

**“We Don’t Want to Be Refugees Again”
A Human Rights Watch Briefing Paper for the Fourteenth Ministerial Joint Committee of
Bhutan and Nepal, May 19, 2003**

“Bhutan is my motherland. I don’t want to stay here,
even though we have the aid of other countries.”
– Seventy-year-old man, Khudanabari refugee camp in Nepal.

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I. SUMMARY

Bhutanese refugees living in Nepal’s refugee camps may finally have an end in sight for their ordeal. The fourteenth round of ministerial-level talks between Bhutan and Nepal, scheduled to begin on May 19, 2003, has the potential to find durable solutions for this refugee situation which

has troubled the region for well over a decade. A lasting solution, however, requires that basic rights of refugees be respected throughout the process. Based on field research conducted in Nepal and India in March and April 2003, Human Rights Watch has identified three areas in which rights protections will be critical to the success of the effort: the status verification process, currently underway, must ensure that all refugees have a fair, timely, and transparent resolution of their claims to Bhutanese nationality; repatriation must in all cases be genuinely voluntary; and Bhutanese authorities must guarantee the full rights of returning refugees, including citizenship rights.

Bhutanese refugees, numbering some 102,140, are living in seven refugee camps in southeastern Nepal jointly administered by Nepal and the United Nations High Commissioner for Refugees (UNHCR). Most are Nepali-speaking and many had spent all or most of their lives in Bhutan. They fled or were forcibly evicted from their homes in Bhutan in the early 1990s when the Bhutanese government introduced highly discriminatory citizenship policies targeting ethnic Nepalese, particularly those critical of the government's policies.

The Royal Government of Bhutan, a hereditary monarchy ruled by King Jigme Singye Wangchuck, has long refused to recognize the refugees' claims to Bhutanese nationality. The government has asserted that the refugees are either not Bhutanese nationals or are voluntary migrants who gave up their citizenship upon departing Bhutan. After years of stalled negotiations, the governments of Bhutan and Nepal are currently implementing a joint status verification and categorization process as a precursor to repatriation. However, this process has excluded UNHCR and nongovernmental organizations (NGOs) from meaningful participation or monitoring, and has been painfully slow: only 10 percent of the refugees have been interviewed since March 2001 and their categorization has yet to be announced.

Human Rights Watch urges the governments of Bhutan and Nepal to use the May 2003 round of ministerial-level talks to initiate a verification and repatriation process that promotes and protects the rights of refugees. UNHCR and the international community, particularly the government of India and donor countries to Bhutan, should take active measures to ensure that one of the region's most intractable refugee situations is resolved with full compliance and respect for international human rights standards. As a priority, all concerned parties should:

- Promote a transparent, fair, and efficient status verification and categorization process.
- Ensure voluntary repatriation in conditions of safety and dignity.
- Find durable solutions for refugees unwilling or unable to return to Bhutan.
- Invite international monitoring and facilitation at all stages.

Bhutan is also currently drafting its first constitution. This constitution should ensure equal protection under the law for all persons in Bhutan, including naturalized citizens, ethnic minorities, and women. A more complete set of recommendations is set forth at the end of this briefing paper, detailing the steps that Human Rights Watch believes the governments of Bhutan and Nepal, as well as international actors, can take to achieve these objectives.

This briefing paper is based on an investigation Human Rights Watch conducted in March and April 2003. Our researchers interviewed 112 refugees in the following camps in Jhapa and Morang districts of southeastern Nepal: Khudanabari, Beldangi I, Beldangi II, Timai, Goldhap,

and Sanischare. Of these 112 interviews, thirty-seven were with refugees who were elected representatives in the camp management committee, members of the refugee-run NGOs operating in the camps, teachers, or health workers. We also conducted five focus groups with refugee youth and women.

Human Rights Watch conducted thirty-five interviews with concerned U.N. agencies and NGOs, including the Kathmandu and Bhadrapur field offices of UNHCR, all the aid agencies working as implementing partners in the camps, UNICEF, refugee advocacy groups, and Nepalese NGOs. We also interviewed fifteen ethnic Nepalese currently living in Bhutan. Human Rights Watch conducted nine interviews with Nepalese government officials and police, including Foreign Minister N.B. Shah and camp-level administrators of the Refugee Coordination Unit (RCU). In New York, Human Rights Watch interviewed Lyonpo Om Pradhan, ambassador and permanent representative of Bhutan to the U.N., and Yeshey Dorji, the deputy permanent representative.

All names of the refugees interviewed are withheld or changed in this briefing paper to protect their confidentiality.

II. BACKGROUND

History of the Bhutanese Refugee Situation in Nepal

Ethnic and political tensions play a central role in the current Bhutanese refugee situation in Nepal. Ethnic Nepalese began migrating to southern Bhutan in the nineteenth century and many were granted Bhutanese citizenship by the 1958 Nationality Law.¹ However, their growing numbers and the formation of a political party were perceived as a threat to the cultural and political order of Bhutan,² ruled by the Ngalongs, descendants of Tibetan Buddhists.³ Beginning in the late 1970s, the government of Bhutan introduced a series of progressively discriminatory measures focused on the political, economic, and cultural exclusion of Nepali-speakers (“Lhotshampas”).⁴

In particular, two Citizenship Acts, one passed in 1977 and one in 1985, tightened the requirements for obtaining and retaining citizenship.⁵ The 1985 Bhutan Citizenship Act included

¹ Under the 1958 Nationality Law, an adult may obtain Bhutanese citizenship by owning land, residing in Bhutan for ten years, and taking an oath of loyalty to the King.

² The government of Bhutan feared a repeat of the events in neighboring Sikkim, where a growing Nepalese population had supported a 1975 merger with India, and in North Bengal, India where the militant Nepalese Gorkha National Liberation Front (GNLF) led an unsuccessful but bloody uprising pushing for a separate Nepali state. See Ben Saul, “Cultural Nationalism, Self-Determination, and Human Rights in Bhutan,” *International Journal of Refugee Law*, Vol. 12, 2000. According to Yeshey Dorji, the deputy permanent representative of Bhutan to the U.N., “What has happened in the neighborhood is very disturbing. Look at Sikkim, Darjeeling, Ladakh. In Sikkim, the original inhabitants are now only 17 percent of the population.... In 1990, Nepal had just become a multi-party democracy. The political leaders [of the ethnic Nepalese in southern Bhutan] wanted to take over, to have the same thing happen in Bhutan. It comes down to the question, does Bhutan have the right to exist?” Human Rights Watch interview, New York City, May 6, 2003.

³ Bhutan is home to three major ethnic groups: the ruling Ngalongs live in the west, speak Dzongkha, and practice Buddhism; the eastern Sarchops speak Tsangla and practice Buddhism; and the southern Lhotshampas speak Nepali, and are primarily Hindu. See Tang Lay Lee, “Refugees from Bhutan: Nationality, Statelessness, and the Right to Return,” *International Journal of Refugee Law*, Vol. 10, No. 1-2, 1998, p. 118.

⁴ “Lhotshampas” refers literally to “people living in the south.”

⁵ In order to become a citizen by naturalization the 1985 Bhutan Citizenship Act requires: twenty years of residency in Bhutan; the ability to speak, read and write Dzongkha proficiently; good knowledge of the culture and history of Bhutan; a good moral character; no “record of imprisonment for criminal offenses in Bhutan or elsewhere”; and “no record of having spoken or acted against the King, country and people of Bhutan in any

provisions for the revocation of citizenship, including for those who have shown any form of disloyalty to the King or country, that are arbitrary and discriminatory in violation of international human rights law.⁶ The government began enforcing the 1985 act through a census in 1988 that resulted in the mass denationalization of many Lhotshampas.⁷ The census was implemented only in southern Bhutan, and reports suggest that local government officials made arbitrary census classifications designed to push the Nepali-speaking community out of Bhutan.⁸

The government of Bhutan soon introduced other “Bhutanization” measures like the 1989 “one nation, one people” policy that forced the practice of Drukpa culture through a compulsory dress code and the termination of Nepali language instruction in schools.⁹ In the early 1990s, the Bhutanese government crushed resistance by ethnic Nepalese and others who protested the policies, which included large public demonstrations and the formation of a political party calling for a multi-party democracy in the early 1990s.¹⁰ Some ethnic Nepalese were involved in violent activities, such as the burning of schools and attacks on government officials.¹¹ Schools and health services were suspended in southern Bhutan. Members of the Bhutanese police and army imprisoned, raped, and tortured many of those who were directly, indirectly, or accidentally associated with the demonstrations. Government forces also destroyed houses and forced many ethnic Nepalese off of their lands.¹²

Tens of thousands of people fled these abuses in Bhutan or were forcibly deported by 1992. Before they crossed the border into India, the Bhutanese government forced many to sign “voluntary migration certificates,” thus surrendering their rights to Bhutanese citizenship under the nationality laws.¹³ Some households were given compensation for their property, but often these amounts did not equal the value of the land. Initially, refugees fled overland to West Bengal and Assam in India. However, harassment from the Indian police forced them to move on to southeastern Nepal.¹⁴ Aid agencies such as The Lutheran World Federation began to assist

manner whatsoever.” Furthermore, section 3 in the 1985 act retroactively makes 1958 the cut-off date for citizenship by registration. In these cases, the person must provide land tax receipts or other proof of residency from on or before December 31, 1958.

⁶ For a more detailed analysis of the 1985 Bhutan Citizenship Act, see Tang Lay Lee, “Refugees from Bhutan,” p. 118.

⁷ AHURA Bhutan, “Bhutan: A Shangri-La without Human Rights,” March 2000; Amnesty International, “Bhutan: Human Rights Violations against the Nepali-speaking Population in the South,” December 1992; Amnesty International, “Bhutan: Forcible Exile,” August 1994; Tang Lay Lee, “Refugees from Bhutan,” p. 118; and U.S. Department of State, “Bhutan, Country Report on Human Rights Practices – 2002,” March 31, 2003.

⁸ Tessa Piper, “The Exodus of Ethnic Nepalis from Southern Bhutan,” April 1995 [online], www.unhcr.ch/refworld/country/writenet/wribtn.htm (retrieved March 1, 2003).

⁹ Ibid.

¹⁰ Ibid. See also Amnesty International, “Bhutan: Human Rights Violations,” 1992 and Amnesty International, “Bhutan: Forcible Exile,” 1994.

¹¹ Amnesty International, “Bhutan: Human Rights Violations,” 1992.

¹² Under the 1977 Citizenship Act, a naturalized citizen and their family who successfully applies to emigrate may not reapply for Bhutanese citizenship. Coercion would negate the application; the Act specifically delays loss of citizenship for applications made “during times of crises such as war.” Amnesty International, “Bhutan: Human Rights Violations,” 1992; Amnesty International, “Bhutan: Forcible Exile,” August 1994; Tessa Piper, “The Exodus of Ethnic Nepalis from Southern Bhutan,” 1995; and Bhutanese Refugee Support Group, Ireland and UK, “NGO Response to Initial State Party Report: Bhutan (CRC/C/3/Add.60) under the Convention of the Rights of the Child,” 27th Session, November 21, 2000.

¹³ Amnesty International, “Bhutan: Human Rights Violations,” 1992 and Amnesty International, “Bhutan: Forcible Exile,” 1994.

¹⁴ D.N.S. Dhakal and Christopher Strawn, *Bhutan: A Movement in Exile* (New Delhi: 1994) as quoted in Tang Lay Lee, “Refugees from Bhutan,” p. 118.

the Bhutanese refugees soon after their arrival, and the government of Nepal enlisted the help of UNHCR in late 1991.

The crisis of the early 1990s has evolved into a protracted dispute, with most refugees in Nepal wanting to invoke their right to return to Bhutan¹⁵ and the government of Bhutan refusing them entry on the grounds that they are illegal migrants or “anti-nationals.”¹⁶ Of those who fled, approximately ninety thousand individuals were registered in refugee camps in Nepal, while some ten thousand non-registered refugees live outside of the camps in Nepal.¹⁷ Another fifteen thousand live in India.¹⁸ There are a small number of Sarchop families among the refugees, mostly non-registered, who fled persecution related to the expression of their political views.¹⁹

Over the last decade, the government of Nepal and UNHCR have jointly administered the camps with the World Food Program (WFP) providing basic food assistance. Several NGOs, including The Lutheran World Federation, Caritas, Save the Children, Oxfam, Nepal Red Cross Society, and Asian Medical Doctors Association have also operated as implementing partners. The refugees are well organized and are deeply involved with the administration and daily operations of the camps. Bhutan and Nepal have engaged in a series of ministerial-level meetings to resolve the impasse over the ultimate fate of the Bhutanese refugees, but until recently made virtually no progress.

Forced Expulsions, Refugee Flight, and the Right to Return

As discussed above, the refugees living in the camps in Nepal were either forcibly expelled from their home areas by the Bhutanese government or were subjected to more generalized persecution in Bhutan, which caused them to flee to Nepal. Persons forcibly exiled are entitled to what is known as the “right to return.”²⁰ Some of the mechanisms for the enjoyment of this right are discussed below. Others are set forth in voluntary repatriation standards established by UNHCR, and discussed in a subsequent section of this briefing paper.

¹⁵ See the section following for a discussion of the right to return.

¹⁶ Representatives of the government of Bhutan have also argued that the refugees are voluntary migrants who followed their political leaders out of Bhutan in the early 1990s. “The people were misled by their leaders, they were told they should go stay in the refugee camps for a few months where they would get huts and food, and that a few months later they would return in triumph. The leaders also thought there should be at least one hundred thousand refugees so they could get international attention. They told people living in India and Nepal to come live in the camps, and they would be rewarded with land in Bhutan.” Human Rights Watch interview with Yeshey Dorji, the deputy permanent representative of Bhutan to the U.N., New York City, May 6, 2003. According to the Thrimshung Chhenpo Tsa Wa Sum (Law on Treason and Anti-Nationals), “anti-nationals” are “those averted [sic] to the development of the Kingdom of Bhutan and those who assist the enemies.” The National Security Act of 1992 (NSA) criminalized “anti-national” activities such as treason, undermining the security and sovereignty of Bhutan by creating or attempting to create disaffection among the people, creating hostility or misunderstanding between the government and the people of Bhutan, and promoting or attempting to promote feelings of hatred between different religious, racial or language groups.

¹⁷ U.S. Committee for Refugees, *World Refugee Survey 2002*, p. 152 (citing Nepalese authorities). Currently, 102,140 refugees live in the camps jointly administered by Nepal and UNHCR (Refugee Coordination Unit, Ministry of Home Affairs, Nepal, November 30, 2002).

¹⁸ U.S. Committee for Refugees, *World Refugee Survey 2002*, p. 149.

¹⁹ Amnesty International, “Bhutan: Crackdown on ‘anti-nationals’ in the east,” January 1998.

²⁰ The right to return encompasses the right of refugees and others forcibly exiled to return to their country and recover lost property. In addition to its legal basis under treaty law, the right to return has increasingly been recognized as a norm of customary international law. See “Current Trends in the Right to Leave and Return,” U.N. Doc. E/CN.4/Sub.2/1985 (emphasizing that the right to return is part of the whole body of human rights, and stating that the “concordance of State practice and common opinio juris, [the right to return] created a legal obligation according to customary international law.”).

International human rights law provides for the right to return to one's country. Article 13(2) of the 1948 Universal Declaration of Human Rights (UDHR) states that "Everyone has the right to leave any country, including his own, and to return to his country." This language is also reflected in the International Covenant on Civil and Political Rights (ICCPR),²¹ and the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the latter of which Bhutan is a signatory. Article 5 of CERD guarantees "the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:... [t]he right to leave any country, including one's own, and to return to one's country."²²

International human rights law also recognizes the right to return to one's former place of residence. For example, Article 12 of the ICCPR recognizes everyone's "freedom to choose his residence," which incorporates the right to return to one's home area. In some cases, the right to return to one's former place of residence is also supported by the right to family reunification and to protection for the family.²³ Recognizing these various rights, the Sub-Commission on the Promotion and Protection of Human Rights has reaffirmed "the right of all refugees . . . to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish."²⁴

Moreover, the right of Bhutanese refugees to return to the specific land or property they lost in Bhutan is rooted in Article 12 of the UDHR and Article 17 of the ICCPR, both of which protect individuals from unlawful or arbitrary interference with their "privacy, family, home, or correspondence." Numerous resolutions of the U.N. General Assembly and of the Security Council, as well as several peace agreements, recognize the right to return to one's home and property, regardless of whether the original deprivation was arbitrary.²⁵ The right to an effective remedy, contained in ICCPR Article 2(3), requires that Bhutanese refugees should be able to

²¹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, art. 12. The right to return under Article 12(4) of the ICCPR is not subject to restrictions to protect national security, public order, public health or morals, or the rights and freedoms of others. The Human Rights Committee, the authoritative U.N. body for interpreting the ICCPR, has ruled, "there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable."

²² International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969. Bhutan signed the CERD in 1973. Under article 18 of the Vienna Convention on the Law of Treaties, a state that has signed but not yet ratified a treaty is obliged to refrain from acts that would defeat the object and purpose of a treaty.

²³ International Covenant on Economic, Social, and Cultural Rights, 1966, entered into force January 3, 1976, Art. 10; Convention on the Rights of the Child (CRC), U.N. Doc. A/44/49, 1989, entered into force September 2, 1990, Art. 9. Bhutan ratified the CRC in 1990.

²⁴ Sub-Commission on the Promotion and Protection of Human Rights, *Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*, Resolution 1998/26.

²⁵ With regard to Bosnia, see U.N. Security Council resolutions 947 (1994) and 859 (1993). See also Report of the Committee on the Elimination of Racial Discrimination, U.N. Doc. A/50/18 (1995) (requiring that "persons be given opportunity to safely return to the places they inhabited before the beginning of the conflict."). With regard to Kosovo, see U.N. Security Council resolutions 1199 (1998), 1203 (1998), 1239 (1999), and 1244 (1999). With regard to Israel, see U.N. General Assembly resolutions 3236 (1974), 3089(D) (1974). With regard to Cyprus, see U.N. General Assembly resolutions 253 (1983), 30 (1979), 3212 (1974), and U.N. Security Council resolutions 774 (1992), 361 (1974). With regard to Cambodia, see Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (1991). With regard to Guatemala, see Agreement on Identity and Rights of Indigenous Peoples (1995) and Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict (1994). With regard to Rwanda, see Arusha Peace Agreement (1993).

repossess their land and homes after being deprived of these, or if this proves impossible, they should be financially or otherwise compensated.

While the ethnic Nepalese have a legal right to return to their homes in Bhutan and receive compensation for their losses, it is important that this right is implemented in a manner that does not cause additional human rights abuses. The government of Bhutan has engaged in a policy of resettling northern Bhutanese on lands formerly occupied by refugees.²⁶ The right to repossess private property must be balanced against any rights these new northern Bhutanese settlers may have in domestic or international law, using impartial and efficient procedural safeguards.²⁷ In other contexts in which refugees have returned home to find others occupying their land (for example in Bosnia), property claims administrators have attempted to resolve these disputes in a manner that respects the rights of the secondary occupier as well as the first possessor.²⁸

III. THE STATUS VERIFICATION PROCESS

Exercising the right to return to their home country remains an unfulfilled dream for the Bhutanese refugees, and the current situation in the camps is disheartening. While humanitarian assistance in the camps has ensured that their basic survival needs have been met, the refugees live in highly crowded conditions. They have experienced growing frustration, anxiety, and depression about their lack of a nationality, their uncertain future, and their inability to pursue higher education and employment. Recent cases of sexual and gender-based violence in the camps highlight the problems that emerge in long-standing refugee situations, such as tensions with the local community, increased intensity of domestic violence, and vulnerability of young girls and women to trafficking.²⁹ Furthermore, UNHCR has reported a worrying increase in the number of mental health problems in the camps, including seventeen suicides since November 2001.³⁰ As Prahlad K., a member of the refugee-run camp committee reflected, “People keep thinking, worrying about the future. It’s mental torture.”³¹

Given the protracted nature of the refugee situation in Nepal, all parties, including the governments of Nepal and Bhutan, UNHCR, and most importantly the refugees themselves, are eager to achieve a resolution. As one elderly refugee told Human Rights Watch, “Bhutan is my motherland. I don’t want to stay here, even though we have the aid of other countries.”³² The first step in the realization of the Bhutanese refugees’ right to return has been the status verification and categorization process pursued by the governments of Nepal and Bhutan, discussed in the following section.

²⁶ Habitat International Coalition, “Habitat International Report on Fact Finding Mission to Bhutan,” 2002 [online], http://www.geocities.com/bhutanese/refugees/habitat_ffm.html (retrieved March 7, 2003).

²⁷ For example, in 1998, the Sub-Commission on the Promotion and Protection of Human Rights urged “all States to ensure the free and fair exercise of the right to return to one’s home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems.” See Sub-Commission on the Promotion and Protection of Human Rights, resolution 1998/26, August 26, 1998.

²⁸ For example, the Dayton Agreement set up the Commission for Real Property Claims (CRPC) and the Office of the High Representative Ombudsperson to resolve property disputes. See *Dayton Agreement*, Annex 7 (1995).

²⁹ UNHCR Kathmandu, “Nepal Information Note,” Issue 2, December 24, 2002.

³⁰ Human Rights Watch interview with Takeshi Moriyama, programme officer, UNHCR Sub-Office, Jhapa, March 19, 2003.

³¹ Human Rights Watch interview with Prahlad K., sub-sector head, Goldhap camp, April 3, 2003.

³² Human Rights Watch interview with Loknath R., Khudanabari camp, March 23, 2003.

Categorization

A breakthrough in the tenth round of ministerial talks in December 2000 led to the creation of a Joint Verification Team (JVT) comprised of representatives from the governments of Bhutan and Nepal to verify the refugees' status. This process has excluded UNHCR, although the agency did provide funds to the government of Nepal for the process, and it provided technical advice to both governments on legal issues related to the status of refugees and durable solutions.³³ The Bhutanese and Nepalese governments have agreed upon a system of categorization into four groups: (1) bona fide Bhutanese who were forcibly evicted, (2) Bhutanese who voluntarily migrated, (3) non-Bhutanese, and (4) Bhutanese who have committed crimes. To date, only 12,096 individuals from Khudanabari camp have been interviewed, and the results of their categorization have yet to be announced.³⁴ No verification whatsoever has been done in the other six refugee camps in Nepal.

As of this writing, it is not known what percentage of the refugees will be placed into each of these categories. Each category presents particular concerns, especially category three, for non-Bhutanese. An independent human rights organization, AHURA-Bhutan, compiled a detailed digital database of the interviewed refugees and their documents in Khudanabari camp. They found that over 66 percent of the residents have Bhutanese citizenship documents and 25 percent have land tax receipts (which was a basis for citizenship under the 1958 Nationality Law). This documentation challenges the Bhutanese government's claims that the majority of refugees are illegal migrants or citizens of India and Nepal who moved into the camps to take advantage of international humanitarian assistance.

In the thirteenth and most recent round of talks held in late March 2003, Bhutan and Nepal announced that they would declare the categorization results at the next round of talks in May, and that voluntary repatriation forms would be distributed to those classified in categories one, two, and four.³⁵ Human Rights Watch welcomes the announcement that all three categories recognized as "Bhutanese" will be allowed the opportunity to repatriate, but wants to ensure that their human rights are respected. In particular, those categorized as having "committed crimes" should be protected from *refoulement* in accordance with customary law,³⁶ afforded due process of law during any criminal proceedings, and should not be prosecuted for the peaceful expression of their political views. All returning refugees, regardless of their classification, should be entitled to the same opportunities to file claims for their land, seek employment, return to their

³³ UNHCR, *Global Report 2001*, p. 311.

³⁴ E-mail message from Giulia Ricciarelli-Ranawat, protection officer, UNHCR-Nepal to Human Rights Watch, May 6, 2003.

³⁵ Human Rights Watch interview with Foreign Minister N.B. Shah, government of Nepal, Kathmandu, April 11, 2003.

³⁶ Neither Nepal nor Bhutan is party to the 1951 Geneva Convention Relating to the Status of Refugees. They are both, however, bound by the international customary law norm of *non-refoulement*, which protects refugees from being returned to a place where their lives or freedom are under threat because of persecution. International customary law is defined as the general and consistent practice of states followed by them out of a sense of legal obligation. That *non-refoulement* is a norm of international customary law is well established. See, e.g. Executive Committee ("ExCom") Conclusion No. 17, Problems of Extradition Affecting Refugees, 1980; No. 25, General Conclusion on International Protection, 1982; *Encyclopedia of Public International Law*, Vol. 8, p. 456. UNHCR's ExCom stated that *non-refoulement* was acquiring the character of a peremptory norm of international law, that is, a legal standard from which states are not permitted to derogate and which can only be modified by a subsequent norm of general international law having the same character. See ExCom Conclusion No. 25, General Conclusion on International Protection, 1982. The Executive Committee is UNHCR's governing body. Since 1975, ExCom has passed a series of Conclusions at its annual meetings. The Conclusions are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law.

region of origin, and enjoy full citizenship privileges and freedoms. Furthermore, all refugees should have access to a fair, independent, and efficient appeal process to contest their categorization.

Human Rights Watch is also concerned about the slow pace of the current verification and categorization process. If continued at this rate, completing all seven camps would require several years. The prolonged wait for the results of Khudanabari camp, the lack of transparency about the categorization criteria, and concerns that the government of Bhutan remains reluctant to take back refugees, risk creating an environment in which refugees, if finally given a window of opportunity to repatriate, may feel pressured to return before conditions protecting their safety and dignity are established.

Human Rights Watch is concerned about the role of women in the verification and categorization process. In Khudanabari camp, women had minimal participation during the verification interview unless they were heads of household. As Kala G., a forty-seven year old woman from Khudanabari camp stated, “They asked my husband about why he left Bhutan. But I was not given a chance to tell my story, and I was tortured more than he was.”³⁷ Except for one woman on the Nepal team who was later replaced, the entire Joint Verification Team was comprised of men. The group format of the interviews as well as the absence of women on the JVT make it difficult for rape, domestic violence, and sexual assault survivors to discuss either their reasons for flight or their hesitations about return. Several women Human Rights Watch interviewed reported that they were survivors of rape in Bhutan.

Finally, the continued closure of the screening post at Kakarbhitta by the government of Nepal and UNHCR (on the border of India and Nepal) since January 2001 severely limits access to asylum procedures. Although some asylum seekers have tried to appeal directly to the Refugee Coordination Unit (RCU) district headquarters, few are familiar with this process or have been provided with the appropriate guidance from camp-level RCUs or UNHCR. Those who did apply said they received no response despite repeated applications.

The situation of non-registered refugees or Indian and Nepali citizens who married refugees is even more precarious than for other refugees. The registration procedures are discriminatory: if a refugee woman marries a local Nepali man, their children cannot be registered in the camp, whereas if a refugee man marries a local Nepali woman, their children are registered. These rules violate Article 9 of CEDAW and Articles 7 and 8 of CRC, both of which Bhutan and Nepal have ratified. Despite strong arguments based on family reunification grounds, those individuals who are not registered were not included with their families during verification interviews. Dil Maya S., a refugee woman in her mid-twenties, told Human Rights Watch,

I married a local person...but then we had problems and I came back to the camp. My husband later came to join me. I have a daughter who is three and a son age seven. I have asked the RCU, but they said we won't get rations until the team comes again, which may be after months or years. I asked again one week ago and they said that I won't get the chance to register my children now. Only I have my name on the ration card. When I went to the verification interview, they snapped my photo but not of my children. During the interview, I asked them to write down the names of my children, but they didn't write down their names.³⁸

³⁷ Human Rights Watch interview with Kala G., Khudanabari camp, March 21, 2003.

³⁸ Human Rights Watch interview with Dil Maya S., Khudanabari camp, March 23, 2003.

The lack of safeguards for refugees like Dil Maya S. and her children, as well as the problems about the status verification process discussed above create the risk of statelessness for many refugees, and deny women fundamental equality.

Verification's Potential Pitfalls: Deprivation of Nationality and Statelessness

The right to a nationality is a fundamental human right. Article 15 of the UDHR, to which all member states of the United Nations are deemed to adhere, states that "[e]veryone has the right to a nationality." The CRC guarantees the right of every child to acquire a nationality,³⁹ and requires states to "undertake to respect the right of the child to preserve his or her identity, including nationality."⁴⁰ Furthermore, "[w]here a child is illegally deprived of some or all elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily reestablishing his or her identity."⁴¹

The Universal Declaration of Human Rights further declares at article 15, "No one shall be arbitrarily deprived of his nationality." Although there is no exact counterpart in the ICCPR, this right is implicit in the rights to freely enter and leave one's own country and the right of children to acquire nationality.⁴² A state act can be deemed "arbitrary" under international human rights law if it lacks a basis in law, flouts requirements of due process and fair procedure, or in other ways trammels other basic human rights norms, such as the norm against invidious discrimination.

The right to a nationality finds its counterpart in the norm against statelessness, which is embodied in several treaties and evolving legal principles. Any time a government withdraws nationality from an individual or group, there is a prospect that those persons will be rendered stateless. The theoretical availability of an alternate nationality upon application does not negate this prospect.⁴³ Similarly, the imposition of nationality without an individual's consent is generally not recognized as valid in modern international law.⁴⁴

While neither Nepal nor Bhutan is party to the Convention on the Reduction of Statelessness, this treaty and other international instruments are relevant in that they illustrate evolving norms and state practice in this area. This convention provides that a state shall not deprive a person of nationality if such deprivation would render her stateless.⁴⁵ It also reaffirms, in article 9, that a state may not "deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."

The verification exercise risks depriving some of the residents of the camps in Nepal of their nationalities. Depending on how the classifications are applied in practice, individuals returning to Bhutan may be denied their right to Bhutanese nationality (see discussion below). Moreover, some camp residents who are considered ineligible to return to Bhutan may in fact be Bhutanese citizens, and therefore denied the ability to enjoy their nationality. Finally, individuals such as the woman described above, who has a mixed marriage, may be forced to choose between

³⁹ CRC, art. 7(1).

⁴⁰ Ibid, art. 8(1).

⁴¹ Ibid, art. 8(2).

⁴² ICCPR, arts. 12(2) and (4) and 24(3).

⁴³ See, e.g. Convention on the Reduction of Statelessness, 989 U.N.T.S. 175, entered into force Dec. 13, 1975, art. 7(1) and 7(2), which provides that renunciation of nationality, or application for naturalization in a foreign country, may not be grounds for denationalization unless the person concerned possesses, acquires, or has been accorded assurance of acquiring the nationality of that foreign country.

⁴⁴ Ruth Donner, *The Regulation of Nationality in International Law*, sec. 3.1 "Imposition of Nationality," pp. 160-165 and *Restatement of the Law Third, The Foreign Relations Law of the United States*, sec. 211, comment d at p. 116 and note 2 at pp. 117-118 (American Law Institute, Washington, D.C.: 1986).

⁴⁵ Convention on the Reduction of Statelessness, art. 8, 989 U.N.T.S. 175, entered into force Dec. 13, 1975.

rendering their children or themselves stateless if adequate safeguards are not provided. This is why Human Rights Watch recommends that all individuals determined to be ineligible to return to Bhutan are given full appeal rights and that procedures are put in place to ensure that no one is deprived of their nationality or rendered stateless as a result of the verification process.

Several UNHCR Executive Committee (ExCom) Conclusions and General Assembly Resolution 50/152 confirm the special role that UNHCR must play when statelessness is a potential eventuality.⁴⁶ However, the agency has not been actively involved in the Nepal verification exercises. Human Rights Watch urges UNHCR to become more actively involved to apply its mandate to address statelessness⁴⁷ by ensuring that these exercises do not render anyone returning to Bhutan or remaining in Nepal stateless.

The status verification exercise must become more transparent and should be amended to conform with guidelines established by UNHCR on refugee status determination procedures.⁴⁸ In order to avoid depriving people of their nationality or rendering them stateless, the governments of Bhutan and Nepal should improve the current status verification and categorization process by inviting the full and equal participation of UNHCR in the Joint Verification Team and initiating a fair and independent appeal process. The classifications and attendant citizenship privileges determined by the verification exercise are closely linked to the success or failure of a voluntary repatriation program for Bhutanese refugees that respects human rights standards of return in conditions of safety and dignity.

IV. PRE-CONDITIONS FOR VOLUNTARY REPATRIATION

Introduction

The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951 Refugee Convention, it follows directly from the principle that no refugee should be returned to a place where his or her life or freedom is under threat (*non-refoulement*) and that the involuntary return of refugees would raise *refoulement* concerns.⁴⁹

⁴⁶ The Executive Committee of UNHCR issued a Conclusion in 1995 which significantly broadened UNHCR's role concerning statelessness. Executive Committee Conclusion 78 on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons acknowledges the responsibilities already entrusted to the High Commissioner for stateless refugees and with respect to the reduction of statelessness, and encourages UNHCR to continue its activities on behalf of stateless persons, as part of its statutory function of providing international protection and of seeking preventive action. The Executive Committee further requested in its Conclusion that UNHCR provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested states. These requirements were confirmed in General Assembly Resolution 50/152 of December 21, 1995.

⁴⁷ UNHCR's mandate concerning statelessness derives from article 11 of the 1961 Convention on the Reduction of Statelessness which provides for "a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority." This function has been entrusted to UNHCR and affirmed by General Assembly resolutions 3274 (XXIV) of December 10, 1974 and 31/36 of November 30, 1976.

⁴⁸ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva: UNHCR, January 1992). In particular, see the sections relating to the cessation of refugee status, pp. 26-32.

⁴⁹ See footnote thirty-six, above, for a discussion of the customary law obligations of the governments of Nepal and Bhutan with regard to *non-refoulement*.

UNHCR has an express mandate to protect refugees, which includes a significant role in the coordination and organization of voluntary repatriation operations and in monitoring the consequences of return. As a practical matter, UNHCR also serves as one of the few voices that can effectively influence states' behavior toward refugees. It is for these reasons that Human Rights Watch believes that UNHCR could play an effective and constructive role in the verification exercise, which is intended to lead directly into a voluntary repatriation exercise.

The most important tool for assessing the quality of any repatriation exercise is UNHCR's Handbook on Voluntary Repatriation ("Repatriation Handbook").⁵⁰ The Repatriation Handbook recognizes that establishing a truly voluntary repatriation program is not only consonant with international law but is also the most pragmatic approach to repatriation: "Repatriation which is voluntary is far more likely to be lasting and sustainable."⁵¹

"Push" Factors

According to UNHCR, an important prerequisite to ensuring that a decision to repatriate is voluntary is "the absence of measures which push the refugee to repatriate."⁵² According to the Repatriation Handbook, "[r]efugee repatriation is **not** voluntary when host country authorities deprive refugees of any real freedom of choice through outright coercion or measures such as, for example, reducing essential services."⁵³

This point is reinforced elsewhere in the Repatriation Handbook: "There must be no threat to phase down basic refugee assistance programmes in connection with registration" for repatriation. Bhutanese refugees in Nepal so far have enjoyed a situation with very few explicit "push" factors. Instead, many of the refugees expressed an overwhelming desire to Human Rights Watch to go home to Bhutan. However, Human Rights Watch urges the government of Nepal and UNHCR to ensure that basic assistance is not phased down once repatriation draws nearer.

Neutral, Accurate, and Objective Information

A serious and pressing problem is the absence of neutral, accurate, and objective information on conditions in Bhutan that is regularly disseminated to all refugees. Such an exchange of information is an essential component of a successful voluntary repatriation program. UNHCR has stated that "[o]nly an informed decision can be a voluntary decision."⁵⁴ UNHCR itself has a key responsibility to provide such information to refugees: "Information campaigns are UNHCR's core responsibility and principal mechanism to promote voluntary repatriation and to ensure that refugees' decisions are taken in full knowledge of the facts."⁵⁵ The Repatriation Handbook further specifies that refugees "need to know about what will happen in the event they decide not to volunteer for repatriation."⁵⁶

Despite this responsibility, neither UNHCR nor the government of Nepal is making an effort to conduct mass information campaigns to provide refugees with full and updated information about

⁵⁰ UNHCR, March 1996. Although the handbook is not binding international law, it provides a set of guidelines by which the behavior of UNHCR and governments during repatriation may be judged. It is also based on several ExCom Conclusions, such as ExCom Conclusion No. 18 (1980), ExCom Conclusion No. 40 (1985), ExCom Conclusion No. 74 (1994), among others.

⁵¹ Repatriation Handbook, p. 11.

⁵² Repatriation Handbook, p. 10.

⁵³ Repatriation Handbook, p. 42 (emphasis in original).

⁵⁴ Repatriation Handbook, p. 44.

⁵⁵ Repatriation Handbook, p. 44.

⁵⁶ Repatriation Handbook, p. 47.

decisions made in recent talks between Bhutan and Nepal or about conditions in Bhutan. In an interview with Human Rights Watch, the protection officer reiterated that, “we will wait for the results of the next round of meetings in May. We have offered our help to the government of Nepal and will wait to be invited before conducting mass information campaigns in the camps.”⁵⁷

The lack of information is also having a detrimental effect on refugees’ psychological well-being. Rumors spread rapidly in the camps, affecting refugees’ ability to make fully informed decisions regarding repatriation. The longer UNHCR and the government of Nepal wait, the more refugees will rely on the unreliable information that political groups with competing agendas provide. UNHCR claims that it “reduced anxiety among the refugees through counselling.”⁵⁸ However, Human Rights Watch found that counseling was reserved for serious cases of mental illness, and no effort was being made to provide systematic and updated information or guidance that would address the general anxiety felt by the majority of camp residents. One widowed Sarchop woman, Daza C., related the concerns she felt as an ethnic minority in the camp, “I want to go to Bhutan. I’m alone here. I have no people of my own culture... But they may arrest me. I cry at night thinking about this. Maybe they have destroyed our house. And will they include me with the Nepalis? I’m alone.”⁵⁹ Another man, Kabiraj T., told a Human Rights researcher that “maybe the next time you return, I will have gone back to Bhutan. Maybe I’ll be shot dead.”⁶⁰ A camp management committee member expressed concerns that there will be tensions and fighting between refugees once the categorization results are announced, with some able to return to Bhutan and others rejected.⁶¹

The poor quality of information in the camps is also of concern as detailed below, because the Bhutanese refugees in Nepal may face discrimination and other serious human rights abuses once they return to Bhutan. In order for the returns to be truly voluntary and sustainable, refugees need to have detailed information about human rights conditions in their country of origin. Perhaps most important, they must have international monitors present to ensure that their return is indeed “safe and dignified.” This requirement of an effective repatriation program is discussed in the following section.

V. CONDITIONS IN BHUTAN

Much of what makes a repatriation a success or failure hinges upon what happens to refugees once they have returned home. This is a particularly important issue for Bhutanese refugees who may be returning to serious conditions of discrimination, or who may be prevented from returning to their home areas or land.

Access to and Presence of UNHCR

In order to ensure returns are a success, UNHCR must have “direct and unhindered access to returnees,” which enables the agency to “monitor fulfillment of the amnesties, guarantees or assurances on the basis of which the refugees have returned.”⁶² One refugee woman, Lakshmi

⁵⁷ Human Rights Watch interview with Abraham Abraham, officer-in-charge, and Giulia Ricciarelli-Ranawat, protection officer, UNHCR Kathmandu office, April 11, 2003.

⁵⁸ UNHCR, *Global Report 2001*, p. 311.

⁵⁹ Human Rights Watch interview with Daza C., name of camp withheld. March 2003.

⁶⁰ Human Rights Watch interview with Kabiraj T., Khudanabari camp, April 4, 2003.

⁶¹ Human Rights Watch interview with Ram K., Khudanabari camp, March 22, 2003.

⁶² UNHCR ExCom Conclusion No. 40 (1985).

C., emphasized the importance of this access, noting, “I think UNHCR should have an office in southern Bhutan, not just in Thimphu.”⁶³

Contrary to these standards, UNHCR has not been invited nor has the agency effectively pushed to be able to establish a presence in Bhutan or to facilitate the return of the refugees. UNHCR has been working with this refugee population for over a decade and requires cooperation from Bhutan and Nepal in order to fulfill its protection mandate. Especially as the conditions of return suggest that the legal and property rights of refugees may not be respected, the presence of an independent monitoring body is essential to promote return in safety and dignity.

As the Repatriation Handbook makes clear, where

there is evidence that the freedom or security of returnees is at risk due to a lack of state protection, UNHCR should do whatever it can to remedy the situation and relieve the plight of refugees. UNHCR must intervene where human rights abuses or severe discrimination come to light.... Where problems and abuses are not isolated and there appears to be a risk of future occurrences, UNHCR should not promote further repatriation, until the problems [sic] is rectified.⁶⁴

Many refugees Human Rights Watch interviewed expressed a deep desire to return to Bhutan, but they also expressed anxiety about the conditions of return. They reflected a wide range of opinions, from those who wished to go back under any circumstance, to those with serious reservations about safety. One refugee man told Human Rights Watch:

All the Bhutanese should be taken back to their original homesteads. No family should be left behind. But before we are taken back, the government has to be very clear—under no circumstances should we return to the same conditions that made us leave. No discrimination should be there—all Bhutanese should be united and ruled by a single law.⁶⁵

Existing discrimination in Bhutan and the conditions that will likely be attached to the opportunity to return raise serious questions about whether refugees will likely truly be able to achieve a voluntary, safe, and durable return. As this briefing paper documents, the human rights of ethnic Nepalese are regularly violated in Bhutan, especially in terms of the rights to a nationality, equality, education, employment, and freedom to practice one’s culture.

The governments of Bhutan and Nepal have not made any formal announcement as to the conditions of return, but according to a Human Rights Watch interview with the Foreign Minister of Nepal, camps are being built in three regions of Bhutan for the returning refugees. The returnees will be guaranteed two years of employment, and under the existing laws, after two years they will be allowed to apply for citizenship.⁶⁶ The transit camps raise serious concerns that not all of the refugees will be able to exercise their right to return to their own lands and regions of origin, and that they could be forced into unsafe living conditions. An often repeated

⁶³ Human Rights Watch interview with Lakshmi C., Sanischare camp, March 3, 2003.

⁶⁴ Repatriation Handbook, p. 66.

⁶⁵ Human Rights Watch interview with Loknath R., Khudanabari camp, March 23, 2003.

⁶⁶ Human Rights Watch interview with Foreign Minister N.B. Shah, government of Nepal, Kathmandu, April 11, 2003. Though no policies have been finalized, it may be that persons classified as “forcibly evicted Bhutanese” will be allowed to return to their original homes.

plea among the refugees Human Rights Watch interviewed was that “we should be able to go back to our own homes on our own land.”⁶⁷

Reflecting the widespread fear that they will be separated upon return and sent to isolated parts of the country with terrain different from the southern plains where they originally lived, a forty-four-year-old farmer told Human Rights Watch, “one has to go back, but without security of life and land, it’s difficult to go back. I’d like to go back to my original homestead, but if I’m taken to some other home, it should be something I can be satisfied with, not some hilly, snowy place.”⁶⁸

Without full citizenship, returning refugees will be vulnerable to regular discrimination and harassment. As noted above, the current citizenship laws impose a two-year waiting period before returnees can obtain full citizenship, a dangerous provision that, if applied, would prevent refugees from enjoying their human rights and would expose them to the risk of statelessness should the Bhutanese government decide to reject their citizenship applications. Furthermore, if they must reapply for citizenship under the existing laws, Human Rights Watch is concerned that refugees are likely to be denied citizenship anyway. This is because the 1985 Bhutan Citizenship Act requires up to twenty years of residency registered in the records of the Department of Immigration and Census, and proficiency in a language that most refugees are not able to speak, among other strict criteria. Lastly, there is uncertainty about whether refugees deemed to have committed crimes, or those who have been politically active and are considered “anti-national,” upon their return to Bhutan, will be subjected by the government to arbitrary arrest and detention, limits on their freedom of expression and their freedom from unlawful interference with privacy, family, or home.⁶⁹

Given the potential for serious human rights abuse in Bhutan, some refugees are fearful about returning home. Refugees Human Rights Watch interviewed who had faced severe persecution and violence in Bhutan felt that it would be difficult for them to return. Kira Maya R., a forty-year-old mother of three who was raped in Bhutan said, “How can we go back to Bhutan if the policies don’t change? If it remains the same laws, I will not go. There are many chances that the same thing will happen to my daughter as happened to me. We should not be forcefully taken back.... I’m afraid.”⁷⁰

Human Rights Watch is particularly concerned about adherence to the standards of voluntary repatriation in conditions of safety and dignity because of the serious human rights abuses that ethnic Nepalese currently living in Bhutan face. Allowing for a UNHCR monitoring presence will be crucial, as will a significant change in policy by the government of Bhutan, in order to ensure that the refugees return to a situation where they will be protected from the discrimination and abuse that ethnic Nepalese suffer in Bhutan, as documented in the following section.

Continuing Discrimination in Bhutan

In April 2003, Human Rights Watch interviewed ethnic Nepalese who currently live in southern Bhutan. The location of these interviews is being withheld as many of those interviewed feared that they would be harassed or imprisoned if the government found out their identity. Some of those interviewed were highly educated, but were unable to find employment because of how

⁶⁷ For example, this desire was expressed in Human Rights Watch interviews with Kamala S., Beldangi II camp, March 30, 2003 and Renuka B., Beldangi I camp, March 26, 2003.

⁶⁸ Human Rights Watch interview with Dev G., Khudanabari camp, March 23, 2003.

⁶⁹ ICCPR, arts. 9(1) and 19(2) and 17(1).

⁷⁰ Human Rights Watch interview with Kira Maya R., Khudanabari camp, March 24, 2003.

they were classified in Bhutan's census (discussed below). In many cases, although these individuals stayed in Bhutan after the mass exodus in the early 1990s, they were persecuted because members of their family fled as refugees. As explained below, sometimes entire families were denationalized when a single member of their household left the country, and in 1998 the government of Bhutan passed a resolution requiring the dismissal of relatives of "anti-nationals" from government jobs.⁷¹

Many of the human rights abuses Human Rights Watch documented during these interviews are related to a discriminatory and complex classification system for individuals living in Bhutan. This classification system was first imposed by the government during the 1988 census in accordance with the 1985 Bhutan Citizenship Act. This census classified people into one of seven categories: genuine Bhutanese, returned migrants (those who had left Bhutan but returned), drop-outs (those not available during the time of the census), non-national women married to a Bhutanese man (or their children), non-national men married to a Bhutanese woman (or their children), legally adopted children, and non-nationals (migrants and illegal settlers). Individuals living in Bhutan refer to their placement into one of these categories as their "census status."

Some interviewees reported that they were unable to obtain a census status at all, which left them highly vulnerable to discrimination. Many interviewees stated that despite initially possessing citizenship cards and being classified as genuine Bhutanese, they were later denationalized into non-nationals, or their children were not given categories. In these cases, Bhutan is violating their right to a nationality by rendering them stateless.

Discrimination relating to citizenship status in Bhutan

Citizenship status and government documents, including a "No Objection Certificate," are required for access to higher education, government jobs, movement through the country, registration of land, and trade licenses.⁷² Some of the discrimination that the Nepali-speaking Bhutanese currently suffer is related to the evictions of the early 1990s when those crossing the border were forced to sign "voluntary migration forms." Even if only a portion of a household fled the country, their remaining relatives in Bhutan were at risk of being denationalized. Those who participated in the 1990 demonstrations against Bhutan's policies toward the Lhotshampas, who had relatives involved with the demonstrations, or who have relatives in the refugee camps are especially at risk of harassment. As Pandu P., a forty-five-year-old man living in Bhutan, told a Human Rights Watch researcher,

In 1992, my parents had to migrate, they were asked to sign the voluntary migration forms. When my father signed, the whole family list was included...my name was also on the list. Right now I am without citizenship. I can't get a license without the census.... I need an NOC [No Objection Certificate] and police clearance because my parents are missing. My brothers were involved in the demonstrations. I have to keep quiet—my brothers are in the refugee camps, and my parents in India.⁷³

⁷¹ The government of Bhutan uses the term *ngolops* or "anti-national" for individuals deemed to have spoken or acted against the King, the country, or the people of Bhutan. This term has been used to refer to anybody who participated in the 1990 demonstrations as well as for those who fled the country.

⁷² The "No Objection Certificate" is now officially called the "Security Clearance Certificate." However, most Bhutanese still refer to the "NOC."

⁷³ Human Rights Watch interview with Pandu P., Indo-Bhutan border, April 6, 2003.

The story of Krishna C., who had participated in a peaceful demonstration in 1990 illustrates the ways in which the 1985 Bhutan Citizenship Act allows the arbitrary stripping of nationality. According to clause 6(c), any “citizen of Bhutan who has acquired citizenship by naturalization may be deprived of citizenship at any time if that person has shown by act or speech to be disloyal in any manner whatsoever to the King, Country and People of Bhutan.” Krishna C. was not only jailed and tortured for his political views, but faced statelessness upon his release. He told Human Rights Watch, “I wasn’t given back my previous job when I was released—authorities have not regularized my census. My land was given to other Bhutanese. I am without census or land.... I went to the Home Ministry in 1999, but they told me ‘your census was erased in 1991 because you were in prison.’”⁷⁴

Ethnic Nepalese women in Bhutan are especially vulnerable to losing citizenship privileges. They are sometimes unable to meet the stringent requirements for proving their status because of a lack of access to documents or knowledge about government procedures. This may also affect the citizenship status of their children. For example, Bhadra Maya R., a twenty-seven year-old ethnic Nepali widow is originally from India but married a man from Bhutan ten years ago. She told Human Rights Watch,

I have no facilities [access to services] in Bhutan, I have tried to include my child for Bhutanese citizenship, I don’t want it for myself. My husband was F1 [genuine Bhutanese], and my husband’s family is living in Bhutan. Me and my child have no number at all—I have searched for all kinds of proof, but my husband’s family isn’t supporting me. They are afraid because I’m an outsider. If they say they are relatives with me, they’ll get in trouble. The *mandal* [village head] knows it’s all true, but I’m not supported. I need documents, but I didn’t have a court marriage. If you’re southern Bhutanese, you have problems. I don’t have a number [census status] so it’s worse. I’m fed up, I’ve stopped trying, because there is no one to help.⁷⁵

As the 1985 Bhutan Citizenship Act is still in effect, returning refugees could expect to suffer problems similar to those documented by Human Rights Watch in the preceding interviews. By virtue of having lived in the refugee camps, they may still be considered “anti-nationals” and therefore not granted genuine Bhutanese status with full citizenship privileges. Human Rights Watch is also concerned that the JVT’s four-tiered categorization system may exacerbate the risks of discriminatory treatment. Of the three categories allowed to return to Bhutan (forcibly evicted, voluntary migrants, and those who have committed crimes), the latter two are currently grounds for denationalization in Bhutan under the 1985 Act, putting these groups at risk of statelessness. This is especially true because Bhutan has suggested that it won’t grant citizenship immediately, but will only let refugees apply for citizenship two years after their return.

Discrimination in employment and education

Without full citizenship privileges, ethnic Nepalese find it difficult to secure employment or sustain a livelihood. Those without NOCs are not allowed to work in government jobs, and sometimes they are prevented from working in the private sector as well. Others who own land reported not being able to register and cultivate it. One man, originally classified as a genuine Bhutanese citizen became a non-national when his brother was forcibly evicted in 1993. This resulted in a change of status for his wife, while his children do not have any category at all. Despite his qualifications as an engineer, he now works irregular jobs as a salesman. He told a

⁷⁴ Human Rights Watch interview with Krishna C., Indo-Bhutan border, April 6, 2003.

⁷⁵ Human Rights Watch interview with Bhadra Maya R., Indo-Bhutan border, April 5, 2003.

Human Rights Watch researcher that, “I had to leave my job as an engineer in 1998. The district head officer wrote a letter to them [my employers] saying that as my parents had left the country, I should be fired immediately. I have a problem with employment. We’re refugees in our own country. I have no trade license. You need an NOC for that.”⁷⁶

While interviewees reported that their children were able to attend primary school in Bhutan, they said that ethnic Nepalese children face problems once they reach higher grades, appear for national exams, apply for scholarships for higher education, or apply for programs abroad. In these cases, the lack of an NOC could prevent the child from studying in Bhutan. Most interviewees felt that they had to send their children to India for further education, often at great expense. They also despaired of their children having employment opportunities upon their return. Savitri A., despite being classified as a citizen herself, worried about her husband and children, who remain without a census status after one of their family members left the country. She explained,

[Children] won’t get admission after class ten, you have to go outside to India, you can’t have a profession in Bhutan.... To pursue more education after class ten, we will have to produce the citizenship ID card. But they won’t give us this card, especially as we’re Nepali. My friend’s son got 96 percent in class ten, but he still didn’t get a scholarship. He got depressed and couldn’t study.... We’re like dead bodies in Bhutan.⁷⁷

All interviewees also expressed great frustration that their repeated appeals to the king and the Home Ministry had proved unsuccessful. Meera M., whose family had lost their citizenship after one member fled Bhutan, said, “My brother tried so many times to get the NOC, but it’s not possible, he is now studying outside. You need an ID card for *any* type of work. You can apply for it, but they won’t say yes or no. We have sent so many applications. Four to five years pass like that.”⁷⁸

Restrictions on freedom of movement

Individuals who are classified as non-nationals or who do not have classifications at all are not allowed to cross checkpoints in Bhutan, which are situated on several major roadways. Crossing these checkpoints is essential for those who need to go to the capital, visit relatives, conduct business, or visit their family lands. Adding insult to injury, people’s inability to cross checkpoints makes it difficult for them to appeal their census status or otherwise claim their citizenship in Bhutan’s capital, Thimphu. All vehicles are stopped at these checkpoints, and the interviewees also said that ethnic Nepalese, whether they have documents or not, are systematically profiled and ordered to come out and show all proof of citizenship to the checkpoint guards. They may also be interrogated. For example, Dinesh B. said he is often interrogated at checkpoints. He told Human Rights Watch:

If we’re trying to cross a checkpoint, we’ll have to know the name of the present village headman, four to five village people, present marriage certificates, and know the name of the subdivision officer and district head officer. While we’re on a bus, they’ll single out the southern Bhutanese to come out and ask them their thram number [government-issued property ID number]. From here, there are four checkpoints to Thimphu. These procedures happen more often if there is any

⁷⁶ Human Rights Watch interview with Dinesh B., Indo-Bhutan border, April 5, 2003.

⁷⁷ Human Rights Watch interview with Savitri A., Indo-Bhutan border, April 6, 2003.

⁷⁸ Human Rights Watch interview with Meera M., Indo-Bhutan border, April 5, 2003.

tension happening in the refugee camps, for example the time the refugees held a peace march to return to Bhutan.”⁷⁹

VI. CONCLUSION

Human Rights Watch is deeply concerned about the fairness, efficiency, and transparency of the status verification process being implemented by the Joint Verification Team, the voluntariness of repatriation, and the risks of statelessness and discriminatory treatment for returning refugees in Bhutan. A new constitution is currently being drafted and reviewed in Bhutan, and Human Rights Watch urges the King and the country to take this opportunity to establish fundamental rights and freedoms for all of its people without discrimination.

VII. RECOMMENDATIONS

To the Governments of Bhutan and Nepal

- Promote a fair verification process and the conditions for a safe and dignified return of refugees in Nepal by:
 - including UNHCR as an equal member in all Joint Verification Team activities;
 - being fully transparent about the criteria used for the verification and categorization of persons in Khudunabari camp;
 - eliminating the four categories currently used in the verification process in favor of a determination identifying those who have the right under international law to voluntary return to Bhutan;
 - beginning verification in the remaining six camps promptly, using transparent criteria, and complete this process within an announced and reasonable timeframe;
 - establishing an appeal mechanism using fair procedures before an impartial decision-maker for individuals whose claims to Bhutanese nationality or refugee status are rejected. Additional measures should be put in place to provide for the future status and integration of these individuals in accordance with international human rights as well as refugee law; and
 - reactivating immediately a screening process for new and recent asylum-seekers as well as long-term unregistered refugees.
- Implement a voluntary repatriation process that conforms with international standards as outlined in UNHCR’s 1996 Handbook on Voluntary Repatriation and ExCom Conclusions. Important measures include:
 - ensuring the absence of negative “push” factors (like the reduction of humanitarian assistance in Nepal);
 - allowing refugees to visit Bhutan before making their decision to repatriate;

⁷⁹ Human Rights Watch interview with Dinesh B., Indo-Bhutan border, April 5, 2003.

- disseminating full, impartial, and regularly updated information to refugees about the conditions in their regions of origin, the specific rights they will enjoy there, and their options if they choose not to return; and
- guaranteeing protection against forced or coerced return to unsafe or discriminatory conditions inside Bhutan.
- Take steps to ensure the meaningful participation of refugee women at all stages of verification, repatriation or resettlement, and integration.
- Demonstrate commitment to international human rights standards by becoming parties to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.

To the Government of Bhutan

- Promote a fair verification process and the conditions for a safe and dignified return by:
 - repealing or amending the 1958 Nationality Law and the 1977 and 1985 Citizenship Acts. In particular, remove burdensome and discriminatory provisions such as a two-year waiting requirement, the loss of citizenship by those deemed “voluntary migrants,” and the twenty-year residency requirement. Remove provisions which infringe the right to acquire a nationality at birth, to keep that nationality, to leave and return to one's country, and to not be arbitrarily deprived of one's nationality; and
 - protecting the rights of returnees by prioritizing family unity during repatriation.
- Implement a voluntary repatriation process that conforms with international standards as outlined in UNHCR’s 1996 Handbook on Voluntary Repatriation and ExCom Conclusions. Important measures include:
 - guaranteeing immediate, full, and free access for UNHCR and humanitarian aid organizations to assess conditions for return and to set up assistance programs for returnees in Bhutan;
 - establishing procedures for returning refugees to reclaim their original land and property and to settle property claims in a fair and timely manner;
 - halting the resettlement of northern Bhutanese on the land of the refugees immediately; and
 - ensuring that the human rights of returning refugees who are accused of committing crimes are respected.
- Ensure that the human rights of returning refugees are protected, including by:
 - ending existing discrimination against ethnic Nepalese and political dissenters, especially in regard to access to education and employment, freedom of movement, and the right to culture, language, and religion;

- following through on its commitment to women and children’s rights signaled by its ratification of the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women, for example by acting on the recommendations made by the Committee on the Rights of the Child in 2001. Follow through on its commitment to racial and ethnic equality established by its ratification of the Convention on the Elimination of all forms of Racial Discrimination; and
- ratifying the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

To the Government of Nepal

- Facilitate voluntary repatriation and do not scale back assistance in order to “push” refugees back to Bhutan. With support from the international community, continue the hospitality extended for the last twelve years by offering local integration to those who are unwilling or unable to return to Bhutan.

To the Office of the United Nations High Commissioner for Refugees

- Act in accordance with UNHCR’s mandate on the prevention of statelessness under Article 11 of the Convention on the Prevention of Statelessness, subsequent UNHCR ExCom Conclusions, and UN General Assembly resolutions by seeking durable solutions for all Bhutanese refugees, but particularly for those who may be rendered stateless by the verification exercise.
- Implement a voluntary repatriation process that conforms with international standards as outlined in UNHCR’s Handbook on Voluntary Repatriation and ExCom Conclusions. Important measures include:
 - actively seeking cooperation from the government of Bhutan in order to assertively monitor and facilitate the repatriation of those refugees who wish to return to Bhutan;
 - providing all refugees with full, impartial, and updated information about conditions in Bhutan prior to their return; and
 - refraining from scaling back assistance or closing the camps prematurely in order to “push” refugees back to Bhutan. Voluntary return should only be encouraged when refugees can return to Bhutan without fear of harassment, intimidation, or persecution. UNHCR should insist that the Bhutanese government guarantee the full reintegration of all returnees and protection of their social, economic, cultural, civil, and political rights.
- Take steps to ensure the meaningful participation of refugee women at all stages of verification, repatriation or resettlement, and integration.

To Donors, the Government of India, and the International Community

- Urge the governments of Bhutan and Nepal to include UNHCR in the verification and repatriation process.

- Step up efforts to ensure that conditions are created under which the refugees can return to Bhutan voluntarily. The return process must ensure refugees' safety and dignity and must respect their human rights.
- Uphold legal and humanitarian obligations to share responsibility for refugees by committing financial support for the transition from camps to local integration, compensation to refugees who are unable to repossess their property, and funding for a mechanism to resolve disputes.
- Ensure that a voluntary repatriation program is planned and funded so that it meets all international standards, particularly those stipulated in UNHCR's Handbook on Voluntary Repatriation and in ExCom Conclusions.
- Provide third-country resettlement possibilities as a durable solution for those who are unable or unwilling to return to Bhutan and for whom long-term protection is not available in Nepal.