Norwegian Refugee Council, hosted three meetings to gain the inputs of international organizations, governments, NGOs and experts on internal displacement. In the IASC Working Group meeting of March 2007, it was decided that rather than benchmarks, the document should be considered more as a framework and was welcomed as such by the said group.

The framework defines "protracted situations" in the following terms.

It is now well recognized that to be internally displaced is to be exposed to a range of particular risks and vulnerabilities, even if it does not create a legal status. Bringing an end to this precarious plight is critically important. However, if decided prematurely, it can have serious ramifications.

Since "IDP" does not imply a legal-judicial status, one's identity as an IDP does not terminate through any overt revocation of that identity. While return, reintegration or resettlement per se does not signify the end of "risks and vulnerabilities" that the IDPs are evidently subjected to, the prefix "protracted" is deployed to emphasize that these risks and vulnerabilities might continue or some fresh risks and vulnerabilities might be added

up, even after their return, reintegration or resettlement and highlight the need for putting an end to them. It takes a far more nuanced view than that of the Guiding Principles in its response to the emerging landscape.

While categorically ruling out that “prevention” of displacement will always be successful, the framework settles for the “durability” of the hitherto prescribed solutions of return, reintegration and resettlement in the following terms.

In order to be considered durable, they must be based on three elements, long-term safety and security, restitution of or compensation for lost property and an environment that sustains the life of the former IDPs under normal economic and social conditions.

The whole intent is to achieve perfect equivalence of “needs” and “human rights” of the IDPs and the non-displaced citizens so much so that the IDPs and the other citizens become indistinguishable and both of them become rights-bearing citizens. We are sure that it does not set forth any absolute standard for determining needs and human rights—which as anthropologists would suggest are culturally configured. The framework takes particular care in determining the degree of durability to be measured in terms of the *processes* through which solutions are found out and the actual or ground *conditions* of the returnees/resettled persons. The idea is to enable the IDP in a way that she becomes capable of making a choice on and for her own. The framework does not consider an IDP in her state of abject displacement as an agency per se, but only a *potential* agency who—if invested with certain enabling conditions (like open and free access to information, participation in the making of decisions that affect her, etc.)—acquires the agency of making a choice of whether to return or to integrate or to resettle. The framework lays down a reasonably long inventory, meticulously detailing the conditions, the fulfilment of which would signal the

end of the cycle of risks and vulnerabilities. The three-fold objective of these conditions is to provide her with certain basic and non-derogable rights (like the right to life, non-discrimination, access to protection, employment, education, etc.), that is to say, eventually make her a rights-bearing person, to reconstitute her property or to make compensation available, in a way that she does not feel disadvantaged and, most importantly, to replace her within her family and community as one of them, so much so, that she does not suffer from the anxiety of being thrown out from the social bond that she considers to be of value to her.

The Dilemmas

Framing an Agenda

The global and international agenda on forced migration seems to have been dominated rather disproportionately by such factors as resource crisis, climate change and environmental disasters, since the advent of the new millennium. When Representative of the UN Secretary General Francis Deng and his legal team finalized the definition of the IDPs contained in the Guiding Principles on Internal Displacement, there was a good deal of debate over whether or not the people displaced by these factors should be considered as IDPs. The majority opinion among the experts consulted in the drafting of the principles, as Roberta Cohen tells us, favoured a broader definition, inclusive not only of those fleeing from armed conflict, generalized violence and violations of human rights but, those uprooted by natural and human-made disasters. There are, however, experts who continue to oppose this broader definition as much as there are governments which do not consider persons uprooted by natural disasters as IDPs; they prefer to describe them as “evacuees” or “disaster victims” presumably keeping them outside the ambit of protection. Nevertheless, a wider consensus has by now emerged that those displaced by resource crisis, environmental degradation and

natural disasters are also IDPs, and therefore, merit attention. Walter Kalin, the Representative of the UN Secretary General on the Human Rights of the IDPs, after visiting the tsunami-affected countries in 2005, concluded that, “it is no less important in the context of natural disasters, than it is in cases of displacement by conflict, to examine and address situations of displacement and to use a ‘protection lens.’” He has since developed Operational Guidelines for Human Rights and Natural Disasters.

Contrary to this commonplace belief, CRG’s study on a sample of 528 IDPs dispersed over such South Asian countries as Sri Lanka, Bangladesh, Nepal and India show that those displaced due to natural disasters have greater hope of being rehabilitated within one year than those who are displaced by development or conflicts: 156 of them displaced by armed conflicts are in a state of displacement for more than five years, while 60 of them displaced by development projects remain as IDPs for more than five years.²⁵ The relative efficiency and speed in providing relief and rehabilitation to the victims displaced by natural disasters is commonly attributed to the apparently non-controversial nature of such displacement. Both development and conflict more often than not raise controversies.

Status Determination

Although the framework prescribes a set of enabling conditions in order that solutions become durable, finally it is the IDP who is called upon to make an informed choice from out of the three alternatives of return, reintegration, and resettlement. While displacement is involuntary, solutions are required to be voluntary in the ultimate analysis. Although every possible care has been taken to ensure that an IDP’s decision to return, reintegrate or resettle remains voluntary in the ultimate analysis, there is no

²⁵ Calcutta Research Group, 2009.

denying the fact that national authorities and international observers may determine that their situation has been resolved using a set of objective or even objectifiable criteria. These might turn out to be what Pierre Bourdieu calls “the conditions of the production and functioning of the feel.”²⁶ Upon return or resettlement at a third place, she may experience that the meticulously detailed inventory of conditions remains unfulfilled even for a considerable length of time. Under such circumstances, she might find that the “solution” is even worse than the problem she had so far been confronting. The framework does not seem to grant her the right to hold on to the status quo, instead of opting for a solution. The framework, however, makes the point that “there is no clear or magic formula for deciding that displacement or the need for assistance or protection has ended” and “the totality of the situation must be assessed.”

Enforceability

The main contribution of the framework is that it sets forth some—though not all—reasonably objective or at least objectifiable criteria for deciphering and measuring the extent of durability of the “durable” solutions. The problem is: what if the states invested with the primary responsibility of protecting the IDPs do not perform the duty? Do the IDPs have a right to seek remedies? Since neither the Guiding Principles nor the framework is a treaty instrument, the states are not obliged to seek durable solutions to protracted situations.

Sovereignty as Responsibility

While sovereignty on paper implies the ultimate power to make exceptions with impunity and continues to refer to an absolute power that is unrestrained by any of the institutions and processes, the international and regional instruments seem to have marked a

²⁶ Bourdieu, p. 27.

departure while redefining sovereignty as responsibility to protect its people, including the IDPs. The redefinition of sovereignty as responsibility has actually strengthened the hands of the state, while the need was to put sovereignty to the test of the democratic processes. The states have been involved in massive reorganization of their populations in tune with the changing imperatives of governing them, obtaining the right size at right places,²⁷ all in the name of carrying out this responsibility.

What if the states are too sovereign to redefine their sovereign power as responsibility? The framework pleads for the “safe, timely and unimpeded access of humanitarian organizations and other relevant actors to assist IDPs to return, locally integrate or settle anywhere in the country.” Many countries often read it as a veiled threat that should they fail in discharging their responsibility; the “humanitarian organizations” will have to have a free and unimpeded access. The history of intervention in the name of humanitarianism is too palpable to be recounted here. The framework, in fact, seeks to institutionalize such access by way of signing bilateral MoUs with them. As John Dunn puts it, the responsibility that sovereignty implies in its new avatar becomes “responsible” only by becoming “prudent,”²⁸ only by way of being reminded by the people of this responsibility and through the activation of the democratic channels and processes.

Division of Responsibilities

Saskia Sassen emphasizes the importance of constructing “democracy across borders” and creating world civil society.²⁹ There is a strong possibility of world civil society having funding

²⁷ Samaddar, pp. 107–32.

²⁸ Dunn, pp. 193–215.

²⁹ Sassen, pp. 141–221.

dry up and programs designed to meet protection needs significantly pruned. If that turns out to be the case, it is for the states to step into the fray and provide alternative resources in order to avoid a situation where protection gaps fuel another cycle of violence and displacement. The imperative of international or global response to the IDP question, which is otherwise very high on the public agenda, is likely to take a backseat in the near future.

What we require is a rights-based legal framework for the protection of the displaced as well as a regional mechanism for status determination under the auspices of the South Asian Association for Regional Cooperation (SAARC). The SAARC Social Charter makes no mention to the question of IDPs. The protection needs of the displaced cannot be adequately addressed by a case-by-case approach. Given the nature of SAARC till now, it may be important that we think in terms of making national legislations rather than non-enforceable policies in this regard. While countries of South Asia are passing through what may be termed as a policy explosion, the need of the hour is to turn their protection issue into legally recognized rights, the violation of which calls for legal remedies.

Managerial Solutions or Dialog

National governments, assisted by UN agencies and international NGOs should take the lead in devising and implementing laws and policies designed towards ensuring return, reintegration and rebuilding of lives and livelihoods in safety and dignity. Mere legislative measures are not going to help resolve situations if they were rushed into, and were ill-advised. One has to emphasize the importance of achieving durable solutions through dialog and cooperation in countries, sub regions, regions and on a global scale. In that context, Pascale Moreau drew attention to the “Ten-Point Plan of Action” as well as the “High Commissioner

Dialogue,” which had been focusing on protracted situations in 2008 and was to bring into focus urban refugees in the years to come.

Dialogs are important particularly in protracted situations where the equivalence sought for the ex-IDPs is perceived as a threat by the locals. For example, their empowerment by way of conferring voting rights on them is likely to change the electoral demography and tilt the balance of power, which might easily be read as a threat to the local interests. Such tangled situations can be addressed only through dialog between the two parties and neither the Guiding Principles nor the framework actually feels the necessity of institutionalizing dialogs.

IDPs and Statelessness

Should a state lose its entire territory, one of the constituent elements of statehood, say through submergence thanks to global warming and climate change, it is not clear whether its statehood would continue to be recognized by the international community. There is a risk that its population would be rendered stateless. While UNHCR has a mandate for the prevention of statelessness and the protection of stateless persons, specific arrangements need to be forged which permit for their movement elsewhere and prevent statelessness. In simple terms, new realities call for newer responses. Our responses seem perpetually inadequate in handling them.

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Restitution and Long-term Reintegration: Sri Lanka's Post-war Scenario

R. A. ARIYARATNE

Most conspicuously, displacement of persons and communities following political conflict or armed confrontation has indeed been taking place as a cycle in independent Sri Lanka from the 1950s. During the same period, finding a durable solution to the underlying causes that feed the flow of the conflict has been lackadaisical and, therefore, it is hardly surprising that the phenomenon of displacement itself has been dealt with half-heartedly, with political expediency being the single most important driving force behind what few desultory attempts that have been made in this direction. Nevertheless, the international community and local citizens with a deep social conscience are waiting with bated breath to witness that justice be meted out to the victims of the armed conflict in Sri Lanka.

Profiling of IDPs and their Movement Into and Out of Transit Camps

The harrowing episodes of displacement in Sri Lanka began with situational violence following anti-Tamil riots in the pre-1983 period, graduating to the partly state-sponsored pogrom in 1983, and extended to full-blown armed warfare in the 1983–2009 period. Irrespective of the vicissitudes of the conflict, the trials and tribulations of displacement followed a familiar pattern: the persons evicted by force moving from one place to another in

desperate search of personal safety, braving the treacherous sea route to southern India in fishing boats and then to other parts of the world, or reconciling to lead an uncertain future in transit camps set up by the government. The only difference was that those displaced in the pre-1983 period were fleeing from situational violence, lasting days or weeks and, therefore, could return once the hostilities subsided and, those displaced subsequently facing an indefinite eviction from their homes as armed confrontation escalated into full-scale war. By and large, the former were temporarily orphaned and the latter “war-displaced” within the full meaning of the term.

The riots of 1983 constituted a watershed event in Sri Lanka’s political matrix in general and ethnic relations in particular. The Tamils at the receiving end of violence became further alienated from the mainstream of politics and, in desperation, began to look upon the fledgling Tamil militants as their saviours. As the Tamil rebels began to acquire modern and long-range lethal weapons, confrontations with the military escalated, and an increasing number of civilians caught up in the cross-fire were driven hither and thither in search of physical security.

According to the SL government estimates, by the end of 1997, the number of IDPs reached 788,000. Their numbers in any given locality tended to fluctuate depending on the shift of the “theatre” of war. In the four main districts of the North alone approximately 300,000 out of its total population of 376,365 were officially estimated as having been displaced.³⁰ By January 2000, over 650,000 Tamil civilians had fled to other countries, first to India and then to the West. The less fortunate victims of the conflict either remained housed in government welfare centres or began living with friends or relatives within the country for two decades until the final phase of the Eelam war. An estimated 207,564 persons (66,623 families) had already been displaced internally

³⁰ Pubudini Wickremaratne, *Sri Lanka, State of Human Rights, 2000*, Colombo: Law Society Trust, 2000, pp. 160–80.

even when Eelam War IV began in 2006.³¹

There has been no concerted effort to resettle them either by local authorities or international humanitarian organizations. They, by and large, were not suspect of being in cahoots with the LTTE and as such there was minimal security surveillance on them at the welfare camps. They could move out of the camps if they so desired but, the problem was that there was no place for them to go and start life all over again. The presence of old IDPs amidst new IDPs has provided the much-needed space for the government to indulge in a statistical gamble to show that over 300,000 of them are on the way out of camps, without going into disaggregating them under the two categories.

A similar terminological oddity surrounds the use of the term “refugee” to classify Sri Lankan conflict-displaced housed in South Indian transit camps. India, like the rest of the South Asian countries, is not a party to either the 1951 UN Convention on refugees or its subsequent protocol of 1967 but, in keeping with its age-old tradition of accommodating asylum seekers and other types of migrants from neighbouring countries, has provided sanctuary to all of them without violating the *non-refoulement* Clause 33 of the 1951 Convention.

Another misleading component in profiling Sri Lankan IDPs is the tendency to group the “old IDPs” and “new IDPs” together in tabulating their figures. This confusion has partly arisen from the international pressure exerted on the government to release those driven to transit camps after the decisive trouncing of the LTTE in May 2009, turning a blind eye to those already languishing in camps, temporary shelters or staying with friends and relatives. According to SL government estimates, at certain stages of intensified fighting, the number of old IDPs reached 788,000. Their numbers tended to fluctuate depending on the tempo of

³¹ Internal Displacement Monitoring Centre (IDMC), “A Profile of Internal Displacement Situation in Sri Lanka: Civilian Displacement by Conflict Facing Severe Humanitarian Crisis”: <http://www.internal-displacement.org>, p. 254.

armed confrontation. What is germane to our discussion here is the fact that during Eelam War IV in 2006, there were 207,564 persons (66,623 families) who had already been displaced internally. In comparison, around 300,000 persons were displaced and living in government-controlled camps when the fighting ended in 2009. Suddenly, the international hue and cry began to centre on the latter without much concern about the fate of the “old IDPs.”

This confusion confounded the process of releasing IDPs. When the government, under pressure from the UN, announced that it would take steps to release the majority of IDPs within 18 months, what it meant was to release 300,000-odd persons displaced at the end of the war. This was followed by the perplexing statement by the UN Office for the Coordination of Humanitarian Assistance (OCHA), citing government figures that as of December 2, 2010, a total of 325,820 persons (102,081 families) had been resettled in the Northern Province since August 2009. Taken literally, this means that more people had been resettled than displaced at the end of the war! In reality, however, the figures of the resettled old IDPs and new IDPs have been put together to present a picture of successfully managing expectations of the return process.

Resettlement Process

Admittedly, OCHA’s “Guiding Principles on Internal Displacement” represent an important landmark in developing a normative framework on the rights of the displaced but, does not adequately deal with multifarious aspects of the returning process. It is to fill this hiatus that the UN FAO commissioned compiling of a handbook on “Housing and Property Restitution for Refugees and Displaced Persons,” popularly known as the Pinheiro Principles (October 2007). The Pinheiro Principles seek to re-run not just the pre-war but the pre-conflict status quo and ensure that no one profits from the violence. In the Sri Lankan context,

however, the overriding imperative is to ensure that no one suffers from the massive destruction caused by violence. Such gray areas are bound to exist as the handbook realistically affirms that its principles are applicable to “typical scenarios.” In the specific circumstances found in Sri Lanka, the term “resettlement” has been used to describe all modes of movement from transit camps or places of temporary stay to original places of residence or different parts of the country. Perhaps such ambiguity is unavoidable, because resettlement is a highly complex process involving several stages of determining when and where to move out at the end of hostilities.

As the NRC and OCHA jointly stated, the critical issue of profiling is that of when one actually stops counting IDPs. But their further clarification that the Guiding Principles outline three types of durable solutions to the internal displacement: return to place of origin, local integration in the areas in which IDPs initially take refuge, or resettlement in another part of the country, the latter two being termed resettlement³² may require reinterpretation when applied to the Sri Lankan context. For instance, when thousands of Muslims and Sinhalese IDPs formerly residing in the North were provided land and housing hundreds of kilometres away in the North-Western or North Central provinces, it is a typical case of relocation rather than resettlement.

The resettlement phase of the post-conflict dispensation is of vital importance to consolidate the gains of hard-won peace. Official permission to leave the camp for good may bring to an end the displacement cycle but, it also means the beginning of a new cycle. It is to make the new cycle meaningful that the concept of “sustainable return” has been mooted. It envisages a situation which ideally assures returnees’ physical and material security and consolidates a constructive relationship between returnees,

³² Norwegian Refugee Council and UN OCHA, “Guidance on Profiling Internally Displaced Persons,” April 2008, p. 15.

civil society, and the state. After all, the freedom from fear and threat emanating from fresh bouts of armed conflicts constitutes a key concern in the broader concept of human security.

When determining security parameters, it is useful to remember that while physical security is vital to human existence in general, the IDPs' perception of security tends to vary depending on the nature of the causes of their flight. For instance, a person displaced as a result of being caught up in the cross-fire may settle for clear signs of an end to such sporadic incidents as the minimum security needed to return, whereas the victims of ethnic cleansing would additionally look for the convincing signs of change in behaviour on the part of their former "tormentors" as a precondition to return. It is worth taking this factor into reckoning when making arrangements to resettle the displaced Sinhalese Muslims in the North.

When the final phase of the war in the North began in 2008, the majority of the people rendered homeless by the 2004 tsunami had been successfully relocated in safe areas and most of the conflict-displaced in the Eastern Province had returned to their original villages. According to the UNHCR country profile, by 2009, the IDPs living outside Vanni area had dwindled to 359 in Mannar and 6,697 in Trincomalee.³³ However, when the final military assault targeted the LTTE stronghold in the North, unprecedented chaotic scenes overtook the sedentary pace of civilian life. Some Tamil residents who held out sanguine expectations of eventual LTTE victory voluntarily followed the Tiger combat formations from one hideout to another, while the majority of them were coerced to provide a human shield to its fighting cadres. The government set up no-fire zones around the cornered Tigers and rescued about 280,000 Tamils from the final battlefield.

Coinciding with this highly convoluted turn of events, the

³³ UNHCR Country Profile Report: <http://www.unhcr.org/cgi-bin/texis>. It further recorded that 180,610 individuals returned to the eastern districts from 2006 to 2008.

international governments, humanitarian organizations and Tamil diaspora groups suddenly sprang into action, pressurizing the government to release the captured Tamils from the Vanni camps hurriedly set up to accommodate them. However, the government and the military, riding on the wave of the euphoria of the epochal victory over the world's deadliest terrorist outfit, were in no mood to cave into international pressure. Their unconditional en masse release was out of the reckoning for several reasons: over 26,000 soldiers had died during the war (7,000 within the final stages of fighting); a large number of former LTTE activists were detected among those who surrendered to the Armed Forces; it was practically impossible to tell an ordinary civilian from a hard-core LTTE activist; among them were many who were privy to unknown details of past deeds and future plans of the LTTE; the new agitation of the international humanitarian organizations smacked of duplicity as they had been apathetic to the fate of the "forgotten generation" of over one million old displaced within the country and housed in South Indian camps.

Seemingly unmoved by such adverse pressurizing, the government boldly set up its own plans to release those in camps in batches within a period of 18 months. It has succeeded in releasing 95 percent of the former inmates from the Vanni camps along with approximately 6,000 out of the 12,000 identified LTTE cadres, within the stipulated time. Nevertheless, release is a far cry from resettlement. As a matter of fact many of them have either been relocated in other parts of the province or in different camps with better facilities. Returning home is no doubt a dream cherished by all IDPs, but one unlikely to come true within the foreseeable future. In the currently prevailing post-war unsettled conditions, serious odds militate heavily against restoring the economy and lifestyles of Northern Tamils to the levels that even remotely resemble those that existed during the pre-war times.

Looking back at this chaotic post-victory phase, by any international standard it is indeed no mean achievement that the

Sri Lankan security forces in the first instance rescued nearly 300,000 Tamils who had willingly or unwittingly provide human shields to the fighting elements of the LTTE, and then accommodated them in makeshift shelters, provided them with food, screened them for security purposes and finally made arrangements (however imperfect by international benchmarks) to resettle or relocate them within a time span of less than two years after the military victory. Records of recent and contemporaneous conflicts the world over abound with total annihilation of civilians who were suspect of even remote complicity with the enemy. Thus, close upon a million civilians perished in Cambodia and, in the currently ongoing wars in Afghanistan, Iraq and Pakistan, not only have enemy suspects and civilians been killed indiscriminately, but entire swathes of villages suspected of providing shelter to the enemy have been razed to the ground along with their inhabitants. At a time when mindless drone planes engage enemy suspects, the empathy and compassion displayed by the Sri Lankan Security Forces toward a motley mass of Tamil civilians, who only a few weeks or months ago had been siding with the enemy, is undoubtedly exemplary.

Releasing IDPs from camps is a relatively light ordeal compared to resettling them. In order to implement a successful and ambitious resettlement program, it requires a vast amount of funds and other material resources. The UN called for US\$270 million in aid to Sri Lanka, but only \$96 million has been promised. The Sri Lankan state has provided \$4.8 million support to the UNHCR and ICRC regional programs, and \$600,000 separately for humanitarian de-mining in Mannar District by June 12, 2009. The Indian government has earmarked Rs. 500 crore for assisting the IDPs in Sri Lanka, in addition to funds annually appropriated to maintain SLED camps on its soil.

De-mining also requires huge sums of money and technical expertise. The UN requires a 99.6-percent clearance rate before resettling people and the process costs US\$1–2 million per square

kilometre. Every square centimetre of the Vanni has been mined by the LTTE. With almost certainty it can be said that although there is strident criticism levelled at the delay in releasing the IDPs from transit camps, if a single person thus released is killed or maimed by a landmine, the blame for it would no doubt be placed squarely on the government. In fact, since the 1980s, according to the International Campaign to Ban Landmines (ICBL) “there were a total of 21,993 landmine casualties, including 1,419 civilian returnees.” The National Strategy for Mine Action in Sri Lanka reports cited figures published by the Sri Lankan Army that 1.6 million landmines had been laid in the war zone of which 366,870 had already been cleared. This still leaves a balance of 1.23 million mines yet to be cleared over the next few years.

Path and Pitfalls of Restitution

What is generally understood by “restitution” is its French equivalent “restoration,” an umbrella term which has its origins in the Bourbon Restoration after the fall of Napoleon in 1814. To the administrator as well as the layman in Sri Lanka, restitution means restoring physical infrastructure—houses, buildings and land—to their rightful owners in the North and East of the country. Then, whether they were deliberately demolished or destroyed in the course of pursuing the war and, by which of the protagonist parties at war, are issues incapable of being determined to any degree of uncertainty. What is clear, therefore, is that an exercise toward this end cannot anticipate a legal response evoking an obligation to make restitution on counts of unjust enrichment. The most that IDPs could hope for the restoration of their lost or damaged property is to fall back on the presumption that they legally remain under the protection of their government—even though the discriminatory policies adopted by the government might be the cause of their flight, or the erstwhile

rebels' activities amounting to committing treason against the legally constituted government.

Although there is a general obligation placed upon states to safeguard the property rights of the refugees, there are no sets of nationally-enacted regulations compelling the referent countries to do so with regard to IDPs. The relevant UN 1998/26 Resolution, entitled Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, refers to "peace agreements ending armed conflicts." But Sri Lanka's current predicament has arisen not at the end of a peace agreement but, of a hard-fought military campaign culminating in outright victory. Even in situations following internationally recognized peace agreements there is no guarantee that the party which finally emerges victorious will adhere to the advocacy of the UN. A case in point is the aftermath of the Dayton Accords on Bosnia-Herzegovina in which out of 50,000-odd claim certificates issued, only 3 percent resulted in the claimants actually recovering the expropriated property, according to the International Crisis Group.

In Sri Lanka, the intense fighting forced many inhabitants of the North and East to flee their homes and lands and stay elsewhere for periods up to two or three decades. There is hardly a single family unit in these areas whose property remained intact during the fighting. They have been either destroyed fully or partly by lethal shellfire or acquired by unauthorized persons. Most documents pertaining to the ownership of property can no longer be found in government offices.

Under the norms of the restitution process, states shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when restitution is actually not possible (e.g. when housing, land and/or property is destroyed or not in existence, as determined by an independent, impartial tribunal), or when the affected party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of settlement provide for a combination of both. Even under such

circumstances the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible. In some situations, a combination of compensation and restitution may be the most appropriate remedy and form of restorative justice. However, most affected persons expect total replacement of assets after decades of devastation.

In general, there are several factors in the way of successful implementation of preliminary work leading to restitution of property.

- The IDP/IDPs concerned may never have had property.
- Whatever property he/they owned may be in a highly dilapidated state due to artillery bombardment or neglect after the owners abandoned the premises.
- Ownership is unclear as families have expanded or split and division of the land and buildings becomes an issue due to death of the owner, which may leave dependants without clear claim to the land.
- Other people may have settled on the land, knowing that it is not theirs, but have nowhere else to go.
- The IDP/IDPs concerned have competing claims with others, including the state or local authorities.
- The IDP/IDPs concerned may not be allowed to reoccupy their erstwhile homes within the expanded demarcation lines of High Security Zones (HSZs). The Armed Forces justified the need for HSZs on the need to ensure security until a permanent settlement of the conflict was reached.

Reintegration: A Task Going Beyond the Return Process

Compounding these physical vulnerabilities, the protracted displacement exposes its victims to hostile attitudes in the public eye. Even if they have managed to escape from areas of persistent

fighting, abandoning their land and homes, often they are associated with the 'enemy' or acts of terrorism, making it difficult for them to lead a normal life in their familiar residential areas. The social stigma is compounded by a nagging sense of recidivism left over from their alleged association with the LTTE. The state intelligence agencies will continue to keep an eye on their movements and activities to pre-empt any move to regroup and resurrect insurgent formations.

Even when property is restored to the former owners, a vicious cycle may set in motion, inducting an element of self-reinforcement into the forced displacement process. The returned would invariably find themselves with reduced economic and social opportunities. With meagre opportunities for life-sustaining incomes and fewer incentives to invest productively, the resultant economic breakdown may force them to move elsewhere. Even at the height of the war, as many people left their homesteads due to shortage of food and essential items as those who fled from the cross-fire between the Army and LTTE.

Even if all the obstacles to the release and resettlement of Northern IDPs are brought under control, their integration into common nationhood is intricately connected to the prospect of finding a permanent political settlement to the underlying frictions that gave rise to the conflict in the first instance and thereafter sustained its momentum. The cause/s of the friction can be neatly summarized as "the legitimate aspirations of the Sri Lankan Tamil people at harmonization within a national framework." If conditions are created to meet their minimum aspirations, there is no doubt that not only would the IDPs contribute positively to the cause of national integration but, also that the Tamil diaspora will come to terms with the reality of the situation and many of them would either return home on a permanent basis or remain closely linked to their kin and kith in the Northeast.

Long-term Reconciliation

One of the principal reasons behind the current wave of disenchantment of the present Constitution is on account of its failure to provide adequate devolution of administrative powers to the outlying provinces. However, given the intense public opposition that arose against the constitutional amendment (the 13th Amendment) establishing provincial councils, it seems unlikely that this arrangement would have succeeded in securing the desired effect. In any case, the North-eastern Provincial Council's egregious decision to announce unilateral declaration of independence not only put paid to the prospects for granting a substantial measure of self-governing powers to the Tamil-dominated provinces but, also provided a powerful argument against devolution of powers in general.

Against this background, it is reasonable to assume that only a power-sharing arrangement between the provincial legislatures and the central parliament could bring about a harmonious and productive link between the centre-periphery relationships in governance. Hypothetically, an equal number of representatives elected to each provincial council through proportional representation could be selected via an electoral college to the central parliament, with the remaining segment of parliamentary membership being filled by representatives elected under the first-past-the-post system of voting from constituencies demarcated throughout the island on the basis of population. This scheme will ensure that marginalized communities living in the outlying provinces will have adequate representation at the centre just as much as the densely-populated urban areas in the South. The presence of a contingent of provincial council-elected members in parliament will serve as a check against possible irresponsible and fissiparous trends at the provincial level while enriching the centre with *acquis communitaire*—acquisition of competence from the provincial units.

However, it would require a complete overhaul of the existing system of governance to incorporate such a sea change of constitutional revision. The basic tenets of democracy demand that all shades of political opinion be consulted on this all-important issue and then move on to deploy the logistics necessary to achieve this objective. What is essential to carry this process to a successful conclusion is a strong commitment on the part of the country's political leadership to the model of power-sharing between the central legislature and provincial councils as the best way to represent the interests and aspirations of all communities in all parts of the country within an inclusive framework of good governance. The ordinary citizenry is normally averse to making radical changes of this magnitude in the body politic but, its mindset could be remoulded to suit the new environment emerging after the war.

Sri Lanka's ethnic polarization arising not so much from cultural incongruity as electoral marginalization of the peripherally concentrated Tamil community has remained a fact of peripheral interest to all the regimes voted into power since independence. None had the motivation—or the will power—to initiate a wholesome change in the estranged relationship by way of readjusting disparities in the decision-making power equation. After the resounding triumph of the state Security Forces over the LTTE, a background conducive to making such a change has materialized: moderate posturing of Tamil disaffection, effective government leverage over Southern political consensus, a disciplined military establishment, command of two-thirds majority for the ruling coalition, and international blessings for a political solution. If this opportunity is allowed to be frittered away through the familiar political tactics of hedging and procrastinating, it is possible that conscience and sense of fair play will take a collective leave of absence from those entrusted with the task of shaping the destiny of the nation.

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Ending the Displacement Cycle: An Experience of Nepal

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Backdrop

The people's war (1996–2006) cost dearly in terms of human lives and the economy of Nepal. The Maoists certainly had the people of the rural hinterlands on their side as centuries of neglect, exploitation and marginalization of *dalits* and *janjatis* had taken the rural people's frustration against the state to its peak. Multi-party democracy, re-established through a popular people's movement in 1990, did little to provide good governance to the people. Instead, a flurry of governments were formed and fell in an unending quest for power and privilege. Not even a single parliament could survive its full term during 1990–2002 and 19 prime ministers ruled the country in 19 years since 1990. Such a mockery of democracy further alienated the mainstream parties from the people. The dissolution of all local elected bodies was another blow to the democratic system and only came as a blessing for the Maoists who quickly set up parallel administrations to fill the vacuum. "The economy that had performed well during the early 1990s, then witnessed a setback and registered only a modest growth. GDP declined to 2.3 percent and the annual inflation rate was 45 percent in F/Y 2005/06."³⁴

³⁴ Bishwambher Pyakuryal and Rabi Shanker Sainju, *Nepal's Conflict: A Micro-Impact Analysis on the Economy*, Kathmandu: Bishwambher Pyakuryal Publishers, 2007, p. 37.

The counter-insurgency operations were fraught with several weaknesses unique to the Nepali context but mastered to its core by the Maoists. The (Royal) Nepal Army had been loyal to the crown and Late King Birendra had repeatedly stressed for a political solution rather than using the military against “his own people.” Without the palace’s approval, the Army could not be mobilized against the Maoists, who, by 2001, had already begun attacking district headquarters and looting large caches of weapons and ammunitions from the ill-equipped and ill-trained police. As politicians jockeyed for power, the palace enjoyed a sadistic spectacle. Ultimately, a state of emergency had to be declared and the Army had to be called out from the barracks. However, devoid of the required support from the political parties and neighbouring India, the Maoists ultimately won in their strategic objective through a people’s movement of 2006 in which the monarchy was overthrown and the (Royal) Nepal Army was brought under civilian rule.

The rest is history. Maoists ultimately signed the Comprehensive Peace Agreement in November 2006 and came to the political mainstream. They contested elections on April 10, 2008 for the first Constituent Assembly in the nation’s history and, to everyone’s surprise emerged as the largest party in parliament. Chairman Prachanda became the first elected prime minister of the republic.³⁵

Remnants of Conflict

Although the fragile peace process is still limping forward, there are hurdles and enormous differences among the main parties as

³⁵ The Maoist-led government survived only for nine months. The CPN(UML)-led government headed by Madhav Kumar Nepal also resigned in the absence of support from other political parties regarding constitution drafting and integration issues.

to how to take the peace process to its logical conclusion. One of the bigger challenges is to draft a democratic, forward-looking, federal Constitution by May 28, 2011. In the midst of these larger challenges, there is no doubt that the ugly scars of the conflict still haunt the Nepali social landscape and unhealed wounds, unforgotten memories, schisms between the Army and the PLA that fought against one another are bitter realities of contemporary national politics. Nepalese have shown a remarkable characteristic of going back to life after a deadly war that ended with no clear side emerging victorious. However, 13,000 is too big a number to overlook. These were the poor villagers, low-level non-gazetted officers of the police, armed police or the Nepal Army and the general militia of the PLA who were at times killed just a few days after they joined the Maoist party.

One of the worst aspects of the insurgency was the massive displacement of people from the rural areas, mainly from the mid-west area of the country to the cities and from the main cities of Nepal to bordering Indian towns. There was also large-scale migration of Nepalese youth to the Gulf countries for work due to lack of employment opportunities back home caused by the conflict. While the Maoists applied violent methods to topple the old, feudal state system, the security forces also used the same tactics of terror, merciless killings and bombardment in order to tame the insurgency. In this game of tit for tat which was getting increasingly protracted and seemingly unending, thousands of people fled the battle scene.

During the early years of conflict, only the local level political leaders, their family members and the family members of the security personnel were forced to leave the villages. The increased cases of capturing land and property of the local level political leaders and barring them to live in their houses further compelled

people to leave their homes. The trend also showed that the displacement ratio grew after the deployment of the army in 2001.³⁶

The districts where major Maoist attacks occurred during the years of conflict and even the people of the district headquarters left their domicile for the cities were Syangja, Dang, Argakhanchi, Jumla, Dolpa, Solukhumbhu, Myagdi, Mugu, Bhojpur, Achham and Khotang.

Afraid and caught on opposing sides of the battle, the innocent left their villages for the major cities like Pokhara, Kathmandu, Biratnagar, etc. where the situation was comparatively better. The Community Study Welfare Centre estimates that there are 1–1.2 million IDPs in Nepal, although this figure varies significantly in other studies conducted by similar research institutions and INGOs. It estimated that almost 60 percent of IDPs go to India for their safety and survival while a good number of others take refuge in urban areas and Terai districts. However, they were not recognized as IDPs in Nepal or as refugees in India. This legal lacuna was not addressed even after the signing of the Comprehensive Peace Agreement by both sides to the conflict in 2006 or, even after the formal invitation to the UNMIN in order to monitor the arms and armies of the conflict. Finally, after immense pressure from all sides, a National IDP Policy was announced by the government in 2007.

Salient Points of the National IDP Policy

For the first time, the term IDP was given a definitional recognition as being:

³⁶ Dilli Raman Dhakal, *A Decade of Disaster: Human and Physical Cost of Nepal Conflict (1996–2005)*, Kathmandu: Community Study and Welfare Centre, May 2006, p. 10.

a person who is living somewhere else in the country after having [been] 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.

This was a major departure for the state, which had all throughout the insurgency, failed to recognize the presence of internally displaced in the Nepali society.

The policy further adds:

One who is displaced due to seizure of house and land or physical property by any of the parties involved in conflicts or due to having the same destructed (sic) in cross-fire during armed conflict or violence; or One who is displaced due to fear, intimidation, threat, or physical or mental torture or personal insecurity by any of the parties involved in conflicts; or One who is displaced due to emergence of problems of livelihood whether or not having the ways or means of livelihood destructed (sic) owing to armed conflict or violence; or One who is displaced due to emergence of situations of gross violation of human rights; or One who is displaced after having [been] neglected in the society owing to social ill-practices or superstitions.

This all-encompassing definition has been widely acknowledged as being a positive step in the right direction. However, there are other aspects such as rehabilitation programs that the civil society and the INGOs were clamouring for from the Nepal government. The policy also brought out the government's commitment towards "registration, identity-card, certification and management of records."³⁷

³⁷ See the full text of the National Policies on IDPs (2007), <http://www.internal-displacement.org/8025708F004CE90B/>

In fact, the government had recognized by 2002–03 that the case of IDPs was becoming a major concern. But a section of the security services desired to use them as a publicity tool against the rebels. Several rallies were organized by the “Maoist Victim Association” and sponsored by the state demanding that their land to be returned, calling upon the rebel leadership for allowing them to return. Since it was becoming an embarrassment for the Maoists, the main leader of the association himself was killed in broad daylight in Kathmandu. The Maoists usually tend to show the case of the IDPs as those having links with the old, reactionary regime. The state too is not serious in initiating concrete action programs for their rehabilitation, education for the children, self-help schemes for the women and finding employment for the youth. The problem of IDPs was (and still is) a grave humanitarian problem and has created a huge vacuum in rural areas. According to a study,³⁸ unplanned settlement and unexpected rise in population density in the cities have affected the quality of drinking water, education, health services, electricity and other basic services. Many IDPs live in squatter conditions in an unhygienic atmosphere in the cities, which has given rise to petty crimes, prostitution and other social evils. Some affluent IDPs who had time to sell their property in the villages purchased flats in Kathmandu’s newly-constructed apartments and housing complexes, giving a boost to real estate prices in the capital city. Others are not so lucky. Exploitation of women and especially widows is common; children are also prone to various types of inhuman treatment.

“Many IDPs have lost documents or had them confiscated during displacement. In many areas the government itself has

[http://Documents/634C98DB1EB6BD2DC12572D70029553B/\\$file/IDP+Policy.pdf](http://Documents/634C98DB1EB6BD2DC12572D70029553B/$file/IDP+Policy.pdf)

³⁸ Prabhu Raj Poudyal, *Situation of Internally Displaced Persons in Nepal and Recommended Responses*, Kathmandu: Rural Urban Partnership Program, UNDP, March 2005.

been displaced for many years, unable to provide documentation or proofs of citizenship to local residents who may have been displaced subsequently.”³⁹ After 2002, all local election bodies were dissolved and since then the number of displaced people saw a dramatic rise. The District Development Committees (DDCs) and Village Development Committees (VDCs) were manned by low-level bureaucrats on contract basis due to which there was neither, seriousness on the part of these officials nor accountability towards the electorate.

There are also certain similarities between Sri Lanka and Nepal, and there are lessons to be learnt, and, of course, some fundamental differences. A brief discussion on this issue will assist in better understanding the plight of IDPs in South Asia. In Sri Lanka, the insurgents have been comprehensively defeated, while in Nepal they were brought into the political mainstream, contested elections, and won the elections and are the single largest party in the parliament.

According to typical communist jargon, an IDP is a “capitalist, petty bourgeois of the society” who had owned large areas of land in the villages, and hence fled the Maoists, instead of joining the ranks and fighting against the state forces. The question asked by the left forces in Nepal is, why did they flee? An equally emotive issue in Nepal is that it also has had to host a large number of refugees from Tibet and Bhutan (25,000 Tibetans and 45,000 Bhutanese refugees). Hence, there are greater implications in terms of China and India as well as a host of internal problems that arise from the presence of this refugee population.

Land, being mostly owned by men, has presented another complex angle to the problem. During the insurgency, young men went abroad to work; therefore, gender, age and disability, etc. do matter. Hence, the IDPs in Nepal are mostly women and children,

³⁹ Anita Ghimire, “Enfranchising IDPs in Nepal”: <http://www.fmreview.org/FMRpdfs/FMR28/26.pdf> accessed January 2, 2011.

which necessitate the IDP policy being linked with gender, age and disability aspects.

After the cessation of hostilities and signing of the Comprehensive Peace Agreement by the government and the Maoists in November 2006 stated in Art., 7.3.1, “Both sides respect and protect the right to individual dignity. In this connection, no person including those deprived of enjoying freedom as per the law would be subject to torture or any other cruel, inhuman or degrading behaviour or punishment.” The CPA also pledged 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 as a result of the conflict and rehabilitate and reintegrate the displaced people into the society.”

However, the noble provisions in this document have hardly been met by the signing parties, i.e. the state and the Maoists. The three basic urgent requirements in the case of the IDPs are: protection and ensuring of safety of the IDPs, their return, resettlement, return of their property forcibly taken during the years of the insurgency, and future prevention of displacement. Although all major political parties in Nepal are committed to these three fundamental aspects, seriousness in actually implementing the agreements that they themselves signed in November 2006 seems to be missing. It is understandable; however, that the onerous obligation towards the nation of drafting an inclusive Constitution by May 2011 is being given priority by the parties but, the plight of the IDPs is too serious to be overlooked even during this interim period. The UNMIN was called upon to monitor the arms and armies of both sides to the conflict but in the absence of a time-bound commitment from both the rebels and the state, UNMIN itself could not achieve much with a limited mandate given by the UN Security Council.

To make the matter more complex, “there is no proper data on how many IDPs are children. How many are not going to school?

How many are elderly? And most important is how many actually need the support?” asks Bishnu Raj Upreti, an independent conflict analyst.⁴⁰ In the absence of such elementary data, NGOs too have not been able to do concrete work in this area.

Another daunting challenge is that the IDPs themselves are unable or unwilling to return. The country’s politics have hardly stabilized in the last four years after the CPA was inked, there is anxiety over the possibility of the relapse of conflict and, due to this, the post-conflict economy has not recovered. “There is limited access to basic services in rural areas; so many returnees have had to go back to towns and cities again in search of work.”⁴¹

Situation in the Terai

Starting from 2007, the Terai or “Madhes” in the southern plains of Nepal clamouring against “internal colonialism” as well as regional and racial discrimination by the hill-dominated people was up in flames. Spearheaded by the MJF party and its chief Upendra Yadav, the agitators demanded complete autonomy from the *pahade* [hill] rulers and at one point even declared that they would launch an armed movement if their demands were not met. Due to this sudden onslaught of violence, the Terai districts were soon engulfed in fire and even the areas that were relatively peaceful during the Maoist conflict embarked on a dangerous spiral of killing and looting. Gruesome incidents in Lahan of

⁴⁰ “Nepal: IDPs Still Wanting for Help, Despite Peace Accord,” IRIN Humanitarian News and Analysis: <http://www.irinnews.org/Report.aspx?ReportId=79651> accessed January 3, 2011.

⁴¹ “Nepal: Failed Implementation of IDP Policy Leaves Many Unassisted,” Internally Displaced Monitoring Centre, Norwegian Refugee Council, January 28, 2010, p. 1.

Siraha District, Gaur and Kapilvastu witnessed one of the worst humanitarian cataclysms of modern Nepali history.

The Terai is the main granary and the most prosperous industrial area of the country close to the Indo-Nepal open border. The area was sensitive not only because of famous cash crops such as tobacco, pulse and tea and staples such as rice, paddy, wheat and maize but, also because of the political implication of having local *madhesi* leaders emerging on the national political scene, thereby cutting the vote-bank of the Nepali Congress and the CPN(UML). Even though the MJF and other Terai parties such as the Nepal Sadbhawana Party and the Teai Madhes Loktantrik Party later decided to contest the elections for the first-ever Constituent Assembly, various armed gangs and outfits are still operative in the Terai, turning the belt into a volatile place. Some of these groups are: Janatantrik Terai Mukti Morcha, JTMM(G), JTMM(Jwala Singh), JTMM(Bisfot Singh), Madhesi Rastriya Mukti Morcha, Madhesi Mukti Liberation Tigers, Terai Cobra, Terai Bagi, Terai Army, Royal Defense Army, etc.

Because of the adverse law and order situation in the Terai, the increasing number of hill people that had settled in the fertile land of the Terai began leaving. Even judges of district courts were not safe. In July 2009 it was estimated that in the eastern and central Terai, over 40 percent of secretaries of VDCs had left their offices and fled.

Hence, the plight of IDPs in the country that had seen an improvement after the cessation of hostilities in 2006 deteriorated again. In August 2008, the government registered 52,000 people and in September 2009 it announced that it considered the total number of conflict-displaced people to be some 70,000. It also added that most IDPs had been able to return home.⁴²

⁴² Armed Police Force: www.apf.gov.np, accessed on September 22, 2009.

Conclusion

The case of Nepal is a unique experiment in South Asia wherein former rebels could be accommodated peacefully in the political mainstream and free and fair elections held without much bloodshed.

But a lot of challenges remain. Issues of federalism, sharing of power and resources, questions of political culture and the ethics of coalition politics, accountability and transparency of the bureaucracy, civilian supremacy of the army, and sense of discipline in the police are all issues that have suddenly germinated and require a careful but astute handling.⁴³

Current challenges relate to meeting people's aspirations for a greater political voice, broader social and economic inclusion and better access to resources and jobs as well as the promulgation of a new constitution. The Constituent Assembly could not ready a draft constitution by the stipulated deadline of May 2010 which was why a year's extension had to be given. However, the political parties are now working towards this historical objective.

The absence of any comprehensive registration of IDPs and any systematic monitoring of population movements, either by national authorities or international organizations, has made it difficult to provide accurate estimates of the total number of people displaced during the decade-long conflict, or the number further displaced due to the disturbance in the Terai. Despite the announced National Policy on IDPs and its commitment to

⁴³ Nishchal N. Pandey, *New Nepal: The Fault Lines*, New Delhi: Institute of South Asian Studies (ISAS) and Sage Publications, 2010, p. 39.

redouble efforts toward creating a suitable atmosphere wherein the displaced persons can return home, the state's incapacity to provide basic services to the citizens due to lack of resources, weak institutions, limited presence in rural areas, and increasing security threats have frustrated the IDPs. Whereas the problem of the people displaced in the Maoist conflict (1996–2006) still remains unresolved, the added burden of people displaced due to the crisis in the Terai is complicating the already complex situation. Only sustained work through joint collaboration of the Nepal government and the INGOs may resolve the woes of the Nepali IDPs.

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When Should Return and Resettlement Begin? The Experience of the Philippines

RUTH R. LUSTERIO-RICO

Introduction

This paper examines the experience of the Philippines in addressing the issues and concerns of internally displaced persons (IDPs) in the country. More specifically, this paper will: (1) provide a brief overview of the causes of displacement in the Philippines and the current state of IDPs in the country; (2) identify the significant initiatives of the Philippine government as well as other sectors to address the situation of IDPs, more particularly in addressing the question of when return and resettlement should begin; and (3) discuss the issues and concerns in relation to how the Philippine government has addressed the question of when return and resettlement of IDPs should begin.

In the Philippines, the displacement or forced migration of people has been the result of: (1) natural disasters or calamities; (2) development projects in local communities such as dams or mining projects; and (3) armed conflict. This paper will focus on the third cause only, i.e. displacement caused by the conflict between the Philippine government and rebel forces on the island of Mindanao. Evidently, displacement impacts communities as people are uprooted from their places of residence. When people are displaced or are forced to migrate, their rights are affected.⁴⁴

⁴⁴ F. Perez, "Forced Displacement Among Rural Women in Colombia," *Latin American Perspectives*, issue 163, vol. 35, no. 6, November 2008: 29.

People lose their livelihoods, their homes, their everyday lives. Thus, displacement results not only in impoverishment but also in the general deterioration of people's lives.

Displacement had been experienced in the Philippines mostly by those living on the southern island of Mindanao as a result of many years of armed conflict between government forces and Muslim groups such as the Moro Islamic Liberation Front (MILF). Scholars and observers have argued that the conflict in Mindanao is rooted in the region's underdevelopment. They cite the inequitable distribution of wealth and the economic and political marginalization of the Muslims in a largely Roman Catholic country.⁴⁵ Indeed, the conflict in Mindanao has become too complex, such that solutions to it have proven difficult to find. Several peace talks between the government and Muslim groups have been launched, but none have been successful in ending the fighting. In the meantime, large numbers of women and children are severely affected by the conflict.

In recent years, the number of displaced persons in the country has increased significantly. This is largely because of the intensification of the armed conflict between the military and Muslim groups, specifically the MILF. In 2008, the hostilities between these forces intensified, when the signing of a Memorandum of Agreement on Ancestral Domain (MOA-AD) was restrained by the Supreme Court.⁴⁶ Such an agreement could

⁴⁵ Internal Displacement Monitoring Centre (IDMC), *Cycle of Conflict and Neglect: Mindanao's Displacement and Protection Crisis*, Geneva: IDMC, Norwegian Refugee Council, 2009, p. 8, accessed through <http://www.internal-displacement.org>

⁴⁶ According to the IDMC, in July 2008, the government and the MILF announced a breakthrough in negotiations with a Memorandum of Agreement (MoA) on the issue of an autonomous Moro homeland known as the "Bangsamoro Judicial Entity" reflecting the Moro peoples' "ancestral domain." Under the agreement, more than 700 villages in Mindanao would vote in 2009 on whether to become part of ARMM. However, the MoA, which would have represented a major step toward the finalization of the long peace process,

have given broader political and economic powers to Muslim leaders and widened the territories of the existing Autonomous Region of Muslim Mindanao (ARMM).⁴⁷

The report, *Cycle of Conflict and Neglect: Mindanao's Displacement and Protection Crisis*, published by the Internal Displacement Monitoring Centre (IDMC) in 2009 took note of the huge challenge in determining reliable figures on the number of IDPs in Mindanao. This is because of two reasons: (1) the displacement in Mindanao is characterized by tremendous fluidity with frequent population movements; and (2) there is incomplete collection of information, with some groups not included in the government data. According to various reports, the number of IDPs in Mindanao reached up to a million because of the intensification of conflict in 2008. In June 2010, more than a year after the ceasefire agreement between the government and the MILF, IDMC indicated that there were still more than 26,000 families that remain displaced on the island.⁴⁸ The most current data reported by the IDMC in December 2010 show that 21,000 families remain displaced in Mindanao.

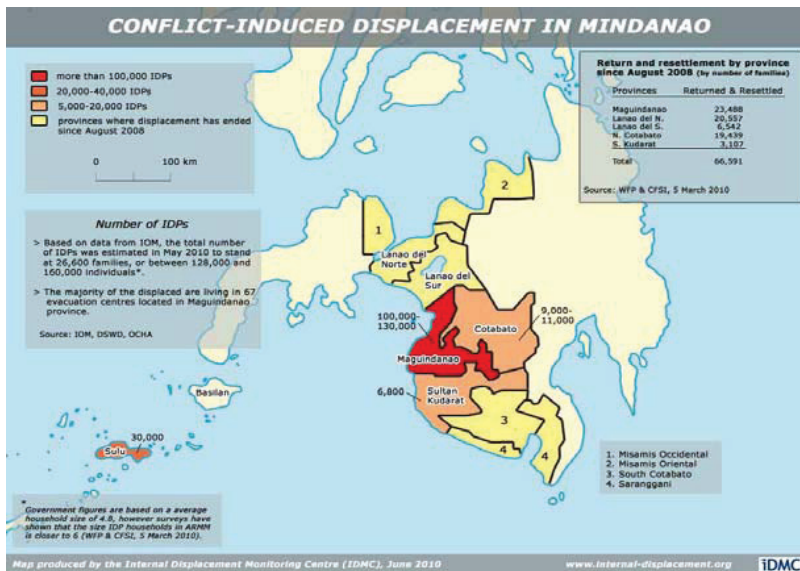
Most of the IDPs live in 67 evacuation centres in Maguindanao, while the rest live in relocation or resettlement sites or are staying with their relatives. It is important to note, however, that aside from the fighting between the government and rebel forces,

attracted strong public criticism and it was suspended and later declared unconstitutional by the Supreme Court. In August 2008, MILF combatants responded by launching attacks on Christian communities in Cotabato Province and later in Lanao del Norte Province. Ensuing fighting with the Armed Forces of the Philippines (AFP) led to the displacement in the following weeks of hundreds of thousands of people in several provinces of Mindanao. By the end of 2008, it was estimated that more than 600,000 people had been displaced: at least half of them have since been unable to return.

⁴⁷ P. Sarmiento, "Women in Troubled South Bear Heavy Burden of Conflict," 2009, accessed through <http://maranao.com>

⁴⁸ IDMC, "Philippines: Overview," June 2010, p. 1, accessed through <http://www.internal-displacement.org>

people in Mindanao have also been displaced due to clan-related violence (or *rido*) and counterinsurgency campaigns of the government against the communist New People's Army (NPA) and other armed groups. The map below produced by the IDMC shows the situation of IDPs in Mindanao as of June 2010. Map 1 shows that displacement has ended since 2008 in the provinces of: (1) Misamis Occidental; (2) Misamis Oriental; (3) Lanao del Norte; (4) Lanao del Sur; (5) South Cotabato; and (6) Saranggani. A total of 66,591 families have returned and resettled since 2008. However, there are still more than 100,000 IDPs (individuals) in the province of Maguindanao, and more than 40,000 in Cotabato, Sultan Kudarat and Basilan.



Map 1 Situation of IDPs in Mindanao (June 2010)

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

Government Initiatives to Address Displacement

The problem of displacement in Mindanao has been the result of many years of armed conflict. Thus, addressing displacement requires a lasting solution to the situation on the island. In 2010, the new administration of President Benigno Aquino III formed a peace panel headed by the lawyer Marvic Leonen to engage in talks with the MILF. It had been reported that prospects for settlement were high as peace talks with the MILF resumed this month.⁴⁹ According to Leonen, the government wants to accomplish a politically-negotiated settlement at the soonest possible time so that they can implement it, within six years. At the same time, Presidential Adviser on the Peace Process, Teresita Deles, said that with the peace talks on track, they are expecting to end the IDP situation within the year.⁵⁰

The Office of Presidential Adviser on the Peace Process (OPAPP) has recently launched a program, Payapa at Masaganang Pamayanan (peaceful and prosperous communities) or PAMANA, “to promote peaceful and prosperous communities as a complementary track to the primary task of ending armed conflict and achieving peace through a negotiated political settlement.”⁵¹ According to Secretary Deles:

⁴⁹ Informal talks between the government and MILF were concluded on January 13, 2011 and formal, exploratory talks will resume during February 9–10, 2011. The government delegation in the informal talks was composed of Panel Chair Marvic Leonen, Panel Member Miriam Coronel Ferrer, and Head of Secretariat Iona Jalijali. Panel Chair Mohagher Iqbal, Panel Member Michael Mastura and Head of Secretariat Jun Mantawil made up the MILF delegation. See Office of the Presidential Adviser on the Peace Process, *OPAPP News*, 2011, <http://opapp.gov.ph> and Integrated Regional Information Networks (IRIN) Humanitarian News and Analysis, “Philippines: One Year to End IDP Plight,” 2011, <http://irinnews.org>

⁵⁰ IRIN, *ibid.*

⁵¹ OPAPP, <http://www.opapp.gov.ph>

the program focuses on poverty and development issues in conflict-affected communities...and aims to empower communities to pursue peace through economic integration and development. One aspect of this is to improve the delivery of basic services and institute a more transparent and responsive governance to strengthen community resilience amidst armed conflict. OPAPP will work together with concerned government agencies to address the roots of armed conflict and other issues which affect the peace process and that the beneficiaries of peace do not have to wait for a political settlement before it can enjoy the peace.⁵²

Among the government agencies that will work with OPAPP are the Department of Social Welfare and Development (DSWD), the Department of Interior and Local Government (DILG), the Bangsamoro Development Agency, and the Autonomous Region of Muslim Mindanao (ARMM) regional government. Thus, based on the above pronouncements, it can be said that the current approach of the government to solving the problem of displacement is strongly linked to addressing the conflict in Mindanao.

Aside from the initiatives from the executive branch of government, a bill on internal displacement⁵³ was reintroduced in the 15th Congress by Representative Rufus Rodriguez (Cagayan de Oro City, 2nd District) and Party-list Representative Maximo Rodriguez, Jr (Abante Mindanao). According to the explanatory note of the Bill, the previous one proposed in the 14th Congress was already approved on the third reading, in the House of Representatives but was not acted upon by the Senate. The present bill aims primarily to define the state's policy regarding internal

⁵² OPAPP, <http://www.opapp.gov.ph>

⁵³ House Bill 00048, "An Act Improving Philippine Commitment to Human Rights Promotion and Protection by Providing the Necessary Mechanisms for the Prevention of Occurrence and the Protection from the Adverse Effects of Internal Displacement and for Other Purposes" (or "Internal Displacement Act of 2010").

displacement, how people can be protected, and to identify the responsible agencies of the government. Aside from this Bill, there is also the initiative to amend the ARMM law (Republic Act 9054) to expand the autonomous region. This effort is being undertaken by the legal panel of the Government of the Philippines and the Moro National Liberation Front (MNLF).

While the current initiatives of the government to address the problem of displacement may be considered commendable, a number of issues and concerns have to be addressed. At best, it can be said that what the Philippine government has done thus far, is to state explicitly its recognition of the problem of displacement. Moreover, it should be noted that a significant part of the efforts to address the problems of IDPs come from other sectors, particularly the international community and non-government organizations (NGOs). The situation of displacement has actually given rise to various human security concerns, especially involving those who live in evacuation centres and resettlement areas. People who have been forced to move because of the presence of conflict have lost their homes and livelihoods, to say the least.

The long years of fighting in Mindanao have resulted in the general impoverishment and deterioration of people's lives. As they leave their homes, displaced people have no choice but to live in overcrowded evacuation areas where the living conditions are very poor. To illustrate specifically, children and women suffer from poor sanitation, lack of access to clean water, and malnutrition. As homes and livelihoods have been lost, women have taken on a major part of the burden of providing for their families. A scholar noted that Muslim women are expected to take care of their families' (sometimes even their whole clan's) needs; particularly, to provide them shelter, food and education.⁵⁴ With no livelihood and home, women depend largely on external

⁵⁴ Gutoc, quoted in P. Sarmiento, "Women in Troubled South", 2009, accessed through <http://maranao.com>

assistance—from government and non-government groups—to provide for their children’s needs, specially food and health care. However, according to a recent Amnesty International report, the food donations received by IDPs have been barely enough to meet the hunger and nutritional requirements of children and women as these consisted mostly of rice, instant noodles, mung beans, and sardines.⁵⁵ Medicines are also rarely available in evacuation and relocation centres.

Perhaps among the many ways in which people have been affected by displacement, it is the impact on women’s health and physical well-being that must be emphasized, since this is the most basic of needs and has implications for the lives of their children and other family members. The poor living and sanitary conditions in evacuation or relocation areas have generally been the cause of illness and disease. And, it should also be stressed that women who are expected to take care of their children and other family members have also been severely traumatized by the conflict that caused their displacement. This example simply shows the complex nature of the problems arising from displacement.

Another significant point that must be raised is the fact that IDPs themselves have been relied upon to make the decision as to whether to return to their homes or not. The government essentially does not have a clear framework or a set of guidelines that would help the IDPs in their decision making. There are no guidelines on the return process or the criteria for return.⁵⁶ There are also no directives given to local authorities to guide the process of return. There have been reports of IDPs who have left evacuation centres (presumably because of the poor conditions) being considered as having “returned” but whose conditions or situation are not really known by government and aid agencies.

⁵⁵ Sarmiento.

⁵⁶ IDMC, 2010, p. 9.

According to IDMC: “Overall, there has been a reported lack of consultation and participation of IDPs in the return and rehabilitation process and a lack of choice offered to them between settlement options.”⁵⁷

Conclusion

While it has been reported that many of the people displaced by conflict in Mindanao have returned to their homes, the question as to when return and resettlement should begin remains largely unaddressed. It appears that one of the major issues that confront the Philippine government is the lack of a clear policy that will set the criteria for and guide the process of return and resettlement. Another issue raised by some NGOs is the dependence of the government on external assistance—whether in terms of providing the basic needs of IDPs or of gathering relevant information among them. The latter has been crucial as the needs of these people have yet to be adequately met.

What the recent program launched by the government (PAMANA) would achieve remains largely to be seen. Displaced people, it should be emphasized, must get the support and assistance that they need from the government as well as other sectors in order to return to their homes, be resettled in another area or build new communities. In concrete terms, the government’s PAMANA program that aims to “empower communities” must be translated into a concrete action plan, and the commitment to implement this program must be comprehensive and long-term, to address the various phases of return and resettlement.

Obviously, the question of when return or resettlement should

⁵⁷ IDMC, 2010, p. 9.

begin cannot be answered by the conclusion of a peace agreement. As the discussion above indicated, there are various needs of IDPs—especially of vulnerable groups like children and women—that have to be addressed. Rebuilding the lives of these people begins once they are provided the proper guidance and assistance to either return to their homes (if this is still possible) or resettle in a new area. More significantly, it should be noted that the problem of internal displacement—and all other problems that arise from it—will be addressed only if there is a long-lasting solution to ending the conflict in Mindanao and addressing the root cause of the problem. For the government, this means not just coming up with a peace agreement but, effectively implementing the laws that recognize the rights of peoples, such as the Indigenous Peoples’ Rights Act (IPRA). Outside of government, there are already various actors (such as NGOs, donor agencies, church groups) that play a significant part in helping address the problem of displacement. What is necessary is for the government and the various sectors involved to come up with a concerted effort and together with the communities find a solution to end the problem of displacement.

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Disaster-induced vs. Conflict-induced IDPs: Successes and Failures of Post- Tsunami Resettlement Efforts in Aceh

RIEFQI MUNA

Introduction

Aceh, with the official name of Nanggroe Aceh Darussalam (NAD), is a province on the extreme west of Indonesia's island of Sumatra. The province is entitled the status of special autonomy (Daerah Otonomi Khusus) together with the province of Papua in Irian Jaya.⁵⁸ In the last four decades, Aceh has been one of Indonesia's provinces that has had a large number of grievances that emerge in the form of growing separatist movements against Jakarta. The Free Aceh Movement (Gerakan Aceh Merdeka or GAM) has openly rebelled against the central government, in which Jakarta has declared and conducted military operations for many decades to crush GAM that was led by Teuku Hasan Tiro from his exile in Sweden. Hasan Tiro was a political ideologue

⁵⁸ Undang-Undang No. 18/2001 tentang Otonomi Khusus bagi Provinsi Nanggroe Aceh Darussalam (NAD) dan UU No. 21/2001 tentang Otonomi Khusus bagi Provinsi Papua (trans.: "Law No. 18/2001 on Special Autonomy for the Province of Nanggroe Aceh Darussalam [NAD] and Law No. 21/2001 on Special Autonomy for the Province of Papua").

who was able to construct the Aceh sub national identity that fuelled aspirations for the struggle for independence from Jakarta.

Counterinsurgency operations have been conducted in Aceh and, consequently the small wars in the province have had widespread impact on the society in the form of a growing conflict cycle that demanded cost of life and brought misery for the people of Aceh. Aceh had become the area of the military battleground between the Indonesian Military (Tentara Nasional Indonesia, or TNI) vs. GAM that claimed the lives of thousands of people. The consequence of military conflict had a tremendous impact on the social landscape and social cohesion in Aceh as a whole, with deep humanitarian concern as well as psychological consequences that destroy the life of the people in Aceh. The violence in the province of Aceh has pushed people to flee their homes for a safe life. In this conflict it was difficult for the Acehnese society to stay neutral politically between the rebel group and the Indonesian military.

The Tsunami that destroyed the province has been seen as a window of opportunity to create peace in Aceh and end the rebellion and the military operations. While the Helsinki Accord has been a landmark of the current peace in Aceh, there is a general feeling, that the Indonesian government and GAM would have been viewed as being immoral, had they not rushed into a peace agreement following the Tsunami which caused a grave humanitarian crisis.

Humanitarian concerns in Aceh have emerged as a consequence of two causes: conflict, and disaster. Conflict-induced or disaster-induced, both feature the problem of Internally Displaced Peoples (IDPs) in Aceh. There has been a question whether the Tsunami disaster has contributed to the achievement of the peace process in Aceh. Had there been no Tsunami, would the peace process have been achieved in Aceh? Beyond the debate about this matter, one thing that needs to be appreciated is the commitment of the leaders on the Indonesian side to commit to a peace deal instead

of continuing military operations to crush GAM that had suffered substantially in terms of logistics due to the Tsunami.

Significantly, the willingness of GAM to abandon military means and agree to a peace settlement contributed significantly to the peace process. It was also morally difficult for Jakarta to continue counterinsurgency operations while the humanitarian operations were needed to respond to the disaster in Aceh. The leadership in the government was generally that of Vice President Jusuf Kalla, who was personally committed to pushing the peace process in Aceh⁵⁹ through the involvement of the Crisis Management Initiatives (CMI) led by former Finnish President Martti Ahtisaari to bring peace to Aceh through the Helsinki Agreement. The previous peace process was facilitated by the Henry Dunant Centre (HDC) with the Cessation of Hostilities Agreement (COHA) which was not successful. Since then, progress has been achieved, such as decommissioning for both GAM and the Indonesian military, amnesty and the release of political prisoners, ratification of the Law on Governing Aceh, and the transition to democratic governance in 2007.⁶⁰

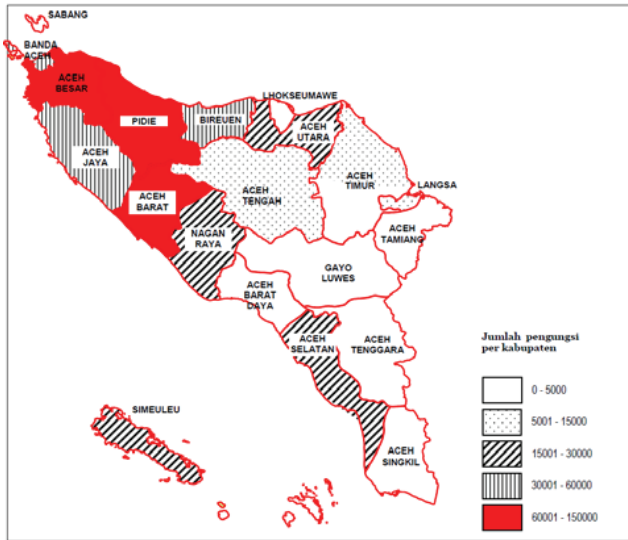
Conflict- and Disaster-induced IDPs

A major earthquake and the Tsunami that occurred on 26 December 2004 caused vast damage, destruction and loss of life, making a bad situation even worse. The World Bank (2008) summarizes the effect of the Tsunami in Aceh as follows:

⁵⁹ It is generally understood domestically that the pro-peace and pragmatic Vice President Jusuf Kalla was the crucial factor behind the achievement of the peace deal between the Government of Indonesia and the Free Aceh Movement.

⁶⁰ Fajran Zain, "Reintegration After Three Years of Helsinki Accord," *Jakarta Post*, August 8, 2008.

The 2004 tsunami caused severe physical damage along the coast of Aceh, with 130,000 people dead and 37,000 still missing. In addition, more than half a million people became IDPs due to the disaster. The damage and losses estimated at U.S. \$ 4.8 billion while productive sectors have suffered damage estimated at U.S. \$ 1.2 billion, more than 100,000 small businesses were destroyed and more than 60,000 farmers have been displaced at least temporarily.⁶¹



Sumber data: Bakornas PBP, 21 Maret 2005, pk 17.00 WIB

Map 1 IDPs in Aceh (March 2005)

Source: Rencana Induk Rehabilitasi dan Rekonstruksi Propinsi Aceh dan Sumatra Utara (trans.: “Master Plan for Rehabilitation and Reconstruction of the Aceh Province and North Sumatra”), pp. I.2–3.

⁶¹ *Laporan Pembangunan Manusia Aceh, 2010* (trans: *Human Development Report of Aceh, 2010*), Jakarta: United Nations Development Programme (UNDP), p. 13.

The conflict and Tsunami together resulted in massive displacement in the whole territory of Aceh. A study conducted in 2005 (Map 1) estimated the total number of displaced at nearly 350,000 people. Districts along the coast have a much greater number of IDPs than the middle regions (Aceh Tengah, Bener Meriah and Aceh Tenggara), which indicates that the Tsunami is a major cause of displacement. Combined, IDPs are the largest in Pidie District on the north coast with a total 65,000 people, Aceh Barat (53,000), and Aceh Besar (40,000), both on the northwest coast. Among the IDPs, males (52 percent) showed a slightly greater percentage than women (48 percent). The proportion of refugee men reached 56 percent in certain locations in the city of Banda Aceh and 55 percent in Aceh Besar, while women showed a greater percentage in Langsa (53 percent) and in Central Aceh (54 percent), located in central areas and, therefore, determined almost solely by the conflict. On a more positive note, the relocation of IDPs occurred very quickly.

In 2009, it was reported that less than 0.1 percent (or 2,600 residents) are still considered as IDPs. Conflict and natural disasters also changed the structure of many families in Aceh. The number of IDPs reached 167,000 women, 14,319 of whom are widows and 20,751 as heads of the family. More broadly, according to recent data, in 2007, there were approximately 148,000 widows in Aceh. The proportion of widowed heads of households in the province is higher than the national average. This is another result of conflicts, where a greater number of men were killed. Similarly, the percentage of family heads who are also widows in Aceh is higher than the national average.

The conflict has led many Acehnese to flee from the province and stay in other provinces and many of them fled to Malaysia that was seen as a safe haven for the Acehnese. There was no exact figure found of the number of the conflict-induced IDPs, with the exception of the pre-Tsunami period when the degree of violent conflict in Aceh was increasing and many non-Acehnese

(especially the Javanese) came to Aceh under a program of transmigration during Suharto's regime.

Armed conflicts between GAM and TNI, which lasted more than 30 years, caused the death of 15,000 people and displaced more than 30,000 families.⁶² Conflict has also caused widespread destruction of physical infrastructure and hampered the provision and maintenance of public services by the government. Adverse effects on social structures in Aceh, in addition to exacerbating horizontal and vertical inequalities in the population, is a serious challenge for efforts to improve their living conditions. In the three decades after the declaration of independence by GAM, Aceh's progress towards human development has decreased as compared with other provinces in Indonesia and poverty has increased.⁶³

Before the Tsunami, the figure of conflict-induced IDPs who reside in shelters in June 2003 reached 62,432 inhabitants.⁶⁴ The largest number of refugees was in Bireun District, of 16,666 inhabitants. The rest were scattered in various areas such as South Aceh, East Aceh and Pidie. Some of the areas had improved and safer communities began to be empowered. Even so, not all areas can be empowered, as the conditions are still volatile. In Aceh, conflict-induced displacement was temporary because the counterinsurgency operations were in sweeps. After the sweep,

⁶² *Laporan Pembangunan Manusia Aceh, 2010* (trans: *Human Development Report of Aceh, 2010*), Jakarta: United Nations Development Programme (UNDP), p. 11.

⁶³ *Ibid.*

⁶⁴ "Jumlah Pengungsi Aceh Mencapai 40,919" (trans: "Total of IDPs in Aceh reach 40,919"), *Tempo Interaktif*, Wednesday, June 18, 2003: http://www.tempointeraktif.com/hg/nasional/2003/06/18/brk_20030618-27_id.html

the refugees returned to their settlements and could run their activities, mostly farming. Most importantly, the extended conflict in Aceh has created a high degree of distrust and the destruction of social cohesion among the societies in Aceh province.

The Tsunami has changed the way of looking at the IDP problem in Aceh. Relaxing the political aspect has brought the IDPs in Aceh to be seen purely as a humanitarian matter in contrast to the era of military operations. The Tsunami was the “X” factor that partly contributed to peace in Aceh. More than that, the Tsunami that induced the changes caused an incomprehensible degree of humanitarian problems in Aceh due to the destructive power of the combination of the biggest earthquake and Tsunami in human history.

The magnitude of the disaster can be seen from the large number of human casualties and damage to the cities of Banda Aceh, Meulaboh and many villages in the coastal areas. A total of 16 kabupaten (districts) were damaged. Of all the districts affected by the Tsunami, those that suffered the worst damage are Banda Aceh, Aceh Jaya and Aceh Besar District. As many as 654 villages (11.4 percent) were Tsunami-affected and the estimated percentage of poor families hit by the Tsunami amounted to 15.16 percent (63,977 households). The number of victims in 15 districts in the province of NAD is estimated at 126,602 dead, and 93,638 people missing. (Of these, it is estimated that some have died, or are in refugee camps outside Aceh.) The number of IDPs up to March 21, 2005 was as many as 514,150 people in 21 districts/cities (Table 1).⁶⁵

⁶⁵ Rencana Induk Rekonstruksi dan Rehabilitasi Propinsi Aceh dan Sumatra Utara (trans.: “Master Plan for Rehabilitation and Reconstruction of Aceh Province and North Sumatra”).

No.	District/City	No. of IDPs		
		House/Shelter	Barrack/Temporary Shelter	Total
1	Banda Aceh	48,360	1,561	49,921
2	Aceh Besar	91,157	6,328	97,485
3	Sabang	3,712	—	3,712
4	Pidie	74,404	11,456	85,860
5	Bireuen	16,768	3,035	19,803
6	Aceh Utara	26,662	150	27,112
7	Lhokseumawe	952	1,542	2,494
8	Aceh Timur	13,182	527	13,709
9	Langsa	6,156	—	6,156
10	Aceh Tamiang	3,224	—	3,224
11	Aceh Jaya	38,217	2,205	40,122
12	Aceh Barat	70,804	1,885	72,689
13	Nagan Raya	16,560	180	17,010
14	Aceh Barat Daya	3,480	—	3,480
15	Aceh Selatan	16,148	—	16,148
16	Aceh Singkil	—	105	105
17	Semeulue	18,009	—	18,009
18	Bener Meriah	648	—	648
19	Aceh Tengah	5,288	—	5,288
20	Gayo Lues	234	—	234
21	Aceh Tenggara	611	—	611

Table 1 IDPs in Kabupaten (Districts) in Aceh Province

Source: Rencana Induk Rehabilitasi dan Rekonstruksi Propinsi Aceh dan Sumatra Utara (trans.: “Master Plan for Rehabilitation and Reconstruction of Aceh Province and North Sumatra”), pp. I.2–3.

Resettlement of IDPs

Efforts to help the IDPs within the overall framework of disaster management and response have been initiated by the national and international communities. However, the magnitude of the problem and its complexity pose difficulties in solving it, as the issue of resettlement is actually not only the physical aspect but, many aspects relating to culture, norms, legal and other practices that hamper the overall process. The government policy on resettlement was part of the overall policy of the Master plan for Rebuilding of the Province of Aceh that was officially released in April 2005.⁶⁶

The resettlement of IDPs was part of the overall reconstruction following the Tsunami in the terribly complex humanitarian emergency situation. The Indonesian government allocated substantial funds within the national budget with the support of many donors for the megaproject of rebuilding and reconstruction of Aceh after the Tsunami. The resettlement of those displaced from their homes quickly surfaced as a central concern of the Indonesian government authorities, IDPs themselves, and international humanitarian organizations. However, the issue of resettlement of the IDPs also needs to be seen within the macro-context of the underlying problem and its political landscape.

The Memorandum of Understanding (MoU) between the Indonesian government and GAM⁶⁷ provide a mandate for the

⁶⁶ Peraturan Presiden No. 30 Tahun 2005 tentang Rencana Induk Rehabilitasi dan Rekonstruksi Wilayah dan Kehidupan Masyarakat Provinsi NAD dan Kepulauan Nias Provinsi Sumatra Utara (trans.: "Presidential Regulation No. 30/2005 on Master Plan for Rehabilitation and Reconstruction of the Area and the Livelihood of the Community in the Province of NAD and Islands of Nias in the Province of North Sumatra").

⁶⁷ Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement, Helsinki, August 15, 2005.

Indonesian government to pursue peace and conduct reintegration to the ex-GAM combatants. Some of the programs related to the amnesty and reintegration are as follows.

- Granting political rights, social and economic benefits to ex-GAM combatants who receive Amnesty get back the Indonesian (RI) nationality for those who left their nationality during the conflict.
- Allocation of funds to ease the reintegration of former GAM combatants economically, political prisoners who have received amnesty, and affected communities.
- Allocation of funds for the rehabilitation of public and private property destroyed or damaged by the conflict to be managed by the Aceh government.
- Allocation of farming land, employment and social security for former GAM prisoners and civilians who were affected by the conflict.
- Establishment of a joint commission for claim settlement by the government of Aceh and the government of Indonesia.
- Granting rights for ex-GAM combatants to obtain employment in the police and military forces in Aceh without discrimination and according to national standards.

Reconstruction and International Role

The massive scale of disaster in Aceh has invited global solidarity in helping the victims. International community—individuals, companies, international NGOs and multilateral organizations—are focusing their attention to help and rebuild the province of Aceh. Many organizations are working to help the IDPs and help them to return. However, since most of their homes were destroyed, there must be a house to be built before their return. As

a consequence, many humanitarian NGOs, local and international, were stationed in Aceh to help the IDPs and build temporary shelters for them.

There are two mechanisms that have been established to address the two disasters in Aceh (natural and political) which are the establishment of: (1) the ad-hoc Agency for Recovery and Reconstruction of Aceh (Badan Rehabilitasi dan Rekonstruksi Aceh, or BRR); and (2) Aceh Peace Reintegration Agency (Badan Reintegrasi-Damai Aceh, or BRA). The task for rehabilitation and reconstruction of Aceh region of those who are victims of the Tsunami tragedy was conducted by the creation of BRR of Aceh–Nias, which was formed on April 30, 2005 pursuant to Regulation No. 2/2005. As a super-body, BRR has been given the full authority and mandate to manage the substantial funds. The total funds entrusted to the BRR since its establishment until the end of 2009 are Rp.25 trillion (US\$3 billion).

BRA was formed in February 2006 to provide social support to communities affected by conflict, by providing funds for economic empowerment to the former TNA, former political prisoners and detainees, the conflict-affected communities (including non-TNA GAM, GAM who surrendered prior to the MoU, and members of the anti-separatist groups). BRA opened representative offices in all districts and municipalities in Aceh. In addition, there are also a number of national and international donor agencies that support the process of reintegration and post-conflict reconstruction in Aceh.⁶⁸

The international donor agencies also set up a Multi-Donor Trust Fund (MDTF) to jointly coordinate to help the process of reconstruction of Aceh, while the Indonesian government set up the BRR in 2005 to address the overall aspect of reconstruction of post-Tsunami Aceh. The BRR was aimed at speeding up the process of reconstruction instead of the normal bureaucracy. The

⁶⁸ <http://bra-aceh.org>

mandate of BRR was until 2008. Despite the great criticism it received, it has helped to speed up the process of reconstruction to include the resettlement of the IDPs by building more than 160,000 houses, against the target of 90,000 houses.⁶⁹

Finally, the challenge to resettlement of IDPs in Aceh is more complex than merely being a matter of technical and procedural aspects. Resettlement is not only a matter of how the houses have been physically built but, it also relates to the government's commitment and how to implement it on the ground. It also relates to how communication between the government and the people could be set up, and how local culture and tradition must be upheld. In the case of post-Tsunami resettlement, the government has commitment and funds, but challenges remain at the operational level that relate to socio-cultural matters and issues of land-titles that also need to be resolved. Most importantly, protection of the daily livelihood is crucial for sustainable and peaceful settlement. Without creating jobs, it will put the IDPs in a vulnerable condition despite having been resettled. Last, issues of resettlement and overall rebuilding of Aceh face the daunting challenge of the governance issue, where corruption is still rampant in bureaucracy.

⁶⁹ <http://groups.yahoo.com/group/IACSF/message/13937>

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Rencana Induk Rekonstruksi dan Rehabilitasi Propinsi Aceh dan Sumatra Utara (trans.: “Master Plan for Rehabilitation and Reconstruction of Aceh Province and North Sumatra”).

Undang-Undang No. 18/2001 tentang Otonomi Khusus bagi Provinsi Nanggroe Aceh Darussalam (NAD) (trans.: “Law No. 18/2001 on Special Autonomy for the Province of Nanggroe Aceh Darussalam [NAD]”).

Undang-Undang No. 21/2001 tentang Otonomi Khusus bagi Provinsi Papua (trans.: “Law No. 21/2001 on Special Autonomy for the Province of Papua”).

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The Role of External Actors in Development-induced Displacement in Myanmar

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Introduction

Over the past 22 years, Myanmar has undergone significant changes in governing ideology. After Ne Win led a military coup and took control of Myanmar in 1962, he ruled over Myanmar and sought a “Burmese Way to Socialism.” However, the late 1980s signalled a turning point in the governing ideology. The 8/8/88 Protests broke out as a result of Ne Win’s decision to reconfigure currency denominations and, many people lost their savings overnight as a result. This was only part of the larger issue of financial mismanagement of the economy. Ne Win subsequently resigned and was replaced by Than Shwe. Than Shwe renamed Burma as Myanmar and changed the economic course of the country away from the Burmese Way to Socialism and international isolation toward a more free market economy. As a result of this change in ideological direction, there was an increase in foreign investment in Myanmar and a government name change which saw the Burma Socialist Program Party (BSPP) become the State Law and Order Restoration Council (SLORC). However, as many states in the West had imposed sanctions upon the regime, in an attempt to encourage democratic reforms, there was decreasing direct involvement of the West in Myanmar. While the sanctions reduced Western involvement, Myanmar’s neighbours, notably China, Singapore and Thailand, began a period of inward

economic investment. It was not until the late 1990s that India, under the Rao administration, changed its policy of outright criticism to one of engagement with the military junta and began investing in Myanmar.

In line with these developments, there was a shift in the underlying causes of internal displacement in Myanmar. Prior to the change in economic ideology, the causes of displacement and human insecurity were directly associated with the ongoing internal conflict between the military junta and the opposition. However, as a new development strategy was being implemented by the military regime, many deals were made with international investors with little or no concern for human security in the areas under development. This decision, coupled with the ongoing internal conflict, meant that there were multifaceted dynamics emerging with reference to the causes of internal displacement. The change from Myanmar's self-imposed isolation to strategic engagement was complete by 1997, with its admission into ASEAN and the change in party name from SLORC to the State Peace and Development Council (SPDC). At this time, Myanmar was motivated predominantly by economic interests and the need to balance the growing influence of China.⁷⁰ However, more recent international interactions with its neighbours have not led to any significant progress on the political dimensions of Myanmar's internal affairs, although there has been increased economic interaction mainly with its neighbouring states. Indeed, Myanmar's ASEAN membership reaffirmed traditional sovereignty norms. By signing the Treaty of Amity and Cooperation, Myanmar ensured that regional criticism was muted through the treaty's provision of "non-interference in the domestic realms of other member states."

⁷⁰ Jurgen Haacke, "Myanmar's Foreign Policy: Domestic Influences and International Implications," Adelphi Papers no. 381, 2006, pp. 1–128.

However, Myanmar's ASEAN membership has prompted criticism from the international community.⁷¹ ASEAN members argue that theirs is a different approach to the political unrest and unresolved conflict, a policy of "constructive engagement."⁷² However, the policy details of constructive engagement remain elusive and, significant political developments are left wanting. While the "big-picture" changes have yet to occur, this has not prevented Myanmar from focusing on economic development. However, significant direct and indirect displacement has been associated with subsequent regional, state and international business opportunities, particularly with natural resource extraction.

Dynamics of Displacement

The ongoing political insecurity inside Myanmar as reflected by the displacement arising from the conflict between government military forces and the ethnic-nationality military forces is inextricably linked to development-induced displacement across

⁷¹ Myanmar was accepted into ASEAN as a member state (Myanmar) in 1997 after much criticism from the USA and the EU, which felt that admission, would lend legitimacy to the military rule in Rangoon. At the 1997 ARF meeting, US Secretary of State Madeleine Albright criticized the ASEAN decision not to admit Cambodia because Hun Sen had used force to change an elected government, while not treating Myanmar the same way.

⁷² "Constructive engagement" is a term used by ASEAN as a preventive mechanism whereby the association membership prefers to interact with a member state to encourage and assist changes to a domestic policy or a dispute with another member state. The policy has been largely discredited for failing to bring about tangible benefits, most notably in the association's "constructive engagement" policy toward Myanmar, which continues not to solve its internal political disputes and transform its political system into a democracy.

the country. The development of the Yadana gas pipeline project and the railway from the Shan-Karenni border to Loikaw station displaced thousands of people. However, a definitive distinction between conflict- and development-induced displacement in Myanmar is not possible because all development projects tend to support the security policies of the military junta, most notably through foreign exchange to finance military operations.⁷³ One of the significant challenges faced by humanitarian groups and NGOs is the ongoing security considerations surrounding displacement. These considerations include the effective monitoring of displaced persons due to ongoing fighting and, the insecurity of both those displaced and the humanitarian and NGO workers in those areas.⁷⁴ As a result, while evidence of development- or conflict-induced displacement is available, accurate monitoring of the situation is difficult under current conditions.

Natural Resources

One of the most notable examples of development-induced displacement is the development of energy projects in Myanmar. These have been identified as significant contributing factors to displacement and human rights abuses across the country. One of the more high-profile cases in the media was the 2002 California lawsuit brought against the US firm Unocal and its French business partner, Total. They were aware that forced labour was used in Myanmar and, the lawyers argued that they were, therefore, partly responsible for the human rights abuses committed by the military junta during the construction of the

⁷³ Evelyn Balais-Serrano, "Internal Displacement in Southeast Asia," *Refugee Survey Quarterly*, vol. 19, no. 2, 2000: 59.

⁷⁴ *Ibid.*, p. 62.

Yadana gas pipeline developed in the 1990s.⁷⁵ Indeed, the natural gas reserves at Yadana and Yetagun are piped from the Gulf of Martaban to Thailand and this natural resource is the major export earner for the military regime, accounting for \$2 billion or more annually.⁷⁶ The major oil companies operating the Yadana field are Total (France) and Chevron (US), bypassing their respective governments' economic sanctions. However, both have implemented corporate social responsibility strategies committing US\$25 million over five years to a socio-economic program for local communities.⁷⁷ The Tenassarim division in which the natural gas projects are located is also home to the development of the Tavoy Deep-Sea Port. During the development of the Yadana gas pipeline there have been cases of land confiscation and forced labour and, there are doubts that similar tactics won't be used with the development of the Tavoy Deep-Sea Port.⁷⁸

Another notable example from Myanmar is the development of hydroelectric power, with more than 60 hydropower projects currently at various stages of development in partnership with Chinese companies. Most of the power generated from these projects will be exported while the domestic availability and demand for electricity will remain the same.⁷⁹ The construction of

⁷⁵ W. Courtland Robinson, "Risks and Rights: The Causes, Consequences, and Challenges of Development-induced Displacement," Brookings Institution–SAIS Project on Internal Displacement: An Occasional Paper, 2003, pp. 1–65.

⁷⁶ Lex Reiffel and Raymond Gilpin, "Can Economic Reform Open a Peaceful Path to Ending Burma's Isolation?" *USIP Peace Brief*, vol. 14, 2010: 1–5.

⁷⁷ *Ibid.*

⁷⁸ Thai–Burma Border Consortium, *Programme Report: January to June*, Bangkok: Thai–Burma Border Consortium, 2010, p. 10.

⁷⁹ Lex Reiffel, "The Economy of Burma/Myanmar on the Eve of the 2010 Elections," *USIP Special Report no. 241*, 2010.

so many dams on the Salween River is likely to have adverse effects on people living downstream. The Mon and Karen ethnic groups are most likely to be adversely affected by this development, as they will become increasingly vulnerable to fish stock depletion and salt water intrusion.⁸⁰

While the energy development projects are undoubtedly the largest contributors to human insecurity and displacement, they are by no means the sole factors. Alongside energy there are other natural resources which form part of the ongoing development agenda of the regime. Foreign investors are also involved in logging activities and gemstone production. For example, more recently in Karenni Division, two townships have been abandoned with the reported relocation of 30 towns away from the main infrastructure development to Taungoo, an area with abundant timber resources.⁸¹

Furthermore, increasing natural resource and economic opportunities have emerged alongside the ongoing conflict in Myanmar with the ethnic nationalities. As such, areas identified as suitable for economic development have oftentimes been located in areas significantly populated with ethnic-nationalities. For gaining access to carry out the various projects, forced labour and migration are commonplace. For example, portage is a common occurrence where ethnic nationalities are forced to carry the supplies of the Armed Forces and act as human shields in heavily

⁸⁰ Centre on Housing Rights and Evictions (COHRE), “Displacement and Dispossession: Forced Migration and Land Rights in Burma,” *COHRE Country Report*, Geneva: COHRE, 2007, accessed February 28, 2011: http://www.cohre.org/sites/default/files/burma_-_displacement_and_dispossession_forced_migration_and_land_rights_nov_2007.pdf

⁸¹ Thai–Burma Border Consortium, p. 13.

mined areas.⁸² If the ethnic nationalities refuse to supply personnel for such activities, they are deemed to have committed high treason against the state and will be shot, imprisoned or forced to leave. As a Burmese refugee from Mon State recalls:

...The village headman at home forced me to leave because I couldn't provide any tax or labour to the Burmese army. I was too poor...I tried to stay in the village, but that corrupt headman forced me out. No one can go against him. He is close to the authorities and if you cross him, he can put you in a cell, like a prison, and lock you in stocks for twenty-four hours.⁸³

Even when families are able to porter, it is usually the men who are sent by the villages to the military to carry out such duties. While the men are away the Burmese army frequently enters the villages and rape the wives of those men forced to porter for them. Even women who are engaged as porters themselves are raped while working, or are taken along as “comfort women” during work routines.⁸⁴ With such reports reaching the international community, there have been various efforts by international organizations and intergovernmental bodies to assess the population inside the country, with varying levels of success. The UNHCR was the lead organization in the repatriation of forced

⁸² Andrew Bosson, *Forced Migration/Internal Displacement in Burma with an Emphasis on Government-controlled Areas*, Geneva: Internal Displacement Monitoring Centre, 2007.

⁸³ Sandy Barron, *Between Worlds: Twenty Years on the Border*, Bangkok: Burmese Border Consortium, 2004, p. 29.

⁸⁴ For a detailed account of the Burmese military's use of rape as a weapon of war, see Karen Women's Organization, *Shattering Silences: Karen Women Speak Out about the Burmese Military Regime's Use of Rape as a Strategy of War in Karen State*, Mae Sot: Karen Women's Organization, 2004.

migrants back into Arakan State along the western border where notable human rights abuses took place in the 1990s. While many ethnic nationalities flee due to fear of these human rights abuses, many remain displaced within the state rather than making it across an international border. If they do cross an international border, they can apply to claim asylum or receive some notional protection from the host state or international organizations, although this has been severely restricted in practice.⁸⁵ As the Myanmar military attempt to wrest control of the territory from ethnic-nationality armed groups along the Thai border, or as part of a larger strategy to populate the area with ethnic Burmans along the Bangladeshi border, it is along the borders with other states, that there is significant internal displacement taking place.

Cross-border Trade

While international investors in Myanmar have contributed to internal displacement through large-scale developments, there is also significant smaller-scale displacement as a result of cross-border trade. This trade relationship has developed with sub regional actors, whereas external investments have developed at

⁸⁵ Here, I refer to notional protection, as Myanmar's neighboring states are all non-signatories to the Refugee Convention and do not adhere fully to these international standards. The varying degrees of protection refugees receive depend on which neighboring state the refugees enter. The level of protection given to a refugee can be as arbitrary as which crossing the refugee takes to enter the neighboring state and, can also be taken away at any moment depending on levels of local corruption. While on fieldwork, members of a CSO informed me that they were able to live outside the refugee camp in a safe-house as long as they provided the police with cash when they dropped by. Sometimes the police would drop by often. It would all depend on how much money they had earned. This situation continues, so the CSO has to keep cash ready for the police because if they do not then they will be returned to the Myanmar border crossing.

the national level. For example, the conflict situations along the Thai border have not only been ongoing, but are prolonged by the various economic interests of neighbouring states.⁸⁶ These economic ventures have led to the entrenchment of the conflict with both the military and the ethnic nationalities profiting from the exploitation of natural resources. These activities occur, most notably, in the Golden Triangle area and along the Thai border, where narcotics production and timber logging account for a significant part of illegal economic activity.⁸⁷

Myanmar remains the world's second-biggest source of opium, accounting for 28,500 hectares in 2008, whereas recent international efforts have seen Thailand and Laos become almost opium-free.⁸⁸ The forestry commission in Myanmar oversees logging activities and has clashed with those people who were

⁸⁶ Notably China, India, Singapore and Thailand are all major investors in Myanmar, funding the continuation of the military regime. For example, in 2006, Myanmar's gas industry brought in revenue of US\$2.16 billion from sales to its main buyer, Thailand. These funds give the military a source of finance independent of its citizens. See Human Rights Watch, *Burma: Foreign Investment Finances Regime*, New York: Human Rights Watch, 2007.

⁸⁷ The Golden Triangle area is one of Asia's two opium-producing areas bordering (variably) Myanmar, China, Laos, Thailand and Vietnam. The United Nations Office on Drugs and Crime estimates that in 2003 around 300,000 people depended on the cultivation of opium poppy in Myanmar alone. See United Nations Office on Drugs and Crime, *UNODC Myanmar Programme*, Vienna: UNODC, 2003.

⁸⁸ United Nations Office on Drugs and Crime, *Press Release: Myanmar Remains the Major Producer of Methamphetamine Pills in the Greater Mekong Sub-region*, Vienna: UNDOC, 2010, accessed February 28, 2011: [http://www.unodc.org/documents/eastasiaandpacific//2010/12/ops-myanmar-ats/Press Release Myanmar ATS Assessment 03 13 December 2010 .pdf](http://www.unodc.org/documents/eastasiaandpacific//2010/12/ops-myanmar-ats/Press%20Release%20Myanmar%20ATS%20Assessment%2003%2013%20December%202010.pdf)

displaced as a result of their land being reclaimed.⁸⁹ These activities provide the main source of income for both the military junta and the militias of ethnic nationalities in the Golden Triangle area. This income finances the continuation of the conflict and fuels internal displacement as the various parties to the conflict periodically control different areas. Indeed, the precarious ceasefire agreements between different ethnic nationalities and the Myanmar military has led to an increase in logging as both sides to the conflict seek to maximize business opportunities. While sustainable economic development would decrease the incentive of producing illicit drugs, there remains much work to be done to achieve this as most of these activities do not benefit the local population. According to Global Witness, “most of the timber cut in Kachin State...has fuelled development in China, not in Burma. Such unsustainable exploitation has already led to environmental destruction and undermines prospects for future sustainable development.”⁹⁰

Along the western border in Arakan State, the military government has developed new model villages around Maungdaw since 2006, which saw the forced eviction of the Rohingya villagers. In the past, these model villages have been built on confiscated land to be used by ethnic Burmans. The evicted villagers were left without any compensation and forcibly relocated to the foothills with a number of them fleeing to Bangladesh.⁹¹ These activities ensured that the Rohingya faced much insecurity and are at risk of being forcibly displaced. In

⁸⁹ Ardeth Thawngmung, *Behind the Teak Curtain: Authoritarianism, Agricultural Policies and Political Legitimacy in Rural Burma/Myanmar*, London: Kegan Paul, 2004, p. 215.

⁹⁰ Centre on Housing Rights and Evictions, *COHRE Country Report*.

⁹¹ Bosson, “*Forced Migration*,” A7.

early 2007, the Burmese military government designated an area along the Bangladeshi–Burmese border to encourage cross-border trade with Bangladesh, called the Taungbro Sub-Town. This designation saw many Buddhist families brought in from other states in Myanmar to settle in this new model village,⁹² demonstrating further signs of an increase in military tactics to promote Burmanization in Arakan State. The recent policies of land confiscation and eviction are evidence of this: the confiscated land can be utilized for natural resource exploitation such as hydropower dams—and is only one of many strategies. This example serves to highlight the complex relationship between the military junta, local populations and external investors. Another of these strategies is forced labour, which manifests itself in various forms: force-farming (forcing farmers to cultivate a certain crop); portering; repairing roads and bridges; collecting bamboo for the authorities; and supplying gravel or stone for infrastructure projects, which are the most prevalent in Rakhine State.⁹³

Conclusion

Through an investigation of development-induced displacement in Myanmar, it becomes clear that it is difficult to separate development-induced from conflict-induced displacement because all development projects support the security policies of the military regime. Along the Thai border, precarious ceasefire agreements have allowed parties to the conflict to put aside their differences with the aim of furthering their own business interests across the borders with China and Thailand. This has not prevented internal displacement: rather, it has led to a change in the character of displacement. Rather than displacement occurring

⁹² Bosson, “*Forced Migration*,” A7.

⁹³ *Ibid.*

as a result of fighting, during the periods of *frozen* conflict, the displacement was subsequently a result of land confiscated for development. While the last 22 years have seen ebbs and flows of conflict, Myanmar has undoubtedly seen significant economic development in the area of exploitation of natural resources, with little (if any) benefit for the local population.

With the contested national elections held in Myanmar in November 2010, there have been calls for the lifting of economic sanctions by both ASEAN member states and political parties of several ethnic nationalities, although the National League for Democracy maintains its pro-sanctions position whilst it investigates their impact in assisting the ethnic nationalities and national economic development.⁹⁴ However, while the impact of the elections continues to be evaluated in addition to a name change of the government to Union Solidarity and Development Party (USDP), it appears that there is an increasing trend of selling off state assets to the private sector, which will further complicate the ability of those forcibly displaced to return to their lands and re-establish their communities.

⁹⁴ “Keep Targeted Sanctions in Place, says NLD,” *Irrawaddy*, January 17, 2011, accessed February 28, 2011: http://www.irrawaddy.org/article.php?art_id=20539

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Report on Development-induced Displacement in India

PAULA BANERJEE

Introduction

The development paradigm favoured by much of the post-colonial world, including India, has inevitably resulted in massive displacement of the vulnerable sections of the population. This is because the cost of development is not borne equally by all sections of the society. The most vulnerable of the population, such as the indigenous people, the minorities, dalits, etc. bear the cost of development while the more endowed, such as the upper-caste Hindus enjoy the fruits of development. India has over 4,300 large dams and a total of 9 percent of the world dam population.⁹⁵ Large dams in India are estimated to have submerged about 37,500 square kilometres—an area almost the size of Switzerland—and displaced tens of millions of people.⁹⁶ According to one estimate, from 1951 until 2000, dams alone displaced between 21 million and 40 million people in India.⁹⁷ The total number of development-induced displaced according to

⁹⁵ Bansuri Taneja and Himanshu Thakkar, “Large Dams and Displacement in India,” Cape Town, South Africa, Submission no. SOC166 to the World Commission on Dams, 2000: <http://www.dams.org/kbase/submissions/showsub.php?rec=SOC166>. See also National Human Rights Commission Annual Report, 2002–2003 and 2004–2005: www.nhrc.nic.in/Documents/AR accessed May 13, 2011.

⁹⁶ International Rivers.Org, “India”: www.internationalrivers.org/en/south-asia/india accessed March 12, 2011.

⁹⁷ Taneja and Thakkar, “Large Dams.”

one researcher points to 50–60 million displaced persons. This figure includes: 3 million in Jharkhand, 3 million in Orissa, 5 million in Andhra Pradesh, 1 million in Kerala, 2 million in Assam, 4.2 million in Gujarat, and 7.5 million in West Bengal.⁹⁸

Much of those affected by displacement are indigenous people belonging to the scheduled tribes. Though the tribal population constitutes a small percentage of the country's population, among those displaced their percentage is much higher. One of the main reasons for the displacement of the tribal population is that over 80 percent of coal and 40–50 other minerals are found in tribal-inhabited areas. Much of their land is owned by the community, so they have no papers for individual ownership of land. According to colonial law, what belongs to the community is known as state property. Very often, they are considered as evicted and not as displaced. They are often forced to become migrant labour with a complete destruction of their livelihood pattern. The vulnerable section of the population, of whom the tribals are but one, are displaced not only because of dam building but also because of other projects such as rapid urbanization, mining, and formation of special economic zones or SEZs, etc. The effects of displacement often lead to loss of traditional means of employment, loss of resources, disrupted community life, change of environment, marginalization and profound psychological trauma. Yet even though development-induced displacement disrupts lives in so many ways and increases morbidity and mortality, it is still continuing today in the name of national interest.

⁹⁸ Walter Fernandez, "Development-induced Displacement: The Class and Gender Perspective," paper presented at the International Conference on "The Emerging Woman in the Indian Economy," Christ College, Bangalore, November 26–7, 2007.

Sardar Sarovar Dam

Any mapping of the development-induced displaced in India should begin with the oustees of the Sardar Sarovar Dam Project, which today is perhaps the most widely researched and discussed project involving a huge number of oustees, the highest number probably in the history of India. The Sardar Sarovar Dam is the second-largest project in the Narmada Valley in terms of both total area submerged and the numbers of people displaced.⁹⁹ Proponents have been promoting the project as the lifeline of Gujarat. They say that the project will make it possible to irrigate large tracts of land, generate electricity for many and provide drinking water to thousands. According to an independent review conducted by Bradford Morse and Thomas Berger for the World Bank, once completed, the Sardar Sarovar Dam Project was to submerge approximately 37,000 hectares (ha) of land for the reservoir, and approximately 80,000 ha for the extensive canal works. It was to displace at least 100,000 people who resided in approximately 245 villages. Approximately 140,000 additional farmers were to be affected by the canal and irrigation system.¹⁰⁰ But much later, in a project by Tata Institute for Social Sciences, it was calculated that an unknown number of people, ranging somewhere in the neighbourhood of 300,000 would be affected by the project.¹⁰¹

The World Bank approved \$450 million in loans for Sardar Sarovar in 1985 even though the project did not comply with the

⁹⁹ Amita Baviskar, *In the Belly of the River*, New Delhi: Oxford University Press, 1995.

¹⁰⁰ B. Morse and T. Berger, *Sardar Sarovar: The Report of the Independent Review*, Ottawa, Canada: Resource Futures International, 1992, pp. xii–xiii.

¹⁰¹ TIISS, “Performance and Development: Effectiveness of Sardar Sarovar Project,” 2008 accessed 12 March 2011:

<http://www.indiaenvironmentportal.org.in/content/performance-and-development-effectiveness-sardar-sarovar-project>

government's conditional environmental clearance. Under strong public pressure, the World Bank withdrew from the Narmada Valley in 1993. India's Supreme Court ordered the project to be suspended in 1995, but later allowed construction to continue under the condition that the displaced people were properly rehabilitated. Even though these conditions have never been met, the dam height has been raised to 122 meters. If the dam is completed, it will reach 139 meters, and flood out thousands more people.¹⁰²

The Morse and Berger report is the final report of the Morse Commission, the World Bank's internal review of the project, which found systematic violations of bank policies and loan agreements, particularly those concerning the environment and resettlement. That report eventually led the World Bank to withdraw funding from the project and has been cited as an important factor in pushing the bank to create its own Inspection Panel, a body tasked with investigating claims from citizens in cases where the bank has failed to enforce its own policies, procedures, and loan agreements. Recent studies also attest to the fact that the rehabilitation process for the oustees of the Sardar Sarovar Dam has been anything but ideal.

Persistent dissatisfaction with the rehabilitation process early on led to a water dispute tribunal. The Narmada Water Disputes Tribunal Award (NWDTA) had a number of landmark features as far as the directions for resettlement and rehabilitation go. It must be acknowledged that these directives of the NWDTA about the entitlements and linkages reflected its concern for, and clarity about how livelihoods must be restored to the affected people and how they cannot and must not be simply flooded out. These directives accord and respect the affected people's right to life, livelihood and dignity. But because of administrative apathy,

¹⁰² Peter Bosshard, "New Independent Review Documents: Failure of Narmada River Dams," International Rivers.Org, India, 2008 accessed 12 March 2011: www.internationalrivers.org/en/south-asia/india

these were never fully implemented.

Regarding entitlements, the tribunal ruled the following.

- First, livelihoods of landholders must be restored by provision of alternate land in place of cash compensation hitherto given under Land Acquisition process (NWDTA XI IV [7]), land-for-land as the basis of the rehabilitation, as against mere cash compensation under the Land Acquisition Act.
- Second, it deemed that the affected population had a right to the share of prosperity of the command area by being rehabilitated on irrigable lands in the command or irrigable lands in their own state with irrigation provided at the cost of the government (NWDTA XI IV [2][iv]).
- Third, it recognized that affected people had a right to choose between Gujarat and their home states with regard to R&R (NWDTA XI IV [2][I]).
- Fourth, it ruled that villages must be relocated as a community and, asked for the setting up of “rehabilitation villages” along with all the amenities necessary for a village (NWDTA XI IV [1] and IV [2][iv]).
- It insisted that provision for rehabilitation must be well in advance of project construction; in fact, it said that within two years of the Tribunal Award (by 1981), lands required for those to be affected below FRL 350 ft must be acquired and be made available according to the choice of the oustees (NWDTA XI IV [2] [i]).

The Ousteers

Notwithstanding all these, the oustees were never satisfactorily rehabilitated. This has led to increasing concern about development-induced displacement. One recent report stated that the project’s irrigation system has never been completed, and the Narmada waters do not reach the intended beneficiaries. The

project authorities are renegeing on their promise to supply drinking water to Gujarat's population. They have increased industry's share of the water from 0.20 to 1.00 million acre feet (MAF), while drinking water for domestic use has been reduced from 0.86 to 0.06 MAF. The project was supposed to generate electricity at a capacity of 1,450 megawatts (MW). In practice, the hydropower plant will only have a capacity of 425 MW, and once the irrigation system is fully operational, this capacity will drop to 50 MW. If the dam is completed, its reservoir will submerge 376 square km of land and displace approximately 240,000 people. The canal network will displace even more people. The Supreme Court decided that the dam oustees need to receive cultivable replacement land and housing plots. The TISS report finds that the state governments have never complied with this binding order, and that the replacement land for the oustees is not available.¹⁰³

For most people working on IDPs, this is nothing exceptional. While building the Hirakud dam (the first Indian mega-dam) about 1.83 lakh acres of land was submerged and the Hirakud Dam affected 294 villages. The displaced got 7,216 acres of agriculture and 206 acres of homestead land. Yet, over 60 years after this dam was completed, about 10,000 people are still not rehabilitated. No matter how the past has been affected, the worst is yet to come in the future. The most horrific future scenario is presented by the development-induced displacement that is expected to happen in northeast India.

Developments in the Northeast

The northeast has been termed as the powerhouse of India. The development projects of the region have directly affected the poor and powerless tribes both in the hills and plains. Absence of

¹⁰³Peter Bosshard, "New Independent Review Documents: Failure of Narmada River Dams," International Rivers.Org, India, 2008 accessed 12 March 2011: www.internationalrivers.org/en/south-asia/india.

adequate resettlement and rehabilitation policies for the displaced has led to further pauperization, marginalization and helplessness among the oustees. The South Asian Solidarity for Rivers and Peoples (SARP) maintained that from the 72 hydel projects proposed in the north-eastern region, only the contractors and dealers of cement, iron, etc. will be benefited, not the common people. It will also help the better off to lead an even more luxurious life, but at the same time the poor and the backward communities will be deprived of their livelihoods. It is also interesting to see that central allocation for NE projects has increased substantially in the financial year 2005–06. Eighty new projects were sanctioned in this year for this region. By now it has become clear that mega-dams have done more harm than good to the people. But still the central government is proposing new plans having dangerous consequences, ignoring the fragile ecology of this region.

The common people have become conscious of the fact that such projects are not only going to displace them, but also break their timeless bond with the land. They will be alienated from their own habitat. The people have now understood that dams and other mega-projects will deprive them of their sustainable modes of living, making their lives more difficult. The ecological condition of this region is fragile. Instead of making any effort to protect the lives of the indigenous population, the central government is coming up with new proposals for setting up different projects in this region, which will have serious consequences in the long run.

Among the north-eastern states, development-induced IDPs are becoming more and more common. The oil sector in Assam has contributed toward the problem of displacement. New oil townships are established in various places of upper and lower Assam, displacing the inhabitants of those areas. It is said that much of upper Assam is floating on oil and companies such as ONGC are reaping advantage out of that to the consternation of

the common people. Two paper mills of Assam at Jagiroad and Cachar have also forced people out of their homes, besides affecting the environment adversely. The Jagiroad paper mill has mostly displaced the people belonging to the Tiwa tribes. On the other hand, the Cachar Paper Mill in Barak Valley of Assam has badly affected the bamboo forest in the neighbouring area. Moreover, urban expansion of Guwahati city has displaced the tribals, mostly Karbis and Bodos. Urban expansion is pushing these people out of the city to the periphery. In 1973, when Assam's capital was shifted from Shillong to Guwahati, these tribal people had to sacrifice once again. An estimated 100,000 of the population was displaced at that time. Educational institutions like Guwahati University and IIT, Guwahati, have also displaced the original inhabitants to the outskirts of the city, without proper rehabilitation.

The Pagladiya Dam Project is being constructed in Nalbari District of Lower Assam. The project is going to irrigate 54,125 ha of land, protect 40,000 ha of land from flood and erosion, and generate only 3 MW of electricity. But it would displace almost 105,000 of the population, most of whom are tribal people. The rehabilitation and resettlement package offered by the government is also not acceptable to the people of the area. Besides, many of them do not possess proper ownership documents and, therefore, will not get any compensation. Hence, the people have started their movement under the banner of "Pagladia Bandh Prakalpar Ksatigrastha Alekar Sangram Samiti" against the implementation of the project. The central government as well as the Brahmaputra Board, which is the implementing agency of the project, is making all efforts to construct the dam there. But till now the resistance of the people has been quite successful and the authority has failed to do even the ground survey because of the massive resistance of the people. For the construction of the fourth bridge over the mighty Brahmaputra, the Bogibeel Bridge, already more than 2,000 *bighas* [one acre has 2.5 to 3 *bighas*] of land have been

occupied. According to an estimate, almost 500 families having ownership documents of these lands have not been compensated yet.

The 2,000-MW Lower Subansiri project to be constructed on the border areas of Assam and Arunachal is already facing a lot of opposition from the people as well as from the governments of both the sectors. The project was planned by National Hydroelectric Power Corporation (NHPC), a government public sector unit and it is very keen to construct the dam as it has obtained environmental clearance for the projects. The proposed height of the dam is 116 meters and it will submerge 3,436 ha of land. At the same time, more than 1 lakh tribal people of Arunachal Pradesh will be adversely affected by the dam, out of which about 15,000 face the threat of physical displacement. Besides, it will affect the rich bio-diversity of the region as 42 ha of land belonging to Tulley Valley reserve forest will also be submerged, where many rare animal species can be found. In Arunachal Pradesh, the state government has signed 168 memoranda of understanding with private and public companies for big dams in the mountainous region. Alarms are being raised in the state of Assam over the dams' downstream impacts. A detailed study on the downstream impacts of Lower Subansiri Dam by an expert group of faculty from three Indian universities has recommended that no mega-dams should be built in tectonically unstable north-eastern India (International Rivers, Northeast, 2010). In Sikkim, the provincial government has recently awarded contracts to private operators for 26 large hydropower projects on the Teesta River, seven of which will affect Dzongu province. In summer 2007, the "Affected Citizens of Teesta" organized what might have been the longest hunger strike in the history of Sikkim to protest the planned construction of hydropower projects on the ancestral lands of the indigenous Lepcha community in Dzongu.

NHPC has already constructed their office in an elephant

corridor. As a result of this the elephants have started attacking and destroying the neighbouring villages. This might prove very hazardous for the ecology. The indigenous people of Arunachal are also worried over the threats posed by these projects to their habitats and unique cultural heritage. They further fear that the project would also lead to influx of outsiders, creating social problems. Again, the project is going to submerge a vast tract of cultivable land in Arunachal Pradesh, impoverishing a large number of indigenous people, while people of other states will get the benefit. However, in a significant development, the Ministry of Power has decided to drop plans for the construction of Upper Subansiri Dam in Arunachal Pradesh following directions by the Ministry of Environment and Forests because of the Indian Board of Wildlife.

The Dumbar Dam of the Gumti Hydel Project in South Tripura District aims at generating 8.60 MW of power and has displaced a total of 5,845 tribal families, between 35,000 to 40,000 people in all. The Gumti Hydel Project has mainly displaced the people belonging to the Reang community. Although a rehabilitation scheme was taken up for the permanent rehabilitation of the affected families and payment of compensation in terms of acquisition of their land was also undertaken by the state government, it is experienced that most of the affected population is dispersed in different localities of Tripura State and they are not in a position to respond during the course of rehabilitation activities. Another point to be mentioned here is that the affected Reang communities are mostly *jumma* people (those who follow slash and burn cultivation or *jhum* cultivation, as it is called in South Asia) and they are having no land records, even of their homestead land. Therefore, it is virtually impossible for them to get resettlement without land documents. Likewise, the Tipaimukh multipurpose project is also going to displace over 15,000 people. It would mainly affect two tribal communities, Zeliangrong Nagas and the Hmar. The construction of the project

will disturb their community life and break their relationship with nature.

Other than mega-dams, there are other development projects also that are displacing many in Northeast India. Tuli paper mill of Nagaland has displaced hundreds of tribal families and affected the rich bio-diversity and environment of the region. The Loktak Hydel Project in Manipur displaced around 20,000 people as their villages went under water. In Arunachal Pradesh, more than 20,000 are to be displaced by the Siang Project. The whole urbanization process is displacing the tribal people in massive numbers in this region. Another way through which people are getting displaced is through mining projects.

Mining and Displacement

There is large-scale displacement due to mining, though it is a gradual process. Although apparently there are complex procedures for acquisition of lands for obtaining mining leases for exploration, prospecting and extraction, in reality, mining projects are sanctioned more with the view of encouraging and catering to the interests of the mining industries rather than to protect the interests of the local communities and the rest of the natural resources which exist in a mining area apart from the minerals, as reflected in the New Mineral Policy of 1993. The shifting focus of India's economic reforms is reflected in the series of recommendations to the Mineral Policy, as well as to push for amendments in other Acts which are related to mining activities, like the labor laws, the Coal Nationalization Act, the Fifth Schedule, the Land Acquisition Act, the Forest Conservation Act, the Environment Protection Act, PESA and others, shows an increasing disrespect of the state toward the rights of communities.

The Gender Dimension

Like many development projects, mining has had an insidious effect on women. Both rural and tribal women are completely alienated from their access to natural resources and rights when the mines come. Testimonies of women from coal mining areas of Orissa (Talcher) show that displacement and loss of land were the most serious problems affecting their lives, as their link to livelihood, economic and social status, health and security all depended on land and forests. Whenever villages have been displaced or affected, women have been forced out of their land-based work and pushed into menial and marginalized forms of labour as maids and servants, as construction labourers or into prostitution, which are highly unorganized and socially humiliating.¹⁰⁴

Displacement due to development has proved to be even more debilitating for women. This is reflected in studies that are carried out on DPs. Among the NALCO DPs of Orissa, the very low sex ratio of 739 among teenaged tribal girls has come as a surprise to many, because studies show that the tribal sex ratio is high because of the higher social status of tribal women than that of her caste counterparts. As long as land and other resources continue to be community-controlled, she has a say in their management and she is an economic asset, unlike those in the settled-agriculture-based dowry-paying groups that consider her an economic liability.¹⁰⁵ Similar is the finding of the health status of girls after the alienation of their land and other resources that sustained them. There is greater incidence of diseases among children,

¹⁰⁴ K. Bhanumathi, "The Status of Women Affected by Mining in India," in Anon, ed., *Women and Mining: A Resource Kit*, New Delhi: Delhi Forum, 2002, pp. 20–4.

¹⁰⁵ Geeta Menon, "The Impact of Migration on the Work and Tribal Women's Status," in Loes Schenken-Sandbergen, ed., *Women and Seasonal Labour Migration*, New Delhi: Sage Publications, 1995, pp. 79–154.

particularly girl children, than among adults. In AP, for example, the incidence of most diseases was 50 percent higher among girls.¹⁰⁶ Studies show that 60 percent of all child labourers are girls (e.g. Burra, 1995). Among the project-displaced families of West Bengal, boys were a third and girls two-thirds of the children who were pulled out of school to work for an income.¹⁰⁷

In India, there are a rising number of protests against development-induced displacement. This became blatantly apparent with the protest against the acquisition of 997 acres of land by the Tatas for the Nano factory in Singur for the production of the cheapest car in Asia. This was compounded by the protest against an SEZ and a chemical hub in Nandigram. These protests led to more than 14 deaths in West Bengal in 2008. This is not unique, as such deaths had become commonplace in certain other parts of the country, such as Orissa. The site of West Bengal was exceptional as it was administered by a pro-labour left-wing state government and an anti-state people's movement here meant something different.

The R&R Policy

The GOI has been toying with an R&R policy for some years but, this has not proved satisfactory to most of the Project Affected People (PAP). There are many problems with the R&R policy. When in the post-independence period people were asked to make sacrifices for the development of the nation, they were ready to

¹⁰⁶ Walter Fernandes, Nafisa Goga D'Souza, Arundhuti Roy Choudhury and Mohammed Asif, 2001, *Development-induced Displacement in Andhra Pradesh, 1951–1995: A Quantative Study of its Extent And Nature*, New Delhi and Guwahati: Indian Social Institute and North Eastern Social Research Centre (mimeo), p. 151.

¹⁰⁷ Walter Fernandes, et al., 2006, *Development-induced Displacement and Deprivation in West Bengal, 1947–2000: A Quantitative and Qualitative Database on its Extent and Impact*, mimeo, Guwahati: North-Eastern Social Research Centre, 2006.

undertake little sacrifices for industrial development and eager to pay the price for the nation as a whole. As this nationalist consensus gradually got fractured, the need for enunciating policies basically meant reincorporating the fragments into the national body and re-establishing the consensus. Globalization, therefore, coincided with a hitherto unprecedented policy explosion. After the 1990s there has been a phase of policy explosion, which has twofold implications. They are: (1) the language of policies is not the language of rights; rights are basically defined as claims against the collective; (2) the fragments, once replaced and reunified with the national body, will not make the latter exactly the same as before.

As far the draft policy is concerned, “rehabilitation” as guaranteed by the draft is only an adjunct to development, meant basically for assuaging the displaced produced by it. But at no point is right against displacement viewed as a value in itself, a reason for scrapping or stalling displacement-inducing development projects and development strategies. While non-displacing or least-displacing alternatives need to be explored as per the policy draft (this is in tune with the Guiding Principles), there is no guarantee that development projects will have to be scrapped if alternatives cannot be found. In short, protection against displacement is never viewed from a rights-based perspective. There is an inherent “number bias” in the policy draft. The Social Impact Assessment, a newly-introduced provision, will be applicable in case of projects that will “displace physically” 400 or more families in the plains and 200 in the hill or scheduled areas and Desert Development Programme (DDP) blocks. The gender insensitivity is reflected in the way the draft treats unmarried daughters and sisters within the purview of the family, rather than as independent individuals. The draft not only makes a distinction between the project-affected persons but, also prioritizes the project affected compared to the displaced persons. Primarily, these policies do not address the matter that once

displaced; people have a propensity to be displaced again.

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