
RI BULLETIN

A POWERFUL VOICE FOR LIFESAVING ACTION

July 25, 2005

Contacts: Kavita Shukla and Michelle Brown
ri@refugeesinternational.org or 202.828.0110

India: Nepali migrants in need of protection

As a result of the nine-year Maoist conflict in Nepal, greater numbers of Nepalis are going to India and these new arrivals are being confronted with the same protection concerns that have plagued generations of Nepalis in India. Under the 1950 Peace and Friendship treaty between Nepal and India, Nepalis have the right to live and work in India and have been coming for decades to India in search of employment opportunities. In theory, Nepalis in India have the same rights as Indian citizens, with the exception of voting rights, yet they are often denied their basic legal rights and are vulnerable to labor rights violations and various forms of exploitation.

Due to the open border between Nepal and India and longstanding Nepali migration into India, obtaining an accurate count of how many additional people have been migrating to India since 1996 to escape the conflict is very difficult. Estimates of people driven to India as a consequence of the conflict are inexact and vary widely, from hundreds of thousands to millions. Analysts interviewed by Refugees International agree that seasonal migrants who used to come to India temporarily are now moving to India with their belongings. Previously Nepalis tended to come to India during times of economic and political crisis and would go back to Nepal when the situation stabilized; however, in recent years, these people no longer appear to be returning to Nepal.

Based on an assessment of conditions inside Nepal and interviews with around 30 Nepali migrants in India, RI believes that the conflict is now so all-pervasive that it is impossible to separate purely economic migrants from those fleeing the conflict. India has become a safety valve for those seeking security and economic survival. Non-governmental organization leaders who monitor this situation worry that as larger than usual numbers of Nepalis keep coming to India, the Government of India will become concerned about the effect on domestic and national security. There are concerns about potential linkages between left-wing insurgency groups operating in India and Nepali Maoists in India and also worries that new arrivals from Nepal, if unable to find jobs, may resort to crime.

RI interviewed a group of Nepalis in Delhi, who work as *chowkidars*, or watchmen. According to this group, there has been a 50% increase in their number in Delhi in the last few years. The members of the group are primarily from the far western districts in Nepal, and many belong to the most marginalized groups in Nepali society. Whereas previously single men used to come for work to India, now entire families are migrating. Raju, a *chowkidar* who first came to India in 1972 from his village in Bajura district, told RI he had no choice but to bring his younger children to India in 2005 due to the fears of conscription by Maoists and frequent disruptions of their education. Raju also mentioned intimidation by both the Maoists and government security forces. If his family refused to provide food to the Maoists, they would harass the family, and if the family assisted the Maoists, the security forces would accuse them of being Maoist sympathizers. Raju maintained that 90% of the population in his village has left, and those who have stayed behind are the most vulnerable, such as the elderly and disabled, who are unable to travel to other areas.

Many of the Nepalis emphasized that the government machinery has ceased to function in their villages and they have not seen any government representative for years. Most development activity has come to a halt in their villages and is limited to the district headquarters, which remain under government control. The Nepalis complained about the lack of jobs in Nepal. They explained that previously 15-16 year olds were coming to India in search of employment, but now in some cases 8-10 year old children are being sent to India to find whatever job possible in order to send remittances back to support the families unable to earn a living in the conflict environment. With the influx of younger children being sent to India, agencies working on child protection issues are reporting increases in child labor.

Nepalis in the *chowkidar* group belonging to the most marginalized social groups praised the Maoists for introducing equality and removing barriers in a society very divided along caste, ethnic and class lines. A man from Achham district, from the *Dalit* or untouchable community in Nepal, stressed that when the Maoists took control of his village he was treated as an equal member of society for the first time in his life. Previously, if he had so much as touched a cow of an upper caste family, the animal was considered to be polluted. The Maoists have done away with such superstitions and punished those who tried to maintain the discriminatory caste practices. The Nepali community also praised the Maoists for banning social evils such as gambling, corruption and liquor.

The Maoists, however, came under criticism from the community for imposing a visa system for those traveling to and from Maoist controlled territories, for the indoctrination of women and children at compulsory rallies, and the Maoist policy of asking each family for one child to join their ranks. Most of the Nepalis said that since the Maoist conflict, it has been much more difficult for them to go back to their country. While previously they used to travel frequently to Nepal to attend family gatherings and festivals, that travel has become limited in recent years. Perhaps as a consequence, for the first time, the Nepalis have started investing in India.

Once in India, the Nepalis become vulnerable to labor and human rights abuses, much like poor Indians. According to the *chowkidars*, they have no legal rights. If they are abused at work and complain to law enforcement officials, their complaints are not taken seriously. In case of robbery, for example, even if they have worked in a neighborhood for many years, the police assume that they are accomplices and the Nepalis are increasingly finding themselves being blamed for crimes. While the Nepalis in the formal sector in India enjoy the same legal rights as Indians by joining labor unions, the formal sector only includes 8% of the workforce, and the majority of Nepalis fall outside this sector. The lack of membership in any organized labor group hits women the hardest, and those working as domestic servants remain particularly vulnerable.

The 1950 Peace and Friendship treaty allows Nepalis free access to Indian government schools, provided they have the correct documentation. However, for many migrants, it is difficult to obtain papers, especially since no documents are needed to cross into India. Without documentation, the Nepalis have no choice but to pay for their children's education in private schools or keep their children out of school. Lack of documentation also hinders Nepalis from opening bank accounts in India, which would make the process of remitting money to Nepal much simpler. In the absence of access to bank accounts, the Nepalis have no choice but to send money via people traveling to and from Nepal. Many of these couriers become the victims of extortion at the hands of petty border officials and guards. Almost all the Nepalis interviewed by RI stressed the need for a registration system for them in India, which would bring with it legal identification.

Nepalis who have fled to India in search of asylum do not come under the mandate of the Office of the UN High Commissioner for Refugees (UNHCR) because the Government of India insists that the 1950 Indo-Nepal treaty accords Nepali residents in India the same rights as Indians, and therefore they do not qualify as refugees. The Nepalis in India appear to lack organization and to be ignorant about the labor rights entitled to the community, such as fair wages and compensation in case of death or injury. This fragmentation and lack of awareness among the Nepali community is in stark contrast to the knowledge about rights and opportunities possessed by nationals of some of the other countries who have fled to India to escape conflict, such as the Burmese. Although there are some Nepali service organizations in

India, they are politically affiliated and primarily provide assistance to the Nepalis with allegiance to their party. While an initiative such as the one taken in 2005 by the Delhi-based South Asia Study Center to organize and register some of the thousands of *chowkidars* in Delhi is a step forward, such programs are needed all over India for Nepali workers in the informal sector.

Refugees International, therefore, recommends that:

- The Government of India create provisions for registration and availability of identification documents for all Nepalis working in the informal sector in India by enacting into law the Unorganized Sector Workers' Bill of 2003, which would mandate registration of all people employed in the informal sector.
- The Governments of India and Nepal, while keeping the border open, regulate it so as not only to lessen extortion demands and other abuses facing those who cross the border, but also to play a more vigilant role in reducing the trafficking of women and children into India.
- Indian human rights organizations undertake awareness raising training for the Nepali community to make it informed of its rights and legal recourse options when these rights are violated.

Advocate Kavita Shukla and Senior Advocate Michelle Brown assessed the situation for Nepali displaced persons in Nepal and India in June.