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The UN Commission on Human Rights resolution on Forced Eviction adopted unanimously on 10 March 1993 in Geneva during the 49th Session emphasized that "**ultimate legal responsibility for preventing forced eviction rest with governments.**"

The question is, what happens when the State itself takes the lead and uses unlawful means to evict lawful citizens. This is the point that needs to be looked into in the case of Bhutanese refugees now languishing in Nepal. Do they have legal remedies? Can they seek intervention of other benign countries when one country - India which could intervene continues to maintain the fiction that it is a bilateral issue to be solved by Bhutan and Nepal? India has bilateral special relations with both the countries.

As on October 1st, a total of 7683 individuals have been verified. Hopefully by the month end, all the individuals in Khudenabari camp would have been verified. It appears that harmonisation of those verified in the first camp will start soon and bonafide Bhutanese citizens will be repatriated soon after.

In our last update no. 17 of 17th September, we had pointed out that there could be only two categories of refugees- Bhutanese and Non Bhutanese. Any other classification will be politically motivated and will be against the interests of justice and fair play. We have also pointed out for a long time that the case of those Bhutanese citizens who were supposed to have signed the "voluntary Migration Forms" come under a different category and that they are prima facie Bhutanese citizens and the only question that needs to be looked into in their case was **whether they voluntarily signed the forms or whether they were forced to**. Our case is that they were forced to.

From the verification made so far from the Khudenabari camp it appears that the bulk of the individuals with their families would come under VMF scheme. Most of them have given evidence that they were coerced to sign the forms. A case study of one of those verified is given elsewhere.

The VMF scheme is dealt with in Section NGA 2 of the 1977 Act which says:

A foreigner who has been granted Bhutanese Citizenship may apply to the Royal government for permission to emigrate with his or her family. Permission will be granted after investigation of the circumstances relating to such a request. After grant of permission to emigrate, the same person may not reapply for Bhutanese citizenship. In the event of adult, family members of any person permitted to leave the country who do not wish to leave and makes an application to that effect, the Home minister will investigate the matter and will permit such persons to remain in the country after ascertaining that the country's interest is not harmed. (Taken from a very detailed paper made by Tang Lay Lee "Refugees from Bhutan: Nationality, Statelessness and the right to return www.bhootan.org/tanglaylee/tanglaylee_intro.htm ^[1]) Some points that need to be considered are:

- * No where in Bhutan laws, a proper definition has been given for a foreigner. The refugees now in Nepal are by no means foreigners to start with.
- * Most of those who signed the forms were subsistence farmers, who had a house, farm and in many cases orchards. They could not have signed voluntarily to give up all their possessions and move elsewhere to an unknown place for making a living with doles from international organisations unless they were forcibly evicted. The very fact that thousands upon thousands were forced to leave would show that it could not have been voluntary unless the state created a situation where it became impossible for them to reside without fear.
- * Many of those who signed the so-called forms were illiterates who did not know what they were signing. There was no mandatory investigation of those who wanted to stay on.
- * All personal and family documents showing proof of their status and land ownership forms were seized by the authorities and no receipt was given. People having no documents are in danger of becoming stateless thus creating more complications.

In our view, the so-called VMS schemes are meant for individuals who may choose to give up citizenship for better prospects elsewhere or for ideological reasons and cannot be applied to a whole lot of people where the State deliberately denationalises people. Those affected are only Lhotsampas and none of the Drukpas. These people have a right to return home as per article 13 (2) of the International Covenant on civil and Political rights. A lawless situation

was created by the very State which was supposed to prevent lawlessness and protect people and the instruments of the State connived to evict the lawful citizens. In these circumstances Bhutan has a responsibility to take back all those who were supposed to have signed the voluntary migration forms.

A case study of one of those who signed the voluntary migration forms is given below to illustrate our position.

Pancha Bahadur Gurung of village Baradurey, Gairgaun, lamidara, Chirang now living in Hut no. 59 Sector Khudunabari Refugee camp gave the following statement to the JVT.

He with 13 prominent villagers were called by the Royal Bhutan Army to the district Headquarters at Damphu on 25. 10.92. As a punishment they were asked to report at the army office daily at 6.15 AM when the journey from Baradurey to Damphu by foot will take 7 long hours. That meant that they had to walk throughout the night. They were released sharp at 5 PM every evening to make the seven hours journey back well into the night. In the absence of "out passes" they were made to walk to and fro thus covering 14 hours a day from 25.10.92 to 5. 11.92 for almost 6 weeks.

One day they were late by 15 minutes. The army officer Chime Dorji threatened them with pointed weapons. The army officer then asked whether they would agree to fill the "voluntary migration form" or clean the latrine used by the army for three months. He along with others pleaded with the army officer not to punish them or evict them from the village. They were locked up in the latrine itself.

In another two days, he was called in a meeting attended by the District Dzongdha, District Police Officer, District Army commander and all the mondals of Chirang District. He was threatened with "dire consequences" if he did not sign the forms. He was thus forced into a situation where he could not avoid filling up of the forms. He left Bahadurey village with eight others soon after.

This case was prepared by the Jagat Subba, President of the Lawyers' Association of Bhutan (LAB).

The case of Pancha Bahadur Gurung is not an isolated one. Almost all those who signed the voluntary migration forms have experienced state coercion in some form or other.

The case of the refugees who signed the VMFs should be considered first when the harmonisation is to be discussed after the completion of verification of the first camp.

A US diplomat visited the refugee camp and is said to have appreciated the patience exhibited by the refugees in remaining peaceful for the last ten years. His visit has given some hope to the refugees that there will be international pressure on Bhutan to take back all the genuine refugees. The leaders of the refugees are aware that but for the involvement of USA and the visit of US officials to Thimphu and Kathmandu in December 2000, the joint verification process would not have taken off, the plans for which had been in the works for over eight years.

Firstly there is the danger of the issue getting radicalised as the youths in the camps are not going to wait indefinitely. Secondly the issue would also get internationalised as the leaders see that as the only hope to solve their problems. It is time India reviews its position with regard to the problem of refugees and work out an amicable settlement primarily in the interest of Bhutan and those of its citizens and now refugees who have been unfortunately deprived of their citizenship.

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