



Submission for the UN Universal Periodic Review (UPR) of Nepal

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Joint Submission

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and

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Summary

This submission highlights four key areas of concern regarding Nepal's compliance with its international human rights obligations. In particular, this submission focuses on the situation of Tibetans living in Nepal, particularly the lack of registration and legal status of Tibetan refugees and how this results in restrictions on their freedom of assembly and expression, arbitrary arrests and detentions, and restrictions on their religious and cultural rights.

Methodology

The information contained in this report was gathered through desk research as well as interviews conducted with ICT's contacts and members of the Tibetan community inside Nepal between November and December 2014.

Follow up to the previous review

During the first Universal Periodic Review (UPR) of Nepal in 2011, seven different States made a total of 9 recommendations on the situation of Tibetans in Nepal or on refugees more broadly.

Our organisations regret to note that Nepal rejected all of these recommendations.

Background and framework

Tibetan refugees in Nepal

1. According to the United Nations High Commissioner for Refugees (UNHCR), in 2011 there were approximately 20,000 Tibetan refugees living in Nepal, with an additional 1,500 Tibetans living in “refugee-like situations.”¹ Unfortunately there are no reliable statistics available since 2011, because due to increased pressure from the Nepali government, most NGOs in Nepal have either stopped working with Tibetan communities or do not publish data on the number of Tibetans they work with.² Nevertheless, due to migration trends in the region and the limited information that is available, we can safely estimate that the number of Tibetans in Nepal today, both refugees and those living in “refugee-like situations,” is likely to be far higher than in 2011.

Nepal's legal obligations regarding refugees and stateless persons

2. Nepal is not a party to the Convention Relating to the Status of Refugees of 1951 (hereafter, Refugee Convention) nor to its additional Protocol of 1967. During its first UPR in 2011, Nepal rejected recommendations concerning its accession to the Refugee Convention and its additional Protocol made by Algeria, Japan, Moldova, the Netherlands, Slovenia and Switzerland. Additionally, Nepal is not a party to the 1954

¹ UNHCR Global Appeal 2010-2011, p. 34, <http://www.unhcr.org/4b03d32b9.pdf>

² Human Rights Watch (HRW), “Under China’s Shadow. Mistreatment of Tibetans in Nepal”, March 2014, p. 52, http://www.hrw.org/sites/default/files/reports/nepal0314_ForUpload_2.pdf

Convention Relating to the Status of Stateless Persons, nor to the 1961 Convention on the Reduction of Statelessness.

3. Nepal is bound by international law to respecting the principle of non-refoulement, which precludes states from returning a person to a place where he or she might be tortured or face persecution. The principle of non-refoulement is included in several treaties signed and ratified by Nepal, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), General Comment 20 No. 20 of the Human Rights Committee (§ 9) and General Comment No. 6 of the Committee on the Rights of the Child (§ 26 – 28). During its 2011 review, Nepal indicated that it did not have a policy of forcibly returning the refugees to their country of origin.

4. A ‘Gentleman’s Agreement’ exists between the Office of the UN High Commissioner for Refugees (UNHCR) and the Nepali government concerning the treatment of Tibetan refugees who have arrived to Nepal after 1989.³ According to this agreement, Nepal will allow Tibetans leaving Tibet a safe passage through Nepali territory to India, with the assistance of the UNHCR, and ensure respect of the principle of non-refoulement. Although there were reports in the past of extortion and refoulement of Tibetans, particularly near the border with China, the last verified forcible repatriation of Tibetan refugees from Nepal was in 2010. Although there have been more recent reports of forced returns and “push-backs” at the border, our organizations have not been able to verify this information.

5. Nepal has no specific domestic law regarding refugees. Its Immigration Act of 1992 covers all judicial aspects associated with foreigners in Nepal.

6. Most human rights provisions in Nepal's Interim Constitution of 2007 apply exclusively to citizens, therefore legally excluding refugees, asylum seekers, and other migrants who do not hold the Nepali citizenship. These provisions include the right to freedom of assembly and expression, freedom of movement, to have the right to equality (§13), the right to education and culture (§17), and the right to live in a clean environment (§16).

Nepal's relations with China

7. Over the past three decades, Nepal and China have strengthened their cooperation, particularly with regards to each country's national security and policies towards Tibetan refugees. For example, in 2010 Nepal and China entered an information-sharing agreement, which resulted in unprecedented levels of surveillance, threats, and arrests of members of the Tibetan community by both Nepali and Chinese state agents. This emerged from the first ‘Nepal-China Border Security and Law Enforcement Talks’ in 2010, in which both sides agreed to share information and intensify policing on the basis of security.

8. Moreover, China demands that all governments with whom it has relations commit to a ‘one- China policy,’ and it sees any assertion by Tibetans of their unique identity

³ For more information on the Gentleman’s Agreement, see: Tibet Justice Center (TJC), “Tibet’s Stateless Nationals: Tibetan Refugees in Nepal”, June 2002, p. 88, <http://www.tibetjustice.org/reports/nepal.pdf>

as a threat to China's sovereignty and territorial integrity. In Nepal, this has manifested itself in statements by the Nepali government that assertions by Tibetans of their unique identity are “anti-China activities” and that it does not allow its territory to be used against its neighbours, stressing that its policies on refugees are guided by “geopolitical sensitivities.”⁴ However, what constitutes an ‘anti-China activity’ has never been clearly defined by either China or Nepal, leaving the term dangerously open to interpretation.

The human rights situation on the ground

Registration and legal status of Tibetans in Nepal

9. In 1974, the Nepali government began issuing Tibetans Refugee Identity Cards (RC), a state-recognized document, which allows the holder to reside and have freedom of movement within Nepal. RC holders are obligated to renew their identity card with local Nepali authorities annually. Starting in 1990, the government began issuing RCs only to Tibetans who were over the age of 16 and if they or their parents had entered Nepal in 1989 or earlier. In 1994, the Nepali government further restricted the allocation and renewal of RCs, leaving this largely to the personal discretion of immigration officers. This has resulted in very few RCs being issued or renewed in the past few years, even to eligible Tibetans, and the obtainment of a valid RC often relying on the payment of bribes. Currently, Tibetans in Nepal (both those newly arrived and who have resided in Nepal for decades) have no form of legal identification or registration with the Nepali authorities other than these rarely and subjectively issued RCs.

10. Tibetans interviewed by ICT raised the issue of the lack of official registration or government-issued identification as a matter of significant concern in their lives. Lack of documentation is at the root of many of the challenges they face, including lack of access to education, legal work opportunities, or medical and other government services, and leaves them vulnerable to crime and human rights violations with no recourse before the law.

11. Without government-issued identification, even Tibetans who have been residents of Nepal for decades are liable to be mistaken by Nepali authorities, whether intentionally or not, as newly arrived refugees. This has led to arrests, detentions, threats of expulsion from Nepal, and most commonly, the extraction of bribes by security agents.

12. Currently, most Tibetan refugees in Nepal are effectively stateless. Tibetans either born in Nepal or who have migrated from China who have not been able to acquire an RC are therefore not legally registered with the government nor do they have any government-issued identification indicating their status as a Nepali citizen or resident or refugee from China. Most Tibetan refugees also do not hold a Chinese passport; there are no passport-issuing government offices in Tibet, so in order to obtain a passport, Tibetans would need to travel to a government office in another major

⁴ For instance, Himalayan Times, “DPM Shrestha holds talks with Tibet govt official, September 2011, <http://m.thehimalayantimes.com/fullNews.php?headline=+DPM+Shrestha+holds+talks+with+Tibet+govt+officials&NewsID=310290#.VLU90RazDwI>

Chinese city, a demarche that is prohibitively expensive or complicated for most Tibetans. Therefore, Tibetans who do not have an RC or a Chinese or Nepali passport, which is the case for most Tibetans in Nepal, are not legally registered nor do they have any legal documentation tying them to any country.

13. In 2014, in the concluding observations of its review of Nepal's compliance with the ICCPR, the UN Human Rights Committee expressed concern about the lack of provision of identity documents for Tibetan refugees, placing them at risk of financial penalties, detention, deportation and refoulement. The Committee urged Nepal *“to undertake a comprehensive registration exercise of long-staying Tibetans to ensure that all persons have proper documentation and ensure...that all refugees and asylum-seekers are not subjected to arbitrary restrictions of their rights under the Covenant”*.⁵ No such registration exercise has been yet undertaken in Nepal since this ICCPR review, nor have any serious preparations for such a registration exercise been undertaken by the Nepali authorities.

Freedom of movement

14. Tibetans holding a valid RC are entitled to move freely within Nepal. However, only Tibetans who reside in remote settlements along the border are permitted into these areas with a valid RC card. The RC states:

*“Mr/Ms _____ is a Tibetan refugee. He/she is permitted to stay in Nepal in accordance with laws and regulations. He/she will enjoy freedom of movement within the territory of Nepal, with the exception of areas forbidden to foreigners, unless his/her habitual residence is located in such an area.”*⁶

15. Since 2008, however, ICT has documented anecdotal accounts of Tibetans who hold valid RCs coming under increased scrutiny when travelling. This appears to apply to Tibetans travelling to attend, for instance, religious ceremonies or anniversary gatherings.

16. Freedom of movement is enshrined in Article 12 of the International Covenant on Civil and Political Rights (ICCPR)⁷ to all persons “lawfully within the territory of a State,” including non-nationals. Article 12(3) of the ICCPR allows for restrictions to freedom of movement to protect national security, public order, public health or morals or the rights and freedoms of others, but only if such restrictions are provided for in the law of the State. Nepal's laws do not include any provision that justifies restrictions to the freedom of movement for Tibetans.

17. In order to travel outside Nepal, Tibetan refugees need to have a travel document issued by the Nepali authorities, and this is extremely difficult and sometimes impossible to obtain. The Tibet Justice Center reported in 2002 that *“[applying for a travel document] tends to be an inefficient, laborious process, plagued by systemic*

⁵ UN Human Rights Committee, Concluding observations on the second periodic report of Nepal (CCPR/C/NPL/CO/2), 2014, para. 15.

⁶ Full details of restricted areas can be found at the following link:
<http://welcomenepal.com/promotional/wp-content/uploads/2013/08/Trekking-Permit-to-Restricted-Areas.pdf>

⁷ Nepal ratified the ICCPR on 14 May 1991

delay and bureaucratic corruption at some levels. Ordinarily, refugee travel documents remain valid for one year and are non-renewable...the government issues refugee travel documents at its discretion, at times relying on the recommendation of UNHCR [...] However, there is no policy about issuing [refugee] travel documents. It is done on a case-by-case basis”.⁸ Obtaining a travel document remains as difficult and arbitrary today as it was in 2002. To qualify for a travel document, the applicant must be able to produce a police letter certifying a clean criminal record, an invitation letter from the person they intend to visit in the destination country with details about the trip, the applicant’s bank statement and passport copy, an airplane ticket, and a valid RC.⁹ Kathmandu’s Chief District Officer (CDO) is required to verify all the documents and issue an approval letter. The travel document, with a validity of one trip in a year, is issued by the Central Passport Office in Kathmandu for a fee of 5,000NPR (US \$56).¹⁰ Because of challenges to obtaining RCs and passports, not to mention the expenses associated with the application, such requirements are often prohibitive for most Tibetans in Nepal, making international travel difficult or impossible, even for Tibetans who are legal residents in Nepal.

18. The Nepali police will now only issue letters of clean criminal records (required for travel document applications) to individuals with not only no criminal record, but also no record of having been involved in political protests. One Tibetan in Nepal reported the following experience: *An officer at the CDO asked me if I had been involved in any anti-Chinese protest since 2008, because if so they would not give me the letters [of recommendation required for the travel document]. They said to me they would check with all the police stations in Kathmandu and if they found my name then my chance to get a travel document would be over. I was so worried about it because I had been detained four times in 2008, but luckily they did not find my name in their records.*¹¹

19. Some Tibetan refugees in Nepal have been offered asylum in other countries such as the USA, Canada, and India. In September 2005, the United States proposed a program to resettle certain Tibetan refugees from Nepal in the United States, a policy decision that was made in consideration of the vulnerability of many long-staying Tibetan refugees in Nepal.¹² To this date, the Nepali government has yet to approve the details of this program with the USA authorities.

Right to education

20. Tibetans in Nepal are allowed to enroll in government-run primary schools, and until 2010, Tibetans with valid RCs could apply for places at government-run high-schools and universities. However, in 2010 a new application form was rolled out by the Nepali Department of Education, requiring students to submit the numbers from their parents’ citizenship cards on their application to government-run high schools and universities. Such a requirement effectively excludes Tibetans and children of

⁸ TJC, “Tibet’s Stateless Nationals: Tibetan Refugees in Nepal”, 2002, p. 65.

⁹ Medical problems, family reunification, a conference, are also valid reasons.

¹⁰ ICT, “Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees”, 2011, p. 87.

¹¹ ICT, *Ibid*, p. 88.

¹² ICT, “US proposes new Tibetan refugee admissions program” September 7, 2007,

<http://www.savetibet.org/media-center/ict-news-reports/tibetan-protestors-without-nepalese-papers-face-removal-india>

Tibetans from accessing state-provided education above primary school, even if they have a valid RC.

21. Tibetans who have not been issued a valid RC, even if they fulfill all the requirements to be a legal resident in Nepal, are also denied access to government-run high-schools and universities. One Tibetan living in Nepal testified to such discrimination in 2010: *“My daughter became eligible for getting admission to a nursing course in Manipal teaching hospital. But the administrator rejected her admission just because she didn't have an RC.”*¹³ Conversations with Tibetans in Nepal over the past year confirm that this policy is still in effect. Tibetan students can therefore only apply to private colleges, which tend to be prohibitively expensive for most Tibetan refugee families.

22. Since most Tibetan students cannot apply to government-run high schools, NGOs have established two Tibetan high schools in Pokhara and Kathmandu. However, children from Tibetan settlements outside of these areas must leave their families and live in hostels run by the high schools if they wish to continue their education beyond primary school, a choice that is both financially and emotionally taxing on Tibetan children and their families.

23. The right to secondary education is protected by Article 13(2)b of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁴, and Article 28(1)b of the Convention on the Rights of the Child (CRC).¹⁵ However, Nepal's Interim Constitution (Article 17(2)) foresees the right to free education at the secondary level only for citizens. Preventing Tibetans without Nepali citizenship to access free state-run secondary education violates its obligations under the ICESCR and the CRC.

Right to work

24. Tibetans who are not citizens of Nepal cannot generally gain employment in the public sector. This includes employment in government schools, hospitals, local, administrative offices and the security forces. In the private sector, Tibetans without RCs report facing employment issues as they are unable to produce any form of official documentation for would-be employers.

25. While Tibetans are not formally prohibited by law or policy from working in the private sector in Nepal, according to Tibetan community leaders, employers often believe that they would face serious consequences if they do so. Tsering Sither, leader of three Tibetan settlements in the Pokhara area, stated that *“all the employers know that they cannot take on Tibetan employees, that it would be seen as somehow illegal and would have serious consequences if they were to do so.”* Tsering Sither further noted that the local police know that Tibetans “are not allowed to apply for jobs, whether in government or private sectors. But they don't know who made this decision, whether it is a Nepali government decision or a Chinese policy being

¹³ Sambad Nepal, 'Unheard Voices of Tibetans in Nepal', 2010, https://www.youtube.com/watch?v=VNJDK1ELKIM&feature=em-share_video_user and https://www.youtube.com/watch?v=VzI6klMD2bs&feature=em-share_video_user

¹⁴ Signed and ratified by Nepal on 14 May 1991

¹⁵ Ratified by Nepal on 14 September 1990

implemented in Nepal.”¹⁶ It is unclear what types of “serious consequences” are feared by Nepali employers and whether Nepali authorities would actually punish employers for hiring Tibetans. Nevertheless, the perceived threat of negative consequences for such an action is enough to prevent Nepali employers in the private sector from hiring Tibetans, resulting in discrimination against Tibetans for employment.

26. In one case, a Tibetan woman from a Pokhara settlement had been working for the private Shangri-La bank for three years. However, when the local trade union discovered this, they informed the owner of the bank that he should not be employing the woman because she was Tibetan, and put so much pressure on the bank that she was effectively forced to quit her job.¹⁷ She was eventually reinstated but her situation illustrates the precarious situation many Tibetans face in the workplace in Nepal. Political parties mobilize unions in order to garner votes, and in return must protect their members’ right to work. Having no voting rights, a Tibetan is unlikely to be affiliated with a Nepali political party, let alone a politically-affiliated workers’ union and as such is vulnerable to being undermined in the workplace by politically-affiliated unions.

27. Since May 2009, Tibetans with or without a valid RC are prohibited from registering any businesses in Nepal. As a result, Tibetan entrepreneurs usually hire Nepalese citizens to act as nominal owners of their businesses.

28. A 38-year-old Tibetan woman, who was born in Tibet and legally resides in Nepal, told of the following experience:

I came to Nepal in 1998. A relative of mine who lives here helped me to pay 8,000NPR (US \$90), so I was able to get one of the last RCs the government ever issued. I realized how lucky I was since many of my friends in Nepal haven’t got any legal documents. I opened a small shop in Boudha using the name of my landlord, who had advised me that if I opened a shop with only a RC for identification I would have problems with the police. For the ten years I had that shop, I was visited by police many times. Most of the time I gave them 500NPR (US \$6), and they never caused any problems. My landlord also had a good relationship with the Boudha police officers. I was able to get the products from one of my relatives who had a shop in Khasa town.¹⁸ which is just on the other side of the Friendship Bridge [that connects Nepal and Tibet]. Before 2008, I used to travel frequently up there to get the goods. The RC was useful for travelling at that time and the Nepali police let me go if I gave them 1,000 – 2,000 NPR. But from March 2008, the Chinese closed the border for about ten months, and my relatives had to close their shop in Khasa. I ran out of goods in my shop and decided to close it in September 2008.

I looked for a new job for months. Since 2009, many Chinese tourists have been coming to Nepal, and there are good opportunities to get jobs in travel

¹⁶ ICT, “Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees”, 2011, p 72

¹⁷ ICT, *Ibid*, p 73

¹⁸ A town on the Chinese side of the Nepal-China border, known as Dram in Tibetan and Zhāngmu in Chinese

*agencies and hotels if you speak Chinese. My friend and I went to the tourist area, Thamel, to search for a job. Most hotels and travel agencies need Chinese speakers as receptionists, tour guides, etc. Whenever I gave them my CV, they asked me whether I have citizenship. All hotel managers or tourist agency people said that they could not employ Tibetan refugees. If they do, they will have lots of problems with the police.*¹⁹

29. The right to work is guaranteed to all by Article 23 of the UDHR and Article 6.1 of the ICESCR. However, Article 18 of Nepal's Interim Constitution guarantees this right only to its citizens

Freedom of Assembly and Expression

30. In April 2013, Pushpa Kamal Dahal, also known as Prachanda, former Prime Minister and Chairman of the Unified Communist Party of Nepal (Maoist), assured China's President Xi Jinping that Nepal will repress any "anti-China" activities by Tibetan refugees.²⁰

31. Tibetans, who publicly display objects such as flags or T-shirts that make reference to Tibetan national symbols or political activism, are likely to have this material confiscated and are at risk of arrest. For example, on 19 March 2014, Ngodup Tsering, an American citizen of Tibetan origin, and his Canadian friend were arrested by 15 Nepali police officers while visiting the Swayambhunath temple, for wearing a jacket with the words "Team Tibet" on the back. The two tourists were reportedly told that the words 'Team Tibet' were illegal in Nepal. The two tourists were released from custody only after an intervention by the US Embassy.²¹

32. Before 10 March 2015, on the occasion of the commemoration of Tibet's National Uprising Day, Nepal's police spokesperson proclaimed: "*If anyone is found indulging in protests or other such activities, they will be dealt with accordingly.*"²² Tibetans could, therefore, only gather privately for prayers since the authorities denied their right to peaceful protest. Such activities, said Kathmandu's Chief District Officer Ek Narayan Aryal, are against Nepal's commitment to its "one-China policy."²³

33. According to interviews undertaken by ICT with the Tibetan community, the number of demonstrations by Tibetans decreased dramatically in 2013 and 2014, which was also an indication of the contracting space for expression of views.

34. Nepal's Interim Constitution (article 12 (3)) guarantees freedom of assembly and expression only to citizens. However, this is not compatible with Nepal's international

¹⁹ ICT, "Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees", 2011, p. 73.

²⁰ Human Rights Watch (HRW), "World Report 2014", 13 January 2014, <http://www.hrw.org/world-report/2014/country-chapters/nepal?page=3>

²¹ Voice of America, "Tibet Jacket Causes Arrest of American and Canadian Tourists in Nepal", 22 May 2014, <http://www.voatibetanenglish.com/content/tibet-jacket-causes-arrest-of-american-and-canadian-tourists-in-nepal/1919682.html>

²² HRW: "Dispatches: Nepal Refuses to 'Indulge' Tibetans' Freedom of Expression", 16 March 2015: <http://www.hrw.org/news/2015/03/16/dispatches-nepal-refuses-indulge-tibetans-freedom-expression>

²³ Daily Mail: "Nepal Warns Tibetans Against Anniversary Protests", 8 March 2015, <http://www.dailymail.co.uk/wires/afp/article-2984951/Nepal-warns-Tibetans-against-anniversary-protests.html>

legal commitments under the UDHR and the ICCPR, which grant these rights to everyone regardless of their citizenship.

Arbitrary arrest and detention

35. Since the 2008 protests in Tibet, Tibetans in Nepal have been increasingly arbitrarily arrested and detained while holding peaceful protests. Moreover, even Tibetans not actively protesting but who are simply suspected of being protestors have also been arbitrarily detained before politically sensitive days and events, such as the anniversary of the March 10th uprising, the Dalai Lama's birthday, official meetings between Nepali and Chinese authorities, or high-level Chinese visits. For example, in January 2012 dozens of Tibetans were pre-emptively and arbitrarily detained in advance of an unannounced four-hour visit by China's then Premier Wen Jiabao. Mr. Wen had scheduled a visit for the previous month, but canceled it due to concerns over protests by Tibetans. During his visit, Mr. Wen agreed that China would give Nepal \$1.18 billion in aid over three years, among other support.²⁴

36. Representatives of Tibetan communities are often warned in advance by police that if Tibetans attempt to hold demonstrations on politically sensitive days and in "prohibited zones" (such as near the Chinese embassy), they will be arrested. Since there is no Nepali law which specifically prohibits "anti-China activities," Tibetans in these situations are usually arrested and detained under the general crime of 'social offences.'

37. Police and security presence in Tibetan areas is often disproportionately high on days of religious and political anniversaries. On 10 March 2014, ten Tibetans were detained for staging three separate peaceful protests in two locations in Kathmandu and one in Pokhara. The Nepalese press reported that the small demonstrations of a handful of individuals occurred despite "*hundreds of policemen deployed outside the Chinese embassy, consular office and places where majority of Tibetan refugees reside [...] Fully armed policemen were also deployed on the roads and alleys leading to the embassy, consular office and Buddhist pilgrim sites in Kathmandu and a tab kept on movement of people and vehicles.*"²⁵

38. There are no effective redress mechanisms available to Tibetans detained by police overnight or for short periods of time. The Chief District Officer (CDO) has authority over all government offices in their district, with the exception of courts and defense-related matters, and as such, they are empowered to prevent and disperse gatherings, and to approve police detentions of suspects without judicial review. Many human rights organizations in Nepal have expressed concerns regarding the expansive powers CDOs enjoy under the Local Administration Act (LAA), the Public Security Act (PSA), and the Public Offences Act (POA). The CDO is the main interlocutor for Nepal's Tibetan refugee settlement officers, who depend on CDO offices for the issuance of routine official documents, authorizations, and decisions

²⁴ New York Times, "China Makes Inroads in Nepal, and Stanches Tibetan Influx", 13 April 2013, http://www.nytimes.com/2013/04/14/world/asia/china-makes-inroads-in-nepal-stemming-tibetan-presence.html?pagewanted=all&_r=0

²⁵ Hindustan Times, "Tibet Uprising: Nepal Arrests 10 Activists for Anti-China Protests", 10 March 2014, <http://www.hindustantimes.com/world-news/nepal-beefs-security-to-prevent-protests-by-tibetans/article1-1193203.aspx#sthash.rPlv60w6.dpuf>

necessary for settlement operations and for the life of the Tibetan community in general. By virtue of exercising both administrative and security powers, CDOs are in a position to influence the organization of public events, gatherings, and even the activities of specific individuals within the community.²⁶

Religious and cultural rights

39. Repression and even criminalization of Tibetan culture and religion by Chinese government policies in Tibet is one of the main reasons that Tibetans risk their lives crossing the Himalayas into freedom in exile. In Nepal, India, and Bhutan, over the past 60 years, Tibetans have been able to perform, explore and develop their own unique cultural heritage away from the restrictions of Chinese rule, including celebrating key Tibetan festivals such as Losar (Tibetan New Year, February/March) and the Dalai Lama's birthday (July 6). However, in recent years the Nepali government has imposed strict restrictions on celebrating these Tibetan festivals. While the Tibetan community has been allowed to celebrate the Dalai Lama's birthday in a specific and pre-arranged location, the authorities acknowledge tightened security and the restriction of other types of celebrations or Tibetan activities. In July 2014, Sashi Shekhar Shrestha, CDO of Lalitpur told the Nepali Times: *"We have tightened security to prevent other activities by the Tibetan refugees here. We will not tolerate activities that are not in line with our country's policy."*²⁷ On the Dalai Lama's birthday, extra security measures are taken around the capital, especially in areas like Boudha and Swoyambhu where majority of the population is Buddhist.²⁸

40. One Tibetan from Nepal told of the following experience: *Nepali citizens of Tibetan origin, nuns, and monks are restricted on these two days [Tibetan New Year and the Dalai Lama's birthday] from travelling. Police check public buses as well as chartered buses travelling around the city that day. Often Buddhist schools (Namgyal, Songtsen, Sambotta), monasteries, and nunneries have chartered buses that take them to the Dalai Lama's birthday celebration venue. However, from 2013 onward the police have stopped these buses and not allowed them to attend the celebrations. After 2008, they have also started heightening security on other occasions such as Karmapa's birthday.*²⁹

Recommendations for the Nepali authorities:

Cooperation with and respect for international human rights mechanisms

- Extend a standing invitation to UN human rights special procedures to visit the country and assist the government with any necessary human rights reforms
- Ratify the Convention Relating to the Status of Refugees of 1951 and its additional Protocol of 1967, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and adopt implementing legislation.

²⁶ HRW, "Under China's Shadow. Mistreatment of Tibetans in Nepal", March 2014, p. 62.

²⁷ Nepali Times, "Guarded Celebrations", 6 July 2014, <http://www.nepalitimes.com/blogs/thebrief/2014/07/06/guarded-celebrations/>

²⁸ Nepali Times, Ibid.

²⁹ ICT interview with Nepali-Tibetan Citizen

Registration and legal status of Tibetans

- Issue refugee identification certificates (RCs) to all eligible Tibetans and their children
- Ensure the renewal of RCs to all eligible Tibetans and their children
- Abolish restrictions on the rights of Tibetan residents in Nepal to work, establish businesses, travel and access education.
- Enable children of refugees to acquire a nationality in accordance with Nepal's obligations under the Convention on the Rights of the Child.
- Reform Article 14.2 of the Immigration Act of 1992 to clearly and specifically define what is “*detrimental to the national interest,*” and therefore that which would justify denying the entry, stay or departure of a foreigner in Nepal.
- Enter into serious discussions with the USA authorities to put into practice the program proposed by the USA in September 2005 to resettle certain Tibetan refugees from Nepal in the United States of America
- Reform Nepal's Interim Constitution of 2007 to ensure that all human rights provisions, including the right to freedom of assembly and expression, freedom of movement, the right to equality (§13), the right to education and culture (§17), and the right to live in a clean environment (§16), are guaranteed to all people in Nepal, including legal residents, refugees and asylum seekers who do not hold the Nepali citizenship.

Freedom of Assembly and Expression

- Protect the rights of everyone to freedom of assembly and expression, regardless of their citizenship, in accordance with international human rights law
- Allow peaceful demonstrations and public gatherings of Tibetans
- Cease and investigate the widespread practices of intimidation and harassment of Tibetans, who, as a result, have refrained from organizing public political and cultural gatherings

Arbitrary arrest and detention

- Immediately cease the practice of pre-emptive detention and the wide-scale use of security forces used to intimidate Tibetans residing in Nepal
- Refrain from arresting and detaining Tibetans for the sole reason of having exercised their rights to freedom of assembly and expression

Religious and cultural rights

- Ensure the rights of Tibetans in Nepal to practice and manifest their religion, and to participate in Tibetan cultural events