



# **Resettlement Challenges of Bhutanese Refugees: Socio-legal Implications of the 2015 Earthquakes in Nepal**

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## List of Acronyms

CDA	Community Development Approach
CMC	Camp Management Committee
CWT	Camp Watch Team
GDP	Gross Domestic Product
GNH	Gross National Happiness
INHURED	International Institute for Human Rights, Environment and Development
IOM	International Organization for Migration
ISS	International Institute of Social Studies
NGO	Non-Governmental Organization
NUCRA	National Coordination Unit for Refugee Affairs
OCHA	Office for the Coordination of Humanitarian Affairs
RCU	Refugee Coordination Unit
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissions for Refugees
U.K	United Kingdom
U.S	United States
WFP	World Food Programs

## **Abstract**

Bhutanese Refugees are languished inside the refugee camps for almost 25 years in protracted situation. In 2007, Nepal as an asylum country accepted third country resettlement by issuing exit permit to the refugees. The resettlement process raised hope of Bhutanese refugees but at the same time it generated tensions and dilemmas to them. This study focuses to examine the challenges of resettlement of Bhutanese refugees with specific attention to socio-legal research an approach of legal consciousness, within the context of additional humanitarian crisis due to the 2015 earthquakes in Nepal. This study examines the shifts of legal consciousness of Bhutanese refugees and refugee agency due to the additional humanitarian crisis in Nepal. Based on the findings, this paper concludes that Bhutanese refugees in Nepal are obliged to comply with the existing laws relevant to the resettlement. The law is static and thus, they do not have influence over the existing laws as interpreted by American Legal Consciousness. The lack of proper information prior to resettlement has increased the vulnerability of Bhutanese refugees towards social exclusion in host society of destination country.

## **Relevance to Development Studies**

This research paper contributes to the scholarly debate and practical importance on the ground through socio-legal research approach of legal consciousness in the context of Bhutanese refugees waiting for resettlement in the face of additional humanitarian crisis due to 2015 earthquakes in Nepal. This study helps to examine how the existing laws affect the resettlement process and day-to-day lives of Bhutanese refugees. Further, it explores on the preparation for integration prior to the resettlement in the host society of destination country. It also examines the additional challenges for resettlement due to additional humanitarian crisis in Nepal.

## **Keywords**

Bhutanese Refugees, UNHCR, Resettlement, Legal Consciousness



# Chapter 1 Introduction

The introductory chapter of this research paper begins with stating research problem, specifically highlighting the issues of Bhutanese refugees under resettlement process. Then, it will highlight the geographical and social background of Bhutanese refugees and briefly reflect upon their history of forced migration from Bhutan to Bhutanese refugee camps in Nepal. Similarly, this chapter will discuss the context of the study area including demographic status of Bhutanese refugees focusing on research site i.e. Beldangi II and its extension. After that, it will present the research objectives, research questions and sub-questions that are going to be addressed by this study in later chapter. The next section will explain and justify why this research is socially, professionally and academically important. Then, it will deal with scope, limitation and organization of the study. And finally, research methodology, an utmost section of this chapter, will deal with sources and tools of data collection; ‘Case Study’ method as methods of data analysis or analytical framework; and ethical considerations that have been taken into account while conducting this research.

## 1.1. Unresolved Dilemmas and Resettlement of Bhutanese Refugees in Nepal

In 2007, Nepal accepted third country resettlement by agreeing to issue exit permit to Bhutanese refugees (European Settlement Network). ‘UNHCR together with the Government of Nepal and eight countries (U.S., Canada, Australia, New Zealand, Norway, Sweden, U.K and the Netherlands) officially announced that resettlement would be pursued to resolve the protracted refugee crisis in Nepal’ (Griek 2014:224). The resettlement process so far has been complicated and challenging.

Previously, UNHCR implemented Community Development Approach (CDA) in the Bhutanese refugee camps envisioning refugees as agents and aiming to prepare them for durable solutions (Muggah 2005:152). ‘However this approach has been criticized for lacking of clear standards and benchmarks’ (Ibid). Moreover, the introduction of CDA has shifted UNHCR’s mandate from emergency to care and maintenance and although it has initiated the Bhutanese refugees to increase their self- reliance and reducing dependency, the approach has led to political activism and potentially threatened the prospects of durable solutions (Muggah 2005: 151-55). So, CDA has been introduced in Bhutanese Refugee Camps as an affirmative solution

with aims to reduce the burden of UNHCR on the one hand and empowerment of refugees on the other. But the unrestrained implementation of CDA has posed potential threats to durable solution of protracted refugee situation.

The resettlement process has raised the hope of Bhutanese refugees but at the same time, it has generated tensions and dilemmas for them. These are reflected from Ilse Griek's interviews of those who were resettled in the U.S.A but were returned from nearest airport without any information. It was later clarified that the resettlement process has to be postponed because the U.S was changing its security policies (Griek 2014:218). Along with these problems, a division between refugees within the camps as pro- and anti-resettlement groups and such situations created tensions which later escalated into violence and rioting (Griek 2014:227).

It has been further elaborated that, although Nepalese laws can be learned through books, internal documents regarding resettlement procedures<sup>1</sup> are not generally accessible (only General Handbook on Resettlement is available on the UNHCR website), and the resettlement countries barely provides reasons for rejection of the applications (Griek 2014:269). In addition to these, according to Nepal Bar Association, the resettlement process has affected the refugees' lives as such the family separation has been perpetuated by increasing divorce rates inside the camps (Bhutan News Service). Since 2014, the Bhutanese refugees are no longer listed in UNHCR priority situations (European Resettlement Network), and hence, there might be a reduction in aids and support that are being provided to them. Along with these problems, Nepal was hit by two successive earthquakes –25<sup>th</sup> April and 12<sup>th</sup> May 2015. The country has been devastated and was under emergency situations. In response to the additional humanitarian crisis most of the International Humanitarian Organizations have focused their activities on the relief and rehabilitation of the victims of earthquake, away from resolving the durable solution requirements for Bhutanese refugees. Similarly, UNHCR, the principal international refugee agency, has been involved in emergency relief work for the earthquake victims in Nepal (see UNHCR 2015).

In addition, the scholarly debate on the legal consciousness approach (this approach has been used as a theoretical framework and elaborated more later chapters) is mostly directed towards the American Legal Consciousness which reflects the ideas of Roscoe Pound i.e. 'how do people experience (official) laws' (Hertogh 2004:457). The works of different scholars (see

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<sup>1</sup> Note: The internal documents means the Standard Operating Procedures which is not available to any of the refugees inside the camps and it is barely available to the researchers.

Merry 1990, Ewick and Silbey 1998 and Nielson 2000) from the perspectives of American legal are limited to the knowledge of ordinary citizens about the formal or official laws and legal institutions and ignored another form of legal consciousness i.e. European Legal Consciousness (Hertogh 2004:457-471). In short, Marc Hertogh argued the scholars did not explain that sometimes the formal laws are put aside in favour of informal solutions and unable to describe how the same ordinary citizens perceived the laws and justice to themselves; from the perspectives of European Legal Consciousness (Ibid). So, it is also essential to examine the shift of American Legal Consciousness towards European Legal Consciousness or vice-versa for better understanding of Legal Consciousness Approach in the context of resettlement of Bhutanese refugees.

Thus, it is worthwhile to examine challenges of resettlement in Bhutanese refugee camps, with specific attention to the socio-legal implications through an approach of legal consciousness of April/May 2015 earthquakes? It is essential to analyse how the legal consciousness of Bhutanese refugees is or how they position themselves in front of existing laws related to resettlement. If so, how is it affecting everyday life of the refugees in camps or has this crisis increased restlessness and impatience among the refugees, creating new wish to apply for resettlement? It is also necessary to understand whether and how the legal consciousness of Bhutanese refugees waiting for re-settlement has been shifting due to earthquake hits? But, before addressing these questions it is very important to discuss on the background of Bhutanese refugees. So, the next section deals with the geographical and social context of Bhutanese refugees and briefly reflects upon the history of their forced migration.

## **1.2. Background of Bhutanese Refugees in Nepal**

Bhutan is a small land-locked country in South Asia; geographically situated between India and China. Bhutan is often portrayed as peaceful country as the inventor of Gross National Happiness (GNH) rather than relying on the Gross Domestic Product (GDP) (The Telegraph UK). Bhutan is divided into three ethnic groups—i) Western Ngalongs, ii) Eastern Sharchhops and iii) Southern Lhotshampas (or Nepalese origin Bhutanese) (Hutt 1996:398). The Central (Ngalongs and Sharchhops) and Northern Bhutanese practice Tibetan Buddhism collectively known as Drukpas whereas the Southern Nepalese speaking Lhotshampas practice Hinduism (Ibid). According to UNHCR (2006), in the early 19<sup>th</sup> Century, the Lhotshampas were recruited by Bhutanese Government and brought to the southern part of Bhutan for agricultural purposes and later they became the main supplier of food all over the country (Ferguson et. al 2011:1).

However, they remained un-integrated to Bhutanese Buddhist population until a new nationality law in 1958 allowed them to acquire Bhutanese citizenship and also to hold some governmental positions (Ferguson et.al 2011:1). Gradually, Lhotshampas ‘began to play an important role in national life, occupying some senior positions in administration and also representing country overseas’ (Hutt 1996:402). But on 1985, most of the Lhotshampas were unable to bear citizenship by birth through father and required criteria for naturalization such as fluency and literacy in national language known as the Dzongkha (Hutt 1996:402). This led to the discriminatory policies such as wearing Nepalese dress and removing Nepalese language from curriculum (Ibid). Due to such discriminatory policies Lhotshampas began to protest and the unrest from south became visible on the surface. In response, the Bhutanese Government branded all those who participated in protest as anti-nationals; imprisoned, tortured and raped several thousand Lhotshampas (Ferguson et.al 2011 & IOM, Nepal 2008). Such repressive measures by the Bhutanese Government continued and citizenship of Lhotshampas were revoked, houses were demolished, and they were forced to sign voluntary migration forms and flee towards neighboring country India (IOM Nepal 2008:2).

They fled to Nepal via India and in 1991, UNHCR was established in Eastern Nepal to serve the approximately 105,000 and an additional 20,000 or so fled to other parts of Nepal and India (IOM Nepal 2008:2). According to IOM, all the refugees arrived in Nepal at the same time unlike the waves of flow of refugees over different period of time like in the case of Kenya (2008:2). Later they were confined to seven different camps located in south-east Nepal. According to UNHCR (2006), these camps have been supported by approximately US \$ 20 million from donor governments each year (Ferguson et. al 2011:1).

Bhutanese refugees had languished in seven camps for almost 16 years without any durable solutions. The 15 rounds of talks between the Government of Bhutan and the Government of Nepal had not secured a way to repatriate refugees back to Bhutan (IOM 2008:2). From those negotiations, a Nepal-Bhutan joint verification team was formed and ‘Bhutan proposed and Nepal agreed to categorize the Bhutanese refugees into four–i) genuine Bhutanese Refugees who were forcibly evicted’, (Human Rights Watch 2007: 40) ii) ‘those who voluntarily migrated’, (Ibid) iii) ‘non-Bhutanese and, iv) those who have committed crimes’(Ibid). However this agreement and joint verification failed to repatriate back any refugee. Similarly, Nepal is not party to 1951 Convention relating to the Status of Refugees and its protocol, so it does not have national legal provisions on the issues of refugees (European Resettlement Network). Furthermore, Nepal has opposed local reintegration (Ibid).

Thus, in 2006, U.S, in response to the protracted situation of Bhutanese refugees, announced its interest to resettle up to 60,000 refugees (Human Rights Watch 2007:1). Along with the U.S seven other countries offered to resettle Bhutanese refugees; New Zealand being the first (European Settlement Network). According to June 2015 statistics of UNHCR, a total 97,197 Bhutanese refugees have already been resettled in U.S (82,197), Australia (5,488), Canada (6,305), Denmark (874), Netherlands (327), Norway (566) and UK (358)<sup>2</sup>. Currently, there are approximately 21,000 refugees remaining inside the camps, out of which 13,000 have shown their interests for resettlement<sup>3</sup> and the remaining 7 to 8,000 are either not interested in resettlement or are not eligible for resettlement<sup>4</sup>.

Although, the offer for resettlement by the U.S. gave hope, initially, the lack of clear information on resettlement and other prospects of durable solutions i.e. local integration and repatriation contributed to the anxiety and created tensions within the refugees (Human Rights Watch 2007:4). In order to carry out the resettlement in a fair, transparent and effective way, the process is coordinated under the collaborative efforts of both UNHCR Nepal and IOM Nepal (IOM Nepal). Therefore, Bhutanese refugees have to go through both UNHCR and IOM standard operating procedure (Ibid). UNHCR Nepal is responsible for verification of applied cases and after which it is transferred to IOM Nepal for file preparation/organizations of selection mission/ case tracking, cultural orientation, health assessments and movement (Ibid). Now, the following section will discuss more specifically on the context of the Beldangi-II and its extension including demography of Bhutanese refugees.

### **1.3. Context of the Study Area:**

The plight of Bhutanese refugees began in 1991 due to Bhutan's strict citizenship policy implementation and potential threat felt by the Lhotshampas and the influx of Bhutanese refugees in Nepal peaked in 1992 (UNHCR 2002:1). According to UNHCR, majority of the Bhutanese refugees are of Nepalese ethnic origin inhabiting rural Southern districts of Bhutan (2002:1). In 1992, considering the request of the Nepal Government, two humanitarian organizations UNHCR and World Food Program (WFP) started care and maintenance program and supported for food to 80,000 refugees with food sustenance during the crisis (UNHCR 2001:1). 'Those

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<sup>2</sup> Unpublished data collected from the Office of UNHCR, Damak Jhapa during field visit.

<sup>3</sup> Ibid

<sup>4</sup> Ibid: Note: Not eligible for resettlement means those individuals who are involved in criminal offense, domestic violence and fraudulent cases.

refugees who arrived prior to 1<sup>st</sup> June 1993 were granted ‘*prima facie*’ refugee status by the Government however the late arrival were required to undergo refugee status determination’ (Ibid). The Refugees were sheltered in seven camps–Beldangi-I, II and Extension, Khudunabari, Goldhap, Timai in Jhapa district and Sanischare in Morang district of Nepal (Ibid).

### **1.3.1. Demographic Status of Bhutanese Refugees:**

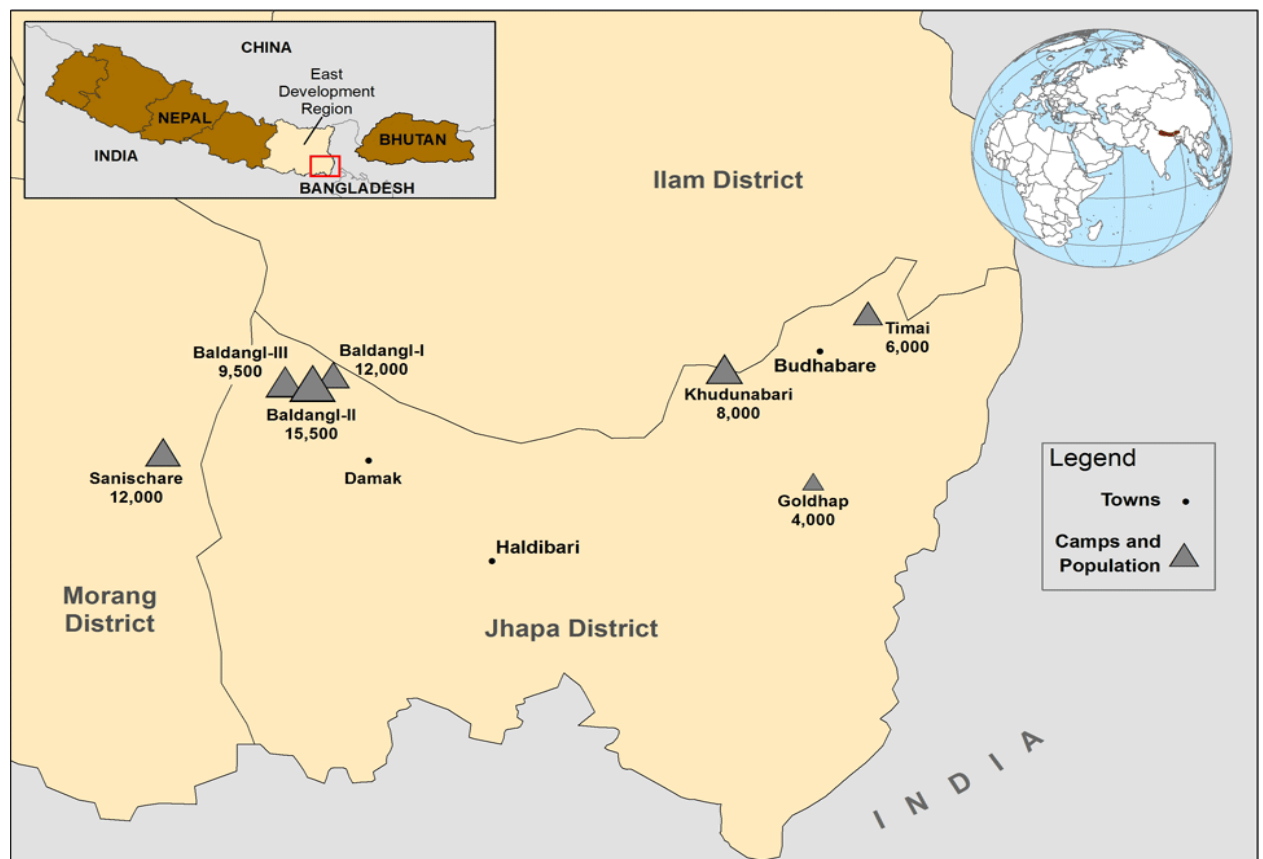
Majority of the Bhutanese refugee speak Nepalese language and some of them are bilingual; some can speak both Nepalese and Bhutanese language called Dzongkha (Bhutanese Refugee Health Profile 2014:4). According to UNHCR, an estimated 35% of Bhutanese refugees have Basic English language proficiency and have an estimated 65% of literacy rate in their native language (Ibid). Regarding their religious beliefs, majority of the refugees are Hindus i.e. 60%, 27% of refugees are Buddhists, 10% are Kirantis (Indigenous animatic faith) and the rest are Christians (Ibid).

Bhutanese refugees have similar caste system to the Nepalese people; there are a total 64 caste and groups inside the camps (Bhutanese Refugees Health Profile 2014:4-5). The typical large household consists of mostly elderly parents, with married and unmarried children and grandchildren (Ibid). They follow the traditional family pattern of respecting elders, and in case of family issues such as disputes, financial and health issues are discussed with elders before any decisions are made (Ibid). ‘The Bhutanese Community as a whole is tightly-knit, and kinship ties are important’ (Ibid). Regarding gender roles inside the camps, it is clearly demarcated like in Nepal, that women are burdened with more household work, less access to resources and have less decision making power within the family (Ibid).

### **1.3.2. Beldangi- II and Extension**

The study was conducted in the Beldangi-II and Beldangi-III or Extension. The rationale behind choosing this camp for study is that it has been the biggest and largest Bhutanese refugee camp. It also has closer proximity to Beldangi III or extension and necessary humanitarian agencies including UNHCR regional office in Damak, Jhapa. And also, there were opportunities to interview Bhutanese refugees from other camps– Goldhap, Timai and Khudunabari–had merged with Beldangi-II, because those camps contained lesser number of refugees with the continuation of resettlement process and were merged into Beldangi-II.

Beldangi-II was established in July 2002 and located seven kilometres north of Damak Jhapa (Commonwealth of Australia 2007:10-11). As June 2006 (before resettlement), this camp sheltered 3358 families (22,610 people) (Ibid). It has nine schools: four pre-primary (till grade 3), four schools (grades 4 to 6) and one secondary school (grades 7 to 10) (Ibid). Its extension was established in November 1992 and is located eight kilometres north-east of Damak Jhapa (Commonwealth of Australia 2007:11). As in June 2006, it had sheltered 1672 families (11,664 people) It has five schools from pre-primary to grade 10 (Ibid).



**Fig: Map of Bhutanese Refugees Camps in Jhapa and Morang Districts of Nepal (Source: Bista 2014)**

With the increasing number of refugees for third country resettlement, the three other Bhutanese refugee camps in the east-Timai, Khudunabari and Goldhap have been merged and all the remaining refugees have been shifted to Beldangi and Sanishchare Refugee Camps (Camp Supervisor, Government of Nepal). The empty huts after resettlement in Beldangi-II and extension have either been occupied by other refugees or demolished (Ibid).

The third country resettlement was offered to the Bhutanese refugees as durable solutions in present context. However, they have to go through the lengthy procedures which involved a series of steps, but their degree of acceptance is depended on compliance of their application to UNHCR's rules and on the migration laws of resettlement countries (Griek 2014:217). And for the process, people are coming to the office of CMC (Camp Management Committee) either to get further assistance in resolving the issues regarding their applications or to check the list of the decisions that have been pasted over the notice board outside the UNHCR field office or CMC office.

#### **1.4. Research Objectives and Questions**

This research paper intend to do three things; firstly, it intend to examine the legal consciousness of Bhutanese refugees during the process of resettlement in the midst of additional humanitarian emergencies in Nepal; secondly, it intend to scrutinize challenges of resettlement of Bhutanese refugees in the face of April/May 2015 earthquake; and finally, it intend to explain the position of Bhutanese refugees in relation to laws relevant to resettlement.

And this leads to ask number of questions that will be addressed in later chapters. Central-ly, it questions; what are the socio-legal implications of process of resettlement in the midst of additional humanitarian emergencies created by the earthquakes of April/May 2015 in Nepal? And more specifically it inquire; how have the existing laws of the asylum country and resettlement country affected the process of resettlement?; what kinds of information have been provided to the refugees before their plight to the resettlement countries?; and what are additional/new challenges that Bhutanese refugees have faced during their resettlement process in the face of April/May earthquakes in Nepal?

After putting the objectives and questions, now it is also important to justify the study from practical, professional and academic viewpoint. Thus, the next section will briefly discuss importance of the research topic, relevant literatures and the theoretical framework that is selected to work with.

#### **1.5. Justification of the study**

An interesting fact after reviewing literatures on resettlement of different scholars (Griek 2014, Verdirame & Harrell-Bond 2005, Loescher 2001...) and organizational reports such as (Human Rights Watch 2007, UNHCR and IOM) relevant to Bhutanese refugees noted a lack of



legal and relevant information about the resettlement. This is a common concern of the refugees who have expressed their interest for resettlement in front of UNHCR. This intensifies the lack of clarity that characterizes the on-going resettlement process for the refugees and agencies themselves. For these reasons, and to ensure the study of some practical importance on the ground, the socio-legal research approach of legal consciousness has been adopted, so that the current situations of Bhutanese refugees and their perceptions about their refugee rights and obligations can be better understood through the lens of legal consciousness.

Likewise the approach of legal consciousness that this study selected to work with, can be viewed within the academic discourse through the work of different scholars of law and society; analyzing the ‘experiences of ordinary citizens about law and street harassment’ (see Nielson 2000), legal consciousness of labors or working class American (see Merry 1990), legal consciousness and peoples’ experiences from everyday lives’ (see Silbey 1990) and legal consciousness and a case study of social injustices in the Netherlands (see Hertogh 2004). This study examines the legal consciousness of the Bhutanese refugees under the resettlement process, so the context and actors itself are new to the discourse and interesting to analyze. And, the aim of the study is to understand the legal consciousness of refugees under the process of resettlement in face of additional humanitarian crisis, which is itself new to the social research and thus it can be a baseline to the further study by generalizing it to broader populations.

This study will generally address some important aspects regarding Bhutanese refugees which are relevant to central research questions –Who are those waiting to be re-settled? Do they have clear notions of their prospects and where they can go to deal with problems in their destination countries? Since the resettlement process begun, how the existing laws relevant to resettlement are affecting their process and their day-to-day lives? The main reason behind selecting this topic is that this research will reflect the current situation of particularly those Bhutanese refugees who are long-term in the process of resettlement. Nevertheless, the findings of the study will contribute to the original knowledge for both academic as well as professional/humanitarian approaches.

Now, the next section will discuss about the scope and limitation of study that was taken into consideration during field visits and writing this paper.

## **1.6. Scope and Limitation of the Study**

The research conducted is about the current resettlement challenges of Bhutanese refugees which are sensitive issues and the respondents were reluctant to be interviewed as they sensed

threat of interruption of undergoing resettlement process. It is a course based, small scale research, conducted in relatively short period of time and has several limitations.

As the research was conducted in Bhutanese Refugees Camps and the permission was needed to access the camps from NUCRA (National Coordination Unit for Refugee Affairs) within the Home Ministry of Nepal. And again the draft of permission letter was submitted to RCU (Refugee Coordination Unit) located in Jhapa district consumed more time than expected which increased the time constraint for field visit. Due to time limitation and scope of the research, it could not incorporate all the existing camps and was limited to only camp and its extension i.e. Beldangi-II and its extensions for the field visits.

The interviews were conducted either inside the housings of refugees or within the peripheries of CMC office. The respondents interviewed in their houses were more comfortable and expressed themselves more clearly than those interviewed within the periphery of CMC offices. The main reason behind it is that the CMC offices are always crowded with refugees who visited there for various reasons including case work, resolution of disputes and to check the notice boards for next announcements. Among the respondents, it is difficult to find someone who grew up in Bhutan or he/she can reflect their experiences on Bhutan as most of these refugees have already been resettled and/or are outside camp for work as their daily routines.

## **1.7. Organization of the Study**

In order to make the study more systematic easy and understandable, the findings of the study have been organized and presented. For this, the paper is divided into four chapters under their headings.

The first chapter is introduction of the study and it presents the background of Bhutanese refugees, statement of the problem, context of the study area, objectives of the study, research questions, justifications and scope and limitations of the study. And finally, it explains the research methodology that is used to collect and analyze data. It includes the sources and tools of data collection and analytical framework. It also highlights the types of respondents and ethical considerations.

The second chapter is presented under the heading ‘Evaluating Resettlement of Refugees in Midst of other Humanitarian Emergencies’. This chapter evaluates the resettlement of refugees in the midst of other humanitarian crisis by reviewing available relevant literatures through the social legal theory and legal consciousness as an approach. This chapter is also fo-

cused with the elaboration with some important concepts that have been applied to analyze the findings of the study.

The third chapter is presented under the heading ‘Analyzing Resettlement of Bhutanese refugees in Nepal’. This chapter presents the analysis of case studies of Bhutanese refugees by triangulating the data from different sources of evidences (Interview, Key Informant Interview and Available literatures) establishing chain of evidences. And the final chapter is conclusion which presents the summary analysis of the findings and highlights the main points of discussions.

## **1.8. Research Methodology**

This section elaborates the research methodology as an utmost section of this chapter. It deals with sources and tools of data collection and analytical framework of the study.

The research is a qualitative study based on primary data collected from the field and secondary data collected from different literatures related to the research topic. In order to address the research question, and to meet the research objective, case study method was chosen as a research technique. The rationale behind choosing technique is that the research seeks to explain the present social circumstances as mentioned by Yin (2014:4). For the case study I have used embedded case study design as the study is single case study i.e. Bhutanese refugees in the face of 2015 earthquake in Nepal with multiple level unit of analysis.

### **1.8.1 Sources of Data Collection**

In order to address the research objectives and questions, the information was collected from both primary and secondary sources of information.

#### **Primary Sources:**

Primary sources of data were collected from the Bhutanese refugees who were under the process of third country resettlement. During the process, prior to interviewing respondents; firstly, the permission for accessing Bhutanese refugee camps and taking pictures was acquired from the NUCRA under Ministry of Home Affairs, Singha Durbar, Nepal. Secondly, the request letter to coordinate and grant permission to enter camp by the NUCRA was then submitted to the director of RCU at district office Chandragadhi, Jhapa, Nepal. And finally, the request letter to conduct interviews was submitted to the office of Refugee Coordination Unit located within the Bhutanese refugee Camp (Beldangi-II).

The semi-structured interviews were conducted by using guiding questionnaires to assess information from the respondents. Out of total 22 interviews (14 male and 8 female); 17 interviews were held with Bhutanese refugees under the process of resettlement, 2 interviews were held with those unwilling to resettle and 3 Key Informants interviews were held with Camp Supervisor (Government of Nepal), Senior Durable Solution Assistant Officer, UNHCR Nepal and the President of International Institute of Human Rights, Environment and Development (INHURED).

### **Secondary Sources:**

In order to substantiate the research finding, secondary data were collected from relevant literatures like books, organizational reports (UNHCR & IOM), journals and articles published in different sources, and different articles published in newspapers and available in internet sources that are essential to validate the key findings.

### **Semi-structured Interview**

The required information from the respondents was acquired by conducting semi-structure interviews guided by open-ended questions. Two sets of questionnaires were used to obtain information from the Bhutanese refugees (interviewees) and officials of Nepal Government, officials of UNHCR Nepal and an NGO (Non-Governmental Organization). The interviews were held in local language i.e. Nepalese language<sup>5</sup> and each interviews were recorded; which has been transcribed for analysis.

### **1.8.2. Methods of Data Analysis or Analytical Framework**

This study intends to use the Case Study as a research technique and inductive method of analytical strategy. The findings from the primary and secondary sources of evidences will be more exploratory as the research questions are projected towards exploring research questions which are framed with – ‘what’ questions rather explaining ‘how’ the existing circumstances or phenomenon is. However the study will also try to look at certain phenomenon for example, how have the existing laws of the asylum country and resettlement country affected the process of resettlement?, and how the legal consciousness of Bhutanese refugees waiting for resettlement?

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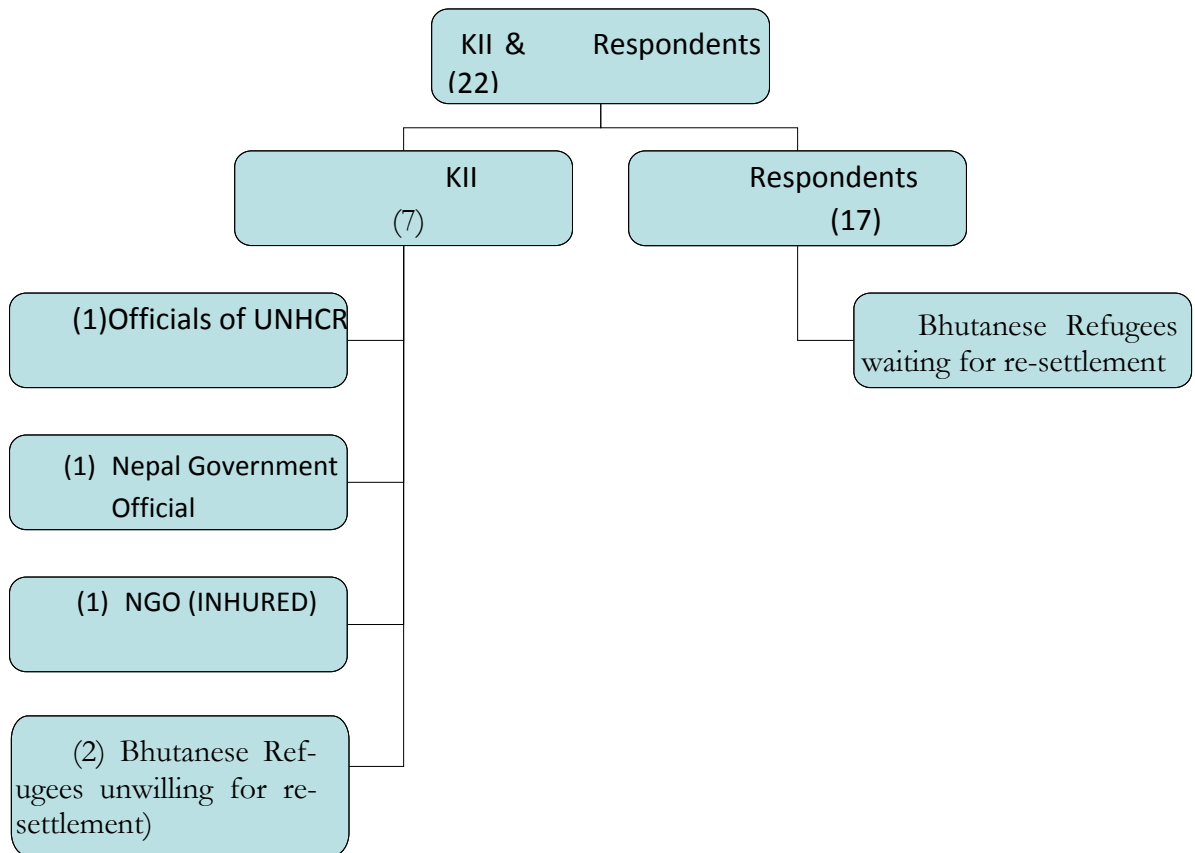
<sup>5</sup> Bhutanese Refugees are using Nepalese language for communication even inside Bhutan.

ment has been shifting due to earthquake hits? Therefore it will be more directed towards hypothesis generating through conclusions and thus providing a platform for further research.

In order to increase the quality of the study, the paper has triangulated the multiple sources of evidence, because the triangulation 'is essentially a strategy that will aid in elimination of bias and allow the dismissal of plausible rival explanations such that a truthful proposition about some social phenomenon can be made' (Mathison 1988:13). The analysis of this study is intends to use the data triangulation method which refers to the use of several sources of available data as mentioned by (Mathison 1988:14). The triangulation of data will help to establish the chain of evidences which will help in further strengthening the validity of the study.

In this study, the findings from interviews–Bhutanese refugees as individual is centered and their experiences with existing laws and legal norms of both current host country and resettlement country is triangulated with the finding from interviews held with–i)Bhutanese refugees, ii) Senior Durable Solutions Assistant Officer (UNHCR Nepal) and organization working for the rights of refugees in Nepal (INHURED) and iii) relevant information from Journal, articles, books and relevant websites and news articles. This has helped to strengthen validity of the study. And to increase the reliability of the study the source of data including interviews have been presented in this study.

## Types of Respondents and Key Informants



### 1.8.3. Ethical Considerations

As the research requires the participation of the respondents who are under the process of third country resettlement, it is vital to ensure privacy of the respondent. The interviews were conducted only after obtaining full consent of the respondent. All the interviews were recorded in a voice recorder after getting full consent of the respondents, by explaining that recording is essential to maintain the flow of interview, and to document all the information that are needed for the research. And only information needed will be used in textual form.

During interview process, mixed reactions were observed from the respondents. Initially, some respondents were reluctant to participate in the interview process. They confided that providing information might risk their third country resettlement process; their resettlement process might get aborted or held longer as they were informed not to give information about resettlement to anyone. But, they were convinced to participate once the objectives of the re-

search explained and assured them that their anonymity will be maintained during the analysis of the key findings. However, the other respondents easily gave their consent and were found to be quite open to express their views on the process of third country resettlement. The pictures of some respondents were taken only after getting their full consent. The privacy of the respondent during data analysis and is maintained by coding the names of the respondent and using only relevant or essential details in analysis.

So, this introductory chapter has stated the problems that, although the resettlement process gave hope to the Bhutanese refugees it has generated tensions and dilemmas. At this juncture the resettlement process has been considered complicated and challenging although it gave future prospects to the Bhutanese refugees in protracted situations. And the additional humanitarian crisis due to the 2015 earthquake incidences in Nepal has further complicated the issues of resettlement. Furthermore, it is essential to evaluate the laws that are directed towards resettlement of refugees in the midst of humanitarian emergencies with the adopted socio-legal theory through an approach of legal consciousness in order to understand the impact of existing laws and how they interact with the legal institutions.

## **Chapter 2 Evaluating Resettlement in Midst of other Humanitarian Emergencies**

### **Introduction**

This chapter is elaborated by reviewing the relevant literatures such as books, journals, articles, organizational reports, research reports and newspaper articles. It is divided into four sections under their respective headings.

The first section of this chapter is presented under the heading ‘Analyzing Refugee Laws, Refugee Protection and UNHCR Durable Solutions for Refugees’. It will first discuss who are considered refugees according to the International Refugee laws, then it will briefly discuss how the refugee protection is linked to the International Human Rights Laws, further it will elaborate on UNHCR’s evolving mandate on refugee protection, then it will briefly discuss on UNHCR’s prospects of durable solutions and lastly it will highlight foreign migration laws relevant to the resettlement of refugees.

Then, the second section is presented under the heading ‘Socio-legal Research an Approach of Legal Consciousness’. It will briefly discuss the sociological interpretations of laws and most importantly focusing on legal consciousness as an approach. This section reflects the debates around the two concepts of legal consciousness i.e. American Conception of Legal Consciousness and European Legal Consciousness. Similarly, the third section is elaborated under the heading ‘Social Exclusion in the context of Resettlement of Refugees’. It deals with the concept of social exclusion linking to the situation of integration of refugee resettlement into a host society. It presents definitions and debates of different scholars around the social exclusion particularly within the context of resettlement.

The final section is discussed under the heading ‘Humanitarianism and Refugee Protection’. This section briefly discusses the distinction between the assistance and protection as function of humanitarian actions reflecting on the contemporary events and debates over refugee protection that is presented in the works by different scholars.



## 2.1. Analysing Refugee Laws, Refugee Protection and UNHCR Durable Solutions for Refugees

*‘The changing nature of armed conflict and patterns of displacement and serious apprehensions about “uncontrolled” migration in this era of globalization are increasingly part of the environment in which refugee protection has to be realized.’*

Ruud Lubbers, United Nations High Commissioner for Refugees & Anderson B. Johnson, Secretary General, Inter-Parliamentary Union

### 2.1.1. Who are Refugees?

According to the article 1(2) of 1951 Convention relating to the Status of Refugees, a refugee is someone who ‘has well-founded fear of being persecuted for reasons of race, religion, nationality, membership of particular social group or political opinion, is outside the country of origin and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country’ (Convention & Protocol Related to the status of Refugees) or ‘the term refugee shall also apply to every person who, owing to external aggression, occupation, foreign dominations or events seriously disturbing public order in either part of the whole of his country of origin’ (UNHCR Resettlement Handbook 2011:81). However, the definitions of refugees itself have both the so-called ‘*inclusion clause*– indicating the abovementioned conditions to fall under the category of refugees and *exclusion clause*–indicating that if a person is involved in war crime or crime against humanity, non-political crime prior to admission in asylum country and if acts opposing to United Nations purposes and principles’ will not be recognized as refugees or will be excluded from refugee status (UNHCR Resettlement Handbook 2011:19).

It clearly shows that the refugee status is determined on the basis of conditions mentioned by the UNHCR. The refugees may be recognized either individually through individual determination procedures or in mass influx on the basis group determination procedures i.e. prima facie (UNHCR Resettlement Handbook 2011: 19). In addition to these, the principal objective of UNHCR is to secure international protection and seek durable solutions for refugees and these functions are interdependent to each other (UNHCR Resettlement Handbook 2011:11). The international protection is defined as ‘all actions aimed at ensuring the equal access and enjoyment of the rights of women, men, girls and boys of concern to UNHCR, in accordance with the relevant bodies of law (including international humanitarian, human rights and refugee law’ (Ibid). So, it is the state or refugee agency that should intervene on behalf of asylum seekers to ensure their rights and security within international principles (Ibid).

### 2.1.2. International Human Rights Laws and Refugee Protection

Those countries that ratified the 1951 Convention Relating to the Status of Refugees and its protocol are obliged to protect refugees within its territories. The responsibilities of state towards the convention and its protocol are to apply: i) ‘Cooperation with UNHCR–State should cooperate with UNHCR to function under its mandate for refugee protection’ (Jastram & Achiron, UNHCR: 11), ii) ‘Information on National Legislation–The state is obliged to provide information about the national laws and regulations they adopt in order to implement the treaties of convention’ (Ibid), and iii) ‘Exemption from Reciprocity<sup>6</sup>–The refugees are exempted from the notion of reciprocity as they are under the risk of persecution in their country of origin’ (Ibid). And the 1951 Convention has legal, political and ethical significances; legal as it articulates basic standards for implementation, political as it delivers a universal framework to which all the states can cooperate and share the responsibilities of refugees and ethical as the commitment of 141 member states to support and protect the vulnerable groups or individual<sup>7</sup>.

The provisions of International Refugee Laws should come under the broader framework of International Human Rights and Humanitarian Laws (Jastram & Achiron, UNHCR:18). *“Everyone has the right to seek and to enjoy in other countries asylum from persecution”*, says Article 14 (1) of Universal Declaration of Human Rights. This article of UDHR morally binds all the states to ensure the rights to seek and enjoy asylum those who fear of persecution in their country of origin. Moreover, “refugees are entitled to two partially overlapping sets of rights–those rights accorded to them as individuals and guaranteed under international human rights standards and national law, and specific rights related to their status as refugees” (Jastram & Achiron, UNHCR:18). Likewise, two international human rights play a significant role reinforcing international refugee laws–i) the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment which prevents forced return or refoulement to the environment with extensive risk and ii) the Convention on the Rights of the Child which protects the rights of refugee child and asylum-seekers (Ibid). Therefore, all the states party to the 1951 convention should share the responsibility, support and protect the vulnerable and disadvantaged groups following the global mandate of international human rights laws.

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<sup>6</sup> ‘Reciprocity is the granting of a right to an alien is subject to the granting of similar treatment by the alien’s country of nationality.’ Source: Refugee Protection: A guide to International Refugee Law

<sup>7</sup> Source: Ruud Lubbers and Ander B. Johnsson, extracted from Refugee Protection: A guide to International Refugee Law (Jastram & Achiron UNHCR)

### 2.1.3. UNHCR evolving mandates on refugee protection

The definition of refugees is the individual or group of people who need protection on the basis of their exclusion from their country of origin. In the light of fact, Ilse Griek refers the refugee law as ‘palliative system designed to temporarily address the irregularity caused by the refugees’ position outside of the regular protective system of the nation state’ (Griek 2014:16). The 1951 convention and its protocol of 1967 is the most effective convention that is mandated to regulate protection of refugee and rights of people seeking refugee status during their state of plight.

The convention is deliberated ‘both as a status and rights-based instruments and is articulated by number of fundamental principles particularly–non-discrimination, non-penalization and non-refoulement’ (UNHCR 1951 Convention and 1967 Protocol:3). Furthermore, like every other human rights treaties and conventions, the state parties to the 1951 Convention to the status of refugees and 1967 protocol are obliged to protect refugees within their territories. However, every state has moral obligations to protect refugees who fear persecution; as articulated by Article 14 of the Universal Declaration of Human Rights which recognizes the rights of people to seek asylum from persecution in any other countries. But according to UNHCR, although states are obliged to protect refugees, ‘there is majority of refugee influx in developing countries who are either unwilling or unable to offer protection and thus the camps in these countries are run by the office of UNHCR’ (Griek 2014:16).

The office of United Nations High Commissioner for Refugee was established by General Assembly of United Nations on December 14, 1950 and began to work on January 1951 in Geneva Switzerland (UN, Global Issues). Although it is delegated for international protection of refugees (Griek 2014:16), initially the work of UNHCR was mandated towards ‘solving the issues of one million refugees in Europe as an aftermath of World War II’ (UN, Global Issues). In short, consequent expansion of UNHCR’s mandate and humanitarian assistance can be examined by focusing on some major historical events that have led to change in types and numbers of influx of refugees in different parts of the world (see Griek 2014 and Loescher 2001). For example, initially in the 1950s, after establishment of UNHCR and its given mandate was confined only in Europe. In the 1960s and 1970s, it witnessed various internal conflicts as the Cold War extended beyond Europe towards parts of the third world and in the 1970s (Loescher 2001:10-11) and 1980s which was marked by various internal wars in Indochina, Central America, the Horn of Africa, due to shift of the structure bipolar conflict between U.S and Russia resulted into outburst of refugees in those regions (Loescher 2001:11).

Consequently, due to the failure of international community to resolve refugee crisis, the large numbers of camps were established often within the region of their country of origin (Griek 2014:17). Thus, Gilber (1998) in Griek stated that ‘the increasing number of camps left UNHCR, not necessarily willingly or happily, with responsibility to coordinate a worldwide mini-empire with a population numbered in millions’ (2014:17). So, the outpourings of refugees due to various inter-state and intra-state conflicts in different regions around the globe gave immense responsibility and challenges to UNHCR, for which UNHCR began to broaden its international agenda in the context of contemporary refugee situation.

Initially the definitions of protracted refugee situation was considered to be their existence for five or more years without any prospects of durable solutions but it was limited due to quantitative restrictions (refugee population should be more than 25,000) (Griek 2014:17). However, in 2009, UNHCR’s Executive Committee (EXCOM) concluded that the quantitative restriction is not necessary to determine the protracted situations of the refugees (Ibid). Despite of, presumed broadened agendas of UNHCR on resolving refugee crisis and offering humanitarian assistance, sometimes, refugees are compelled to live in protracted situations without any prospects of durable solutions.

#### **2.1.4. UNHCR prospects of Durable Solutions**

In present context, one of the important aspects of international protection of refugees is the finding of durable solutions. The framework of durable solutions proposed by UNHCR aims for ‘sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees’ (UNHCR 2003:9). So, the protection mandate of UNHCR proposes three durable solutions for refugees—i) ‘voluntary repatriation to the country of origin, ii) local integration in the country of asylum, and iii) resettlement to third country’ (UNHCR Resettlement Handbook 2001:28). ‘These three durable solutions complement each other and should be given full consideration prior taking the resettlement into account; an option for resolving refugee crisis’ (Ibid).

#### **Voluntary Repatriation:**

According to the UNHCR mandate on voluntary repatriation, the role of UNHCR is summarized as the promotion of solutions, promotion of repatriation and facilitation (Voluntary Handbook 1996: 13). ‘The promotion of solutions refers to actions that creates conducive environment for refugee repatriation, similarly, the promotion of repatriation refers to the practical

measures that is taken to help refugees return voluntarily' and UNHCR may facilitate the voluntary repatriation process if refugees have strong desire to return voluntarily to their country of origin or if they have already initiated by themselves (Voluntary Handbook 1996:13-15).

The refugees are entitled right to return to their country of origin when the environment is conducive. 'UNHCR's Executive Committee has repeatedly affirmed that voluntary repatriation, in safety and dignity, where and when feasible, remains the most preferred solution in the majority of refugee situations' (Human Rights Watch 2007:40). In the light of historical events of the 1980s the western countries discouraged repatriations but with the changing global political environment in 1990s, the 'repatriation became central part of the UNHCR's new global strategy of preventive protection', and also increasing the responsibility of state towards its own citizen (Loescher 2001:17). So putting the repatriation in central to UNHCR's global strategy or preferring repatriation Loescher argued that 'UNHCR run long-term programs in emergency mode, which was damaging the long-term welfare of refugees stuck in protracted camp situations' (Ibid).

### **Local integration**

Local integration of the refugees is another viable option during their plight after seeking asylum in the host country. The local integration can be regarded as process which has three inter-related dimensions—i) 'it is a legal process whereby refugees are granted a progressively wider range of rights and entitlements by the host state, ii) it can be regarded as economic process and iii) it is a social process, enabling refugees to live amongst and alongside the host population in conducive environment' (Crisp 2004:1). And although the principles of local integration is articulated by international refugee laws but it has limited practice since the refugee crisis have become worldwide phenomenon (Crisp 2004:3). As the majority of refugee influx is towards the developing countries or within the region of their country of origin, the local integration has become less possible or not preferred by the host country.

### **Resettlement**

Resettlement is 'a process which involves the selection and transfer of refugees from state in which they have sought protection to a third state which has agreed to admit them as refugees with permanent residence status' (UNHCR Resettlement Handbook 2001:3). The resettlement plays role for three important functions; firstly, 'it is an essential tool to provide international protection and ensuring the needs of refugees' (UNHCR Resettlement Handbook 2001:36);

secondly, ‘it is also an important durable solutions to large number of displaced people along with repatriation and local integration as other prospects of durable solution’(Ibid); and thirdly, ‘it can be a worthy expression of international solidarity through supporting and sharing responsibility by the states’ (Ibid). The resettlement submission categories according to UNHCR are ‘legal and/or physical needs, survivors of torture and/or violence, medical needs, women and girls at risk, family reunification, children and adolescents in risk and lack of foreseeable alternative durable solution’ (UNHCR Resettlement Handbook 2001:37).

If the refugees cannot repatriate or integrate locally, then third country resettlement becomes an option for survival. However, UNHCR always reminding time and again that there is no right to resettlement for refugees (Verdirame & Harrell-Bond 2005:283). This means, resettlement option is viable if only other developed countries offer resettlement quotas. For example, U.S, Canada and Australia have resettlement quotas for refugees in different regions including Asia and Africa (Verdirame & Harrell-Bond 2005:283).

#### **2.1.5. Laws in Asylum Country and Foreign Immigration Laws related to the Resettlement of Refugees.**

The prime responsibility of state is to maintain rule of law to ensure securities from both internal and external threats to the people residing within its territory. Thus, refugees who are residing inside the Nepalese territory become subject to its Civil Code of conduct (Muluki Ain/Nepalese Law). Nepal has not ratified the 1951 UN Convention related to the status of refugees so it does not have the national legislation on refugee issues.

Similarly, the existing Nepalese laws and policies have implications on day-to-day lives and also their resettlement process. For example, Article 5 of the Nepalese Citizenship Act 2006, which prohibits acquiring Nepalese citizenship by a foreign man married to a Nepalese woman; a foreign woman married to a Nepalese man however can acquire Nepalese citizenship<sup>8</sup>. Furthermore, according to the provisions of the 1993 State Cases Act, polygamy or to acquire more than one wife is considered as crime to be prosecuted unless certain conditions are considered such as [if first wife is suffering from incurable sexually transmitted disease, if she is unable to give birth, if she is insane, if she is paralyzed....] (Griek 2014:241). In short, such provisions made under valid marriages predominantly violate the women’s right to equality by the Nepalese Supreme Court (Ibid).

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<sup>8</sup> Nepalese Citizenship Act 2006

## **Brief discussion on foreign immigration laws and policies related to the resettlement of refugees.**

There is an estimated 51.2 million forcibly displaced people in 2014 but by end of the year the numbers increased to 59.2 million which is considered to be the highest increase in one year due conflict, fear of persecution and other several human rights violations (UNHCR Global Trend 2014:2-5) but only few countries like U.S, Australia and Canada provides quotas for refugee resettlement (Verdirame & Harrell-Bond 2005:283). But then the numbers and certain categories of refugees offered to be resettled are decided by the country that is participating in resettlement (Verdirame & Harrell-Bond 2005:283-4). So, the way of responding towards refugees are always shaped by various political interests and are articulated through the state immigration policies for refugees. Therefore, Claire Higgins in her article argued that, in today's context, countries like Australia's response towards refugee resettlement is 'the state to overcome its difficult past and to remake itself in the eyes of the world' (Higgins 2015, the Interpreter). Despite Canada being appraised for welcoming more refugees than any other countries, 'Canada's acceptance of large numbers of Vietnamese Refugees in the 1970s was to offer protection to Jewish refugees fleeing Nazi Germany aboard the St. Louis in 1939' (Ibid).

The Canadian Refugee system has two components—i) 'the Refugee and Humanitarian Resettlement Program, for people seeking protection from outside Canada and ii) the In-Canada Asylum Program for people making refugee protection claims from within Canada' (Government of Canada). In Canada the resettlement of refugees all across the country are also supported by private sponsors (organizations/groups of people); therefore refugees get initial assistance either from the federal government, the Province of Quebec, or private sponsors (Ibid). Likewise, Canadian immigration policy divides the migrants into three categories—i) 'economic migrants which includes skilled workers, ii) family immigrants, and iii) humanitarian class migrants, predominantly refugees' (Hyndman and Mc Lean 2006:349). However, the research on Resettlement of Acehese people in Canada concluded that, the full legal status and state social welfare benefits are yet to make the refugees economically self-reliant (Hyndman and Mc Lean 2006:358).

Likewise, for the vast majority of refugees in Kenya and Uganda, resettlement is the only option because two other prospects of durable solution is not feasible (see Griek 2014 and Verdirame & Harrell-Bond 2005). Despite the fact that, resettlement can be a viable option for survival of refugee, the resettlement process to be fair, transparent and efficient has become a massive challenges to the concerned agencies.

So, from this section, the paper will use the analysis on provisions of UNCHR Resettlement Handbook (2001) and arguments of authors such as Guglielmo Verdirame & Barbara Harrell-Bond (2005), Gil Loescher (2001) and Ilse Griek (2014) during the analysis of findings in next chapter (chapter 3).

## **2.2. Socio-legal Research, an Approach of Legal Consciousness**

There are ongoing debates on the sociological interpretations of legal ideas in current discourses. The current critiques of the legal sociology render the ideas that ‘sociology has no privileged way of approaching legal ideas and it claims that law cannot be understood in sociological terms’, basically ‘the legal idea of lies on truth and it has its own way of seeing the world’ (Cotterrell 1998:171-4). It clearly argued that legal idea should be interpreted in its own otherwise the idea of sociology will supersede the law as doctrine. And dealing with these, some scholars argued that, ‘law is an important aspect of society, framework and expression of understanding that enables society to exist’ (Cotterrell 1998:182) or ‘the analysis of law is directly linked to the analysis of social situations to which law applies’ (Schiff 1976:287). They basically argued that law shapes society and both the society and law within the concept is indispensable. Both the concepts are inseparable, merely co-existing and reinforce each other.

Moreover, it can be summarized that sociological understanding is essential wherever the law applies. Similarly, the essence of sociological interpretations lies in three assumptions–i) ‘Law is viewed as an entirely social phenomenon, ii) The social phenomenon of law should be understood empirically and, iii) It must be understood systematically i.e. from specific to general’ (Cotterrell 1998:183). Despite of the fact that, critiques doubted ‘the capacity of law to influence social consciousness, the new approaches of the relationship often see that the law constitutes social life to a significant degree by influencing social relations’ (Cotterrell 1998:176-7). And Petrazycki in Cotterrell emphasized that the law should be studied in various form of consciousness and understanding (1998:172). So one of them can be considered as the legal consciousness of the subjects to which the laws have been applied.

### **2.2.1. Legal Consciousness as an Approach**

The research in law and society have been shifted away from instrumental approach –‘law is treated as autonomous from social life, normative systems and social institutions’, towards constitutive approach–‘law as it is connected to and embedded in other arenas, allowing an examination of the cultural constraints and social norms of the law’ (Nielson 2000:1058). Ac-



According to Nielson, the important aspect of this shift is to study the legal consciousness of ordinary citizens specifically—how they think about law and how their general understanding on existing legal institutions and laws affect their lives (Ibid). Marc. Hertogh refers ‘legal consciousness’ is being all ‘about ideas, nature, function and operation of laws in society at a given time’ (Hertogh 2004:460). Basically, it can be understood as common ideas of dealing with legal issues in everyday practices in any social situations or simply legal consciousness about what someone thinks or how they position themselves in front of law.

An interesting analysis about legal consciousness is that, it is not only about what someone does or says about law but it is also about ‘how people do not think about law or it is the body of assumption that people have about the law which are simply taken for granted’ (Nielson2000:1059). It means that legal consciousness can be there even when it is seemingly absent from the understanding of an ordinary citizen and ‘thus the research on legal consciousness has broader implications for justice, legitimacy and ultimate social change’ (Ibid). The significance of using this conception is, as highlighted by Nielson ‘the research on legal consciousness helps to examine the role of law and its role in constructing understanding and various aspects of social lives’ (Nielson 2000:1059). And Nielson elucidated that the Legal Consciousness is contingent and may shift according to the different changing social situations (Nielson 2000:1061).

The term legal consciousness has been used differently in the context of American and European literatures (see Hertogh 2004). According to Marc Hertogh, the American conception of legal consciousness was first introduced with the ideas of Roscoe Pound and it deals with ‘how do people experience (official or formal) law and the European conception of legal consciousness was first introduced by the Austrian legal theorist Eugen Ehrlich and deals with what do people experience as law?’ (Hertogh 2004:457). Thus the conception of legal consciousness is not consistent and emphasizes diverse and subtle ways of understanding the worldviews.

In article ‘*A European Conception of Legal Consciousness: Rediscovering Eugen Ehrlich*’ Marc Hertogh clearly explained the shortfalls of American Legal Consciousness by reviewing three works of other scholars—Sally Engle Merry (1990), Patricia Ewick and Susan S. Silbey (1998) and Laura Beth Nielsen (2000) and a case study of a run-down neighborhood in Netherlands (see Hertogh 2004:457-71). Marc Hertogh summarized that these three studies have been analyzed through the lens of American Legal Consciousness where the law is considered to be an independent variable, static or no influence of subject towards the existing laws (Hertogh 2004:464-70). All these studies do not explicitly explain how their respondents conceive

justice or how they define law or what is the image of law for them (Hertogh 2004:471). Similarly, the case study of the neighborhoods in Netherlands provides that ‘the American conception of legal consciousness with its focus on ‘law in action’ that the legal ideal of the *Rechtsstaat* i.e. legality and equality do not play significant role in day-to-day decision making’ and rules and regulations are put aside in favor of more informal solutions’ (Hertogh 2004:470). So, although the study of the scholars around the American Conception of Legal Consciousness, but the European Conception of Legal Consciousness should also be taken into consideration specifically to the changing social situations.

Therefore, the discussions in next chapter i.e. analysis of the findings will be based on the above-mentioned concepts on Legal Consciousness and theoretical framework from the viewpoint of scholars like Marc Hertogh (2004) Laura Beth Nielson (2000) and Roscoe Pound (ideas on American Legal Consciousness) & Eugen Ehrlich (ideas on European Legal Consciousness) in Marc. Hertogh(2004).

### **2.3. Social Exclusion in the Context of Resettlement of Refugees**

The term ‘social exclusion’ is defined and used in policy frameworks in different country context. Robin Peace defined the concept of social exclusion in two ways—in narrow definition, the concept can be as ‘synonym for income poverty and refers specifically exclusion from paid work force or to those people who work in low-wage work’ whereas in broader definition it is defined much more than ‘poverty, income inequality and lack, or lack of employment and seen as multidimensional, that involved a lack of resources and/or denial of social rights and that exclusion was a dynamic process’ (Peace 2001:26). Social exclusion can be referred to as ‘dynamic process of being shut out, fully or partially, from any of the social, economic, political or cultural systems which determines the social integration of a person in society’ (Byrne 2005:2).

According to DFID (2005),

‘social exclusion is a process by which certain groups are systematically disadvantaged because they are discriminated against on the basis of their ethnicity, race, religion, sexual orientation, caste, descent, gender, age, disability, HIV status, migration status or where they live. Discrimination occurs in public institutions, such as the legal system or education and health services, as well as social institutions like the household.’ (DFID 2005:3).

Along with these definitions Robin Peace has identified ‘social marginalization, cultural exclusion, exclusion from family and community, exclusion from the welfare state, exclusion from mainstream political, economic exclusion, and exclusion from the labor market..... as different types of social exclusion that are mentioned in European Policy Texts’ (Peace 2001:22).

Similarly, Robin Peace referred to the three faces of social exclusion; ‘economic—the unemployed or those deprived of assets such as property or credit, social—the loss of an individual’s link to mainstream society and political—certain categories of vulnerable or disadvantaged groups such as women, ethnic minorities and migrants’ (Peace 2001:27). In the same line Percy-Smith (2000) in Correa-Velez et.al highlighted that, the people are more likely to be vulnerable to exclusion when they start facing multifaceted problems or multiple deprivation in society (2012:165). And multiple deprivations in society includes lack of access to resources, lack of adequate services, lack of employment, bad housing, crimes and discriminatory institutional policies (Peace 2001:25). Due to social exclusion the individual or group of people might face several psycho-social effects. And psycho-social effects might include: ‘psychological problems, relational problems, loss of identity, loss of cultural affiliations, de-integration from work relations, de-integration of family ties, problems of mental depression, loss of purpose etc.’ (Peace 2001:25).

### **2.3.1. Social Exclusion and Resettlement of Refugees**

Some countries like U.S, Canada and Australia offer resettlement for global sharing of burden and responsibility of protection of refugees in protracted situations. According to UNHCR 2011, the host countries are expected to provide all the support and facilities that will further facilitate them to integrate into the society (Correa-Velez et.al 2012:163). The conception of social exclusion in resettlement process can be analyzed through the barriers that refugees as individuals or groups face to equal and meaningful participation in social, economic, cultural and political aspects in host country (Ibid).

In the initial stage of resettlement, the refugees might be vulnerable to social exclusion and might be experiencing multiple deprivation due to the lack of institutional support and mistrust of neighbors and service providers (Correa-Velez et.al 2012:163 and Hynes 2009:100). And all these situations might lead resettled refugees towards anxiety, depression and isolation from society. According to the research on social exclusion of refugees resettled in Queensland Australia, the resettled refugees were facing barriers due to extreme unemployment, job dissatis-

faction, negative educational experiences in the education institutions and also while accessing health care (Correa-Velez et.al 2012:180-82).

Similarly, the different researches conducted on resettlement of refugees such as Block et.al (2011) in Australia; Hyndman & Mc. Lean (2006) in Canada; Wren (2007) in Glasgow UK; and Hynes (2009) in London UK, emphasized that the refugees and asylum seekers in developed countries are vulnerable towards multiple-deprivation in the initial stage of integration into society due to disruption of education, language barriers, poor employment etc. Likewise, Hyndman and Mc. Lean have argued that despite fully granted legal status and access to employment, it is not adequate for integration in totally different situation in the host society (Hyndman & Mc. Lean 2006:345). For example, many refugee youths in Australia after resettlement were 'subjected to violence or have witnessed extreme violence and undertaken migration precipitated by trauma and the extent of young people's isolation was profound' (Block et.al 2011:74 &77). The arrival of asylum seekers or refugees in the community for resettlement created certain resentment due to people's perception of them and the resource allocation (Wren 2007:410).

So, it is important to use the concept of social exclusion to reflect upon preparatory phase of resettlement of refugees abroad. It is also essential to shed light on the challenges of resettlement in the country which are absolutely different from the context they lived in for so long. It is also important to examine whether or not the refugees are prepared to deal with such anticipated circumstances in future. From this section the definitions, concepts and debates of different scholars such as Ignacio Correa-Velez et.al (2012), Jenifer Hyndman & James Mc Lean (2006) and Robin Peace (2001) will be used in next chapter to substantiate the findings of the study.

## **2.5. Humanitarianism and Refugee Protection**

According to Mark Cutts, humanitarianism 'may include both assistance and protection, and it may incorporate emergency aid, reconstruction and reintegration assistance, and even aid for longer term development and associated with diverse issues such as peace-keeping, socio-economic development, governance, human rights and the environment' (Cutts 1998:2).

Earlier, the humanitarian action has different and discrete functions between assistance and protection—assistance was related to providing material and medical services during emergency situations and protection was related to protecting human and humanitarian rights by promoting relevant international human rights laws and also refugee rights ensuring protection

of refugees (Suhrke 2002:30-31). And Suhrke (2002) also argued that although UNHCR's mandate is to protect refugees but until the 1990s its functions were focused on asylum seekers outside the conflict scenario (Ibid). Although, UNHCR initiated its humanitarian work in conflict zones such as the Bosnian War in 1993, it was much involved in supplying material and medical services (Ibid). It has also been criticized that the flow of humanitarian aid sometimes are contributing to escalation of conflict besides providing food, shelter and legal protection to the refugees (Barber 1997:8).

Due to the change in nature and size of refugees afterwards, due to changing dynamics of conflict and other natural disasters; UNHCR as a humanitarian organization expanded its mandate to protect vulnerable and disadvantaged individuals or groups in different regions around the globe (see Loescher 2001). But the shift in global political environment and UNHCR that relies on donors has influenced during implementation of its own mandate. In the same line Verdirame & Harrell-Bond argued that, 'in a highly competitive funding environment, for UNHCR and its partner organizations, institutional survival rather than the protection of refugees became the primary determinant of policy' (Verdirame & Harrell-Bond 2005:17).

Therefore, UNHCR focused on supporting encampment policy in order to maintain the visibility of their work or to prove that there is presence of refugees in camps which is apparently favorable for attracting donor funding (Ibid). Along with these, the donors also chose to fund which trainings to be conducted in case of Africa—for example 'the donors funded human rights training courses for police and prison wardens but did not include immigration or border police officials and Canadian and British officials did train their Ugandan counterparts in how to recognize forged passports' (Verdirame & Harrell-Bond 2005:56-7). These show that the activities are influenced by the donors' interest.

Similarly, UNHCR can prioritize the implementation of its internal policies, ignoring the existing needs of the refugees in a very much bureaucratic manner (Verdirame & Harrell-Bond 2001:18). This argument was clearly explained with example of the systematic cuts of the food ration in Northern Uganda, despite the fact that the settlements were going through drought and food insecurity (Ibid). Likewise, the destruction of Ogujebe transit center, uprooted '24,000 people at gun-point into large lorries with all of their life's possessions, splitting up families in the rushed process'; this situation was considered an achievement rather what it was: gross human rights violations (Ibid). Although at some point Ilse Griek stated that 'neither UNHCR nor host country have absolute control over refugee camps' (Griek 2014:47) but the

above mentioned examples in Uganda is juxtaposing the influence of UNHCR and its internal policies.

Similarly, Nepal underwent devastation due to two subsequent earthquakes i.e. 25<sup>th</sup> April and 12<sup>th</sup> May 2015. This has created an additional humanitarian crisis in the country. So, according to OCHA, 33 different humanitarian organizations were competing back at home to get funds to support earthquake devastated Nepal (OCHA & Relief Web, 8<sup>th</sup> May 2015). The agency working for refugees such as UNCHR was also found actively involved in reliefs and aids by making an appeal to donate to the victims of earthquakes (see UNHCR Nepal). Thus, it is necessary to examine if the legal consciousness of both the agencies and the refugees in Bhutanese refugee camps have been affected by additional humanitarian crisis due to earthquake in Nepal. So, the concept of humanitarianism with respect to refugee protection has been applied to analyze the current situation refugee resettlement of Bhutanese Refugees. From this section, the ideas, concept and the arguments of Gil Loescher (2001) and Guglielmo Verdirame & Barbara Harrell-Bond (2005) will be used to support the arguments presented in next the chapter.

So, the chapter 2 has dealt with different laws attracted to refugee protection and refugee resettlement reviewing relevant literatures in books, journals, articles, reports and policy briefs. It has already highlighted the socio-legal research an approach of legal consciousness as the theoretical framework putting forward the ideas on two types of legal consciousness which is central to the discussion in later chapters. In addition to these, this chapter briefly discussed on the some concepts social exclusion and humanitarianism in relation to refugee resettlement. However, this study is not about the post-resettlement period but focusing on the prior resettlement phase. So, the social exclusion as concept has been put forward within the discussion in order to support the argument of based in next chapter.

## Chapter 3 Analysing Resettlement of Bhutanese Refugees in Nepal

### Introduction

The numbers of Bhutanese refugees are inconsistent in different articles published, however an estimated 105,000 Bhutanese refugees either evacuated or fled mostly from the southern part of Bhutan (IOM Nepal 2008:2). Among those, some left the country after signing voluntary migration form, while others fled due to fear of state-oriented persecution and arbitrary detention. For almost 15 years, they were compelled to live in a state of statelessness or without any legal citizenship. Without any future prospects they were confined within the seven refugee camps situated in Nepal. The 15 rounds of talks between the Government of Bhutan and the Government of Nepal could not yield any durable solutions thus failing to repatriate a single refugee in Bhutan (IRIN, Humanitarian and News Analysis).

According to UNHCR in October 2006, United States of America expressed its willingness to re-settle 60,000 Bhutanese refugees (Human Rights Watch 2007:1). This step of U.S. towards re-settlement is comprehended by seven other countries—Canada, Australia, Denmark, Norway, the Netherlands, New Zealand and the United Kingdom. In 2007, the offer of third country resettlement as one of the durable solutions brought anxiety and dilemma to the refugees due to the lack of proper information about the resettlement (Human Rights Watch 2007:4).

Eventually, UNHCR began to disseminate information about third country resettlement through radio programs, brochures, flyers and through CMC<sup>9</sup>. But still, the lack of clear and adequate information on third country resettlement and repatriation as other prospects of durable solutions led to anxiety and tensions within the camp between refugees (Human Rights Watch 2007:1). In short, refugees were put into dilemmas with an offer of third country resettlement in protracted refugee situation.

Between 2007 to June 2015, a total of 97,197 refugees had already left for resettlement and approximately 13,000 had expressed their interests and/or are under the process of resettlement<sup>10</sup>. By the time of research (July 2015), majority of the Bhutanese refugees had either already left the camps or were preparing to leave. It is not that the Bhutanese refugees had a

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<sup>9</sup> According to the interview with Senior Durable Solutions Assistant, UNHCR, Damak Jhapa Nepal.

<sup>10</sup> Source: Statistics of June 2015, UNHCR Damak Jhapa, Nepal.

strong desire for resettlement but they did not want to live out their own lives and their children's lives inside refugee camps. Out of a total 15 of interviewees, 7 of them had been waiting for third country resettlement to the U.S., 2 to Australia, 2 to Canada, and 1 to New Zealand. Among the 15 respondents, one interviewee expressed his interest for resettlement because of his degrading health situation and he could not afford the treatment in current the asylum country.

Nevertheless, approximately 7 to 8,000 of the residual population of refugees which was comprised of those refugees who were either demanding repatriation or those unfit for resettlement and/or could not meet the criteria for resettlement. Similarly, the current scenario inside the camp during field observation can be reflected from the ongoing activities around CMC, CWT and UNHCR offices inside the camps. For example, it was very common to see many refugees busy discussing family issues inside mediation center within the office of CMC; sitting under the two big banyan trees with updates on each other's ongoing resettlement process; and waiting for the new notice to be posted on the notice board. Whereas, in the same gathering, there were some refugees who were still carrying the hope to be repatriated back to Bhutan. During interview, they were so delighted to share their day-to-day life in Bhutan; about their farms, cattle and orchards. They clearly showed their love and intimacy with land and still living with the hope of going back in the future. They expressed that, they are waiting for the concerned agencies particularly UNHCR to take necessary steps for their repatriation.

Thus, this chapter is focused on the Bhutanese refugees waiting for resettlement; the findings are directed towards the refugees waiting for resettlement in order to make generalization on broader population inside the camps through socio-legal research approach of legal consciousness. Firstly, this chapter will discuss how the inconsistencies of laws between the asylum country and resettlement country affected the resettlement process. It will be followed by discussions on what kind of preparation Bhutanese refugees undergo before flying to their destination country. Finally, this chapter will discuss their experience during the process of resettlement particularly during additional crisis of earthquakes and how the unconscious ideas about laws affect not only their decisions on resettlement process but also their day-to-day lives.

### **3.1. Inconsistencies of laws between current host country and country of resettlement**

Bhutanese refugees residing inside the refugee camps in Nepal ultimately became subject to its law within its territories and they were also governed by the rules and regulations of UNHCR



mandated by its principles. The present situation of the Bhutanese refugees can be analyzed from the Socio-legal research approach of Legal Consciousness particularly from the standpoint of American Legal Consciousness; the finding deals with how the Bhutanese refugees under the process of resettlement, are experiencing the formal or official laws inside the camps during the process of resettlement (see Hertogh 2004: 457). The findings clearly showed that during resettlement process, they were obliged to follow the foreign immigration laws and policies of resettlement countries in order to be eligible for resettlement.

In short, Bhutanese refugees have no options besides following existing laws and policies relevant to resettlement. In the same line, Ilse Griek also stated that, the Bhutanese Refugee have no any other options rather complying the UNHCR rules and regulations and foreign immigration rules (Griek 2014:265). It clearly shows that the Bhutanese refugees did not have any influence over those laws and hence amendment of those laws was not possible. These had affected both the resettlement process and day-to-day lives of Bhutanese refugees. Now, these arguments will be cleared by discussing the laws and regulations that are attracted towards the cases of mixed marriages and polygamy affecting their resettlement process and their day-to-day lives.

### **3.1.1. Mixed Marriage and the Resettlement of Bhutanese Refugees**

Due to protracted refugees situations and future uncertainties some Bhutanese refugees chose to marry people outside the camps. It is commonly termed as ‘Mixed Marriage’ inside the camps. During the time of data collection (July 2015), the term ‘Mixed Marriage’ was coming out from almost everyone’s mouth because it was directed towards those refugees whose resettlement process was delayed due to by marrying someone other than refugees; particularly Nepalese people outside the camps. But, this mixed marriage system created different situation for refugee man and refugee woman especially during the process of third country resettlement.

If a female refugee is married to a man outside camp, resettlement is not considered as durable solution; she can acquire citizenship from her husband. ‘But if she gets divorce from her husband, then again she will be eligible for resettlement’ (Senior Durable Solutions Assistant, UNHCR Damak Jhapa). After verification of their ‘case file’<sup>11</sup> male refugees under mixed marriages were able to proceed for third country resettlement. However, it was not the same

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<sup>11</sup> Case file is the record file with refugee’s necessary documentation proceeds to UNHCR for further verification during resettlement process.

case with woman. If a refugee woman was married to a man from outside the camp, she was not eligible to apply for the third country resettlement. Due to these, the cases of divorce among Bhutanese refugees have increased with the process of resettlement; differing on opinions on resettlement between couples (Griek 2014:259). Therefore, female Bhutanese refugees under category of mixed marriages were obliged to comply with UNHCR laws and regulations to be eligible for third country resettlement. In short they have to divorce their husband and get children's custody to be eligible for resettlement. Due to such provisions of existing laws and regulations, not only resettlement process but to a greater extent their family lives had been affected.

It is also clearly reflected through interviews and discussions presented below:

I got married to a man outside the camp. It was an arranged marriage. But after sometime my husband got another wife and vanished out of sight and did not return till today. And neither have I acquired citizenship from him nor are my children registered for citizenship. Now I need his permission for my children to complete the process for third country resettlement. Nobody knows about his whereabouts and now I am in a dilemma. What shall I do? (Ambika, name changed).

Ambika and her story represent the pain and dilemmas of other refugee women who have been long waiting for resettlement. The bottleneck created by lengthy and complicated resettlement procedures has anguished women like Ambika in the refugee camps. Her resettlement process was in hold for long time as she was unable to get custody from her missing husband. She often visited UNHCR office for counseling if UNHCR officials can solve her problem. She had no option left besides waiting for the call from UNHCR for next step.

I have strong desire for third country resettlement. I came to know that it will be better for my children's future. But I got married to a man outside camp. As UNHCR said, I cannot be eligible for resettlement unless I divorce my husband. And the UNHCR official said that my case falls under 'mixed marriage'. But my husband does not want to divorce and give custody of my children (Kumari, name changed).

The option of resettlement raised hopes with future prospects to majority of Bhutanese refugees till date, but it also has intensified problems to some other woman like Kumari. She had expressed her wish to resettle along with her children in front UNHCR. But the problem is that she was married to a man outside the camp and became ineligible for resettlement. According to UNHCR, it will be possible only if she gets divorce and custody of her children. She said that, she had already expressed her interest of resettlement but her husband was not willing to divorce and give children's custody. So, such circumstances inside camps had created family tensions sometimes leading to domestic violence.

This contradicting situation of separate provisions between male and female Bhutanese refugees is an outcome of unequal provisions for man and woman articulated by Citizenship Act of Nepal 2006. It can be further elaborated as according to Article 5 that says 'the procedures for acquiring clear provision if a woman gets married to a Nepalese man can acquire citi-

zenship on basis of sub-section (1) & (2), but there is no single provision for a man who is married to a Nepalese woman' (Nepalese Citizenship Act 2006). Therefore, if a foreign man marries a Nepalese woman, he cannot acquire Nepalese Citizenship (Ibid).

Due to such provisions, a refugee woman married to a man from outside camp is not eligible to apply for resettlement. Thus, it has become one of the main reasons for increasing divorce rates particularly when the dispute between husband and wife intensifies due to different opinions on resettlement. And hence, among the total interviews held, the unresolved family issues were the main reasons behind their long wait for resettlement.

### **3.1.2. Polygamy and the Resettlement of Bhutanese Refugees**

Polygamous marriages complicate and thus delayed the resettlement process whole family's process of resettlement creating family disputes and tensions. A polygamous man considering his favorite wife as his legal wife and divorcing the other in order to precede resettlement process has been commonly observed inside the refugee camps. This is also because, as a common rule, polygamous families were clearly told that, polygamy practice is restricted in the resettlement country, and if they still request to resettle, they have to decide which wife will be resettling with their husband and also which children will stay with which wife (Griek 2014:242). For example in U.S. where larger numbers of refugee population have resettled, polygamy is banned in all 51 states through a provision in the U.S. immigration law (Ibid).<sup>12</sup> The restraining provisions on polygamous marriages in resettlement country in contrast to their country of origin compelled the refugee's family members to separate (family disintegration) and resettle in different places preferably different countries or different cities.

The other wife after getting divorced from her husband and those children who decided to stay with their mother will be considered as 'vulnerable member'. So, the separate process for resettlement will be started again preferably not in the same country or same city (Senior Durable Solution Assistant Officer, UNHCR Nepal).

For example, Bikash (name changed), due to polygamous nature of his family had been waiting to be resettled for 5 years. He explained that, his father had two wives and as per UNHCR rules and regulations they cannot apply for resettlement unless his family resolved the issues of polygamous marriages. Due to these, the family members started quarreling with each other and that created tensions within his family. But after several discussions with family members, his father decided to resettle with his stepmother. After that he was going to resettle

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<sup>12</sup> Note: The provisions regarding polygamy law in U.S immigration law is the polygamy bar out in section 212 (a) (10) (A) of the Immigration and Nationality Act, which bars the admission of practicing polygamists (or those who intend to practice polygamy) to the United States ( Griek 2014).

with his mother; UNHCR wanted at least one child to stay with his mother. Like Bikash's family, issue of polygamy is very common among the refugee families who are still waiting for resettlement since the process began in 2007.

Furthermore, it can be elaborated more by discussing the persisting issue of polygamy inside the Bhutanese refugee camps. Polygamy is considered legal in Bhutan<sup>13</sup> and the practice of polygamy is prevalent in the asylum country. In Nepal, polygamy is criminalized and prosecuted by the state in accordance with the provisions available in Article 9 of the Nepalese Legal Code 1963; however a man may take additional wife if certain conditions are met<sup>14</sup>. Despite a crime, polygamy is still prevalent in Nepalese society. So, for male Bhutanese refugee, it is common to have more than one wife as polygamy is not a crime in Bhutan.

Like a case discussed earlier, the polygamous families with unresolved issues were also among the one waiting for resettlement. For example, Bikash became eligible to resettle with his mother only after his father decided to resettle with his second wife after divorcing his first wife (Bikash's mother). In his case, the family members had to split in order to become eligible for resettlement because the domestic legislation of resettlement country articulates that if any party is involved in polygamy or intended to practice polygamy, the request for resettlement will be denied (Griek 2014:243). So, the disintegration of family members was commonly observed among the polygamous families inside the Bhutanese refugee camps.

In both cases i.e. mixed marriage and polygamy, Bhutanese refugees under the process of resettlement positioned themselves as subject to the existing formal laws; whether it was legal provisions of asylum country, UNHCR rules and regulations or foreign immigration of laws of resettlement country. In order to be eligible for resettlement the Bhutanese refugees had to comply with the existing laws related to resettlement. Thus, from the standpoint of American Legal Consciousness in both cases the existing laws relevant to resettlement are found to be static and independent. Therefore, Bhutanese refugees have no influence over those laws. As a result, the Bhutanese refugees were having social problems such as increased divorce rates, family disintegration and sometimes domestic violence.

Although in-depth analyses the implications inconsistencies of laws relevant to resettlement are presented above, it is essential to shed lights on other challenges of resettlement of

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<sup>13</sup> Countries and Culture, retrieved from: <http://www.everyculture.com/A-Bo/Bhutan.html>

<sup>14</sup> A man can take additionally legal wife if his first wife suffers from an venereal disease, a certified medical board proves that is she is incapable of bearing children, she is insane, paralyzed and if go blind (Source: Saktida 2015)

Bhutanese refugees. So, the next section will discuss the preparatory measures that have taken by the Bhutanese refugee prior to resettlement.

### **3.2. Preparation for the Integration of Bhutanese Refugees Prior flying to Resettlement**

Bhutanese refugees have expressed their interest in resettlement for a better future. But according to interviews held, Bhutanese refugees were found to be unaware about difficulties and challenges they might face in early stages of integration into a host society that is entirely different from the existing situation inside the camps. The main aim of highlighting this discussion is to argue that the information provided prior to resettlement is not adequate for them to cope with unanticipated problems and challenges in destination countries. It is also argued by Correa-Velez et.al stating that, such situation is likely to increase vulnerability of resettling refugees towards social exclusion in destination countries (2012:164). This elucidates that the Bhutanese refugees with limited or lack of information are vulnerable to social exclusion in their destination countries. Despite of the fact that Bhutanese refugees underwent 3 to 5 days of cultural orientation program (limited to five resettlement countries)<sup>15</sup> prior to their resettlement, they were unaware about their existing social and legal institutions and how to deal with their legal rights in destination countries.

The Bhutanese refugees were relying on already resettled family members. It helped them to reduce their anxiety to some extent but it was not the same case with every refugee because not every Bhutanese refugee was going for family integration. So, it is important to reflect upon whether the 3 to 5 days cultural orientation program is adequate for Bhutanese refugees to resettle in completely different context to their existing situations inside the camps. As per the interview, the cultural orientation program delivered in camps is reflected as such:

Cultural orientation session for me was about the culture of destination country 'Australia'. As we are going to the country that totally different from the existing living situation, they taught us how to deal with the culture shock. For example, we cannot drop by to our friend's place without permission. We have to follow certain traffic rules etc. (Doma, name changed)

Like Doma, those respondents who went through cultural orientation session basically talked about how they can deal with culture shock and personal etiquettes. They reflected about the modes of teaching; the concerned officials discussed the courses through visual and verbal

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<sup>15</sup> Note: According to interview held with official of UNHCR Nepal, the 3 to 5 days orientation is provided to those Bhutanese Refugees whose destination countries are U.S., Canada, Australia, Norway and the Netherlands (Also can see, website of IOM Nepal).

presentations. But during interviews, none of the Bhutanese refugees were able to reflect upon, what are the legal rights for them, and how can they enjoy those rights. The respondents were aware of the UNHCR laws and regulations and also Nepalese domestic and criminal laws, as they had to deal with it every day. But, they were unaware of the foreign immigration laws regarding their destination country.

During orientation program, they (IOM staffs) told us that once we get our “green card” (permanent resident card of U.S.), we can work for ourselves. They taught some behavioral activities such as how to cross the street, how to talk to people, how to use toilets, we should not pick our nose..... I do not know anything about the immigration laws and regulations of U.S. or legal rights that are meant for us. Actually I do not remember if they discussed such things about us. I am planning to work in the same company in U.S. where my sister in-law is working (Shova, name changed).

Like Shova’s reflection, inside the camps it was not new for any respondents to have resettlement anticipation which was blend of better and uncertain future. During interviews, the respondents said that they managed to see how their destination countries look like from the videos and pictures screened during orientation session. They were worried about their illiteracy and inabilities to speak proper English language as required sustaining themselves in destination countries. And that they might go through the problems of communicating people and searching jobs as such. They clearly expressed that, 3 to 5 days cultural orientation sessions gave them some idea about the day-to-day lives in destination country. However, it is still not enough for the Bhutanese refugees to prevent from social exclusion and successfully integrate into the host society of destination country.

During the resettlement process of Bhutanese refugees, IOM in collaboration with UNHCR and the Government of Nepal and eight countries participating in resettlement is facilitating selection mission, conducting medical examinations of the selected Bhutanese refugees for resettlement and cultural orientation for the destination countries, facilitating exit permit and arranging transportation till they reach to the destination country (IOM, Nepal). The cultural orientation program will be conducted for 3 to 5 days for those refugees who are selected for U.S, Canada, Australia and Norway as resettlement country (Ibid). The orientation course primarily focus on early concerns of resettlement such as housing, employment, education, social services and legal rights (Ibid).

In addition to these, ‘UNHCR and IOM neither shared resettlement Standard Operating Procedures (SOP) and specific rules with refugees nor they gave the documents that sets out immigrations laws of those countries that participated in the resettlement program’ (Griek 2014:265). It clearly indicates that Bhutanese refugees lack necessary information related to their destination countries and might go through dire situation in early stage on integration.

For further elaboration on these, this paper has used different definitions of ‘social exclusion’ from several scholars. So, social exclusion can be defined as the process which excludes group or individuals on the basis of their caste, gender, sexuality, ethnicity, origin from institutional and social benefits (see Peace 2000, Byrne 2005 & DFID 2005). And the ‘factors such as socio-economic disadvantage, lack of social support and experiences of discrimination have been found to contribute to anxiety, depression and feelings of social isolation among resettled refugees’ (Ibid). The Bhutanese refugees are very much likely to face the consequences of social exclusion particularly in early stages of integration if they are integrated without proper information. This statement is also supported by Kenny’s illustration that how refugee often experiences difficulties in the initial stage of resettlement due to lack of substantial knowledge on institutional support available to them in destination countries (2011:219). In the same line, Hyndman and Mclean argued that despite full legal status and access to employment it will not be easy for refugees to integrate in drastically different situations in destination countries (Hyndman & Mclean 2006:345). The lack of proper information about their legal rights including legal and social institutions, make Bhutanese refugees more vulnerable towards social exclusions in an entirely new host society.

During interview, UNHCR official claimed that all the necessary information were provided prior leaving to destination country, but none of the Bhutanese refugees were able to express what foreign immigration laws are and how they will be governed by those laws in destination countries. They simply replied that they know nothing about those laws and they will be relying on other family members who have already resettled there. The discussions above clearly show that the information provided prior to resettlement is inadequate to cope with unforeseen problems and challenges in an entirely different host society. Thus, the Bhutanese refugees are vulnerable to social exclusion in early stages of resettlement. After analyzing the challenges above, now this paper will discuss additional resettlement challenges that might have occur due to additional humanitarian crisis in Nepal.

### **3.3. The Additional Resettlement Challenges for Bhutanese Refugees in the face of 2015 Earthquake**

The third country resettlement offer to the refugee raised hope with future prospects. But, the additional humanitarian crisis i.e. 2015 earthquakes in Nepal again served uncertainties and dilemmas for the Bhutanese Refugees. It is because the selection teams particularly from New Zealand and Canada were supposed to come to the camps for further processes, were delayed.

The reasons behind highlighting this situation is that, due to the additional humanitarian crisis in Nepal delayed resettlement process in Canada and New Zealand. Bhutanese refugees whose destination countries are other than U.S has no options but to wait for the arrival of selection mission. They have already started thinking about expressing their interest of changing destination country. This has led to the shift legal consciousness of the Bhutanese refugees whose resettlement process was delayed due to earthquake incidents. Here the shift of legal consciousness can be explained from Nielson's statement that 'the legal consciousness is contingent and may shift according to the different changing social situations' (Nielson 2000:1061). Like Nielson's interpretation, the legal consciousness of Bhutanese waiting for resettlement particularly to Canada and New Zealand was changing due to the situation of delayed resettlement. And the in-depth discussion about this existing situation is made below:

On 25<sup>th</sup> April and 12<sup>th</sup> May 2015, Nepal was devastated by consecutive hits of earthquakes that resulted into the around 8,000 deaths, more than 16,000 injured and destruction of 3,00,000 houses (Telegraph, UK). During interviews, the respondents were excited to share their experiences; how the whole camp was under tremor and what kind of thinking promptly came into their mind. They said that, they were traumatized with the earthquake incident, although it did not have much impact as many other places in Nepal.

We have applied for New Zealand as third country resettlement. But after earthquake incident in Nepal our process is in hold. Everyone we knew has already left for resettlement to their destination countries. We have been waiting for resettlement but the '*Toli*' has not arrived for New Zealand. (Bipana, name changed).

Bipana and her family members have been waiting for resettlement mission from New Zealand. They expressed their interest for New Zealand because of personal reasons. Their process was delayed because the selection mission from New Zealand was delayed due to the earthquakes. Not a single mission has arrived to the camp during or after (till research period: July 2015) earthquake. She said that, she got more anxious seeing her neighbors leaving camps to fly to their destination country (only U.S). During interviews, the respondents revealed that the resettlement process for U.S continued even during and after the earthquake incidents in Nepal. Like Bipana's, the unanimous response was coming from all the refugees whose resettlement process was delayed due to earthquake incidents.

The resettlement process for Canada and New Zealand was delayed because not any selection missions from those countries were organized during or after (July 2015) the incident of earthquake. The Resettlement Support Center in Jhapa organizes the selection missions for the U.S., Australia, Canada, New Zealand, Norway, Denmark, the Netherlands and the UK (IOM, Nepal) and this process is commonly used as '*Toli/Mission*' by Bhutanese refugees inside the



camps. According to the respondents, arrival of selection mission from the country other than U.S. such as New Zealand and Canada was delayed due to the earthquake incidents. Unlike Canada and New Zealand, the resettlement process for U.S continues throughout the year and it was not interrupted during and after the earthquake in Nepal. But, those refugees who already left the camp for departure had to return because of air strikes in Tribhuvan International Airport in Kathmandu due to earthquake.

As per earlier discussion, this situation can be further explained by analyzing the interviews held inside the camp. For example, one respondent said that, if concerned authorities kept delaying for the resettlement process, her family might express interest of changing destination country in front of UNHCR. She said so because she was well aware that U.S continued resettling refugees even in additional humanitarian crisis that. Consequently, such circumstances seems to make the refugees more impatient and intensifying their anxieties that is affecting their decisions about destination country.

According to the respondents, during and after (July 2015) none of the selection mission arrived since earthquakes hits in April 2015 for further process. Due to further uncertainties Bhutanese refugees were worried and cannot do anything but to wait or express their interest to UNHCR in changing destination country. However, the ultimate decisions will be taken by the agencies whether they can change their destination countries; they can only express their interest to UNHCR<sup>16</sup>. And Verdirame & Harrell-Bond also argued that it is the country who participated in resettlement that decides time, numbers and categories of refugees to be resettled (2005:283-86). The refugees can express their interest to change their destination country in front of UNHCR however the decisions are made by country participating in resettlement<sup>17</sup>.

Similarly, the Bhutanese refugees are already stuck in protracted situations for more than 25 years due to UNHCR's prospect for repatriation by implementing long-term educational programs, small income generating projects and community development approaches. The long-term projects run by UNHCR provided more time and space. Ilse Griek also argued by stating that 'although they are in protracted situation the humanitarian aids apparently becoming transitory and the camps they are living ended up to be the temporary places' (Griek 2014:17). It is necessary to discuss with the passage of time if the humanitarian agencies like UNHCR and its partner organizations like WFP can come under strains due to budgetary con-

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<sup>16</sup> Interview with Student of ISS, former officials of UNHCR in Syria and UNHCR in South Sudan and worked in Refugee Resettlement Issues.

<sup>17</sup> Ibid

straints consequently cutting down essential services including food, fuel and medical care, why was it necessary to request the Bhutanese refugees to donate the plastic sheets which were needed to repair their leaky roofs during monsoon? It can also be argued that, UNHCR can strategize to support any other humanitarian crisis going beyond its mandate to protect refugees. Similarly, here the shift in legal consciousness of refugee agency can be identified. This statement is also supported by the Marc Hertogh's argument; he stated that the legal consciousness of subject is shifted when the formal rules and regulations are put aside in favor of more informal solutions (Hertogh 2004:470). So, it can be said that there is shift in legal consciousness because of UNHCR's changing internal policies supporting the relief and aids to the victims of earthquakes and beyond its mandate of refugee protection.

During interviews, they disclosed some interesting issues such as during emergency situations, some of the Bhutanese refugees went with UNHCR to earthquake devastated areas to help the victims of earthquakes. At the same time UNHCR requested CMC office to talk to the Bhutanese Refugees and donate the tarpaulins that are allotted to repair their leaky roofs for upcoming monsoon. According to the interview held with ISS student (former official of UNHCR in Syria and South Sudan), sometimes UNHCR comes forward to help in additional crisis through its sister agencies but to request for material donations from refugee itself is considered as inappropriate act of refugee agency.

Since 2014, the issues of Bhutanese refugees are no longer kept in UNHCR priority list situations (European Settlement Network). On the one hand it is because majority of the Bhutanese refugees have already been resettled and on the other is the emerging refugee crisis in other regions such as Middle East and Southeast Asia. One of the best examples of donor fatigue in Bhutanese Refugees came in December 2006, during which World Food Program (WFP) notified that it had not receive any international funds and it led to the reduction of all the aids and services that is being provided to the refugees (Human Rights Watch 2007:19). Similarly, the plastic sheets (tarpaulin) that used to be provided twice a year in order to repair the huts of Bhutanese refugees have been reduced to once a year and only to vulnerable families (Ibid).

It clearly shows that UNHCR and other humanitarian partner organizations can become donor fatigued anytime. But the respondents, during interviews shared that, with the request of UNHCR, they donated the tarpaulin allotted to repair their leaky roofs to the earthquake vic-

tims<sup>18</sup>. Nevertheless, the reason behind putting these things together sheds light on how humanitarian organizations like UNHCR shifts their priority from protection of refugees to support and serve natural disaster led humanitarian crisis. So, the main points of discussions of this section is the additional humanitarian crisis due to earthquake incidents has shifted the legal consciousness of both the Bhutanese refugees whose resettlement process was delayed and the also the UNHCR.

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<sup>18</sup> UNHCR requested the Camp Management Committee to discuss with other refugees if they are willing to donate their allotted tarpaulin to the earthquake survivors (On the basis of interview with respondents and CMC members).

## Chapter 4 Conclusion

For almost 16 years, Bhutanese refugees were confined to stay inside the seven Bhutanese refugees camps without any prospects of durable solutions. Although the offer of resettlement as durable solutions raised the hopes of Bhutanese refugees, the lack of clear information about resettlement contributed to refugee's dilemmas and led to tensions within refugees. But, the possibility of better future after resettling abroad has increased the interests of Bhutanese refugees for resettlement. So with regard to these, majority of the Bhutanese refugees have already resettled in eight countries that participated in Bhutanese refugees Resettlement Program. However, there are still significant numbers of residual population comprised of people who have not shown their interests for resettlement or demanding repatriation and those people who are not eligible for resettlement.

The process of resettlement of Bhutanese refugees is complicated and encompasses several challenges. From the discussions above and from the American Legal Consciousness standpoint, the Bhutanese refugees position themselves as subject in front of existing laws relevant to resettlement. It means they have to comply with the domestic legislation of asylum country within its territory, UNHCR rules and regulations inside camps and foreign immigration laws of resettlement country. And these reinforce to conclude that for Bhutanese refugees under the process of resettlement, those laws are static and they do not have influence over the ultimate decisions made for them. The inconsistencies between these laws have implications on both the resettlement process and day-to-day life of Bhutanese refugees. Due to unequal provisions of Nepalese Citizenship Act 2006, and foreign immigration laws and policies of resettlement country, particularly polygamy law has affected the resettlement process of Bhutanese refugees. Therefore, this has led to the dramatic increase of divorce rates and disintegration of family members of Bhutanese refugees.

After completion of indicated stages of resettlement and before leaving for their destination countries, Bhutanese refugees are undergoing 3 to 5 days cultural orientation session. Nevertheless, on the hand such cultural orientation program only provides information about basic living etiquettes and on the other hand it is limited to five out of the eight countries that participated in resettlement. Among all respondents interviewed none of them were aware about their legal rights. This showed that there is information gap or complete lack of information about the social and legal institutions they have to deal in destination country. These have emphasized to conclude that, such situation has increase the vulnerability of Bhutanese refugees

towards social exclusion in early stages of integration in destination country. It can also be concluded that the amount of information provided for Bhutanese refugees prior to resettlement are not enough to prevent social exclusion or successful integration into a host society that is completely different from the existing situation inside the camps.

The resettlement process of the Bhutanese refugees has been delayed due to the subsequent incidences of earthquakes in Nepal. The resettlement process has been delayed for those Bhutanese refugees who have applied for Canada and New Zealand. However, the resettlement process for U.S continued during and after the crisis; increased the tension and anxiety of those refugees whose process have been delayed. Due to the changing situation inside the camps led by additional humanitarian crisis, there was of shift in legal consciousness of Bhutanese refugees; they started thinking to express the interest of changing their destination countries if the process continued to be delayed. Although it was for short duration, there was shift on priority of UNHCR from protection of refugees to provide aids and relief to the survivors of earthquake in Nepal. This can be argued on the basis of UNHCR's inappropriate request Bhutanese refugees to donate their tarpaulins on the face of monsoon. Thus it reinforces to conclude that due to additional humanitarian crisis has served to shift the legal consciousness of both the Bhutanese refugees and refugee agency (UNHCR). The UNCHR's legal consciousness shifted from its obligation to follow mandates of refugee protection towards changing its internal policies in order to serve the victims of earthquake in Nepal.

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## Annex-I: Guiding Questionnaires

### Bhutanese Refugees: Beldangi-II and Extension

S. No.	Questions
1.	Name
2.	Age
3.	Sex
4.	Marital Status
5.	Numbers of family members
6.	<p><b>History (Bhutan)</b></p> <p>Are you born here? Or in Bhutan?</p> <p>Where did you live in Bhutan?</p> <p>What you used to do in Bhutan? Your occupation/your parent's occupation?</p>
7.	<p>When did you arrive in the camp?</p> <p>What you used to do inside the camp? (Study/work outside/household chores)</p>
8.	<p><b>Resettlement</b></p> <p>Are you waiting for resettlement?</p> <p>For which country have you expressed for resettlement?</p> <p>How long have you been waiting for resettlement? Why late?</p> <p>Have you attended the cultural orientation session?</p> <p>What kind of information did you get from those sessions?</p> <p>Are you aware of the legal rights in your destination countries?</p> <p>What do you expect from resettlement process?/ future prospects</p> <p>Do you have any idea about where to communicate and whom to contact if you have any problem in your destination country?( Legal and social institutions)</p>
9.	<p><b>Additional Crisis due to 2015 Earthquake Incidences</b></p> <p>How do you feel during the earthquake incidences?</p> <p>Do the earthquake incidences affect your resettlement process? How/ and Why?</p> <p>Were there any change in assistance that is being provided by agencies such as UNCHR, WFP and IOM?</p>