

I. Executive Summary

In the early 1990s tens of thousands of ethnic Nepalis were arbitrarily deprived of their Bhutanese citizenship. Some were then expelled from Bhutan, while others fled the country to escape from a campaign of arbitrary arrest and detention directed against the ethnic Nepalis. For sixteen years these Bhutanese refugees have languished in seven refugee camps in Nepal with no resolution to their plight. In October 2006, however, the United States announced its willingness to resettle up to 60,000 of the refugees. While the U.S. resettlement offer has given hope to many of the Nepali-speaking refugees, now numbering some 106,000, the lack of clear information about the resettlement offer or about the prospects for other durable solutions, namely repatriation to Bhutan or local integration in Nepal, has resulted in increasing anxiety and tensions among the refugees. Some opponents of resettlement have threatened refugees who speak out in favor of resettlement, leaving many refugees fearful of expressing their thoughts on their future. Furthermore, the fate of the remaining 46,000 refugees and of an estimated 10,000-15,000 unregistered refugees in Nepal and 15,000-30,000 unregistered refugees in India remains unclear.

For the past sixteen years the overwhelming majority of the Bhutanese refugees in the camps in Nepal have vested their hopes in the possibility of returning to their homeland. Refugees have the right under international law to return to their own country. However, in a flawed process that was widely discredited by international observers and refugee experts, Bhutan and Nepal instituted a “joint verification process” to determine which refugees would be able to return.

The process of “verifying” the status of refugees and placing them in one of four categories broke down after a joint Nepal-Bhutan verification team assessed only one camp, and not a single refugee has been allowed to return to Bhutan as a result of this process. The Bhutanese authorities sought to limit the right of return to a small subsection of the refugees who could prove to the Bhutanese authorities that they were forcibly expelled from the country. Bhutan maintains that the majority of the camp population left Bhutan voluntarily and renounced their Bhutanese

citizenship in the process. If Bhutan were to allow the “voluntary migrants” to return, it maintains that they would have to re-apply for Bhutanese citizenship under Bhutan’s exceedingly strict citizenship laws.

Contrary to Bhutan’s contentions, under international law most, if not all, refugees in the camps in Nepal have a right to return to Bhutan. The available evidence relating to the events of the early 1990s makes clear that the refugees did not leave Bhutan voluntarily. Refugees were forced to sign so-called Voluntary Migration Forms; Human Rights Watch gathered testimonies of refugees who said that the Bhutanese authorities commanded them to “show your teeth”—to smile for the photographs that were taken of them as part of the formalities to create the impression that they left willingly and happily. In reality they were either forced to leave, or felt compelled to leave the country to avoid harassment, physical abuse, and imprisonment. Those ethnic Nepalis who signed so-called voluntary migration forms did so under duress, and did not voluntarily renounce their Bhutanese citizenship. Nothing they did in the course of their flight from Bhutan extinguished their right to return to Bhutan or to have their Bhutanese citizenship restored to them.

The right to return is not by itself a sufficient condition for the promotion of voluntary repatriation as a durable solution. Repatriation in safety and dignity is feasible only if the country of origin is willing and able to guarantee respect for returnees’ human rights. In the case of the Bhutanese refugees in Nepal, such guarantees are lacking. Not only does Bhutan remain unwilling to accept the vast majority of the Bhutanese refugees, but it also continues to discriminate against the remaining ethnic Nepali population in Bhutan. Ethnic Nepalis have great difficulties obtaining so-called No Objection Certificates (NOCs), which are a pre-requisite for government employment, access to higher education, obtaining trade and business licenses, travel documents, and buying and selling land. Being denied a NOC deprives a person of almost all means of earning a living.

Moreover, Bhutan’s remaining ethnic Nepali citizens face ongoing threats to their citizenship status. A nationwide census completed in 2005 classifies 13 percent of current Bhutanese permanent residents as “non-nationals.” Ethnic Nepalis who reside in Bhutan reported to Human Rights Watch that many of them are being

denied citizenship cards. While most ethnic Nepalis in Bhutan do not believe that they are currently at imminent risk of being expelled from Bhutan, they fear that without citizenship cards and without NOCs, life in Bhutan will eventually become so difficult as to leave many of them with little choice but to leave the country. Others fear that resettlement to the United States of many of the Bhutanese refugees in Nepal could encourage the Bhutanese authorities to coerce more ethnic Nepalis to leave.

Although Nepal has permitted the refugees to stay on its territory, it has, to date, ruled out local integration as a durable solution. The Nepalese authorities deny Bhutanese refugees the right to freedom of movement, and prohibit them from seeking employment and from engaging in income-generating activities, even within the confines of the camps. The Nepalese government has thus forced the refugees into a situation of complete dependency on the support of the international community for their survival. As the years have passed without a solution in sight, donor countries have steadily grown more reluctant to keep providing the funds to cover refugees' needs. As a result the support system in the camps has come under increasing strains, with budgetary constraints necessitating cuts in the provision of essential services, including food, fuel, and medical care.

Refugees' forced dependency on dwindling assistance, the complete lack of control over their own lives, and the fading hopes of a change of policy on the part of Bhutan to recognize refugees' right to return have produced increasing levels of anger and frustration in the camps. Parents despair about their inability to offer a future to their children, while refugee youths are becoming increasingly restless in the face of the ongoing uncertainty about their prospects. The poor conditions in the camps combined with anxiety about the future contribute to strains and tensions that result in domestic violence and conflict in the camps.

While the refugees have found safety in Nepal from the threats to their security they faced in Bhutan, the situation in the camps is not sustainable, either for the refugees who must live in the camps, or for the international community on whose continued assistance the refugees are dependent. Against this background many refugees have welcomed the U.S. resettlement offer. Many of the younger generation are overjoyed

to be offered the opportunity to start a new life in the U.S., while many refugee parents are immensely grateful that they can finally allow themselves to have some real hopes for their children's future.

However, the U.S. offer has also generated enormous anxiety in the camps. This is due to a lack of reliable information about the resettlement program. Refugees are concerned and confused about the selection procedures for resettlement, about education and employment opportunities in the U.S., and about housing and health care. Above all they are anxious to understand what the resettlement offer means in terms of citizenship. Having been arbitrarily deprived of their citizenship by Bhutan, many refugees' first priority is to obtain confirmation that the resettlement offer entails an irrevocable offer of U.S. citizenship.

Some of the refugees in the camps do not wish to be resettled. Some of the older people in particular fear that they would not be able to cope with the demands of a foreign language and a foreign culture. Although they worry about their own future if most of their relatives choose to be resettled, they do not wish to stop others from opting for resettlement. Their overriding concern is that the resettlement program remains voluntary and that they themselves will not be resettled against their wishes.

Other refugees are opposed to resettlement not just for themselves, but for everyone. A number of prominent refugee leaders and refugee political organizations, most based in Kathmandu, have denounced the resettlement offer on the grounds that it rewards the Bhutanese government for the unlawful expulsion of its own citizens, undermines the struggle for the right to return for the Bhutanese refugees in Nepal, and endangers the position of the remaining ethnic Nepalis in Bhutan by giving the green light to the Bhutanese government to embark on a new round of expulsions.

Most proponents of resettlement readily agree that there is something profoundly offensive about the idea that, after first having expelled tens of thousands of its own citizens in violation of its international legal obligations, Bhutan will now in effect be rewarded for its obduracy during fifteen rounds of negotiations with Nepal that were meant to produce an end to the refugee crisis. But they feel equally strongly that the refugees should not be held hostage to the outcome of any further negotiations with

the Bhutanese government, the likely outcome of which would only be to prolong the refugees' suffering in the camps. Moreover, they rightly point out that the option of resettlement does not extinguish their right to return to their own country, and that staying in the camps will not in itself bring the objective of repatriation closer.

Some refugees, mostly under the influence of the Kathmandu-based leaders, are using threats and intimidation to try to silence the advocates for resettlement. During the time of the Human Rights Watch mission to the camps, a heretofore unknown group lodged a death threat against two of the elected camp secretaries who have welcomed the U.S. resettlement offer.

Although no actual acts of violence have been committed so far, fear among the refugees is widespread and most are extremely reluctant to express an interest in the resettlement offer publicly.

It is in this climate of fear and intimidation that the lack of information about the resettlement offer has its most pernicious consequences. Without reliable information to dispel rumors and disinformation, refugees are ill-equipped to make free and informed decisions about the resettlement offer and limit the scope for intimidation. An information campaign would counter the rumors that circulate in the camps and ensure that refugees could debate the options for their future in an atmosphere of openness and respect.

The U.S. offer to resettle up to 60,000 Bhutanese refugees is the first significant movement in 15 years toward resolving one of the world's most intractable refugee situations. But to be truly effective this offer cannot operate in isolation. The U.S. resettlement offer needs to be a catalyst for a comprehensive solution to the Bhutanese refugee crisis. This requires a three-pronged strategy.

First, given that resettlement is likely to remain the only feasible durable solution in the near future for the majority of the refugees, countries other than the U.S. should join in a coordinated effort to maximize the total number of resettlement places available. If the U.S. offer to resettle 60,000 stands alone and neither repatriation nor local integration become viable options, the majority of refugees will remain

without durable solutions. In addition to more than 100,000 refugees living in the camps in eastern Nepal, as many as 15,000 unregistered Bhutanese refugees live outside the camps in Nepal and another 30,000 live in India.

Moreover, Nepal must respect refugees' right to leave the country. The Nepalese government should issue exit permits without delay for Bhutanese refugees who are offered resettlement. While the government of Nepal should continue to demand that the government of Bhutan respect refugees' right to return to Bhutan, it should not make its cooperation on resettlement contingent on the outcome of further rounds of bilateral talks with Bhutan.

Second, refugees must have a real alternative in the form of local integration, including guarantees of freedom of movement and the right to seek a livelihood in Nepal. Nepal should grant Nepalese citizenship to those refugees who express a preference for local integration over resettlement.

Third, the United States and other resettlement countries should redouble their efforts to convince Bhutan of its obligation to allow refugees who want to repatriate to do so. All relevant parties should emphasize to the refugees and the government of Bhutan alike that the options of local integration and third-country resettlement do not extinguish refugees' right to return. Rather, refugees are offered these options on humanitarian grounds, to allow them to end their current status. Refugees' interim choices do not deprive them of their right to return to Bhutan. Equally, no offer of a durable solution, be it local integration in Nepal or resettlement to a third country, extinguishes Bhutan's obligations under international law to respect the refugees' right to return to Bhutan. Moreover, the options of local integration and third-country resettlement do not extinguish refugees' right to have restored to them any housing, land, or property of which they were arbitrarily or unlawfully deprived, and to be compensated for any housing, land, or property that cannot be restored to them.

The resettlement countries must present the refugees with a clear message that their offer of resettlement is not intended to undermine the efforts to realize refugees' right to return to their own country. To enforce this message, the resettlement

countries must bring pressure to bear on the government of Bhutan to respect and protect the fundamental human rights of the remaining ethnic Nepalis in Bhutan, and to allow those refugees who wish to repatriate to exercise their right to return. The international community, and in particular the U.S. and other resettlement countries, and those countries who maintain diplomatic relations with Bhutan, must put real pressure on the government of Bhutan to ensure respect for the rights of Bhutan's ethnic Nepalis on a non-discriminatory basis, and in particular to ensure that all ethnic Nepalis in Bhutan are protected from arbitrary loss of nationality resulting in statelessness.

II. Recommendations

To the Government of Bhutan

- Respect and protect the civil, political, economic, social and cultural rights of the ethnic Nepalis in Bhutan, without discrimination.
- Amend the citizenship laws so that all Bhutanese are protected from arbitrary denationalization and statelessness. In particular, citizenship by naturalization should be an open, fair, and transparent process, that does not exclude persons with genuine ties to the country from applying and being granted citizenship simply on the basis that they have voiced criticisms of the government, or are proficient in Nepali but not in Dzongkha.
- Abolish the system of No Objection Certificates and grant equal rights to all Bhutanese citizens.
- Eliminate all discrimination against ethnic Nepalis on the basis of the connections to refugees in the camps in Nepal.
- Ensure that all Bhutanese citizens receive new citizenship cards without discrimination, and that all adult Bhutanese citizens are allowed to register as voters for the 2008 elections.
- Respect the right of return of all Bhutanese refugees by abolishing the current four-tiered categorization process and applying internationally recognized refugee-status-determination procedures.
- Invite the UN High Commissioner for Refugees (UNHCR) to establish a presence in Bhutan in order to facilitate the return and reintegration of returnees, to monitor their status, and to intervene on their behalf, if necessary.
- Respect the right of all Bhutanese refugees to housing, land, and property restitution, and their right to be compensated for any housing, land, or property that cannot be restored.
- Ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on Elimination of Racial Discrimination.
- Ratify the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.

To the Government of Nepal

- Cooperate with the U.S. and other resettlement countries in the resettlement of Bhutanese refugees, and respect refugees' right to leave the country. Issue exit permits in a timely way to all refugees who wish to repatriate or who choose to accept third-country resettlement.
- Continue to demand that Bhutan respect the right to return of all Bhutanese refugees. At the same time, do not make the implementation of resettlement programs dependent on progress in the bilateral talks with Bhutan.
- Immediately guarantee respect for the right to freedom of movement for refugees, and authorize their right to seek employment in Nepal.
- Allow Bhutanese refugees to integrate locally in Nepal. Give refugees who opt for local integration the possibility to acquire Nepalese citizenship.
- Ensure that all refugees who are entitled to Nepalese citizenship under Nepal's Citizenship Act 2006, including in particular children born to a refugee mother and a Nepalese father, receive the necessary administrative assistance to complete the formalities for acquiring citizenship.
- Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and adopt implementing asylum laws and regulations.
- Allow all non-registered Bhutanese asylum seekers to register their claims for refugee status in Nepal, and determine such claims on the basis of fair and transparent asylum procedures, including a right to appeal.
- Continue to provide secure asylum to the Bhutanese refugees for as long as is required before they have found a durable solution.
- Provide security in the Bhutanese refugee camps to enable free expression of opinions and beliefs and prosecute intimidators who threaten or harm those who exercise their rights to freedom of opinion, expression, and association.
- Ratify the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.

To the Government of India

- Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.
- Ratify the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.

- Allow all Bhutanese refugees currently living in India to regularize their status, and give them the possibility to acquire Indian citizenship.
- Offer to mediate between Bhutan and Nepal to resolve the Bhutanese refugee and statelessness crisis.
- Engage actively with the Bhutanese authorities to demand that Bhutan accept the return of Bhutanese refugees under proper international monitoring and with the restoration of rights and property.
- Make clear to the Bhutanese authorities that expulsions of ethnic Nepalis following the current census would be unacceptable.
- Encourage Bhutan to immediately stop its policy of discrimination against its ethnic Nepali citizens.

To the United Nations High Commissioner for Refugees

- Work with local authorities and the refugee leadership and population to ensure respect for the right of all refugees to freely express their opinions about all durable solutions.
- Work with the government of Nepal, the resettlement countries, and nongovernmental organizations (NGOs) to provide, as soon as possible, detailed and up-to-date information about all durable solutions to all refugees in the camps.
- Ensure that the elections for the Camp Management Committees (scheduled for June 2007) are free and fair.
- Ensure that the refugees to be resettled—particularly the first group—are protected from threats, intimidation, and physical attacks by opponents of resettlement.
- Continue to press Nepal, Bhutan, and India to ratify the 1951 Refugee Convention and its 1967 Protocol, the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness.
- Consider for refugee status under UNHCR's mandate ethnic Nepalis from Bhutan in India who fled or were expelled from Bhutan for the same reasons as the Bhutanese refugees living in Nepal.
- Ensure that all refugee children born in the camps have their births registered.

- Continue to work with the refugees to reduce the incidence of sexual and gender-based violence in the camps.

To the United Nations Children’s Fund (UNICEF)

- Ensure that all refugee children who are entitled to Nepalese citizenship under Nepal’s Citizenship Act 2006, including in particular children born to a refugee mother and a Nepalese father, are properly assisted to complete the formalities for acquiring citizenship.

To the United States and other resettlement countries

- Work with previously resettled refugees and with NGOs to provide detailed information about the terms and conditions of the offer of resettlement to all refugees in camps using different media, including brochures, radio broadcasts, and face-to-face, question-and-answer sessions.
- Emphasize to all parties that the choice of resettlement is voluntary and does not in any way extinguish the right to return.
- Mobilize the international community to bring pressure to bear on Bhutan to respect the rights of all its citizens, including ethnic Nepalis, and to respect the Bhutanese refugees’ right to return to Bhutan.

To the international community, in particular the “Friends of Bhutan” group (Austria, Denmark, Finland, Japan, Netherlands, Norway, Sweden, and Switzerland) and the “core group” (Australia, Canada, Denmark, Netherlands, New Zealand, Norway, and the United States)

- Continue to provide for the needs of the Bhutanese refugees for as long as they remain in the camps in Nepal.
- Put pressure on Bhutan to respect the rights of all its citizens, including ethnic Nepalis, and to fulfill its obligations on the right to return of all Bhutanese refugees.