

**Asia Pacific Forum of National Human Rights Institutions/Brookings Institution –
SAIS Project on Internal Displacement**

**National Human Rights Institutions
and Internally Displaced Persons Project**

**Visit of Three Member Team to Nepal
5 – 9 July 2004**

1. Introduction.....	2
2. Background.....	3
3. National Human Rights Framework.....	6
4. The National Human Rights Commission.....	8
5. Recommendations.....	10
6. Attachment 1.....	19
7. Attachment 2.....	21

1. Introduction

1. At the Sixth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions (APF) held in Colombo, Sri Lanka, September 2001, the member institutions of the APF expressed interest in developing their potential in promoting and protecting the human rights of internally displaced persons (IDPs) in their respective countries. In order to more effectively undertake this work, APF members requested that the APF secretariat raise funds to assist national institutions on this issue.
2. In response to this request, the APF entered into a partnership with the leading research and policy institute in this field, the Brookings Institution-SAIS Project on Internal Displacement (Brookings-SAIS Project). The Brookings-SAIS Project and the APF succeeded in securing financial and human resources to enable an eighteen-month internal displacement project consisting of individual assessments of six institutions in countries experiencing displacement (India, Indonesia, Nepal, Philippines, Sri Lanka and Thailand) and a regional workshop to be undertaken in 2005.
3. The project commenced in 2004 with institutional assessments of the Philippines Commission on Human Rights in April and the Indonesian National Human Rights Commission in May.
4. At the invitation of the National Human Rights Commission of Nepal (NHRC), a three-member team visited Nepal from the 5th to 9th July 2004 to undertake the third institutional assessment and the first in South Asia. The team consisted of Ms Pip Dargan, Deputy Director, APF Secretariat, Mr David Fisher, Senior Legal and Research Officer, Brookings-SAIS Project, and Mr Jeevan Thiagarajah, Executive Director, Consortium of Humanitarian Agencies, Sri Lanka (who joined the team as a consultant on internal displacement).
5. The purpose of the visit was to (i) engage with the NHRC as well as with governmental agencies, local and international non-governmental bodies, civil society, international donor organisations, UN agencies, internally displaced persons and other stakeholders to discuss the role the NHRC could play with regard to IDPs; (ii) make an initial assessment of the NHRC's capacity and (iii) develop recommendations for the consideration of the NHRC.
6. At the NHRC, the team met with the Chairperson, Rt Honourable Mr Nayan Bahadur Khatri, Commissioner Dr Gouri Shankar Lal Das, and various senior staff members including those engaged in the UNDP 'Project on Capacity Development of NHRC'. The Team's official program was organised by Mr Achyut Acharya, Disappearance and Displacement Survey Officer and Mr Surya Bahadur Deuja, Coordinator of the Planning, Monitoring and Evaluation Division

of the NHRC. In addition, Achyut Acharya and Surya Deuja accompanied Pip Dargan and David Fisher to Nepalgunj in the mid-Western region of Nepal, whilst Jeevan Thiagarajah held additional meetings in Kathmandu.

7. The team held discussions with the following key stakeholders: (i) representatives of government agencies including the Armed Police Force, Royal Nepalese Army, the Human Rights Promotion Centre within the Office of the Prime Minister and Council of Ministers and the Chief District Officer, Banke; (ii) representatives from civil society including the Nepal Red Cross, Informal Sector Service Centre (INSEC), Community Study and Welfare Centre (CSWC), Nepal Bar Association, Centre for Victims of Torture (CVIT), Himalayan Human Rights Monitors and the Former Chief Justice of Nepal/Formal Head of the Constitutional Drafting Committee, Mr Bishwa Nath Upadhyaya; (iii) representatives of the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Program (UNDP);¹ (iv) international donors including the European Union, Danida and USAID and (v) internally displaced persons at a community gathering in Nepalgunj, Banke, in the mid-western district.
8. The Team's program of meetings is at Attachment 1 and a list of persons met during the visit is at Attachment 2.

2. Background

9. The Kingdom of Nepal is a landlocked country with a population of 27 million, the majority of whom live in rural areas. In terms of religious affiliation, 87% of the population is Hindu, 8% Buddhist, 4% Muslim and 1% other. It is the only official Hindu state in the world. It ranks 140th in the UNDP's Human Development Index out of 177 countries (UNDP 2004).
10. In 1990, Nepal became a constitutional monarchy with a parliamentary form of government. A Maoist insurgency, punctuated by two ceasefires in 2001 and 2003, has been ongoing since 1996. In addition, Nepal has recently experienced political instability with the dissolution of Parliament in 2002 and the appointment of a series of caretaker Prime Ministers by the King. Recently, Sher Bahadur Deuba, was re-appointed as Prime Minister and during the Team's visit the Prime Minister announced his 31 multi-party cabinet. There is a growing expectation that the new government will soon, as a priority, indicate its policy on conflict resolution including a new cease-fire proposal and the re-establishment of peace talks with the Maoists.
11. Internal displacement in Nepal has largely been caused by the internal conflict between the Nepalese Government and the Communist Party of Nepal – Maoist

¹ Meetings were also scheduled with other UN agency representatives, including the UN resident representative, UNICEF and UNHCR among others but, for various reasons, were unable to go forward.

(Maoists). The causes of displacement are fairly well established, however, there is a major information gap on all other aspects of the IDP situation in Nepal. There is insufficient data collection, research and analysis of the issue. Of the handful of small-scale studies that have been undertaken on the internally displaced, none claim to offer a complete picture of their numbers or particular needs.

12. A study undertaken jointly in 2003 by the Norwegian Refugee Council, the Deutsche Gesellschaft für Technische Zusammenarbeit, the International Nepal Fellowship, the Netherlands Development Organization, and UNDP, with the involvement of the NHRC, examined existing official, UN and NGO data and arrived at a “working figure” of 100,000 to 150,000 people displaced within the country as a direct and indirect consequence of the conflict. During the Team’s meeting with NGOs, INSEC reported that it had tallied 31,635 internally displaced during 2002 and 2003, but this data was admittedly incomplete. INSEC also estimated that at least 400,000 have been displaced across the border with India.
13. A number of factors hamper the effective gathering of data. One such factor is the traditionally high level of labor migration in and out of the country, the usual routes of which have also been used by those fleeing the conflict. It has been reported, for example, that many IDPs have fled from the rural areas to urban and district centres throughout Nepal including Kathmandu, Beratnagar, Nepalgunj, Bhairahawa and Pokhara. Some IDPs from the hills district move to unoccupied land. Others move in with relatives or friends – or they find places to rent, often moving in with other displaced persons in small rooms, making them difficult to track. Other factors include security problems in some areas and the reluctance of some IDPs to respond to researchers for fear of identification with one or another side of the conflict. Even with the foregoing in mind, however, the team was left with the impression that the largest barrier to the gathering of more comprehensive data has been a lack of focus on the issue of displacement by the Government, major donors and the UN country team.
14. The Government’s response to the crisis had been described to the Team as being insufficient, lacking direction and discriminatory. In 2001 and 2002 the Government established several compensation funds for victims of conflict, including a daily allowance for IDPs (amounting to 100 Nepali Rupees (approximately \$1.30 USD) per head per day (with a maximum of 3 per family)). However, as noted in a five-point guideline issued to chief district officers in August 2002, the Government defined “IDP” to include only those displaced by Maoists (thus excluding those displaced by the Government’s own security forces). In any event, the Team was informed that the funds allocated for these assistance programs were exhausted in late 2002 and no assistance is currently being provided to the displaced.

15. One issue that was consistently raised in the Team's consultations was the question of how best to conceptualise the problem. Who, in the context of the situation in Nepal, is an "IDP"? What are the similarities and differences between those displaced within and across Nepal's borders and should their needs and problems be addressed together? Can those displaced by the conflict be usefully distinguished from those migrating for other purposes, or who are left behind, or who are simply impoverished for other reasons?
16. With regard to the first of the above questions, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), which has gained world-wide recognition as an authoritative restatement of international norms concerning the internally displaced, proposes a functional definition of internally displaced persons as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border." The core elements of this definition are (1) involuntary movement and (2) staying within borders.
17. However, some local advocates expressed their feeling that even those who cross the Indian border might be considered "IDPs". This is due to the unusually free traffic across the border allowed to citizens of Nepal and India by a 1951 treaty between the two states. Technically, these persons could not be considered "IDPs" as the term is most widely understood; however, inasmuch as these persons are reportedly not considered "refugees" either by the Government of India or the United Nations High Commissioner for Refugees because of the above-mentioned treaty, an argument might be made that they are in a similarly ambiguous situation in terms of legal status and equally under-served in terms of humanitarian and reintegration needs.
18. At least at the anecdotal level, the Team was able to verify numerous human rights and humanitarian concerns of the internally displaced. In Nepalgunj, the NHRC and Team members met with approximately 45 displaced persons as well as representatives of international civil society and humanitarian organizations (including the Plan Association, Nepal Bar Association, Centre for Victims of Torture, Care International, the Journalists Association for Women and the International Committee of the Red Cross). Most of the IDPs reported having been displaced from four or five districts surrounding Nepalgunj by Maoists. However there were also some references to security forces harassing civilians and arbitrarily detaining persons considered to be Maoist sympathisers.
19. The IDPs outlined a catalogue of human rights violations including torture (one man at the meeting had his eyes torn out by Maoists and another had lost his leg), acid burning, extortion, confiscation of property, abduction and disappearances of friends and family. Some, but not all, had had formerly been chairs or vice chairs of Village Development Committees. Overwhelmingly, the displaced called for

long-term solutions including the end of conflict and the restoration of peace, as well as shelter, education, health and employment. Compensation was mentioned, but it appeared the vast majority of the displaced wanted to feel productive and preferred to be engaged in gainful employment rather than receive an “allowance” from the state. A number of NGOs and IDPs expressed their willingness to assist the NHRC to more effectively work with IDPs, particularly as the NHRC proposes to establish a regional office in Nepalgunj within the next few months. One displaced man said that he hoped the NHRC would “represent the voice of the displaced” while another felt that “prevention is better than a cure” and that root causes of the conflict must be addressed.

20. In a meeting with Mr. Dilli Raj Joshi, Chief District Office of Banke District, the Team learned that up to 700 – 800 families had been displaced in the Banke District. However, Mr. Joshi had no concrete figures and felt that a project was needed to collect data on the IDP situation in the district.
21. The Team was also informed by various stakeholders that access to displaced persons is sometimes hampered by unsure security conditions and poor roads. The Maoists are reportedly beginning to insist that UN agencies and humanitarian organisations recognize them as a legitimate government in areas they control and pay “taxation” for the right to enter them. The Nepal Red Cross additionally reported that they had recently had some of their ambulances ambushed by Maoists. On the other hand, the Team was also told that the NHRC has until now been recognised by both the Maoists and the central government as an independent body and, on that basis, appears to have enjoyed a good level of access to rural and remote areas by both the security forces and the Maoists.
22. In addition to the plight of those who have fled their homes, the Team was told that some of the people most severely affected by the conflict are those who have stayed behind. In many families, the elderly, women, children and particularly the poor have stayed behind to face increasing poverty, food shortages and harassment of various kinds by the Maoists and security forces.

3. National Human Rights Framework

23. As a sovereign state, the Government of Nepal has an obligation and responsibility to promote, protect, respect and fulfil the internationally guaranteed human rights of persons within its jurisdiction. These obligations are clearly set out both in international instruments and in Nepal’s own national legal institutional framework.
24. In the early 1990’s, in the wake of Nepal’s transition to a democratic and pluralistic system of government, Nepal signified its commitment to human rights by ratifying numerous international human rights treaties including the International Covenant on Economic, Social and Cultural Rights, the International

Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and the Convention on the Rights of the Child. These joined Nepal's earlier accession to the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide, both of which entered into force in the country in 1971.

25. At the national level, human rights are enshrined in the *Constitution of the Kingdom of Nepal 1990* and other laws, including the National Human Rights Commission Act. The Constitution guarantees the fundamental rights of the Nepalese people, including civil, political and economic rights. The *Directive Principles and Policies of the State*, as enunciated in the Constitution, states that the chief objective of the State is to promote conditions of welfare on the basis of the principles of an open society, by establishing a just system in all aspects of national life, including social, economic and political life, while at the same time protecting the lives, property and liberty of the people.
26. In addition, in April 2004, the Government, through the Office of the Prime Minister and Council of Ministers, released its *National Human Rights Action Plan* (NHRAP). The NHRAP identifies 12 priority areas for protecting and promoting human rights in Nepal: education and culture; health; environment and sustainable development; indigenous, ethnic, dalit, disabled and senior citizens; women's empowerment, gender equality and equity and women's rights; children's rights and development; law reform; justice administration and management; prison management and reform, labour and employment, conflict management and institutional strengthening.
27. In the NHRAP section concerning conflict management, there is a table of actions and activities to be undertaken within the next 3 years which aim, amongst other things, to "rehabilitate and resettle the victims of the conflict and reconstruct the physical and social infrastructure damaged during the conflict." In a specific reference to displaced persons, one of the objectives is to provide "protection and assistance to the victims of and those displaced by armed conflict for their repatriation and rehabilitation". For this section, the Plan identifies the Ministry of Home Affairs as the "Implementing Ministry" and the "Monitoring and Evaluating Agencies" as the Office of the Prime Minister and Council of Ministers, National Planning Commission, Ministry of Home Affairs, NHRC, Foreign Affairs and Human Rights Committees and concerned Parliamentary Committees.
28. It is also important to note the significance of international human rights law within the domestic legal context. The *Treaty Act of 1990 (B.S 2047)* governs the substantive and procedural matters relating to the ratification and accession of treaties and conventions. Section 9 of the Act explicitly states that any law of Nepal inconsistent with a treaty or convention acceded to or ratified by Nepal

shall not be applicable, and the relevant provision of the treaty or convention will prevail. Therefore, the international instruments acceded to or ratified by Nepal constitute part of the national legal system and, as such, the government is legally bound to give effect to them. The Team was informed, however, that while Nepal has ratified many international treaties and conventions, progress has been slow in ensuring the consistency of domestic law and practice with Nepal's international human rights law obligations.

29. The adoption of the Constitution, the ratification of human rights treaties, the creation of the NHRC and a national human rights action plan to protect human rights are important steps. However some charge that the effectiveness of these achievements is being undermined by a climate of conflict and impunity, and an unstable political environment which allows human rights violations to continue. In effect, advocates claim, successive governments have consistently failed to deliver on their obligation to create the conditions and develop measures to enable the effective implementation of international human rights at the national level.

4. The National Human Rights Commission

30. The NHRC was established by the Human Rights Commission Act 1997 and it began operations on 5 June 2000. It has a legislative mandate to promote and protect human rights in Nepal.
31. It currently employs 55 staff and receives an annual budget from the Government of 4.5 million Nepalese Rupees (USD 64,500). This allocation is not sufficient for the effective operation of the NHRC. Fortunately, the NHRC receives crucial funding and assistance from the UNDP under the '*Capacity Development of the NHRC*' Project. Under this project, professional, local and international UNDP staff members are funded to provide strategic advice, assistance and the transference of skills on various projects to the 'core' NHRC staff. This Project has a duration period of April 2002 to March 2005 with a budget of USD 404,257. Assistance for capacity building and projects is also received from governmental and non-governmental donors including UNICEF, Canada, Norway, European Union (EU), Denmark and the APF. With the help of the UNDP Project, the NHRC has developed a *Five Year Strategic Plan 2004-2008* to guide its activities, growth and vision.
32. The NHRC's central office is in Kathmandu and it is broadening its outreach with the financial assistance of the EU to establish four regional offices. Two regional offices will be established in the next several months in Nepalgunj and Biratnagar. The locations of the other two regional offices are still being considered and are not yet finalised. This will further develop the NHRC's monitoring and protection capacity.

33. It was made clear to the Team that the NHRC is an institution working hard to develop its human resources and institutional capacity within a difficult conflict environment and ongoing political instability. The Team were impressed that the NHRC held such a high reputation for its work and independence within the community in light of its as yet small number of staff and the particularly difficult political context in which it has had to operate.
34. Notwithstanding its difficulties and many competing priorities, the Team feels that that the NHRC is well placed to take a leading role in advocacy for the rights of the displaced. In extensive discussions with several Commissioners and a range of staff from the NHRC, it was made clear to the Team that the Commission itself recognised the need for it to be more engaged in this area.
35. The NHRC has already formalized this intention by expressly incorporating internal displacement within its *Strategic Plan* as a key priority under the first strategic objective to contribute to the peace building process by “*studying, investigating and documenting disappearances, human rights violations, internal displacement and following up.*”
36. Inasmuch as the armed conflict is the major cause of displacement inside and outside the country, it is important to recognise the role the NHRC has played in trying to develop a sustainable peace for Nepal. It has held meetings with government officials, political parties and representatives of civil society to pressure contending parties to come to the negotiating table for peace talks. It was active in drafting the Code of Conduct for parties during the period of ceasefire. It has asked both the Government and the Maoists to commit to national and international human rights principles and humanitarian law. It also called on parties to sign the Human Rights Accord which it drafted. The NHRC expressed its willingness to lead a human rights monitoring committee that would ensure that both parties adhere to the code of conduct and investigate and monitor cases of human rights violations during the ceasefire period. This proposal was viewed positively by both parties.
37. Moreover, the NHRC has taken some significant steps directly addressed to the issue of internal displacement, including:
- hosting a workshop in cooperation with the Norwegian Refugee Council (NRC) in March 2003 on the UN Guiding Principles on Internal Displacement;
 - participating in a joint study on internal displacement (described above) with the Netherlands Development Organisation, the International Nepal Fellowship, the Gesellschaft für Technische Zusammenarbeit, UNDP and NRC;
 - issuing and publishing separate documents in 2004 calling on both the Government and Maoists to observe minimum human rights standards in their

activities. These documents make particular reference to IDPs and the UN Guiding Principles on Internal Displacement; and

- appointing a staff member as ‘Disappearance and Displacement Survey Officer’ under the Protection and Monitoring Division.

5. Recommendations

38. In developing recommendations for the Commission’s consideration, the Team were mindful of the NHRC’s existing capacity (financial and human) and therefore sought to suggest a number of activities that could be achieved within its current limitations. Accordingly, a number of the recommendations below should not require external funds or expertise and can be undertaken with relative ease by using the Commission’s existing networking, coordination and organisational skills in partnership with other stakeholders. Other recommendations may need some level of financial or external assistance that could be sought by the NHRC through donors or with the assistance of the APF and the Brookings-SAIS Project.
39. At the same time, the Team also took a longer term view with an eye towards a point – apparently not too far off – when the Commission’s staffing level, skills and knowledge will be more fully developed. It has therefore tried to develop some longer term recommendations that can be implemented as part of an ongoing program for the integration of IDPs in the work of the Commission – for example, through its monitoring function.
40. During our discussions over the five-day period, the Team gained the impression that a number of civil society and other organisations including donors are prepared to work in partnership with the Commission on this issue. This will be a valuable resource for the NHRC to tap into and use for future activities and we would urge the Commission to utilise this opportunity for partnership.
41. In terms of the recommendations made in this report, the Team believes they can be most effectively implemented if the NHRC respects three underlying principles. Those principles involve recognizing the importance of (i) developing partnerships specific to this issue; (ii) applying a regional approach; and (iii) engaging in consultations at the local level.
42. The first principle recognises that the NHRC cannot do everything alone and that it can work more effectively and efficiently by developing **partnerships** with government, civil society, donors and displaced persons themselves to assist in its activities. For example, it may not be practical for the NHRC to be solely responsible for undertaking base line studies and data collection on the IDP situation, but rather it could take a coordinating role to support those agencies or NGOs better equipped to do so. Second, it will be important to recognise that the IDP situation will vary from region to region and that IDP assessments and programs will require a **regional approach** to factor in the local issues. Thirdly, the programs should be ‘people’ and not ‘victim’ oriented. Displaced persons

must feel that they have had their voices heard and been given the opportunity to have input into possible solutions. This can be facilitated by holding **consultations at the local level**. The NHRC's outreach into the regions with new offices will provide it with a great opportunity to increase its access to people and issues relating to displacement as well as developing good local partnerships.

43. With the foregoing in mind, we suggest that the NHRC consider the following six goals as elements of the IDP portion of its *Strategic Plan*:

- i) Develop a conceptual framework for addressing the problem;
- ii) Promote an effective Government policy and its implementation;
- iii) Develop a comprehensive database and understanding of the IDP situation in cooperation with stakeholders;
- iv) Develop the capacity of the NHRC on the issue;
- v) Improve awareness of IDP rights outside NHRC; and
- vi) Develop and harness networks.

44. Accomplishment of these goals could be planned as a three-to-four-year project as part of the *Strategic Plan*.

Goal 1: Develop a conceptual framework for addressing the problem

45. As mentioned previously, there are a number of definitional issues to be addressed regarding 'who' is a displaced person within the Nepalese context and how best to conceptualise the problem of this and other human rights consequences of the conflict. To some extent, elements of the answer can be found through greater exposure to international standards (as compiled by the Guiding Principles) and the global experience of internal displacement. However, other elements will need to be determined locally, and the Commission can and should lead this process with the assistance of other stakeholders by undertaking a range of activities including:

46. Activity 1.1

Write a concept or discussion paper on the issue of forced displacement using the Guiding Principles on Internal Displacement as the framework – but raising some issues arising out of the Nepalese context – for example: What is the distinction between internally displaced persons and economic migrants? If a person leaves her/his home for mixed motives, should she/he still be considered “displaced”? Should the issues of internally and externally displaced persons be considered together? This could be a duty assigned to a staff member, or perhaps the NHRC could seek assistance from an external consultant or research institute.

47. Activity 1.2

Circulate the draft concept/discussion paper to stakeholders including NGOs, government agencies (including security forces), education/research institutes, academics, lawyers, UN, donors and hold a meeting (possibly at the Commission's offices) to discuss and expand upon the paper. After the meeting finalise the paper and distribute it to all stakeholders.

48. Activity 1.3

Use the finalized paper as a reference in its lobbying, protection and other activities on behalf of the displaced. Consider publishing it in a local newspaper to bring the issue out into the public domain.

49. Similarly, the NHRC could hold internal discussions on the concept of 'protection' – and perhaps consider the local applicability of the widely recognised model developed at a workshop hosted by the International Committee of the Red Cross in 1999 sometimes referred to as the 'egg model'. This model has 3 key elements including: (i) *responsive action*, to include any activity undertaken in the context of an emerging or established pattern of abuse and aimed at prevention and/or alleviating its immediate effects; (ii) *remedial action*, to include any activity aimed at restoring dignified living conditions through rehabilitation, restitution, and reparation; and (iii) *environment-building*, to include any activity aimed at creating and/or consolidating a global environment conducive to full respect for the rights of individuals. This protection model could be useful to all staff but particularly relevant to staff assigned to the regional offices as they will have closer contact with IDPs and will need skills to assess the options available to them to assist in protecting displaced persons. The UN Inter-Agency Standing Committee (IASC) has also issued a very useful policy paper on the Protection of Internally Displaced Persons. It is currently being updated from its 1999 version. The APF and the Brookings Institution are willing to provide additional information on this protection framework (including the IASC policy paper) should the Commission require it.

Goal 2: Promote an effective Government policy and its implementation

50. As outlined previously, the Government has no clear national policy relating to internal displacement. There was a brief attempt to provide financial assistance to IDPs but the program was ill-conceived, discriminatory and ineffective. It is clear that the Government has sufficient grounds to promote and protect the rights of its citizens including internally displaced persons. As noted in the section on the 'national human rights framework' the Government has a raft of legal measures and policy platforms relating to human rights. Its recently released NHRAP, for example, has a specific reference to displaced persons, but without any identified funds for implementation. The Government now needs to provide concrete initiatives and funding to respect, promote and protect the rights of its displaced citizens. The NHRC is the best placed institution to advocate for the need for an

effective and comprehensive approach along with immediate concrete actions on behalf of the displaced.

51. Activity 2.1

The NHRC should encourage the Government to develop an effective national policy and programs on IDPs which are non-discriminatory (applicable to people displaced by both Maoists and security forces), people-oriented, focused not only on immediate problems but also durable solutions, and based on international human rights standards as restated by the Guiding Principles on Internal Displacement. It should also lobby the Government to assign ministerial or departmental responsibility for the implementation of a national policy inclusive of the activities outlined in the NHRAP. Written submissions to the Government on this issue should then be followed up by a high level delegation from the NHRC to the Government.

52. Activity 2.2

The NHRC can lobby (via official correspondence and personal meetings) international donors to seriously take up the issue of displacement and recommend that a portion of donor funds provided to the Government for good governance and human rights initiatives be allocated to IDP programs. The NHRC should also brief international donors on its IDP activities and provide them with its expertise on the human rights dimension of displacement.

53. Activity 2.3

The NHRC should consider using its legal expertise to pursue the issues of basic assistance and protection of IDPs guaranteed by international human rights law through litigation. It is noteworthy in this respect that the Nepal Supreme Court has previously ordered the government to enact legislation to give effect to its international human rights obligations (see *Dhungana v Nepal*, Supreme Court of Nepal, Writ No. 3392 of 1993, 2 August 1995).

54. Activity 2.4

The NHRC should include issues related to IDPs in its current review of laws in light of Nepal's treaty obligations, as appropriate.

Goal 3: Develop a comprehensive database and understanding of the IDP situation in cooperation with stakeholders

55. There is a lack of data collection, coordination and analysis on displacement in Nepal. This contributes to an overall lack of understanding on the issue in addition to a lack of information to develop effective programs. The NHRC is not in a position and does not have the capacity to undertake a national data collection program relating to displacement on its own. However, in addition to make a contribution to the available data as possible through its own operations, the NHRC can and should take a coordinating and catalytic role to ensure that comprehensive figures are eventually obtained. In this respect, the valuable

efforts already being undertaken by the NGO community (for example INSEC, CSWC and the Nepal Red Cross) to collect data are worth noting. INSEC also has a wide network throughout Nepal which presents a valuable partnership opportunity to the Commission.

56. Activity 3.1

The NHRC could initiate a series of activities to assist in developing a more comprehensive database of information on IDPs. This could be done by convening a meeting to establish a formal taskforce or sub-committee with NGOs, Government agencies and international organisations to share information within a structured relationship. In collaboration with these bodies the NHRC could help coordinate the collection of existing information and provide an assessment and an update of the status of displacement in the country. It is timely that the NHRC is now establishing regional offices in areas affected by displacement. The Commission could request its regional offices to work in cooperation with IDPs and human rights organisations to collect IDP information and forward it to the central office for input into the taskforce's deliberations. To support its capacity to undertake this activity the NHRC may wish to consider commissioning an academic partner or NGO to assist in this process.

The objective of this taskforce could be to provide an updated assessment of internal displacement in Nepal, including numbers of displaced persons and the needs of particular groups such as women, children, the elderly and the disabled. Further the taskforce would seek to analyse particular issues such as; the roles that the different Government agencies play or could play; the roles that the different local and international organisations are playing; the gaps in existing law and policy with suggestions for reform; and the obligations of the different actors in terms of the Guiding Principles on Internal Displacement.

57. Activity 3.2

The NHRC could produce, in cooperation with other stakeholders, a series of reports, community guides or information sheets, based on the work of the taskforce which should be published and distributed to media outlets, Government agencies, donor governments and to the broader community. The NHRC should also ensure that the reports and copies are provided to the regional offices.

58. Activity 3.3

As a long-term goal, and one related to the development of a comprehensive Government policy on the issue, the NHRC should seek to empower and persuade a responsible Government agency with operational expertise and responsibility for the internally displaced to take the lead in gathering and maintaining comprehensive data on the internally displaced.

Goal 4: Develop the capacity of the NHRC

59. Activity 4.1

It is recommended that the NHRC obtain training on IDP issues and international norms relevant to IDPs and explore the opportunity for holding training programs for its Commissioners and central and regional staff. Such training would aim to:

- provide an understanding of the global phenomenon of internal displacement;
- provide an understanding of the international normative framework, principally the Guiding Principles on Internal Displacement;
- enhance understanding of the local contexts in which displacement is taking place;
- explore in an interactive environment some durable solutions to the crisis of internal displacement; and
- train staff to enable them to become trainers in this area.

60. The APF and the Brookings Institution are willing to initiate a process of collaboration for training between the NHRC and the Norwegian Refugee Council (NRC) and to ensure that the training is tailored to fully take into account the mandate of the Commission.

61. Activity 4.2

The NHRC has appointed a staff member to handle two major human rights issues – disappearances and displacement by creating a ‘Disappearance and Displacement Survey Officer’ under the Protection and Monitoring Division. The Team congratulates the NHRC for creating such a focal point. The Team considered that if additional resources could be made available (perhaps through the support of donors) then an additional staff member could be appointed in this Division so that one could handle disappearance issues and the other would deal exclusively with IDPs, particularly if the NHRC decides to adopt a long-term strategy relating to displacement. This officer would then be the core support to commissioners in planning, coordinating, liaising and implementing the IDP strategy. The officer would also be an important resource of information and key contact for staff in the central and regional offices.

Goal 5: Improve awareness of IDP rights outside the NHRC

62. The NHRC has garnered a good reputation nationally. The Commission should use its position as an authoritative and respected institution to raise the level of awareness of the IDP situation to the domestic and international community: political parties, Government agencies, media, judges and lawyers, donor governments, the UN, the Maoists and the general public.

63. Activity 5.1

The NHRC should encourage news media to cover the issue of internal displacement. One way to do so would be to invite journalists to take part in the NHRC monitoring team visits to areas of displacement. Journalists and other media representatives should also be invited to participate in the NHRC's taskforce or sub-committee on IDPs. Another way would be to hold public hearings on the issue of IDP protection and assistance involving IDPs, their advocates, governmental representatives and the press.

64. Activity 5.2

The NHRC should incorporate a chapter on IDP rights into its existing training materials used for external training for other Government agencies (such as the Home Ministry, Police and Army), NGOs, and other stakeholders.

65. Activity 5.3

The NHRC should explore further contacts with Maoists, potentially increase engagement with them and train them in human rights in general and IDP rights in particular. It was pointed out to the team that there might be legal barriers to this in light of anti-terrorism legislation. If this is the case, the NHRC should seek exemption from any such rule in order to carry out its human rights mandate. In this connection, it should be noted that non-state actors in other parts of the world have participated in training in IDP rights.

66. Activity 5.4

The NHRC should seek greater engagement with lower level security force personnel. Training might be held in cooperation with the ICRC, Nepal Red Cross or relevant NGOs.

67. Activity 5.5

The NHRC should seek to inform and provide training to IDPs about their rights. In particular, once the Commission's new regional offices are established, the NHRC staff in these regions will be ideally placed to liaise with IDPs at the local level and incorporate them in their training sessions on the Guiding Principles on Internal Displacement.

68. Activity 5.6

The NHRC should approach donors to fund the publication of more copies of the Nepali translation of the Guiding Principles on Internal Displacement and distribute it widely to IDPs, and in particular to all participants of training programs.

69. Activity 5.7

The NHRC should include a specific section on IDPs in its annual reports and updates on its activities relating to IDPs in its electronic bulletin.

Goal 6: Develop and harness networks

70. A number of stakeholders have expressed willingness to work in partnership with the NHRC on displacement. This energy could be harnessed by the NHRC as an important resource to assist it in the promotion and the protection of the rights of displaced persons.

71. Activity 6.1

As noted above, it is recommended that the NHRC organize a task force to look into the issue of information collection on IDPs. This same task force might form the nucleus of an advocacy network to help the NHRC in its efforts to lobby the Government for a comprehensive policy on internal displacement.

72. Activity 6.2

It was pointed out to the Team that informal contacts have taken place between the NHRC and other quasi-governmental institutions such as the National Women's Commission and the National Dalit Commission. Both are reportedly in a state of legal limbo at present due to exhaustion of the terms of sitting commissioners and the lack of a parliament to appoint new ones. If they should be revived, the NHRC should seek formal means of regular sharing of information and strategy, in particular with regard to the issue of internally displaced person.

6. Conclusion

73. IDPs are encountering serious human rights violations and there is a wide gap between what rights they are entitled to in theory and in law, and what they are experiencing in reality. The Commission is the critical player to raise the level of awareness of this issue in and outside Nepal by using its official mandate to promote and protect the rights of the displaced. It is a respected institution which has a high level of support within the community. It is also an institution endeavouring to build its capacity (financial and human) with the support of the UNDP in a country suffering conflict, political instability and poor governance – so its challenges are well known and recognised. Nonetheless there are opportunities for the NHRC to use its human rights mandate, reputation and a fresh strategy to advocate on behalf of internally displaced. It can use the three underlying principles of (i) developing partnerships, (ii) applying a regional approach and (iii) engaging in consultations at the local level to undertake a range of activities to begin to engage more effectively in addressing displacement. The APF and the Brookings Institution stand by to offer any support the NHRC may consider necessary.

74. The Team was grateful to have the opportunity to visit Kathmandu and Nepalgunj and hopes that its observations, recommendations, and ongoing engagement in any capacity building initiatives requested by the Commission will be of practical assistance. The Team would like to express its deep appreciation to the Commission and its staff – particularly Justice Khatri, Commissioner Das, Mr

Achyut Acharya, Mr Surya Bahadur Deuja, Mr Niraj Dawadi and others within the Capacity Building Project for their assistance in organising the visit and for the warm welcome it received.

Attachment 1

APF/Brookings Institution SAIS Internally Displaced Program for 5th to 9th July 2004, **Kathmandu and Nepalgunj, Nepal**

Monday 5 July

- | | |
|-----------------|--|
| 3:00pm -4:30pm | Meeting with NHRC Commissioners and staff: <ul style="list-style-type: none">• Mr Surya Bahadur Deuja, Coordinator Planning, Monitoring & Evaluation Division, and Mr Achyut Acharya, Disappearance and Displacement Survey Officer• Meeting with divisional heads of NHRC staff• Chairperson, Justice Khatri and Commissioner Dr Gouri Shankar Lal Das. |
| 5:00pm -6:00pm | Dev Ratna Dhakwa, Secretary, Nepal Red Cross |
| 8:00pm – 9:00pm | Team meeting |

Tuesday 6 July

- | | |
|----------------|---|
| 9am – 10am | Meeting with OHCHR and UNDP representatives |
| 10am -12noon | Meeting with Government/ Security Officials |
| 12-1:30pm | Lunch |
| 1:30pm -4:30pm | Meeting with NGOs |
| 8:30pm -9.30pm | Team meeting |

Wednesday 7 July

Pip and David to Nepalgunj and Jeevan in Kathamandu

Pip and David:

- | | |
|----------------|----------------------------------|
| 08.30am | Depart hotel for airport |
| 11:30am | Flight to Nepalgunj |
| 2:00pm -5.30pm | Meeting with IDPs and NGOs/INGOs |

7:00pm -8.00pm Meeting with Mr Dilli Raj Joshi, Chief District Officer (CDO), Banke

Jeevan:

10:00am Meeting with Mr Satish Kharel Advocate,Former,Secretary, Nepal Bar Association.

3:00pm Meeting with Mr Sobodh Raj Pyakurel, Chairperson, Informal Sector Service Centre (INSEC)

Thursday 8 July

8:30 – 9:30 Meeting with government agencies including the CDO, Regional Director, Armed Police Force, and Deputy Superintendent of Police, Nepalgunj (*David and Pip*)

10.50am Flight to Kathmandu

12:00 Meeting at Nepal Bar Association with members of projects on media and monitoring (*Jeevan*)

2.00 pm- 4.30 pm Meeting with USAID, DANIDA, EU (*David and Pip*)

3:00 pm. Meeting with Justice Bishwa Nath Upadhyaya, Former Chief Justice of Nepal and Former Head of the Constitutional Drafting Committee (*Jeevan*)

8:00pm – 10.00pm Team meeting

Friday 9 July

10:00 – 11:00 Meeting with Mr Bipin Adhikari, National Project Advisor/Administrator, Project on Capacity Development of NHRC, UNDP.

11:00 – 1:00pm Presentation by David Fisher on the UN Guiding Principles on Internal Displacement to NHRC staff

1:00pm – 2:00pm Meeting with Commissioner Das, NHRC

3:15 – 3:45pm Meeting with Ms Padma Mathema, National Rapporteur on Trafficking of Woman Children

Attachment 2

REPRESENTATIVE LIST OF PERSONS/ORGANISATIONS MET BY TEAM (not exhaustive)

NHRC

1. Justice Khatri
Chairperson
National Human Rights Commission
2. Dr Gouri Shankar Lal Das
Member
National Human Rights Commission
3. Ms Padma Mathema
National Rapporteur on Trafficking of Women and Children
Office of the National Rapporteur on Trafficking of Women and Children.

Mr Achyut Acharya
Disappearance and Displacement Survey Officer
National Human Rights Commission

4. Mr Surya Bahadur Deuja
Coordinator
Planning, Monitoring & Evaluation Division
National Human Rights Commission
5. Mr Bipin Adhikari, PhD
National Project Advisor/Administrator
Project on Capacity Development of the
National Human Rights Commission, UNDP
6. Mr Niraj Dawadi
National Project Consultant
Capacity Development Project
National Human Rights Commission
7. Ms Lauren Matthews
Human Rights Adviser (Training)
Project on Capacity Development of the
National Human Rights Commission, UNDP

8. Ms Roxana Garmendia
Human Rights Adviser (Monitoring)
Project on Capacity Development of the
National Human Rights Commission, UNDP
9. Madhav Parasad Gautam
Complain Handling and Investigation Officer
National Human Rights commission

NGOs/CIVIL SOCIETY

10. Kedir Awol
Delegate
International Committee of the Red Cross
11. Dev Ratna Khakwa
Secretary
Nepal Red Cross
12. Sushil Lakhe
Advocate
Advocacy Forum – Nepal
13. Subodh Raj Pyakurel
Chairperson
Informal Sector Service Centre (INSEC)
For Human Rights and Social Justice
14. Dharma Raj Neupane
Chairman
Association of Sufferers from the Maoist Nepal (ASMAN)
15. Dr. Bhogendra Sharma
President, IRCT
International Rehabilitation Council for Torture Victims

Executive Director
INHURED INTERNATIONAL
(Special Consultative Status with the ECOSOS of the UN)
16. Dr. Gopal K. Siwakoti
Secretary General
HimRights
Himalayan Human Rights Monitors
INHURED International

17. Mr Dill Raman Dhakal
General Secretary
Community Study and Welfare Centre
18. Justice Bishwa Nath Upadhyaya
Former Chief Justice of Nepal and
Former Head of the Constitutional Drafting Committee
19. Mr Satish Kharel, Advocate, Former Secretary, Nepal Bar Association

GOVERNMENT AGENCIES

20. Nawa Raj Silwal
Deputy Superintendent of Police (Human Rights Officer)
Human Rights Cell
Police Headquarters
21. Mr Narayan B Thapa
Armed Police Force
22. Col.Nirendra Prasad Aryal
Deputy Judge Advocate General
Co-ordinator – Human Rights Cell
Royal Nepalese Army
23. Dibakar Pant
National Director
Office of the Prime Minister and Council of Ministers
Human Rights Promotion Centre
24. Surenda Prasad Pathak
Executive Secretary
Municipal Association of Nepal (MuAN)
25. Mr Dilli Raj Joshi
Chief District Officer, Banke

UNITED NATIONS

26. David A. Johnson
Senior Human Rights Adviser
Office of the High Commissioner for Human Rights
United Nations Nepal

27. Carla Covarrubias
Human Rights Officer
Governance Unit
United Nations Development Programme

DONORS

28. Shiva D. Bhandari
Human Rights Officer
European Union
Delegation of the European Commission in Nepal

29. Mette Damgaard
Danida Advisor
Danida/Hugou
Human Rights & Good Governance Advisory Unit

30. Anita Mahat
Economic Opportunities Advisor
Special Projects Office
USAID

IDP'S

Approximately 40-45 IDPs attended a community meeting organised for our Team in Nepalgunj. No names obtained.