



NEPAL
Unrepresented Nations and Peoples Organization (UNPO)
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The Unrepresented Nations and Peoples Organization (UNPO) is an international, nonviolent, and democratic membership organization. Its members are indigenous peoples, minorities, and unrecognized or occupied territories who aim to protect and promote their human and cultural rights and to find nonviolent solutions to conflicts which affect them.

Key Words: Refugees, non-refoulement, arbitrary arrests and detentions, Tibetan, Uyghur.

A. Introduction

In the Federal Democratic Republic of Nepal there are around 120,000 registered refugees¹. More than 20,000 of them are exiled Tibetans. A number of Uyghur refugees have passed through Nepal but have since had to flee because of the human rights and living conditions they faced². These two refugee groups are represented by UNPO, whose Members include Tibet as represented by the **Government of Tibet in Exile** (CTA), describing itself as rightful and legitimate government of the Tibet Autonomous Region. The Uyghur people are represented by the **World Uyghur Congress** (WUC), the major international body that represents the Uyghur's in East Turkestan and abroad, with main objectives of promoting democracy, human rights and freedom for their people. Other refugees in Nepal with UNPO representations originate from Iraq, Iran, Nigeria, Somalia (70 people) and Pakistan³.

B. Nepal's Normative and Institutional Framework and International Obligations

Refugees in Nepal face obstacles to obtaining basic human rights situations arising from inadequate representation within the Nepalese judicial system. The country is governed under its 2007 Interim Constitution, which replaced the 1990 Constitution of the Kingdom of Nepal in an effort to work towards conflict resolution and prevention. The promulgation process of a new, more democratic and inclusive Constitution is deadlocked over basic issues, and the initial deadline of May 28 2010 for its entry into force has been extended by yet another year⁴ - this increases tension and division over governance. Even with these setbacks, the content of the 2007 Interim Constitution still resembles that of its predecessor; accordingly not much has changed in the past decennia as many issues concerning the attainment of human rights remain uncontested and unmonitored and UNPO recommends that alternations to the draft Constitution need to be made to ensure protection of refugees particularly with regards to their legal rights and ability to access basic standards of living within Nepal.

In Nepal, most constitutional human rights regulations apply to citizens exclusively, such as the freedoms to assemble, of expression, to form political parties or unions, to move freely, to be employed and to earn money (§18) (§12 (3a-f)), to question the government and its judicial, to have the right to equality (§13), the right to education and culture (§17), the right of living in a clean environment, of receiving free health care (§16) and the right to property (§19) thereby excluding asylum seekers and refugees who do not have citizenship status.

¹ UNHCR (2009) Country profile Nepal

² <http://www.refugees.org/newsroomsub.aspx?id=1047>

³ Time (2009) 'Somali Refugees in Nepal: Stuck in Waiting Room'

⁴ <http://www.indianexpress.com/news/New-Constitution-needs-time--Nepal-PM/618745>

Moreover, Nepal has no specific refugee law, wherefore its 1992 Immigration Act manages all judicial issues connected to foreigners. It allows the government to exempt any group from its provisions and it allows the government to deny entry, presence and departure of any foreigner deemed as risky to national interests (§14). Furthermore, no legal proceeding can be made against governmental staff, provided their action is “in good faith” (§17) leaving treatment for recrimination open to subjectivity; the law also allows the government to take legal documents into custody (§6), and to arrest, search and inquire freely upon criminal suspicion (§8)⁵. Foreigners can be kept in detention for 25 days, to be extended in cases the suspect can not provide for security or bail for up to 90 days⁶. After finishing the investigation of a foreigner suspected of a crime, the given person can be expelled (§9). Other regulations the 1958 Foreign Employment Act, which determines the refugees’ legal rights⁷, but the status or handling of asylum seekers remains debated⁸.

Due to pressures of Human Rights concerns, a national Human Rights Commission has been created and manifested in the Interim Constitution (§131-133), with chairpersons appointed for a term of 6 years, who report back to the president in an annual report, containing descriptions, investigations and recommendations⁹. Unfortunately, in reality the Commission is severely underequipped and its powers are very limited.

On a transnational level, while Nepal is signatory to many international treaties, it is not a signatory to the United Nations Convention Relating to the Status of Refugees of 1951 and its 1967 Protocol¹⁰, a fact that aggravates the legal status of refugees and their own ability to influence the situations which they face. The ability of the international community to intervene is thereby severely limited. This is particularly unfortunate considering not only the high presence of refugees who have fled to Nepal but that impunity for grave violations of human rights and violations of humanitarian law in the country is a widespread concern.¹¹

C. Promotion and Protection of Refugee Rights on the Ground

1. Civil and Social Rights

Freedom of Assembly and Expression

The Freedom of Assembly is identified as a human right, political freedom and civil liberty, enshrined in the 1948 Universal Declaration of Human Rights (§20), and in the 1966 International Covenant on Civil and Political Rights (§21), manifesting the individual right to come together to collectively express, pursue, promote and defend common interests.

In Nepal, only citizens are granted the rights to assemble, to form unions and to protest. Protests of Tibetans living in exile, for instance, have in the past been treated by the Nepalese government with excessive use of force, arbitrary arrests and detention, sexual assault and restriction on freedom of movement¹². On March 10 2010 after peaceful demonstrations, 26 Tibetans were beaten, arrested and have since been held in custody, where they are protesting

⁵ <http://www.nrn.org.np/downloads/immigrationact.pdf>

⁶ <http://www.nrn.org.np/downloads/immigrationact.pdf>

⁷ http://www.childtrafficking.com/Docs/1985_2042_foreign_employment_act_english_3.pdf

⁸ World Refugee Survey (2009) ‘Nepal’

⁹ <http://www.nhrcnepal.org/>

¹⁰ UNHCR (2005) Statistical Yearbook

¹¹ http://www.adh-geneva.ch/RULAC/international_treaties.php?id_state=152

¹² Human Rights Watch (2008) ‘Appeasing China; Restricting the Rights of Tibetans in Nepal’

against their situation by means of hunger strike. In June 2009, 34 Tibetan refugees were detained for allegedly planning a demonstration near the Chinese border¹³. At a pre-Olympics demonstration in August 2008 in front of the Chinese embassy, nearly 1400 Tibetan protestors were detained. In March 2008 a peaceful Tibet demonstration march in Kathmandu was violently broken up by the Nepalese government, 475 people were arbitrarily arrested and detained¹⁴, and a week later again more than 100 protestors were detained¹⁵. The government argues that it will not allow protests and demonstrations against any “friendly nation” which includes China.

Freedom of Movement

In Article 26 of the 1951 UN Convention, freedom of movement is identified as a basic human right. It is a broad concept, including aspects such as the right to travel and to move within and between countries, without interference from the state. In Nepal, the 1958 Foreigners Act permits the Government to restrict the residence of foreigners and refugees, and provides penalties for violation. Besides of travel and residence, in Nepal freedom of movement is also infringed by arbitrary arrests and detentions; indications for and lengths of preventive detention (§25) are open for interpretation.

Tibetans who arrived before 1990, were recognized, received some protection and legal rights, and experienced economic integration. Thereafter, new arrivals were often fined, detained, and hindered from trespassing to India¹⁶; this is aggravated by the fact that Tibetan refugees have to and will continue to transit through Nepal to India. Also for future life orientation, it is necessary to be able to move freely to seek out opportunities.

Freedom of movement is regulated and limited by the use of legal documents, or identity papers. In the 1951 UN Convention, identity papers issuing is described as a fundamental right (§27). Nepal does not handle the issuing of Identity Papers and international travel documents universally, granting eligibility to Bhutanese and Tibetan refugees only.

Principle of Non-Refoulement

Article 3 of the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which Nepal is a signatory, provides that no State should extradite a person to another State where there are ‘substantial grounds for believing that he would be in danger of being subjected to torture and persecution’¹⁷. This principle is also codified in the 1951 UN Convention (§32, §33) and the 1967 UN Protocol. According to the annual Human Rights Report of the US Department of State, the Peoples Republic of China abused the rights of citizens accorded under their Constitution, by applying extrajudicial killings, torture and mistreatment of prisoners, forced confessions, arbitrary arrest and detention, lengthy incommunicado detention, and denial of due process,¹⁸ conditions which offer sufficient evidence to support the non-refoulement of refugees to China.

While Nepal ratified the Convention Against Torture on 14 May 1991, torture will only become criminalized with the promulgation of the Interim Constitution. Nevertheless it has international obligations both as a signatory to the Convention and in jus cogens international

¹³ World Refugee Survey (2009) ‘Nepal’

¹⁴ <http://www.foxnews.com/story/0,2933,340829,00.html>

¹⁵ <http://news.bbc.co.uk/2/hi/7321671.stm>

¹⁶ <http://www.refugees.org/countryreports.aspx?id=1596>

¹⁷ UN (1987) “Convention against Torture”

¹⁸ <http://www.unpo.org/content/view/936/107/>

law not to send refugees to places they may face torture. While new Tibetan arrivals are usually granted refuge in Nepal, exceptions have been made as there are reports that people have been sent back and China is even allowed capturing its refugees in Nepal itself¹⁹ with evidence indicating that Tibetan refugees were expelled and handed over to Chinese authorities illegally²⁰. Media attention has however forced the governments to act differently with Tibetan refugees, a fact which does not apply to other refugee groups.

Social Services and Aid

The right to education is codified in the Universal Declaration of Human Rights (§26) and the International Covenant on Economic, Social and Cultural Rights (§14), as well as reaffirmed in UNESCO and ECHR Conventions. The provision of primary education is the development of accessible secondary education and the access and equity in higher education are compulsory.

In Nepal, UNHCR has programmes which provide for the health care and education of refugees, however the government and international donors do not include them into poverty reduction strategies and development projects²¹. Nepal should be encouraged to work within UNHCR's strategies to develop capabilities to provide refugees within their territories with basic amenities, social services, aid and education, as durable solutions to long term refugee situations.

D. Recommendations

On Constitutional and Legal Reform

- Incorporation of human and refugee rights principles into new legal framework (e.g. new Constitution January 2011), based on international conventions.
- Establish a new, independent panel capable of checking the process of promulgation, controlling practical implementation and initiating adjustments quickly where needed.
- Strengthening the Nepalese Human Rights Commission by enlarging and granting it independent powers, also as to connect on the ground observations with legal consequences.
- UNPO urges the government of Nepal to sign and adhere the 1951 UN Convention and the 1967 UN Protocol on refugees, to show their international commitment to standards accepted in the treatment of refugees and implemented by most other states.
- Allow for integration, inclusion and political representation, at least for long-term refugees and displaced people.

On Civil and Social Rights

- Allow for activism/peaceful demonstrations of refugees to draw attention to their situation.
- Allow all refugees to travel and transit through Nepal, be prevented from refoulement, and choose their residency.
- All people, including refugees should obtain recognized Identity Papers with which they can move freely and easily.
- Ensure non-refoulement of refugees especially to countries in conflict, and where facing abuse and torture.

¹⁹ World Refugee Survey (2009) 'Nepal'

²⁰ <http://www.phayul.com/news/article.aspx?id=19515&t=1>

²¹ http://www.worldrefugeesurvey.org/index.php?title=Nepal#Law_and_Policy

- Nepal should help and facilitate the provision of social services to refugees, also as a means of resolving their dependency through empowerment.
- Seek durable solutions for refugees and asylum-seekers (e.g. large-scale resettlement); ensure that they are able to make informed and free decisions; and that those with specific needs enjoy legal and physical protection.