



BHUTAN/NEPAL

Last Hope

The Need for Durable Solutions for Bhutanese Refugees
in Nepal and India

HUMAN
RIGHTS
WATCH





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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.

III. Background

The Bhutanese refugee crisis has its roots in the history of migration to Bhutan, the resulting ethnically diverse make-up of the country's population, and the harsh policies of Bhutan's absolute monarchy towards its ethnic Nepali minority.¹ The politically and culturally dominant Ngalongs, who live mainly in the central and western regions of Bhutan, are of Tibetan descent; their ancestors arrived in Bhutan in the eighth and ninth centuries. The Ngalongs speak Dzongkha and follow the Drukpa Kagyu school of Tibetan Buddhism, which is Bhutan's state religion. Bhutan's king, Jigme Khesar Namgyel Wangchuck, is a Ngalong. The Sharchhops, who live in eastern Bhutan, are descendants of the earliest migrants to arrive in Bhutan; they are of Indo-Burmese origin, speak Tshangla (which is closely related to Dzongkha) and follow the Nyingma school of Tibetan Buddhism. Together the Ngalongs and Sharchhops are known as Drukpas. The third major group, who differ greatly from the Drukpas in terms of culture, language, and religion, are ethnic Nepalis in southern Bhutan; they speak Nepali and are predominantly Hindu.^{2,3}

¹ For a more detailed analysis of the developments leading up to the Bhutanese refugee crisis, 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. See also Human Rights Watch, "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, <http://hrw.org/backgrounder/wrd/refugees/>; Human Rights Watch, *Bhutan/Nepal – Trapped by Inequality: Bhutanese Refugee Women in Nepal*, vol. 15, no. 8(C), September 2003, <http://www.hrw.org/reports/2003/nepal0903/>.

² According to the 2005 Population and Housing Census of Bhutan, the population of Bhutan is 634,982. The census does not provide population statistics by ethnicity. Estimates of the ethnic breakdown of the population are a source of considerable controversy, and range from 10 to 28 percent for the Ngalongs, 30 to 40 percent for the Sharchhops, and 25 to 52 percent for the ethnic Nepalis. See Michael Hutt, "Bhutan's Crisis of Identity," *The World Book Year Book* (London: World Book Inc., 1994), pp. 65-66. According to the U.S. State Department, the Ngalongs and Sharchhops together account for about 50 percent of the population, and the ethnic Nepalis for about 35 percent of the population, with the remaining 15 percent indigenous tribal people. U.S. State Department, Bureau of South and Central Asian Affairs, "Background Note: Bhutan," January 2007, <http://www.state.gov/r/pa/ei/bgn/35839.htm> (accessed January 16, 2007).

³ The ethnic Nepalis in Bhutan are often referred to as Lhotshampas, which translates as "people of the south" (just as Sharchhops translates as "people of the east"). However, after the eviction of tens of thousands of ethnic Nepalis from Bhutan, the government instituted a policy of resettling Drukpas on land formerly owned by the ethnic Nepalis (see section V of this report). As a result, the term Lhotshampa no longer exclusively denotes ethnic Nepalis in Bhutan, but also includes those Drukpas living in southern Bhutan. This report will therefore use the term ethnic Nepalis, or Nepali speakers, to distinguish this group from the Drukpas.

Ethnic Nepalis first began migrating to Bhutan in the nineteenth century. Many became eligible for Bhutanese citizenship under the 1958 Nationality Law.⁴ Moreover, from the mid-1950s ethnic Nepalis began to be admitted into the bureaucracy, the army and the police, and were made members of the cabinet and the judiciary.⁵ However, by the late 1970s the Drukpa establishment had come to see the ethnic Nepalis' growing numbers and influence as a threat to Bhutan's cultural identity and the Drukpas' own privileged position. Increasingly, Bhutan's ruling elite asserted that the majority of the ethnic Nepalis in Bhutan were not in fact citizens but illegal immigrants who threatened Bhutan's "survival as a distinct political and cultural entity."⁶

The government invoked these perceived threats as justification for a series of discriminatory measures aimed at the political, economic, and cultural exclusion of Bhutan's ethnic Nepalis. Two new Citizenship Acts were passed in quick succession, in 1977 and 1985, each tightening the requirements for Bhutanese citizenship.⁷ The

⁴ Under the 1958 Nationality Law, foreigners who had resided in Bhutan for at least 10 years and who owned agricultural land in Bhutan were eligible to apply for Bhutanese citizenship after taking an oath of loyalty to the king. Foreigners who had served satisfactorily in government service for at least five years and who had resided in Bhutan for at least 10 years were also eligible to apply for Bhutanese citizenship, as were foreign women married to Bhutanese men. Children of Bhutanese fathers acquired Bhutanese citizenship by descent.

⁵ D.N.S. Dhakal and C. Strawn, *Bhutan: A Movement in Exile* (Jaipur: Nirala Publications, 1994), p. 151. Bhutan is governed by the king and the cabinet, which consists of the Council of Ministers and the Royal Advisory Council. The king nominates all cabinet ministers. Until recently all political parties were forbidden, but a draft constitution released in 2005 paves the way for a process of democratization. Bhutan's first elections are scheduled for 2008. See section V for a more detailed discussion of Bhutan's transition to a two-party democracy.

⁶ Ministry of Home Affairs, *The Southern Problem: Threat to a Nation's Survival* (Thimpu, Bhutan, May 1993), pp. 41. Referring to the millions of ethnic Nepalis in India, the government raised the specter of a "relentless tide of the Nepali diaspora" imposing "a state of democratic siege on Bhutan" (*ibid.*, pp. 37, 41). The government asserted that "the southern Bhutan problem is neither a movement for democracy nor an issue concerning human rights. It is simply an attempt by an ethnic community to turn themselves into a majority through illegal immigration in order to take over political power" (*ibid.*, p. 34). Developments in the region no doubt contributed to these fears. In 1975, the neighboring kingdom of Sikkim ceased to be an independent state and merged with India, following a referendum in which the Nepali migrants, who had come to outnumber the Buddhist Sikkimese, were instrumental. In the mid-1980s the Gorkha National Liberation Front led an ultimately unsuccessful but violent campaign in North Bengal in India, on Bhutan's western border, for an independent Nepali state. Finally, in 1990 Nepal's democracy movement reduced the status of Nepal's king to that of a constitutional monarch. For a detailed analysis of the ruling Drukpas' perception that Bhutan's identity was threatened by the ethnic Nepalis in Bhutan, see Michael Hutt, *Unbecoming Citizens: Culture, Nationhood, and the Flight of Refugees from Bhutan* (Oxford and New Delhi: Oxford University Press, 2005).

⁷ The government argued that the tighter citizenship requirements were "all that stands between overwhelming demographic pressures and the survival of the Bhutanese people as a distinct political and cultural entity." Ministry of Home Affairs, *The Southern Problem*, p. 39. A new Marriage Act, adopted in 1980, was intended to form part of this barrier by deterring further immigration. It imposed heavy burdens on all Bhutanese citizens marrying foreigners. Bhutanese citizens who worked for the Bhutanese government were denied any promotions from the day of their marriage to a foreigner, and were excluded altogether from employment in the ministry of foreign affairs and the national defense department. They were also denied facilities provided by the state to other Bhutanese citizens, such as distribution of land, cash loans, grants of seeds and oxen, grants of capital, medical treatment abroad, and government assistance for education and training abroad. The 1977

1977 Citizenship Act increased the residency requirement for citizenship by 10 years: from five to 15 years for government servants and from 10 to 20 years for all other foreigners.⁸ The growing concerns about the threat posed by ethnic Nepalis to Bhutan's cultural identity were reflected in an additional requirement for applicants for Bhutanese citizenship to have "some knowledge" of the Dzongkha language and Bhutanese history.⁹ The 1977 Act also provided that citizenship would not be granted to anyone who was related to any person involved in activities against the people, the country, and the King.¹⁰ Bhutan's first national census from 1979 to 1981 used the criteria set out in the 1977 Act to identify residents as citizens or not. Following the census, only those identified as citizens according to the 1977 Act were issued citizenship identity cards.

The 1985 Citizenship Act tightened the requirements for Bhutanese citizenship still further. Under the 1985 Act, a child only automatically qualifies for citizenship if both parents are Bhutanese.¹¹ The 1985 Act raised the bar higher for naturalization.¹² The 1985 Act also provided for citizenship by registration if one had been permanently domiciled in Bhutan on or before December 31, 1958, and one's name had been registered in the Ministry of Home Affairs census register.¹³

The 1985 Citizenship Act was followed by a new census in 1988. This census amounted to a selective, arbitrary, and retroactive implementation of the 1985 Act. First, the government only conducted the census in southern Bhutan. Second, the

Citizenship Act had already repealed the provision in the 1958 Nationality Act according to which women married to Bhutanese men were entitled to Bhutanese citizenship by virtue of their marriage; under the 1977 Act such women had to apply for Bhutanese citizenship like any other foreigner.

⁸ Act on Grant of Citizenship in Bhutan, 1977, arts. Ka 1 and Ka 2.

⁹ Act on Grant of Citizenship in Bhutan, 1977, art. Ka 3. Since most ethnic Nepalis had very little contact with Drukpas, and therefore had little or no knowledge of Dzongkha, this requirement was difficult to meet for ethnic Nepalis, even if they had lived in Bhutan all their lives. Dhakal and Strawn, *Bhutan: A Movement in Exile*, pp. 172-173.

¹⁰ Act on Grant of Citizenship in Bhutan, 1977, art. Kha 2.

¹¹ Bhutan Citizenship Act, 1985, art. 2.

¹² The requirements for eligibility for citizenship by naturalization under the 1985 Act are: residence in Bhutan of 15 years for government employees and children with one Bhutanese parent, and 20 years for all others; the period of residence must be registered in the government records; proficiency in Dzongkha; good knowledge of the culture, customs, traditions, and history of Bhutan; good moral character; no record of imprisonment for criminal offences; and no record of having spoken against the king, country, and people of Bhutan. The 1985 Act grants the government of Bhutan the right to reject any application for naturalization without giving reasons. Bhutan Citizenship Act, 1985, art. 4.

¹³ Bhutan Citizenship Act, 1985, art. 3.

authorities excluded ethnic Nepalis from becoming naturalized citizens, as provided for under the 1985 Act; instead, the authorities restricted Bhutanese citizenship to ethnic Nepalis who had records, such as tax receipts, to prove residence in Bhutan in 1958—30 years before the census. Bhutanese officials refused to accept residency records from 1957 or earlier, or from the years 1957 and 1959 (indicating residency in 1958) to establish citizenship. They disregarded the citizenship identity cards issued after the previous census: the authorities classified people who could not prove residence in 1958 as non-nationals, “returned migrants”, or other illegal immigrant categories, even if they possessed a citizenship card.¹⁴

The census caused considerable anxiety among the ethnic Nepali population in southern Bhutan. A series of “Bhutanization” measures in line with Bhutan’s “one nation, one people” policy exacerbated this state of fear and resentment by trying to impose a distinct national identity. On January 16, 1989, the king issued a decree requiring all citizens to observe the traditional Drukpa code of values, dress, and etiquette called *driglam namzha*.¹⁵ Then in February 1989 the government removed the Nepali language from the curriculum in all schools in southern Bhutan.¹⁶

Ethnic Nepalis perceived these policies as a direct attack on their cultural identity. This led to growing unrest in southern Bhutan, culminating in mass demonstrations in September and October 1990. The government response was swift. The authorities classified all participants in the demonstrations as *ngolops* (“anti-nationals”), and arrested and detained thousands of people accused of taking part in the demonstrations. Many were subjected to ill-treatment and torture; a number of

¹⁴ Amnesty International, “Bhutan: Forced Exile,” AI Index: ASA 14/04/94, August 1994. The 1988 census placed people into one of seven categories (or “forms”): F1 (genuine Bhutanese citizens), F2 (returned migrants, i.e. people who left Bhutan and then returned), F3 (people who were not around at the time of the census), F4 (non-national women married to Bhutanese men, and their children), F5 (non-national men married to Bhutanese women, and their children), F6 (legally adopted children), and F7 (non-nationals). Only those people who could prove that they resided in Bhutan in 1958 were categorized as F1. The Bhutanese authorities applied exceedingly strict criteria in this regard. For example, people who had documents proving residence before and after 1958, but not 1958 itself, were categorized as F2. People who had no documents to prove residence in 1958 frequently had their citizenship card confiscated by the census officials. See *ibid.*, and D. B. Thronson, “Cultural Cleansing: A Distinct National Identity and the Refugee from Southern Bhutan,” Kathmandu: INHURED International, August 1993, http://www.bhootan.org/thronson/nationality_index.htm (accessed January 24, 2007), p. 11.

¹⁵ Perhaps the most controversial aspect was the requirement that all men wear the *gho*, a one-piece tunic, and all women wear the *kira*, a one-piece ankle-length dress. These outfits had never been worn by the ethnic Nepalis and were unsuited to the subtropical climate in southern Bhutan. The policy was strictly enforced; failure to wear the traditional dress outside the home led to on the spot fines or even imprisonment. See Thronson, *Cultural Cleansing*, p. 20.

¹⁶ Tessa Piper, “The Exodus of Ethnic Nepalis from Southern Bhutan,” 1 April 1995, <http://www.unhcr.org/home/RSDCOI/3ae6a6co8.html> (accessed January 24, 2007), section 3.3.

people reportedly died in detention. The security forces staged frequent raids on the homes of ethnic Nepalis, and there were numerous accounts of women and girls being raped in the course of these raids.¹⁷ Following the demonstrations, the government closed all schools in southern Bhutan and suspended health services.¹⁸

By the end of 1990 the Bhutanese authorities coerced the first ethnic Nepalis to leave Bhutan. They released some ethnic Nepalis from prison on condition that they would leave the country, while giving others who were categorized as non-nationals under the 1988 census the “choice” to leave the country or face imprisonment. Some fled to avoid falling victim to arbitrary arrest and detention. The security forces harassed many ethnic Nepalis, in some cases destroying their homes. The authorities forced the majority of those who became refugees into exile by intimidating them into signing so-called “voluntary migration forms.”¹⁹ A young man’s testimony was typical of the accounts refugees gave to Human Rights Watch of the circumstances of their departure from Bhutan:

The army took all the people from their houses. The army came to my house many times. My father left the house and went to India. My brother and two sisters worked in the government service. The army sent us the form issued by the government [voluntary migration form]. They said that we had to go out. They said if you go now you will get some money. Some people got a little money. On the way [as we left Bhutan] there were many police. We were forced to sign the document. They snapped our photos. The man told me to smile, to show my teeth. He wanted to show that I was leaving my country willingly, happily, that I was not forced to leave. Only one member of my family signed. My mother gave her thumbprint.²⁰

¹⁷ Amnesty International, “Bhutan: Human Rights Violations against the Nepali-speaking Population in the South,” AI Index: ASA 14/04/92, December 1992.

¹⁸ Piper, “The Exodus of Ethnic Nepalis from Southern Bhutan,” section 5.

¹⁹ Amnesty International, “Bhutan: Forced Exile,” AI Index: ASA 14/04/94, August 1994. Many ethnic Nepalis were threatened with large fines or imprisonment if they failed to comply. Some received monetary compensation for their land in Bhutan, but frequently the compensation represented only a fraction of the value of the land. Ibid.

²⁰ Human Rights Watch interview (B1), Kathmandu, November 7, 2006.

Some of the ethnic Nepalis who fled or were expelled from Bhutan settled in India, but most refugees ended up in Nepal.²¹ UNHCR has provided assistance to the Bhutanese refugees in Nepal since 1992.²² There are currently more than 106,000 Bhutanese refugees living in seven refugee camps in Nepal.²³

²¹ While some refugees made their own way to Nepal, the Indian authorities transported others to the India-Nepal border. Gerrard Khan, "Citizenship and Statelessness in South Asia," *New Issues in Refugee Research, UNHCR Working Paper no. 47*, October 2001, <http://www.unhcr.org/research/RESEARCH/3bfoff124.pdf> (accessed January 24, 2007). Estimates of the number of Bhutanese refugees in India range from 15,000 to 30,000. See U.S. State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices – 2006: Bhutan," March 6, 2007, <http://www.state.gov/g/drl/rls/hrrpt/2005/61706.htm> (accessed January 25, 2007); Farzana Shaikh, "Nepal: Early Warning Analysis," *Written Report*, August 2004, <http://www.unhcr.org/publ/RSDCOI/4186626c4.pdf> (accessed January 25, 2007); S. Chandrasekharan, "Bhutan – Bhutanese Refugees: Repatriation Chances Look Bleak," South Asia Analysis Group, Note 212, February 19, 2004, <http://www.saag.org/notes3/note212.html> (accessed January 25, 2007); Minorities at Risk, "Assessment for Lhotshampas in Bhutan," December 2003, <http://www.cidcm.umd.edu/inscr/mar/assessment.asp?groupId=76001> (accessed January 25, 2007).

²² UNHCR-Nepal, "Bhutanese Refugees in Nepal," August 2003.

²³ Six of the refugee camps (Beldangi I, Beldangi II, Beldangi II-extension; Timai, Goldhap, and Khudunabari) are in Jhapa district, and one camp (Sanischare) is in neighboring Morang district, in eastern Nepal. UNHCR and the government of Nepal are currently conducting a census in the refugee camps to establish the precise number of Bhutanese refugees in Nepal (see section XII below). UNHCR estimated that in 2005 there were 106,200 Bhutanese refugees in Nepal. See UNHCR, "Global Report 2005," (Geneva, 1 June 2006), <http://www.unhcr.org/cgi-bin/texis/vtx/template?page=publ&src=static/gr2005/gr2005toc.htm> (accessed January 25, 2007), p. 326.

IV. Life in the Refugee Camps in Nepal

*The situation in the camps is getting worse and even good people are becoming bad people. After finishing their studies, young people don't get jobs. They have no work, they are idle. They get bad company, and they drink a lot. They get violent.*²⁴

— A 43-year-old refugee at the Beldangi II camp

The Bhutanese refugees in Nepal are restricted to living in camps and prohibited from engaging in income-generating activities, even within the camp confines (see section IX). As a consequence the refugees are entirely dependent on the support of the international community for their survival. Although camp residents highly appreciate the education the camp schools are able to provide, despite very limited resources, the lack of employment for students who finish school corrodes morale and dashes hopes. A refugee teacher in Sanischare camp observed that more and more students are dropping out of school because they have no future prospects. “There is frustration, they see no bright future. They ask, ‘What is the use of studying, when there are no opportunities?’ Some drop their studies and loiter, they remain idle. The frustration is increasing all the time.”²⁵

While young adults may feel the frustration most acutely, all the refugees in the camps share the feeling of being stuck in place.

Cuts in Essential Services

With the passage of time this 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. The Bhutanese refugees in

²⁴ Human Rights Watch interview (K15), Beldangi II-extension camp, November 11, 2006.

²⁵ Human Rights Watch interview (K24), Sanischare camp, November 14, 2006. See also Bhutanese Refugees Durable Solutions Coordination Committee, “Current Situation of the Bhutanese Refugees in Nepal,” January 2007, unpublished document on file with Human Rights Watch, p. 2, noting that frustrated refugee students without future prospects “become a formidable force to engage actively in antisocial activities including domestic violence which contribute significantly to sexual and gender based violence.”

Nepal are trapped between their forced dependency on international assistance and the increasing reluctance of the international community to keep providing for their needs.

One of the more dramatic signs of donor fatigue came in December 2006, when the World Food Programme (WFP) warned that it had not yet received any international donations to fund its food aid to the refugees for the next two years, and would be forced to cut rations to the refugees unless it received immediate funds.²⁶ UNHCR too has had to scale back its assistance programs to the refugees in the face of budgetary constraints.²⁷ Some services which used to be extended to all refugees have now been limited to the most vulnerable. For example, whereas UNHCR used to provide all refugees with plastic sheeting once every two years to repair their roofs, it now only provides roofing materials to the most vulnerable.²⁸ As a result, many refugees are left with leaking roofs, which they cannot afford to repair and which during the rainy season force entire families to crowd together in the small parts of their huts that are still dry, or to take shelter in other families' huts.²⁹ The problem also affects schools in the camps; leaky roofs in primary-school classrooms mean that the jute mats on which the students sit become soggy during the rainy season, and the children are forced to attend classes standing up.³⁰

²⁶ "Absence of Funds Threatens UN Efforts to Feed 106,000 Bhutanese Refugees in Nepal," *UN News Centre*, December 22, 2006, <http://www.un.org/apps/news/story.asp?NewsID=21084&Cr=nepal&Cr1=> (accessed January 25, 2007). The WFP has since received donations from the European Community Humanitarian Office (ECHO), Canada, and the US. "US, ECHO and Canada Provide Aid to WFP," *Bhutan New Service*, February 14, 2007, <http://www.apfanews.com/news/?id=333131f1676> (accessed February 14, 2007).

²⁷ The government of Nepal invited UNHCR in August 1991 to provide relief to the Bhutanese refugees on its territory. Assistance to the refugees is currently provided by UNHCR, the World Food Programme, the Lutheran World Federation, Caritas, AMDA, and the Nepal Bar Association.

²⁸ UNHCR, "Global Report 2005," (Geneva, 1 June 2006), <http://www.unhcr.org/cgi-bin/texis/vtx/template?page=publ&src=static/gr2005/gr2005toc.htm> (accessed January 25, 2007), p. 328.

²⁹ Human Rights Watch focus group discussion with a group of 14 women (K41), Beldangi II camp, November 17, 2006.

³⁰ Human Rights Watch interview with camp secretary Parshuram Nepal (B45/K35), Timai refugee camp, November 16, 2006. According to UNHCR, the decision to select shelter as an area to be targeted for budget cuts was made in consultation with the refugees. Besides assisting the most vulnerable refugees with roof repairs, UNHCR also gives priority to public buildings in the camps, such as schools and clinics. Human Rights Watch interview with UNHCR staff, UNHCR sub-office, Damak, November 20, 2006. The rainy season in Nepal lasts from about May to September.

These are by no means the only challenges refugees face because of aid agencies' funding woes. Caritas stopped distributing clothes in 2002.³¹ UNHCR has cut back the vegetables and spices it provided to supplement the basic WFP rations; now refugees can only prepare very basic meals with little variety.³²

Probably the biggest impact of budget cuts on refugees' daily lives was the switch in December 2005 from kerosene to coal briquettes for cooking. UNHCR implemented this change following a steep increase in the price of kerosene, combined with its doubts about donor nations' willingness to provide continued funding for this protracted refugee situation.³³ While briquettes are cheaper, they also have a number of serious disadvantages compared to kerosene. First, the briquettes generate much smoke, which envelops the camps in a thick cloud in the early morning and late afternoon when all families are preparing their meals.³⁴ During interviews with Human Rights Watch, camp residents, as well as the staff of camp health clinics, consistently attributed eye, skin, and respiratory complaints to the introduction of the coal briquettes. Association of Medical Doctors of Asia statistics, however, show no correlation between the introduction of the coal briquettes and an increase in the incidence of skin or respiratory problems.³⁵ Whatever the

³¹ Human Rights Watch interview with UNHCR staff, UNHCR sub-office, Damak, November 20, 2006; and Human Rights Watch interview with Fr Varkey, Jesuit Refugee Service, Damak, November 14, 2006. In the winter of 2006-2007, cold weather, poorly insulated huts, and lack of warm clothing caused a spike in the number of children falling ill. "Nepal: Poor Housing Causes Illness Among Refugee Children," Jesuit Refugee Service briefing, January 17, 2007, <http://www.jesref.org/news/index.php?lang=es&sid=1607> (accessed February 1, 2007). In 2006 Caritas distributed school uniforms to 2,182 students from vulnerable families, and a set of undergarments to each of 1,132 girl students from vulnerable families. Caritas hopes to provide more school uniforms in the course of 2007. A joint effort by UNHCR-Nepal and UNHCR-Japan resulted in a large donation of clothes from Japan that were distributed in the camps in early March 2007. Email from Abraham Abraham, UNHCR-Nepal to Human Rights Watch, March 12, 2007; and "Japan's UNIQLO Clothes to Exiled Bhutanese," Bhutan New Service, March 7, 2007, <http://www.apfanews.com/news/?id=333432fc2012> (accessed March 8, 2007).

³² Human Rights Watch interview with UNHCR staff, UNHCR sub-office, Damak, November 20, 2006.

³³ "Rising World Oil Prices Squeeze Fuel Supply for Bhutanese Refugees," UNHCR news stories, September 2, 2005, <http://www.unhcr.org/news/NEWS/431875b84.html> (accessed February 1, 2007); UNHCR, "Global Report 2005," (Geneva, 1 June 2006), <http://www.unhcr.org/cgi-bin/texis/vtx/template?page=publ&src=static/gr2005/gr2005toc.htm> (accessed January 25, 2007), p. 327.

³⁴ In interviews with Human Rights Watch, refugees observed that the first two deliveries of briquettes had been of higher quality, and had produced significantly less smoke, than later deliveries (Human Rights Watch interview with eight members of the Bhutanese Refugee Women Forum (K36), Timai camp, November 16, 2006). The quality of the briquettes is in fact so bad that they disintegrate into coal dust and do not burn properly. Refugees try to remedy this by mixing the coal dust with water, shaping the mixture into new briquettes and drying these in the sun. During the rainy season and during the winter months the weather conditions mean this is not a practicable option.

³⁵ According to Association of Medical Doctors of Asia (AMDA) statistics, the total number of refugees presenting with skin problems decreased from 44,647 in 2005 to 39,907 in 2006; the total number of refugees with eye infections increased from

documented causal link between the use of briquettes and camp health so far, there is concern within the camp that it has been harmful to the camp residents' health and that it has added to the pressure on the camp health facilities at a time when these, too, are facing budget cuts.³⁶ Second, preparing meals now takes significantly longer, which means that mothers find it impossible to prepare breakfast for their children before they go to school. Preparing several small meals a day for infants and for elderly or sick people has also become almost impossible, since it simply takes too long to heat the briquettes sufficiently for cooking.³⁷ Third, refugees have been provided with only one oven per hut, even if there are two separate households sharing the hut, so that families have to take turns in preparing meals.³⁸ Fourth, there is no lighting in any of the camps, so that after sunset the camps are shrouded in darkness. The refugees formerly used part of their kerosene fuel ration for lighting oil lamps at night, which was particularly important for families with children of school age who needed lighting to do their homework. Almost without exception refugees stated that the one liter of kerosene per family per month that is now provided specifically for the purpose of lighting is insufficient.³⁹ Finally, refugees

6,746 in 2005 to 8,269 in 2006; and cases of acute respiratory track infections decreased from 180,906 in 2005 to 126,718 in 2006. Email from UNHCR-Nepal to Human Rights Watch, March 12, 2007.

³⁶ Human Rights Watch interview with nine health workers at Primary Health Centre, Khudunabari refugee camp, November 15, 2006; and Human Rights Watch interview with Health Protection Officer, Primary Health Centre, Timai refugee camp, November 16, 2006. In an interview with Human Rights Watch, UNHCR staff stated that a number of steps were being taken to address the smoke-related problems, including monitoring the quality of the briquettes, testing the air quality in the camps, providing more training to the refugees on the proper use of the chimneys that had been supplied with the ovens, and replacing chimneys with higher-quality ones.. UNHCR has studied various alternatives to the compressed coal dust briquettes, in particular so-called bio-briquettes which produce much less smoke than compressed coal dust briquettes, but the amount of biomass available locally was found to be insufficient to produce enough briquettes for the camps. Human Rights Watch interview with UNHCR staff, UNHCR sub-office, Damak, November 20, 2006. On alternative fuels, see also Women's Commission for Refugee Women and Children (New York), "The Perils of Direct Provision: UNHCR's Response to the Fuel Needs of Bhutanese refugees in Nepal," March 2006, http://www.womenscommission.org/pdf/np_fuel.pdf (accessed January 31, 2007), pp. 14-16.

³⁷ Human Rights Watch interview with the secretary of the Bhutanese Refugee Women Forum (K20), Beldangi I camp, November 13, 2006.

³⁸ While some of these problems have been alleviated by the provision of solar cookers to the refugees, the solar cookers do not provide a solution to all these problems. Thus, while the solar cookers help to reduce the smoke levels in the camp, they cannot be used to prepare food in time for breakfast because of lack of sunlight. Moreover, there is only enough sunlight for the solar cookers to be used on about 40-60 percent of days during the year. See Women's Commission for Refugee Women and Children (New York), "The Perils of Direct Provision", pp. 2, 9-12. In some parts of the camps there is insufficient space for solar cookers to be installed. Thus for example in Timai camp, about 400 huts cannot be provided with solar cookers at all, because there is not enough space between the huts. Human Rights Watch interview with camp secretary Parshuram Nepal (K38), Timai refugee camp, November 16, 2006.

³⁹ UNHCR staff challenged this observation, saying that one liter of kerosene is sufficient for 62 hours of light using a stormlamp, i.e. about two hours a day for a month. Also, a pilot project in Timai camp will test the use of solar lights to provide lighting at night in the streets in the camp as well as in common spaces such as schools, allowing students to study at night. Human Rights Watch interview with UNHCR staff, UNHCR sub-office, Damak, November 20, 2006.

stated that the quantity of briquettes they receive each month is insufficient, so that they have to use firewood as an alternative source of fuel when they run out of briquettes. Some families can afford to buy firewood, but others have to go to the nearby forests to collect firewood. This is a source of conflict with the local Nepalese population, who rely on these same forests for firewood.⁴⁰

The change from kerosene to briquettes has also indirectly affected refugee children's ability to complete their secondary education. The schools in the camps only provide education from first to 10th grade; students who want to continue to grades 11 and 12 have to attend private Nepalese "colleges" in the towns. Those who could afford the colleges used to rent a room in the town, and to minimize their living expenses, used to prepare their own food, using a portion of their family's monthly ration of kerosene. However, because the briquettes produce too much smoke and little light, the students can no longer prepare food in their rooms or read after dark. As a result, many students have been forced to give up their rooms in the towns. Some students now bicycle to their college on a daily basis, which for many of them takes about one hour each way. But other students have been forced to abandon their education, since their colleges are two or three hours cycling away from the camps.⁴¹

The reduction of aid to the refugees places a particularly high strain on the women in the camps. Many refugee women told Human Rights Watch that they feel responsible for the deterioration of their families' conditions, and they expressed their despair about their inability to break out of their continued dependency and to provide for their families' needs. The secretary of the Bhutanese Refugee Women Forum (BRWF) in Beldangi I said, "The mothers have to bear a lot. Sixteen years of staying here, and even when there is a reduction of assistance, they cannot go out and earn. It is very

⁴⁰ Human Rights Watch interview with eight members of the Bhutanese Refugee Women Forum (K36), Timai camp, November 16, 2006; and Human Rights Watch interview (B35), Sanischare camp, November 14, 2006. UNHCR staff conceded that the quantity of briquettes currently made available to the refugees might not be sufficient. Human Rights Watch interview with UNHCR staff, UNHCR sub-office, Damak, November 20, 2006. On February 22, 2007, fighting broke out between Bhutanese refugees and local Nepalese citizens outside Sanischare camp, after tensions escalated between locals and refugees who were collecting wood in a nearby forest. In the course of the fighting, one refugee was killed and eight refugees wounded, five of whom seriously. Locals burned down a number of refugee huts. "Clashes Between Locals and Refugees: One Dead and Several Injured," UNHCR-Nepal press release, February 23, 2007.

⁴¹ Human Rights Watch interview with eight members of the Bhutanese Refugee Women Forum (K36), Timai camp, November 16, 2006; and Human Rights Watch interview with four students living in Damak (B64, B65, B66), November 18, 2006.

difficult, they are frustrated.”⁴² For some women the hopelessness of their situation becomes too much and they succumb to depression. A health worker in Khudunabari camp stated that the incidence of depression is increasing in the camps, with women above the age of 30 representing the largest group.⁴³ But they are by no means the only ones who suffer; the conditions in the camps are difficult to bear for all who have to live there. A refugee student said, “Young people in the camp are frustrated. We have many talents, but as refugees we don’t get a chance to express ourselves. Sometimes I feel I want to end my life.”⁴⁴

Refugee women told Human Rights Watch that the cutbacks in assistance have heightened tensions within families and between members of different families sharing a single hut.⁴⁵ Given overcrowded conditions, up to eight adults may share a two-room hut. Since women typically have primary responsibility for managing the household resources, they often find themselves at the receiving end of their husbands’ and children’s frustration with camp conditions, over which they have no control. A refugee mother said:

When the roof is leaking, when the ration is not enough, when children don’t want to go to school because they don’t have a school dress, with all these things children will first go to their mother. So the women can feel quite desperate, because there is nothing they can do.⁴⁶

Sexual and Gender-Based Violence

For some of the women in the camps the consequences of the cutbacks in international aid are even worse. Refugee women reported that the worsening

⁴² Human Rights Watch interview (K20), Beldangi I camp, November 13, 2006.

⁴³ Human Rights Watch interview with nine health workers at Primary Health Centre, Khudunabari refugee camp, November 15, 2006.

⁴⁴ Human Rights Watch interview with a student who had temporarily left Nepal to study at a college in India (K58), Kalimpong, India, November 22, 2006.

⁴⁵ Human Rights Watch interview with the secretary of the Bhutanese Refugee Women Forum (K20), Beldangi I camp, November 13, 2006; and Human Rights Watch interview with eight members of the Bhutanese Refugee Women Forum (K36), Timai camp, November 16, 2006.

⁴⁶ Human Rights Watch interview (K19), Beldangi I camp, November 13, 2006.

conditions in the camps and the resulting strains on families are a contributing cause of domestic violence.⁴⁷ They argued that this explained at least in part why no progress had been made in bringing down the overall level of sexual and gender-based violence (SGBV) in the camps, including domestic violence, despite the efforts that have been made by UNHCR and the refugee community alike to address this problem.⁴⁸

In 2004 and 2005 UNHCR recorded virtually the same number of reported SGBV cases in the camps (157 and 159, respectively), a number which increased to 174 in 2006. These statistics include cases of domestic violence, which grew from 58 reported cases in 2004 to 83 in 2005, and 88 in 2006.⁴⁹ Amongst women refugees there is an acknowledgment that in the past few years much progress has been made in challenging women's perceptions that it was shameful to report cases of domestic violence, and that it was their duty as wives to suffer any ill-treatment at the hands of their husbands in silence. This change in attitude was helped in part by reforms that were instituted following the investigation of an October 2002 sexual exploitation scandal involving refugee aid workers that revealed a lack of support services for victims and a male-dominated refugee camp leadership that often ignored gender-based violence or imposed dispute settlements that were harmful to women. As one woman said, "The good development is that women can now express

⁴⁷ Human Rights Watch interview with the secretary of the Bhutanese Refugee Women Forum (K20), Beldangi I camp, November 13, 2006; and Human Rights Watch interview with eight members of the Bhutanese Refugee Women Forum (K36), Timai camp, November 16, 2006.

⁴⁸ In late 2002 UNHCR-Nepal became aware of several cases of sexual exploitation and abuse of refugee women and children by refugee aid workers. In October 2002 and January 2003 a UNHCR team of experts visited the camps to investigate the situation with respect to SGBV in the camps. The team's recommendations for the development of a monitoring and response strategy were implemented over the course of 2003. UNHCR-Nepal, "Bhutanese Refugees in Nepal," August 2003. Human Rights Watch conducted a mission to the camps in March 2003 and made further recommendations for addressing the problem of SGBV in the camps. Human Rights Watch, *Nepal/Bhutan – Trapped by Inequality: Bhutanese Refugee Women in Nepal*, vol. 15, no. 8(C), September 2003, <http://www.hrw.org/reports/2003/nepal0903/>. Since then, UNHCR-Nepal and the government of Nepal have made significant progress with the implementation of awareness and training programs, and improving the monitoring, reporting, and referral systems for SGBV in the camps. Steps have also been taken to improve victim services, amend the code of conduct for employees of UNHCR and implementing partners, and pursue remedies through the Nepalese criminal justice system. However, in October 2006, UNHCR reported that despite its continued efforts to reduce the level of SGBV in the camps, the number of SGBV incidents had remained constant. "2005 Annual Report on Sexual and Gender-Based Violence in Relation to Refugees and Asylum-Seekers," October 17, 2006, p. 2.

⁴⁹ Email from UNHCR-Nepal to Human Rights Watch, March 12, 2007.

their feelings.”⁵⁰ Another woman agreed, saying that women who are victims of abuse now “feel that they have the right to speak.”⁵¹

Extensive social awareness campaigns have not only provided women with a better understanding of their rights, but have also raised the levels of awareness among refugee men about their responsibilities, and the possible legal consequences for perpetrators of SGBV. Moreover, better reporting and referral mechanisms have been put into place in the camps, and refugee women were generally well-informed about the existence of these mechanisms.⁵²

Despite these positive developments the threat of sexual and domestic violence remains high in the consciousness of refugee women and girls. A young refugee woman told Human Rights Watch, “Sometimes when we walk at night it is dangerous. There are difficulties inside and outside the camp. It is not safe to walk alone at night. I have to walk with friends. There is no guarantee for safety.”⁵³ Another refugee woman said that she felt more insecure when her husband was gone for long periods looking for work. In an attempt to escape the conditions of dependency in the camps, many men leave the camps for months at a time in search of work, either in Nepal or in India.⁵⁴ This woman said, “The husbands are compelled to go out to earn money. During that time, the women face a lot of problems. They are not safe at all.”⁵⁵ In relation to domestic violence, refugees told Human Rights Watch that some women who are abused by their husbands are reluctant to make use of the reporting mechanisms in the camps for fear that the husband would retaliate with even more violence as soon as he realized that his wife had reported on him.

⁵⁰ Human Rights Watch interview (K17), Goldhap camp, November 12, 2006.

⁵¹ Human Rights Watch interview (K19), Beldangi I camp, November 13, 2006.

⁵² UNHCR stated that monitoring of SGBV in the camps had been made easier by a greater willingness on the part of individual refugees as well as members of the Camp Management Committees to come forward to report cases of SGBV and discuss SGBV-related matters. Human Rights Watch interview with UNHCR staff (Field Officer – Protection, Community Services Officer, Assistant Protection Officer), UNHCR sub-office, Damak, November 10, 2006.

⁵³ Human Rights Watch interview (B16), Goldhap camp, November 12, 2006.

⁵⁴ While the Bhutanese refugees are not officially allowed to work in Nepal, the Government to some extent turns a blind eye to refugees working outside the camps. This applies particularly to teachers, since the Bhutanese refugee teachers are often better qualified than their Nepalese counterparts, and are willing to take jobs at schools in remote locations where few Nepalese teachers are willing to go. See UNHCR, “Country Operations Plan 2006 – Nepal,” September 1, 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDCOI&id=4332c56e2> (accessed January 26, 2007), p. 1.

⁵⁵ Human Rights Watch interview (K19), Beldangi I camp, November 13, 2006.

Women told Human Rights Watch that ultimately it was the camps themselves that were to blame for much of the problem. They said that conditions in the camps, with large numbers of people being forced to live together in close confinement, were not conducive to creating a safe environment for women and girls.⁵⁶ As an elderly refugee woman put it:

This problem is due to so many people being packed so tightly together. As long as we are in these camps, in such cramped conditions, such problems will exist. No amount of social awareness training will be able to deal with this. To remove this problem, there has to be a permanent solution for the refugees.⁵⁷

⁵⁶ The camps have become more congested over time, due to the natural growth of the camp population. Until 2000 the government of Nepal made more land available to accommodate the growing camp population, but since that time the camps have not been allowed to expand any further. As a result, refugees have to build extensions to their huts to make room for their grown-up children who want to start families of their own, leaving less and less space between the huts. Human Rights Watch interview (B8/K14), Beldangi II-extension camp, November 11, 2006; and Human Rights Watch interview (B28), Sanischare camp, November 14, 2006. See also Bhutanese Refugees Durable Solutions Coordination Committee, "Current Situation of the Bhutanese Refugees in Nepal," January 2007, unpublished document on file with Human Rights Watch, p. 2, noting that the increasing pressure on space in the camps gives rise to new tensions between refugees.

⁵⁷ Human Rights Watch interview with refugee woman (K17), Goldhap camp, November 12, 2006. Explaining why there were limits to UNHCR's ability to reduce the number of incidents of domestic violence in the camps, the UNHCR representative in Nepal expressed the same sentiment, observing that "the camp environment continues to pose challenges." Human Rights Watch interview with Abraham Abraham, UNHCR Representative in Nepal, Kathmandu, November 28, 2006.

V. Life for Ethnic Nepalis in Bhutan

Ethnic Nepalis who were not evicted and who remain inside Bhutan face persistent discrimination and ongoing threats to their citizenship status. A nationwide census completed in 2005 classifies 13 percent of current Bhutanese permanent residents as “non-nationals.”⁵⁸ While it is not possible to say what groups or individuals have been classified as “non-nationals,” they are widely believed to include many ethnic Nepalis.⁵⁹ Following the census new ID cards are being distributed to all recognized Bhutanese citizens. In interviews with Human Rights Watch, ethnic Nepalis who reside in Bhutan reported that only those people who have been classified as F1 (genuine Bhutanese citizens) and F4 (non-national women married to Bhutanese men, and their children) are given new citizenship cards.⁶⁰ One man said, “Until now, everyone has had a red ID card [the old version of the Bhutanese ID card]. But the new cards are given only to [people who have been classified as] F1 and F4. The others don’t get one.”⁶¹

No Objection Certificates

Following the unrest in southern Bhutan in the early 1990s, the government introduced so-called “No Objection Certificates” (NOCs), issued by the police on the basis of confirmation from the Dzongdag (district administrator) that the person in question is not in any way involved in “anti-national activity.”⁶² NOCs are required for enrollment in higher education, employment with the civil service, to obtain business and trading licenses, for travel documents, for buying and selling land, and

⁵⁸ Out of the 634,982 people residing in Bhutan on June 1, 2005, only 552,996 people were deemed to be Bhutanese citizens, with the remaining 81,986 people categorized as “non-nationals.” Proceedings and Resolutions of the 85th Session of the National Assembly of Bhutan, June 15 – July 7, 2006, <http://www.nab.gov.bt> (accessed February 11, 2007), p. 3.

⁵⁹ In June 2005 members of Bhutan’s National Assembly raised concerns that “many of the people in southern Bhutan [who] revolted against the *Tsa-Wa-Sum* in 1991 ... are still living in the country” and “requested the government to take prompt and necessary actions on the census issues in southern Dzongkhags.” The Proceedings and Resolutions of the 83rd Session of the National Assembly of Bhutan, June 2005, <http://www.nab.gov.bt> (accessed February 11, 2007), p. 55.

⁶⁰ F1 and F4 refer to the categories introduced by the 1988 census (see Background section above). People in F4, wives and children of a Bhutanese man, are considered to be “closest to” F1.

⁶¹ Human Rights Watch interview with ethnic Nepali living in Bhutan (K63), details withheld.

⁶² Tessa Piper, “The Exodus of Ethnic Nepalis from Southern Bhutan,” 1 April 1995, <http://www.unhcr.org/home/RSDCOI/3ae6a6co8.html> (accessed January 24, 2007), section 5.3.

for selling some cash crops. Being denied a NOC deprives a person of almost all means of earning a living. All Bhutanese citizens must apply to the police for their NOC on an annual basis. One ethnic Nepali student from Bhutan who had no NOC and who had gone to India to go to college said, “The NOC is crucial. Without a NOC we get no government jobs, no promotions. Even some private sector people ask for the NOC. My parents are really worried that I will not get a job. It is very hard for us to get jobs, particularly white-collar jobs.”⁶³

Drukpas are routinely re-issued with NOCs every year. As one man said, “Drukpas just phone and they [the police] issue their NOC. They have no problems.”⁶⁴ Ethnic Nepalis, on the other hand, experience great difficulties in obtaining NOCs. In particular, if ethnic Nepalis are known to have relatives in the refugee camps in Nepal they are denied NOCs. One man said, “If you have relatives in the camps, then for you there will be no NOC, no other facilities.”⁶⁵ Another man described his predicament as follows: “I am in F4. F4 is nearest to F1. But in practice, since my parents are refugees, I cannot get a NOC. I cannot get government jobs, I have to work privately.”⁶⁶

One measure of the disastrous consequences of not having a NOC is the extraordinary fear on the part of ethnic Nepalis in Bhutan about making contact with their relatives in the refugee camps in Nepal, because they are afraid that any such contacts might disclose to the authorities that they are related to refugees. Many refugees reported that they have had no contact with their relatives who had stayed behind in Bhutan ever since they fled to Nepal in the early 1990s. An ethnic Nepali from Bhutan said, “We are not in touch with anyone from the camps. If we keep in touch with anyone in the camps, we will get into trouble.”⁶⁷ A refugee woman said, “People in Bhutan hide the pictures of their refugee relatives. Parents in Bhutan have no photos of their refugee children in their homes. When the children call their

⁶³ Human Rights Watch interview with ethnic Nepali living in Bhutan (M9), details withheld.

⁶⁴ Human Rights Watch interview with ethnic Nepali living in Bhutan (K68), details withheld.

⁶⁵ Human Rights Watch interview with ethnic Nepali living in Bhutan (K63), details withheld.

⁶⁶ Human Rights Watch interview with ethnic Nepali living in Bhutan (K69), details withheld.

⁶⁷ Human Rights Watch interview with ethnic Nepali living in Bhutan (M8), details withheld.

parents in Bhutan, the parents put down the phone because they are afraid.”⁶⁸ Refugees who receive occasional visits from their relatives in Bhutan reported that during these visits their relatives refuse to impart any information about the conditions inside Bhutan for fear that if the information spread in the camps, the Bhutanese authorities might discover the source of the information. Another refugee said, “My brother still lives in Bhutan, he has come to visit me three times in the last 16 years. When he is here he doesn’t talk about the situation in Bhutan, because he fears that the information might get back to Bhutan and then he will be expelled too.”⁶⁹ A refugee teacher said, “When they come here they are afraid to come out of our hut. They are afraid that spies will report back to the government of Bhutan. Their minds are full of fear.”⁷⁰

Even Drukpas are afraid about having contact with refugees for fear that it might affect their security clearance in Bhutan. A refugee student at a college in Kalimpong, in India, described the mindset of students from Bhutan: “The Bhutanese students, Ngalongs, are scared of us, because the government has said to them that we are terrorists, anti-nationals.”⁷¹ Another refugee student, who had told his fellow students that he was Nepali, said, “Students from Bhutan are afraid of the refugees. That is the mentality created by the Bhutanese government. When I ask them about Bhutanese refugees in Nepal, they are afraid, they say, ‘Please don’t introduce us to them.’”⁷²

In interviews with Human Rights Watch, Drukpa students were extremely reluctant to comment on the situation of the Bhutanese refugees and the reasons behind their eviction. One Drukpa student simply stated that refugees were anti-nationals and were therefore expelled.⁷³ Another Drukpa student said, “We know there was a

⁶⁸ Human Rights Watch interview (K42), Beldangi II camp, November 17, 2006.

⁶⁹ Human Rights Watch interview (K37), Timai camp, November 16, 2006.

⁷⁰ Human Rights Watch interview (B41), Khudunabari camp, November 15, 2006.

⁷¹ Human Rights Watch interview (K57), Kalimpong, India, November 22, 2006.

⁷² Human Rights Watch interview (K58), Kalimpong, India, November 22, 2006.

⁷³ Human Rights Watch group interview with three Drukpa students (K54), Kalimpong, India, November 22, 2006.

problem in southern Bhutan. There were refugees. But we don't know why they left."⁷⁴

Education

In interviews with Human Rights Watch, ethnic Nepalis who still live in Bhutan explained that, 15 years after the mass eviction of their fellow ethnic Nepalis, they continue to suffer discrimination in almost all aspects of their daily lives in Bhutan, including education, employment, and land ownership. After the unrest in southern Bhutan all schools in the southern districts were closed. Recently a number of schools have reopened, but only in places where Drukpas have been resettled on land formerly owned by refugees. Drukpa students are given priority for the limited number of places available in these schools, leaving many ethnic Nepali children to compete for the few remaining places.⁷⁵ There is no instruction in the Nepali language, even in schools in the southern districts: only Dzongkha and English are taught. Ethnic Nepalis are still expected to wear the traditional Drukpa clothes (*gho* for men, *kira* for women) in schools and other public places, as stipulated by the king's 1989 decree of *driglam namzha*.⁷⁶

Compulsory labor

Ethnic Nepalis also reported discrimination in the way Bhutan's system of forced labor is implemented. Bhutan's citizens are expected to contribute labor to construction projects.⁷⁷ As one man said, "If there is a construction project, everyone has to provide labor. If you can't, you have to hire someone else, or pay a fine. After the project, a form is issued to say that you have contributed."⁷⁸ However, he said that these rules were implemented in a discriminatory manner.

⁷⁴ Human Rights Watch group interview with three Drukpa students (K54), Kalimpong, India, November 22, 2006.

⁷⁵ Human Rights Watch interview with ethnic Nepali living in Bhutan (K63), details withheld.

⁷⁶ Human Rights Watch interview with ethnic Nepali living in Bhutan (K63), details withheld.

⁷⁷ For a detailed description of Bhutan's compulsory labor system, see Tek Nath Rizal, *Ethnic Cleansing and Political Repression in Bhutan: The Other Side of Shangri-La* (Kathmandu: Human Rights Council of Bhutan, 2004), pp. 31-32.

⁷⁸ Human Rights Watch interview with ethnic Nepali living in Bhutan (K68), details withheld.

Following the expulsion of the refugees in the early 1990s, the government resettled Drukpa people from northern Bhutan on land that was formerly owned by the refugees.⁷⁹ Ethnic Nepalis reported that these Drukpa settlers are exempted from Bhutan's system of compulsory labor, while ethnic Nepalis in southern Bhutan are forced to work for the settlers to help them build their new homes. An ethnic Nepali who still lives in Bhutan, said:

In southern villages, forced labor still exists. I don't know about the central areas. Sometimes they ask for one week, or 15 days. If you cannot provide the labor, you can pay compensation to provide other laborers. The Northerners who have been resettled are not asked to provide labor. They are given free housing loans, free timber; they don't have to pay land tax for ten years. The southern Bhutanese have to provide labor for them: help out with building a house, provide timber, transportation. They don't receive any compensation; it is commanded from the administration office. If people refuse, they will be fined, they will be called, they will be penalized. No one can refuse in front of them.⁸⁰

Land ownership

Ethnic Nepalis also face many difficulties with respect to land ownership. Buying and selling land requires a NOC. Moreover, government guidelines for a nationwide land survey state that any land that is registered in the name of non-nationals is liable to confiscation by the government.⁸¹ This is a major concern for those people who were denied registration in the 2005 census and who have not been given a new citizenship card. As one man said, "If only one member in a family is F1, all property is registered in his name. When he dies, the property will not be transferred to his family members, but it will be confiscated by the government. It is written in the Land

⁷⁹ Human Rights Watch interviews with ethnic Nepalis living in Bhutan (K56, K68, K69), details withheld.

⁸⁰ Human Rights Watch interview with ethnic Nepali living in Bhutan (K69), details withheld.

⁸¹ Chapter 28 of the Guidelines states: "While checking the status of land registration in the context of the census record, if found that the land registered in the name of a non-national, regardless of his/her marriage with a national, the said land shall be taken over as Government land as per clause Ka 5(9) of the Land Act." Ministry of Home Affairs, Land Records Office (Survey of Bhutan), "Guidelines on the New Sathram Compilation," second edition 1998 (on file with Human Rights Watch), Chapter 27.

Act.”⁸² Another man stated, “Suppose I am F1 and I marry a foreigner. Our child would be F4 and the child would not inherit my property. The property would go to the Bhutanese government.”⁸³

The land-survey guidelines also authorize the government to confiscate all land that is registered in the names of refugees, whether or not they left the land certificates with their relatives in Bhutan before they exited the country.⁸⁴ Relatives of refugees therefore find themselves in an extremely difficult position. They are likely to be denied NOCs because of their relatives in the refugee camps, which means they have no access to government employment and cannot apply for business and trading licenses. They are thus largely dependant on their family land as their only means of survival, but they risk losing that land too if it was registered in the name of a refugee relative. An ethnic Nepali who lives in Bhutan said:

My land has not been surveyed. When I go to pay [land] tax, they tell me my name is not on the census. If they don’t take the tax, it means that my land has been seized. At any time, the government can acquire it. I have appealed to the district authorities, to the home ministry and even to the king. They say, “Come back later,” and after I have been a number of times they say, “Wait, we will get back to you.” But nothing happens.⁸⁵

This man, who was not included in the 2005 census and therefore has not been given a new citizenship card and has no NOC, went on to say that he did not think the Bhutanese authorities would eventually go so far as to expel him. But, he said, “They don’t ask me to leave, but they make me so miserable, I will be forced to leave. I have no identification, so I cannot do anything, go anywhere, get any job.” Other

⁸² Human Rights Watch interview with ethnic Nepali living in Bhutan (K69), details withheld.

⁸³ Human Rights Watch interview with ethnic Nepali living in Bhutan (K63), details withheld.

⁸⁴ Chapter 28 of the Guidelines states: “Unless a written approval is sought by the legal heirs of the emigrants for the transfer of the land sold/gifted by the illegal emigrants, all such land shall be taken over by the government in line with clause Ka 6(18) of the Land Act”. Chapter 29 states: “All land registered in the names of traitors (*Ngolops*) of the country shall be confiscated by the Government in the light of clause Ka 6(19) of the Land Act.” Ministry of Home Affairs, Land Records Office (Survey of Bhutan), “Guidelines on the New Sathram Compilation,” second edition 1998 (on file with Human Rights Watch), Chapter 27.

⁸⁵ Human Rights Watch interview with ethnic Nepali living in Bhutan (M12), details withheld.

ethnic Nepalis from Bhutan agreed that while they did not expect the government to undertake a new round of expulsions, many ethnic Nepalis might eventually decide that their lives and livelihoods are so insecure in Bhutan that they are left with no other option but to leave the country. One of them said, “The king has become clever. He does not want the international community to criticize him because he is throwing out his citizens. Instead, he has made it impossible for us to survive in Bhutan, so that we are forced to leave anyway.”⁸⁶ Another stated:

Ethnic Nepalis are not called born Bhutanese, they are called immigrants. There are two categories: legal and illegal. Whoever is not F1, they started to call them illegal immigrants. They are not allowed land registration, are not included in the census. They will be struck off everything. F2, F3, F4, F5, F6, F7: all except F1. No service will be provided to them, no NOC. They won’t be expelled, but life will be made impossible for them.⁸⁷

Even ethnic Nepalis who possess citizenship cards and NOCs told Human Rights Watch that they feel at constant risk of losing their status. As one man said, “Every year people face the risk of being reclassified. If you’re F1, they can dig something out and then you are put in a different category.”⁸⁸ As a result, there was a strong consensus among ethnic Nepalis in Bhutan that it would be unwise for them to make any attempts to advocate for an end to Bhutan’s discriminatory policies and laws. As a student said, “It is not possible to say that we want human rights for ethnic Nepalis. It is very dangerous to say these things. They will definitely take away your NOC [if you make such demands]. They might even take your citizenship card.”⁸⁹ A teacher stated, “Nepalis in Bhutan are aware that they are deprived of their human rights. But they don’t agitate, because they are afraid of being evicted.”⁹⁰ A third person said, “The people are afraid because they have seen the example of the refugees; if

⁸⁶ Human Rights Watch interview with ethnic Nepali living in Bhutan (M14), details withheld.

⁸⁷ Human Rights Watch interview with ethnic Nepali living in Bhutan (K69), details withheld.

⁸⁸ Human Rights Watch interview with ethnic Nepali living in Bhutan (K68), details withheld.

⁸⁹ Human Rights Watch interview with ethnic Nepali living in Bhutan and studying in India (K55), details withheld.

⁹⁰ Human Rights Watch interview with Bhutanese refugee in India (K70), details withheld.

they cry for democracy, they will have the same fate.”⁹¹ There was general agreement that the situation of the ethnic Nepalis was unlikely to improve in the foreseeable future, but they saw no other option than to put up with the situation, because the alternative was even worse:

Everyone is keeping quiet. No one can raise their voice against the government. Everybody knows they are being discriminated against, but they don't dare to raise their voice, because they think the consequences will be the same as for the people who have already left. So people are trying to make themselves patient, to bear the situation.⁹²

Democratization

In March 2005 the Bhutanese government released a draft constitution. It is expected to be ratified after a referendum, which will pave the way for Bhutan's transition from an absolute monarchy to a constitutional monarchy with a limited form of representative government. Elections are scheduled for 2008, and political parties have been invited to register from July 2007. In a surprise move, the fourth king of Bhutan, Jigme Singye Wangchuck, abdicated in favor of crown prince Jigme Khesar Namgyel Wangchuck on December 9, 2006.

The draft constitution sets out citizens' fundamental rights and duties,⁹³ and provides for a transition to a two-party democracy in Bhutan.⁹⁴ In interviews with Human Rights Watch, many ethnic Nepalis in Bhutan and in the refugee camps in Nepal expressed skepticism that the process of democratization would bring real improvements in their situation. For a start, the draft constitution incorporates the

⁹¹ Human Rights Watch interview with ethnic Nepali living in Bhutan (K71), details withheld.

⁹² Human Rights Watch interview with ethnic Nepali living in Bhutan (K69), details withheld.

⁹³ The Constitution of the Kingdom of Bhutan, Tsa Thrim Chhenmo, second draft, August 18, 2005, http://www.constitution.bt/draft_constitution_2nd_en.pdf (accessed February 13, 2007), arts. 7-8. A number of fundamental rights are restricted to Bhutanese citizens, including the right to life, liberty and security of the person (art. 7(1)), the right to freedom of speech, opinion, and expression (art. 7(2)), and the right to freedom of thought, conscience and religion (art. 7(3)). Other rights extend to all persons in Bhutan, including the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7(17)).

⁹⁴ Draft constitution, art. 15.

discriminatory provisions of the 1985 Citizenship Act,⁹⁵ and provides that Dzongkha is the national language of Bhutan,⁹⁶ and that Buddhism is the “spiritual heritage of Bhutan.”⁹⁷ Ethnic Nepalis observed that only those people who were given new citizenship cards would be able to vote in the 2008 elections. As a refugee student said, “The Bhutan government is presently doing a census. The outcome is that again more Nepalis will be evicted from the country. Only after all that dust has been cleared, then they will give democracy.”⁹⁸

Others were suspicious of the extensive powers retained by the king under the new constitution.⁹⁹ A refugee stated, “The new constitution clearly mentions that the king is the head of the nation, not the prime minister. If that goes through, nothing will change.”¹⁰⁰ An ethnic Nepali who lives in Bhutan said:

As long as there is the royal family, I don’t think there will be any human rights. If they practice exactly according to the draft constitution, it will be good. But I don’t know how far they will follow the draft constitution. They write one thing and do something else. They have to show that book [draft constitution] to the international community.¹⁰¹

A third man observed:

Only those with new ID cards will be able to vote in the elections. Even after the elections, nothing will change, because the remote control will still be in the king’s hand. If the king wanted to give real

⁹⁵ Draft constitution, art. 6.

⁹⁶ Draft constitution, art. 1(8).

⁹⁷ Draft constitution, art. 3(1).

⁹⁸ Human Rights Watch interview (K58), Kalimpong, India, November 22, 2006.

⁹⁹ Under the draft constitution, the king may “exercise powers relating to matters which are not provided under this Constitution or other laws.” Draft constitution, art. 2(16)(e). The king also retains the power to appoint the chief justice of Bhutan, all judges of the supreme court and the high court, the election commissioners, the auditor general, the members of the Royal Civil Service Commission, and the members of the Anti-Corruption Commission. Draft constitution, arts. 2(19)(a)-(h).

¹⁰⁰ Human Rights Watch interview (K14), Beldangi II-extension camp, November 11, 2006.

¹⁰¹ Human Rights Watch interview with ethnic Nepali living in Bhutan (K69), details withheld.

democracy, he would allow free elections. Then after the elections, the parties would sit together and make a new constitution. But the constitution has already been drawn up and the king controls who is in which party.¹⁰²

Ethnic Nepalis frequently suggested that the process of democratization might be more for show, to impress the international community, than to institute real changes. A refugee said, “It is just done for the international community, to say that a wonderful thing has been done in Bhutan.”¹⁰³ A refugee student concurred, “They are just showing to the world, to get dollars from the world.”¹⁰⁴ Some conceded that even if the changes were made to improve Bhutan’s image in the eyes of the international community, some real changes might be brought about in the process.

However, ethnic Nepalis who still live in Bhutan said that any such changes could only have limited scope. One of them said, “Due to international pressure, there is some improvement. But it is more for show. There is some international influence, but until there is an internal change of heart, there cannot be real change.”¹⁰⁵ But not everyone is so pessimistic. A refugee said, “Yes, maybe democratization is to impress the international community. But at least what was not there is now there. For example, now at least there is a constitution. The content may not be to our specification, but it is up to the people to change that.”¹⁰⁶

¹⁰² Human Rights Watch interview with ethnic Nepali living in Bhutan (K63), details withheld.

¹⁰³ Human Rights Watch interview (K14), Beldangi II-extension camp, November 11, 2006.

¹⁰⁴ Human Rights Watch interview (K58), Kalimpong, India, November 22, 2006.

¹⁰⁵ Human Rights Watch interview with ethnic Nepali living in Bhutan (M5), details withheld.

¹⁰⁶ Human Rights Watch interview (K48), Damak, November 20, 2006.

VI. The Need for a Durable Solution

One of the core components of international protection for refugees is finding durable solutions.¹⁰⁷ The refugee regime offers three durable solutions for refugees: voluntary repatriation, local integration in the region of displacement, or resettlement in a third country. The principal objective of each durable solution is to restore national protection to refugees. Sixteen years after the first ethnic Nepalis fled or were expelled from Bhutan the Bhutanese refugees are still awaiting a durable solution.

While the Bhutanese refugees have found basic protection in Nepal, the continuing confinement of more than 100,000 refugees to camps is clearly not sustainable either for the refugees or for the international community. As discussed earlier, the protracted nature of this refugee crisis is taking a heavy toll on the refugees. Being reduced to a state of complete dependency is a source of immeasurable frustration, and has given rise to increased levels of depression and psychosocial problems in the camps.¹⁰⁸ Refugee parents despair of their inability to provide a future for their children, while in the past few years refugee youths have been growing increasingly restless in the face of the ongoing uncertainty about their prospects. Time and again refugees indicated to Human Rights Watch that while they are grateful for the support they receive from the international community, their only true desire is to be restored to the status of full citizens, with full respect for their political, civil, economic, social and cultural rights. A young refugee man expressed his frustration with his situation as follows: “I cannot live in the camp anymore. I will go to any country where they will give me citizenship, even if it is Afghanistan.”¹⁰⁹ A 45-year-old refugee said:

¹⁰⁷ United Nations High Commissioner for Refugees (UNHCR), *Agenda for Protection, Third Edition* (Geneva: UNHCR, Department of International Protection, October 2003), <http://www.unhcr.org/protect/PROTECTION/3e637b194.pdf> (accessed January 25, 2007), Goal 5: “Redoubling the Search for Durable Solutions”, p. 74. The *Agenda for Protection* has been welcomed by the UN General Assembly, Resolution 57/187 (2002), A/RES/57/187, December 18, 2002 <http://www.un.org/Depts/dhl/resguide/r57.htm> (accessed January 25, 2007), para. 6.

¹⁰⁸ UNHCR-Nepal, “2005 Annual Report on Sexual and Gender-Based Violence in Relation to Refugees and Asylum-Seekers,” October 17, 2006, p. 1.

¹⁰⁹ Human Rights Watch interview (K43), Birtamod, November 18, 2006.

We want to live in an atmosphere where we can eat our own bread earned from our own sweat. We don't want to be dependent on others. We no longer want to have the tag of "refugee." Half our lives have been spent as refugees. We don't want that tag on our children's forehead. We want them to be proud citizens.¹¹⁰

In interviews with Human Rights Watch, some refugees said that they have vested their hopes in political changes in Bhutan leading to their Bhutanese citizenship being restored, while others said that they hope for Nepal or a third country to offer them citizenship. But what all those interviewed have in common is their urgent desire to regain their independence and to be allowed to become productive members of society, able to take care of their own needs and to offer a future to their children.¹¹¹ As a 25-year-old refugee man said, "I don't want a golden plate. I want freedom."¹¹² The camp secretary of Timai camp spoke for many refugees when he said, "People in the camps are very frustrated. They look for an end to their refugee existence. They need a solution. It can be any of the three solutions [repatriation, resettlement or local integration], but we do not want to continue as refugees anymore, that is the general plea of the refugees."¹¹³

¹¹⁰ Human Rights Watch interview (B23), Beldangi I camp, November 13, 2006.

¹¹¹ Even those refugees who have moved away from the camps and who have found employment in Nepal by no means have a secure existence, since it is illegal for them to work in Nepal. They are frequently paid less than their Nepalese colleagues for the same work, and do not have job security. A teacher said, "I may have a job now, but tomorrow I may be dismissed. It is not a permanent solution. The refugee problem must be settled." Human Rights Watch interview (K43), Birtamod, November 18, 2006. Another teacher agreed: "We work outside the camp to support our families. We work illegally in boarding schools. Much smaller salaries are paid to refugee teachers. Unless you are a citizen, you will not be able to sell your labor fairly. Our children have no certain future." Human Rights Watch interview (B25), Sanischare camp, November 14, 2006.

¹¹² Human Rights Watch interview (B10), Beldangi II-extension camp, November 11, 2006.

¹¹³ Human Rights Watch interview with camp secretary Parshuram Nepal of Timai camp (B45/K35), November 16, 2006. Each camp has a camp secretary, who is elected by the refugees for a period of one year, and who heads the camp management committee (CMC), a body of elected refugee representatives responsible for the day-to-day management of the camp.

VII. Repatriation

UNHCR's Executive Committee has repeatedly affirmed not only the right of refugees to return to their own country, but also that "voluntary repatriation, in safety and dignity, where and when feasible, remains the most preferred solution in the majority of refugee situations."¹¹⁴ In Resolution 50/152 the UN General Assembly reaffirmed the same principle, calling voluntary repatriation, when feasible, "the ideal solution" to refugee problems, and called upon "countries of origin, countries of asylum, the Office of the High Commissioner [for Refugees] and the international community as a whole to do everything possible to enable refugees to exercise their right to return home in safety and dignity."¹¹⁵

Throughout their stay in the refugee camps in Nepal, refugees have clung to the hope that one day they would be allowed to return to Bhutan. A young refugee woman expressed a widely heard sentiment when she said, "I want to go to my own country. My motherland where I was born is precious to me."¹¹⁶

The Right to Return to One's Own Country

Under international law refugees and exiles have a right to return to their country. Article 13(2) of the Universal Declaration of Human Rights states, "Everyone has the

¹¹⁴ UNHCR, ExCom Conclusion 104 (LVI), "Conclusion on Local Integration," October 7, 2005, <http://www.unhcr.org/excom/EXCOM/4357a91b2.html> (accessed February 10, 2007), preamble. Earlier ExCom conclusions affirming this principle include Conclusion 101 (LV), "Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees," October 8, 2004, <http://www.unhcr.org/excom/EXCOM/417527674.html> (accessed February 10, 2007), para. (b); and Conclusion 99 (LV), "General Conclusion on International Protection," October 8, 2004, <http://www.unhcr.org/excom/EXCOM/41750ef74.html> (accessed February 10, 2007), para. (u). The Executive Committee (ExCom) is the governing body of the United Nations High Commissioner for Refugees. Since 1975 the ExCom has adopted a series of "Conclusions" at its annual meetings, which are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law. ExCom Conclusions are not legally binding on states, but they are widely recognized as representing the view of the international community and carry persuasive authority as they are adopted by consensus by ExCom member states (currently numbering 70 states).

¹¹⁵ UN General Assembly, Resolution 50/152, "Office of the High Commissioner for Refugees," UN Doc. A/RES/50/152 (1996), <http://www.un.org/Depts/dhl/res/resa50.htm> (accessed February 10, 2007), para. 17.

¹¹⁶ Human Rights Watch interview (B16), Goldhap camp, November 12, 2006. One indication of the extent to which the idea of returning to Bhutan shapes refugees' lives is the fact that the schools in the camps follow the Bhutanese curriculum from grade 1 to grade 8, with pupils studying Dzongkha. For the Nepali-speaking refugees, Dzongkha is a foreign language, and the only use they have for Dzongkha is in the context of a future life in Bhutan. The schools in the camps switch to the Nepalese curriculum in grade 9 and 10, with pupils studying Nepali and English. Human Rights Watch interview (B19), Beldangi I camp, November 13, 2006.

right to leave any country, including his own, and to return to his country.”¹¹⁷ The United Nations Convention on the Rights of the Child (CRC) to which Bhutan is a party and legally bound also sets out that “States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.”¹¹⁸ Bhutan has also signed, but not ratified, the International Convention on the Elimination of All Forms of Racial Discrimination which in Article 5(d)(ii) of the Convention 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: ...The right to leave any country, including one's own, and to return to one's country.”¹¹⁹

In addition to its legal basis under treaty law,¹²⁰ the right to return is recognized as a norm of customary international law.¹²¹

In October 1993 the governments of Nepal and Bhutan met for the first time for negotiations aimed at resolving the refugee crisis. Each subsequent round of bilateral talks built up refugee hopes that a way out of the impasse would soon be found, allowing them to exercise their right to return to Bhutan. However, the negotiations got off to an inauspicious start when Bhutan proposed, and Nepal agreed, to categorize the camp population into four different groups: (1) bona fide Bhutanese who were forcibly evicted; (2) Bhutanese who voluntarily migrated; (3) non-Bhutanese; and (4) Bhutanese who have committed crimes. Both this

¹¹⁷ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948).

¹¹⁸ Article 10(2) of the United Nations Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. Bhutan ratified the CRC on August 1, 1990.

¹¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969. Bhutan became a signatory to the ICERD on March 26, 1973, but has not yet ratified the treaty. Under article 18 of the Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, entered into force Jan 27, 1980, a state which has signed but not yet ratified a treaty must refrain from acts that would defeat the object and purpose of the treaty.

¹²⁰ Article 12(4) of the International Covenant on Civil and Political Rights provides: “No one shall be arbitrarily deprived of the right to enter his own country.” International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 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 March 23, 1976, art. 12(4). Bhutan has not signed the ICCPR.

¹²¹ See UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, “The Right of Everyone to Leave Any Country Including His Own, and to Return to His Country,” June 20, 1988, UN Doc. E/CN.4/Sub.2/1988/35, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G88/125/26/pdf/G8812526.pdf?OpenElement> (accessed February 10, 2007), para. 88, stating that “the right to return is a positive right. It is considered a part of conventional international law as well as one of the ‘general principles of law recognized by civilized nations’,” i.e. customary international law.

categorization scheme and the verification process—reflecting Bhutan’s intention from the start to limit the right of return to only a small subset of the refugees—met with widespread international criticism for failing to meet established standards for refugee screening and verification.

After many years of fruitless talks and delays, Bhutan and Nepal agreed during the 10th round of bilateral talks in December 2000 to establish a Joint Verification Team (JVT).¹²² The 12th round of bilateral talks in February 2003 produced an agreement whereby only people in category one were accorded the right to repatriate to Bhutan and have their status of citizens of Bhutan restored to them. People in category two would have to re-apply for Bhutanese citizenship after their return to Bhutan, whereas people in category four would first have to stand trial in Bhutan. People in category three would not be allowed to return to Bhutan at all.¹²³

The JVT completed the verification exercise of the first camp, Khudunabari, between March and December 2001, but did not release the results until June 2003.¹²⁴ Out of a total of 12,643 people registered in the camp, the JVT categorized 12,090. Of these the JVT placed 293 (2.4 percent) in category one; 8,595 (70.55 percent) in category two; 2,948 (24.2 percent) in category three; and 347 (2.85 percent) in category four.

¹²² In June 2001 Bhutan appeared before the UN Committee on the Rights of the Child which was considering its report under the UNCRC. This was the first time that Bhutan appeared before any human rights treaty body. The Committee’s conclusions in respect of Bhutan’s treatment of child refugees were that while:

the verification process of refugees in camps in Nepal has commenced, the Committee is nevertheless concerned at the slow rate of this process and the serious and negative impact this has on the rights of children residing in these camps, particularly given that repatriation will begin only once all refugees have been verified.

53. In accordance with the principles of the best interests of the child, the right to a nationality and to the preservation of identity (articles 3, 7 and 8 of the Convention), and with a view to reaching a just and durable solution to the situation of refugees in camps in Nepal, the Committee recommends that the State party:

- (a) Make greater efforts to expedite the verification process and consider the possibility of repatriating individuals within a reasonable time following individual verification;
- (b) Consider a mechanism to allow individuals to appeal against decisions;
- (c) Ensure that returnees are repatriated and resettled, in safety and dignity, to their place of origin or choice...

United Nations Committee on the Rights of the Child, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child, Bhutan,” July 9, 2001, UN Doc. CRC/C/15/Add.157, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.157.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.157.En?OpenDocument) (accessed April 19, 2007), paras. 52-53.

¹²³ “Fourteenth Ministerial Joint Committee Meeting,” Nepal – Bhutan joint press release, May 21, 2003, Annex I: “Agreed Position on the Four Categories,” http://www.geocities.com/bhutanese-refugees/mjc_press_release.html (accessed February 10, 2007).

¹²⁴ Nepal and Bhutan excluded UNHCR from the categorization process, and never made public their criteria for categorizing the refugees. UNHCR-Nepal, “Bhutanese Refugees in Nepal,” August 2003, p. 3.

The two governments confirmed their agreement on the treatment of the four categories during the 15th round of bilateral talks in October 2003.¹²⁵ Since then no progress has been made.¹²⁶ No verification exercises have been conducted in other camps, and none of the residents of Khudunabari camp have been allowed to return to Bhutan.¹²⁷

Bhutan's attempts to limit the right of return to people in category one violate its obligations under international law. Bhutan argues that the people in category two, Bhutanese who are deemed to have left Bhutan voluntarily, have renounced their Bhutanese citizenship.¹²⁸ However, the circumstances surrounding their departure from Bhutan in the early 1990s make clear that, far from leaving voluntarily, ethnic Nepalis were either forced to leave, or felt compelled to leave the country to avoid harassment, physical abuse, and imprisonment.¹²⁹ There is, thus, no basis for distinguishing between people in categories one and two: they should all be allowed to exercise their right to return to Bhutan should they so wish and have their status as citizens of Bhutan restored to them immediately.

The agreement reached by the governments of Nepal and Bhutan purports to deny the right to return to those refugees who are deemed to be non-Bhutanese (category three). However, the right under international law is to enter one's "own country" rather than only the country of one's nationality. Guidance on the meaning of "own country" in this context has been provided by the Human Rights Committee in its

¹²⁵ "Fifteenth Ministerial Joint Committee Meeting," Nepal – Bhutan joint press release, October 22, 2003, http://www.geocities.com/bhutanese/refugees/mjc_press_relese.html (accessed February 10, 2007).

¹²⁶ Bhutan has sought to blame both the refugees and the government of Nepal for the lack of progress, citing security concerns arising out of an incident on December 22, 2003, in Khudunabari camp, when refugees protested against the verification results during a visit of the JVT. See Proceedings and Resolutions of the 82nd Session of the National Assembly of Bhutan, June 2004, <http://www.nab.gov.bt> (accessed February 11, 2007), pp. 86-88.

¹²⁷ In a Human Rights Watch interview, the Bhutanese Ambassador to India stated that before any of the refugees could be repatriated, the Bhutanese authorities would have to process them individually, in effect subjecting them to re-verification. Human Rights Watch interview with Ambassador Dago Tshering, Ambassador of the Kingdom of Bhutan to India, Nepal and Japan, New Delhi, India, November 24, 2006.

¹²⁸ Under article 6(2) of the 1958 Nationality Law of Bhutan, "Any person who is registered as a Bhutanese national but has left his agricultural land or has stopped residing in the Kingdom shall forfeit his Bhutanese nationality." Since this provision has not been expressly repealed by the 1977 Act on Grant of Citizenship in Bhutan or the 1985 Bhutan Citizenship Act, it presumably survives as law; see D. B. Thronson, "Cultural Cleansing: A Distinct National Identity and the Refugee from Southern Bhutan," Kathmandu: INHURED International, August 1993, http://www.bhootan.org/thronson/nationality_index.htm (accessed January 24, 2007), p. 8.

¹²⁹ See the Background section above.

General Comment 27 on Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which states that “No one shall be arbitrarily deprived of the right to enter his own country.”¹³⁰ The Human Rights Committee stated:

The wording of article 12, paragraph 4, does not distinguish between nationals and aliens (“no one”). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase “his own country.” The scope of “his own country” is broader than the concept “country of his nationality.” It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, for nationals of a country who have been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence.¹³¹

Thus the General Comment adopts an inclusive interpretation of “own country” to protect all those with “special ties” or connections with a country, those who cannot be considered “mere aliens.” Criteria for determining the existence of such “special ties,” and thus the existence of a right to return based on such ties, can be derived from the criteria set out by the International Court of Justice in the *Nottebohm* case in relation to the concept of a “genuine and effective link.”¹³² The court said that different factors need to be taken into consideration, including “the habitual

¹³⁰ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 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 March 23, 1976.

¹³¹ UN Human Rights Committee, General Comment 27, Freedom of Movement, UN Doc. CCPR/C/21/Rev.1/Add.9 (1999), para. 20.

¹³² *Nottebohm Case (Liechtenstein v. Guatemala)* (Second Phase), Judgment, I.C.J. reports 1955, Rep. 4.

residence of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.”¹³³ Thus a “genuine and effective link” to one’s “own country” can be composed of various elements, including long-term residence, cultural identity, family ties, etc.

Most refugees who are deemed not to be Bhutanese nationals and who therefore fall in category three can likely demonstrate such special ties to Bhutan. Some were long-term residents of Bhutan who were arbitrarily denied the right to acquire Bhutanese citizenship under Bhutan’s discriminatory citizenship laws. Others were arbitrarily stripped of their Bhutanese nationality by the 1988 census. Therefore, category three refugees, too, have a right to return to Bhutan; it is their individual choice whether to exercise that right, but it does not come within Bhutan’s prerogative to deprive them of their right to return.¹³⁴

People in category four, who are deemed to have committed crimes and would face prosecution upon their return to Bhutan, may choose not to exercise their right to return because they fear such prosecution would be a form of persecution. The agreement between Nepal and Bhutan on the treatment of refugees in the four different categories does not specify what kind of “criminal acts” warrant the placement of a refugee in category four. However, a number of Bhutan’s criminal laws are not in conformity with accepted human rights standards, and prosecution under those laws could amount to persecution.¹³⁵ In particular, under the law of *Tsa-Wa-Sum* (which translates as the “law of the three main elements,” namely king, country, and government), anyone who defames, or attempts to defame, any or all of the three main elements of king, country, and government is guilty of an act of

¹³³ *Ibid.*, para. 22.

¹³⁴ This is in line with UNHCR’s Executive Committee Conclusion 104, which “[c]alls on countries of origin and countries of habitual residence to accept back refugees who are non-nationals but have been habitually resident in that country, including those who were previously stateless there.” UNHCR, ExCom Conclusion 104 (LVI), “Conclusion on Local Integration,” October 7, 2005, <http://www.unhcr.org/excom/EXCOM/4357a91b2.html> (accessed February 10, 2007), para. (m).

¹³⁵ United Nations High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, reedited January 1992, para. 59.

treason and is liable to life imprisonment.¹³⁶ This criminalization of such peaceful exercise of freedom of expression and the excessive punishment under Bhutan's penal code are incompatible with the right to freedom of opinion and expression as protected under international law.¹³⁷ Nepal is bound by customary international law not to return refugees, including those in category four, who have a well founded fear of persecution in Bhutan, including that which would stem from prosecution for exercise of rights protected by international law.¹³⁸

Right to a Nationality

Article 15(1) of the Universal Declaration of Human Rights states: "Everyone has the right to a nationality." Article 15(2) adds: "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."¹³⁹ The right to a nationality, in particular the right of children to a nationality is also reflected in Article 24 of the ICCPR, and in two Conventions to which Bhutan is a party: Article 7 of the CRC and Article 9 of the Convention on the Elimination of Discrimination Against Women

¹³⁶ Thrimshung Chenpo, Tsa-Wa-Sum, http://ahurabht.tripod.com/draft2_4.html (accessed February 11, 2007), art. TSA 1-5; and Penal Code of Bhutan 2004, <http://www.judiciary.gov.bt/html/act/PENAL%20CODE.pdf> (accessed February 11, 2007), art. 7(a).

¹³⁷ See Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), article 19, which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Similarly, Article 19(2) of the ICCPR states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 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 March 23, 1976, art. 19(2). Bhutan has not signed the ICCPR.

¹³⁸ Nepal is not a party to the 1951 Refugee Convention or its 1967 Protocol, but is nevertheless bound by customary international law not to return refugees to a place where their lives or freedom would be threatened. UNHCR's Executive Committee adopted Conclusion 25 in 1982, which declared that "the principle of nonrefoulement ... was progressively acquiring the character of a peremptory rule of international law." UNHCR Conclusion 25 (XXXIII), "General Conclusion on International Protection," October 20, 1982, <http://www.unhcr.org/excom/EXCOM/3ae68c434c.html> (accessed February 11, 2007), para. (b). More recent ExCom conclusions have reaffirmed this principle, including Conclusion 79 (XLVII), "General Conclusion on International Protection," October 11, 1996, <http://www.unhcr.org/excom/EXCOM/3ae68c430.html> (accessed February 11, 2007), para. (j) and Conclusion 81 (XLVIII), "General Conclusion on International Protection," October 17, 1997, <http://www.unhcr.org/excom/EXCOM/3ae68c690.html> (accessed February 11, 2007), para. (i). The UN General Assembly reinforced the international consensus that the nonrefoulement obligation adheres to all states, not just signatories to the Refugee Convention, when it adopted Resolution 51/75 on August 12, 1997, which: "[c]alls upon all States to uphold asylum as an indispensable instrument for international protection of refugees and to respect scrupulously the fundamental principle of nonrefoulement, which is not subject to derogation." UN General Assembly Resolution 51/75, A/RES/51/75, 12 February 1997, <http://www.un.org/Depts/dhl/res/resa51.htm> (accessed February 11, 2007), para. 3.

¹³⁹ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 15.

(CEDAW).¹⁴⁰ While not all acts that deprive a person of a nationality are arbitrary, any deprivation of nationality that causes statelessness would negate the essence of the right to a nationality. The avoidance of statelessness and the right not to be arbitrarily deprived of nationality are core principles reflected in various sources of international law, most specifically encompassed in the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Deprivation of nationality resulting in statelessness is therefore widely considered arbitrary and incompatible with international law.

In 1988 the UN Sub-Commission's Special Rapporteur on the right to leave any country, including his own, and to return to his own country, stated:

In view of Human Rights law, denationalization should be abolished. It constitutes a breach of international obligations, in particular, if it is based on racial or religious discrimination. There is also a growing tendency to require the acquisition of another nationality as a precondition for the validity of denationalization. The recognition of the right to nationality as a basic human right, in effect, limits the power and freedom of a State arbitrarily to deprive its citizens of nationality.¹⁴¹

Bhutan's denationalization of its ethnic Nepali citizens rendered them stateless and thus breached the principle that no one should be arbitrarily deprived of nationality. Bhutan should, therefore, restore citizenship to refugees arbitrarily rendered stateless. UNHCR's Executive Committee's Conclusion 101 of 2004 "notes the importance of ensuring nationality; and

¹⁴⁰ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Bhutan on August 31, 1981.

¹⁴¹ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, "The Right of Everyone to Leave Any Country Including His Own, and to Return to His Country," June 20, 1988, UN Doc. E/CN.4/Sub.2/1988/35, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G88/125/26/pdf/G8812526.pdf?OpenElement> (accessed February 10, 2007), para. 107. The UN General Assembly affirmed this principle when it called upon states "to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality and by eliminating provisions that permit the renunciation of a nationality without the prior possession or acquisition of another nationality, while at the same time recognizing the right of States to establish laws governing the acquisition, renunciation or loss of nationality." UN General Assembly, Resolution 50/152, "Office of the High Commissioner for Refugees," UN Doc. A/RES/50/152 (1996), <http://www.un.org/Depts/dhl/res/resa50.htm> (accessed February 10, 2007), para. 16.

urges countries of origin to ensure that there is no exclusion of returning refugees from nationality and that statelessness is thus avoided.”¹⁴² UNHCR’s Repatriation Handbook states: “Where refugees have lost their nationality, the country of origin should arrange for its restoration as well as for its granting to children born outside the territory and, as appropriate, to non-national spouses.”¹⁴³ Moreover, UNHCR’s Executive Committee’s Conclusion 18 of 1980 “call[s] upon governments of countries of origin to provide formal guarantees for the safety of returning refugees and stresse[s] the importance of such guarantees being fully respected and of returning refugees not being penalized for having left their country of origin for reasons giving rise to refugee situations.”¹⁴⁴

As discussed above, under the agreement reached by the governments of Bhutan and Nepal, Bhutan is offering to restore Bhutanese nationality only to the exceedingly small group of refugees who it deems to be genuine Bhutanese (category one).¹⁴⁵ Under the agreement, refugees in category two (genuine Bhutanese who are deemed to have left Bhutan voluntarily) would be allowed to return to Bhutan, but would have to re-apply for Bhutanese citizenship. However, the provisions of the 1985 Bhutan Citizenship Act would exclude most, if not all, people in this category.¹⁴⁶

Prospects for Repatriation

Voluntary repatriation in safety and dignity is feasible only if refugees can once again avail themselves of the protection of their own country, so that international

¹⁴² Conclusion 101 (LV), “Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees,” October 8, 2004, <http://www.unhcr.org/excom/EXCOM/417527674.html> (accessed February 10, 2007), para. (k).

¹⁴³ UNHCR, Handbook Voluntary Repatriation: International Protection (Geneva: UNHCR, 1996), <http://www.unhcr.org/publ/PUBL/3bfe68d32.pdf> (accessed February 12, 2007).

¹⁴⁴ UNHCR, ExCom Conclusion 18 (XXXI), “Conclusion on Voluntary Repatriation,” October 16, 1980, <http://www.unhcr.org/excom/EXCOM/3ae68c6e8.html> (accessed February 12, 2007), para. (f).

¹⁴⁵ In the only camp where verification has been conducted to date, Khudunabari camp, only 2.4 percent of the camp population was placed in category one.

¹⁴⁶ In order to qualify for citizenship by registration the applicant must have been permanently domiciled in Bhutan on or before December 31, 1958, and their name must appear in the census register maintained by the Ministry of Home Affairs. To qualify for citizenship by naturalization, the applicant must have resided in Bhutan for 20 years, must be proficient in Dzongkha and must have no record of having spoken or acted against the king, country and people of Bhutan in any manner whatsoever. See the Background section above.

protection ceases to be necessary. The yardstick against which to measure the restoration of national protection in the country of origin is provided by international human rights law and standards.¹⁴⁷ More specifically, voluntary repatriation in safety and dignity requires guarantees of physical, legal, and material safety in the country of origin.¹⁴⁸

As section V of this report demonstrated, at present the human rights situation of the remaining ethnic Nepalis in Bhutan is precarious at best.¹⁴⁹ While they have managed to avoid expulsion, their legal status in Bhutan is under constant threat. Under these circumstances, it could not be said that the conditions that caused the refugees to leave in the early 1990s have fundamentally and durably changed. Also, particularly in the absence of a UNHCR presence in Bhutan and Bhutan's unwillingness to entertain the idea that UNHCR could facilitate and monitor voluntary repatriation of the refugees, there can be no guarantees of a secure legal status for any returning ethnic Nepali refugees.

Repatriation of the Bhutanese refugees in conditions of safety and dignity would only be feasible if Bhutan took real steps to protect ethnic Nepalis' human rights by guaranteeing their physical safety and respecting their civil, political, economic, social and cultural rights. Until the Bhutanese government agrees to such terms and conditions, repatriation to Bhutan cannot be promoted as a durable solution for the Bhutanese refugees in Nepal. Many refugees expressed their concern about the conditions for ethnic Nepalis in Bhutan—and the implications of this for their own repatriation. A refugee student said, "I feel that even if we go back to Bhutan, since the Bhutanese government is not interested, they will oppress us. Because of that fear, we don't want to go back. We will not be given any citizens' rights in Bhutan."¹⁵⁰ An elderly refugee man said:

¹⁴⁷ UNHCR ExCom, Standing Committee, "Legal Safety Issues in the Context of Voluntary Repatriation," June 7, 2004, UN Doc. EC/54/SC/CRP.12, <http://www.unhcr.org/excom/EXCOM/40c70e064.pdf> (accessed February 11, 2007), para. 6.

¹⁴⁸ *Ibid.*, para. 2.

¹⁴⁹ While no precise figures are available, ethnic Nepalis are thought to constitute about 35 percent of the population of Bhutan. According to the U.S. State Department, the Ngalongs and Sharchhops together account for about 50 percent of the population. See footnote 2, and U.S. State Department, Bureau of South and Central Asian Affairs, "Background Note: Bhutan," January 2007, <http://www.state.gov/r/pa/ei/bgn/35839.htm> (accessed January 16, 2007).

¹⁵⁰ Human Rights Watch interview (M3), Kalimpong, India, November 22, 2006.

I am frightened about the future. After the bilateral talks, if there is repatriation, there will be no security for us. There is no democracy; that is why I am fearful. There is no single UN agency in Bhutan and UNHCR is not allowed to enter in Bhutan. Generally, why refugees fear returning is that when they enter in Bhutan, there is no human rights agency, no UN agency, only UNDP is there. If we are punished severely, there is not anyone to look after us in Bhutan. It is an autocracy, it is not like other countries; it is not free.¹⁵¹

Refugees reported that their relatives in Bhutan are warning refugees against returning. A refugee teacher said, “People in Bhutan are suggesting to their relatives in the camps that they should be prepared for alternative solutions, because people in Bhutan don’t have security. They say, ‘It is better for you to take the good options.’”¹⁵² Another refugee said, “I have some relatives in Bhutan. They live in very difficult conditions, hand to mouth. They give me the message that I was very lucky to have left Bhutan, that I am in the position of a human being. They say, ‘We are still not that.’”¹⁵³

The Working Group on Resettlement of UNHCR’s Executive Committee stated that “voluntary return and repatriation must always be viewed as the preferred durable solution; if for no other reason than that it signals a positive change in the conditions of the country of origin to the benefit of the refugees returning there, as well as to the benefit of those who never left.”¹⁵⁴ The situation in Bhutan underscores that the converse of this statement is equally true: the absence of any positive change in Bhutan regarding the rights of the ethnic Nepalis not only means that the situation of the remaining ethnic Nepalis in Bhutan continues to be insecure, but for the foreseeable future it also rules out voluntary repatriation as a feasible durable solution. A young refugee man said, “We cannot go back to Bhutan in the absence of

¹⁵¹ Human Rights Watch interview (K32), Khudunabari camp, November 15, 2006.

¹⁵² Human Rights Watch interview (K24), Sanischare camp, November 14, 2006.

¹⁵³ Human Rights Watch interview (K71), Siliguri, India, November 26, 2006.

¹⁵⁴ UNHCR ExCom, Standing Committee, “The Strategic Use of Resettlement, A Discussion Paper prepared by the Working Group on Resettlement,” UN Doc. EC/53/SC/CRP.10/Add.1, June 3, 2003, <http://www.unhcr.org/excom/EXCOM/3edf57cd4.pdf> (accessed February 13, 2007).

change in Bhutan. We cannot go back to the same country that expelled us.”¹⁵⁵
Another refugee said:

Everybody wants to go back to Bhutan, but there is no way to go back. The Bhutan government is not going to accept us as loyal citizens. Some people say, “We want to go back to Bhutan,” but they have not understood what the conditions in Bhutan are. The first option for people is to go back to Bhutan in dignity and honor. If there could be provision for that, almost all refugees would go back to Bhutan. But seeing all these things in Bhutan, people have less hope that the conditions will come. I don’t want to go back to the conditions that I left.¹⁵⁶

¹⁵⁵ Human Rights Watch interview (K40), Damak, November 17, 2006.

¹⁵⁶ Human Rights Watch interview (K24), Sanischare camp, November 14, 2006.

VIII. Resettlement

On October 2, 2006, U.S. Assistant Secretary of State for Population, Refugees and Migration, Ellen Sauerbrey, announced that the United States would be willing to resettle up to 60,000 of the Bhutanese refugees living in Nepal.¹⁵⁷ In light of the protracted nature of the Bhutanese refugee crisis with no other durable solutions in sight, this offer of resettlement was a welcome development that promises to alleviate the plight of a substantial number of the Bhutanese refugees in Nepal.¹⁵⁸

Lack of Information

The announcement has sparked considerable debate amongst the refugees. Some are overjoyed to be offered the option of resettlement, while others are wary, having seen too many promises of a solution come to nothing over the course of the past 15 years. Yet others are not willing to contemplate any durable solution other than repatriation to Bhutan; some people in this category are suspicious about the motivations behind the resettlement offer.

Clearly, in a population of more than 100,000 people, differences of opinion are only to be expected; the Bhutanese refugees are no more homogeneous in their views than any other group of that size would be. But interviews with refugees in the camps showed that beyond the normal diversity of opinion, there are a number of distinct but related problems that urgently need to be addressed.

First, no reliable and precise information is currently available to the refugees about the offer of resettlement. As a result, there is much confusion and anxiety. On the one hand, there are fears among the refugees that the offer does not represent a real commitment to actually conduct resettlement, but is only a suggestion, and might be

¹⁵⁷ UNHCR Spokesperson Jennifer Pagonis, "Nepal: Generous US Resettlement Offer May Help Break Bhutanese Deadlock," *UNHCR Briefing Notes*, October 6, 2006, <http://www.unhcr.org/news/NEWS/45262b462.html> (accessed February 14, 2006).

¹⁵⁸ A number of other countries have also indicated their willingness to resettle smaller numbers of Bhutanese refugees, including Australia and Canada. *Ibid.*

withdrawn at any time and without warning. An elderly refugee woman said, “Is the American promise just talk, or a real promise?”¹⁵⁹

Other refugees are under the impression that this is not so much an offer as a command, and that refugees will have no choice in the matter. Tellingly, the U.S. offer of resettlement is frequently referred to in terms of the U.S. “taking” 60,000 refugees, and some refugees are afraid that they will indeed be taken to the U.S. even against their will. A refugee teenager said, “Our first priority is to go to Bhutan, but we hear the news that the U.S. will take us.”¹⁶⁰

The refugees have a desperate need for information, but there is nowhere they can turn for answers to their many questions. One 43-year-old refugee said, “Nobody has informed us. We are hearing rumors only. No authority has met the refugees.”¹⁶¹ Another refugee stated, “Nothing is known clearly, no proposal is brought in the camp clearly and openly by any of the agencies.”¹⁶²

The lack of information concerns all aspects of the resettlement proposal. Thus, for example, refugees are unclear about the eligibility criteria for resettlement, with many expressing fears that only young, healthy, and educated refugees would qualify, leading to the separation of family members. One refugee asked, “Will they only take the educated refugees and leave the others behind?”¹⁶³

Refugees also have many questions about the conditions they would face in the U.S. in terms of housing, health care, education, and employment. A refugee woman spoke for many when she reeled off a long list of questions: “If these countries are taking us there, what are the terms and conditions? Where will we be kept? Will we be given a field to work? Can we also work in the factories? Will the huts look like the huts here?”¹⁶⁴ Some refugees were uncertain about their rights in the United States or

¹⁵⁹ Human Rights Watch interview (K17), Goldhap camp, November 12, 2006.

¹⁶⁰ Human Rights Watch interview (B63), Beldangi II camp, November 17, 2006.

¹⁶¹ Human Rights Watch interview (K15), Beldangi II-extension camp, November 11, 2006.

¹⁶² Human Rights Watch interview (K25), Sanischare camp, November 14, 2006.

¹⁶³ Human Rights Watch interview (B15), Goldhap camp, November 12, 2006.

¹⁶⁴ Human Rights Watch interview (K20), Beldangi I camp, November 13, 2006.

other resettlement countries. Speculation in the camps and inaccurate reports in the local media fueled this confusion. One refugee man dressed in traditional Hindu clothing expressed it in the question, “Will I be allowed to put the *tikka* on my forehead in America? I have heard from the media that although there is supposed to be protection of minority rights, that many do not follow these rights in America.”¹⁶⁵

Of all the questions refugees have, perhaps the one question they want to see addressed most urgently relates to their legal status in the United States. Having been stripped of their Bhutanese citizenship, and having been unable to assert any of their civil and political rights for the past 15 years, the refugees are anxious to be granted citizenship by whichever country offers them a durable solution. As a refugee woman asked, “When we go there, will we still be refugees, or will we be given the right of these countries? If I have to go there as a refugee, why can I not stay here?”¹⁶⁶

But refugees’ concerns run even deeper than a grant of citizenship. The injustice of being denationalized is deeply ingrained in refugees’ minds, and they are loath to ever have it happen to them again. A refugee asked, “In the previous days our ancestors were invited by the Bhutanese to go settle there. And then they expelled us. Why wouldn’t the U.S. do the same thing and invite us only to expel us later?”¹⁶⁷ It is a question that is on many refugees’ minds. An elderly woman said, “Will we have the same rights as U.S. citizens? Will they not evict us after 15, 20 years, like they did in Bhutan? Our forefathers went to Bhutan, and we were evicted. We fear that the U.S. will do that too.”¹⁶⁸

Due to the lack of information about the resettlement offer, there is a certain level of suspicion about the motivations behind the offer. Some refugees are wary, thinking that the U.S. might want to exploit them in some way or that it wants to use them in pursuit of some other geopolitical plan or agenda:

¹⁶⁵ Human Rights Watch interview (B51), Timai camp, November 16, 2006.

¹⁶⁶ Human Rights Watch interview (K20), Beldangi I camp, November 13, 2006.

¹⁶⁷ Human Rights Watch interview (B69), Beldangi I camp, November 19, 2006.

¹⁶⁸ Human Rights Watch interview (K17), Goldhap camp, November 12, 2006.

I have heard about the U.S. proposal, but I don't know the details. Why are western countries interested in settling us, what is the benefit for them? If they want to help us, why don't they try to help us to repatriate? We want to know the clue, the main reason. There must be some political issue. What is the benefit they get? I don't believe that it is on neighborly grounds. If they give us a green card, if they treat us as their own citizens, *then* we will think about it.¹⁶⁹

Equally, refugees want reassurance that a decision on their part to accept the offer of resettlement does not extinguish their right to return to Bhutan. Despite Bhutan's intransigence of the past 15 years, refugees have not given up hope that one day they will be allowed to return to Bhutan. Some refugees now fear that they are being asked to choose between a future in the U.S. and their right to return to their own country. A refugee said, "When the statement came that the U.S. will not just take the strong, educated people, people were interested [in the resettlement offer]. Even then, people were afraid. Can we still go back?"¹⁷⁰

¹⁶⁹ Human Rights Watch interview (K59), Kalimpong, India, November 22, 2006.

¹⁷⁰ Human Rights Watch interview (B40), Khudunabari camp, November 15, 2006. The interviewee was referring to a letter by Ellen Sauerbrey, U.S. Assistant Secretary of State for Population, Refugees and Migration, published in a monthly refugee newsletter, which stated: "It is important to note that we select applicants for our [resettlement] program on the basis of applicants' needs – we do not make selections based upon level of education, job-related skills or other such criteria." Ellen Sauerbrey, "US Motivation Is Humanitarian," *The Bhutan Reporter*, vol. II, no. 23, November 2006, p. 2. The letter helped to allay a number of refugees' fears.

IX. Local Integration

In 2005 UNHCR's Executive Committee (ExCom) adopted Conclusion 104, which called on states "to facilitate, as appropriate, the integration of refugees, including, as far as possible, through facilitating their naturalization."¹⁷¹ It noted that the process of local integration comprises three distinct but inter-related dimensions: a legal dimension, an economic dimension, and a social and cultural dimension.¹⁷² If the Bhutanese refugees were allowed to locally integrate at all, there would be very few obstacles to ensuring their social and cultural integration, since they have much in common with their Nepalese hosts; not only do they speak Nepali, but they also identify closely with their hosts in terms of religion and culture. There are already a significant number of marriages between Nepalese citizens and Bhutanese refugees.¹⁷³

However, Nepal government policy is firmly aimed at precluding the Bhutanese refugees from integrating in Nepal, both in legal and in economic terms. ExCom Conclusion 104 affirmed "the particular importance of the legal dimension of integration, which entails the host state granting refugees a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of naturalizing."¹⁷⁴

The situation of the Bhutanese refugees in Nepal stands in stark contrast to that envisaged by the ExCom Conclusion. Nepal is not a party to the 1951 Refugee Convention or its 1967 Protocol,¹⁷⁵ nor has it adopted national refugee legislation. Instead, the legal status of asylum seekers and refugees in Nepal is governed by the

¹⁷¹ UNHCR, ExCom Conclusion 104 (LVI), "Conclusion on Local Integration," October 7, 2005, <http://www.unhcr.org/excom/EXCOM/4357a91b2.html> (accessed January 30, 2007), para. (d).

¹⁷² *Ibid.*, para. (k).

¹⁷³ Conflicts between the Bhutanese refugees and their host communities do occur, but these are invariably caused by the competition for scarce resources, such as fire wood, rather than by intolerance, discrimination, or xenophobia. See also Section IV.

¹⁷⁴ UNHCR, ExCom Conclusion 104, para. (l).

¹⁷⁵ Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954; Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967.

Aliens Act supplemented by administrative directives, leaving the legal status of the Bhutanese refugees in Nepal far from secure.¹⁷⁶ While Nepal allows the Bhutanese refugees to remain on its territory,¹⁷⁷ it accords them few rights.

First, regardless of the fact that many Bhutanese refugees have now resided in Nepal for more than 15 years, and that a significant proportion of the Bhutanese refugee population consists of children who were born in Nepal, no provision is made for Bhutanese refugees to acquire Nepalese citizenship, leaving them politically disenfranchised.¹⁷⁸

Second, Bhutanese refugees are denied two basic rights that are a prerequisite for economic integration: freedom of movement and the right to engage in income-generating activities. Bhutanese refugees do not enjoy freedom of movement in Nepal; instead they are confined to seven refugee camps where they face highly congested living conditions (see section IV).¹⁷⁹ Refugees need to apply for permission from the government authorities in the camps whenever they want to leave the

¹⁷⁶ Four different legal regimes are in place for different groups of refugees and asylum seekers, depending on their nationality and their time of arrival in Nepal: Tibetans who arrived before January 1, 1990; Tibetans who arrived after January 1, 1990; Bhutanese refugees and asylum seekers; and refugees and asylum seekers from other countries. UNHCR, "Country Operations Plan 2006 – Nepal," September 1, 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDCOI&id=4332c56e2> (accessed January 26, 2007), p. 1.

¹⁷⁷ Not everyone who enters Nepal to seek refuge is permitted to stay in Nepal; in particular, Tibetans who arrived after January 1, 1990, are not permitted to remain in the country. For those Tibetan arrivals who are determined to be of concern to UNHCR, onward travel to third countries is arranged by UNHCR. UNHCR, "Country Operations Plan 2006 – Nepal," p. 1.

¹⁷⁸ A new Citizenship Act, which came into force on November 26, 2006, has relaxed the requirements for Nepali citizenship in some respects. The Act's main aim is to grant citizenship to the estimated 3-4 million people belonging to the communities of the Terai, Nepal's southern belt, in time for the elections for a new constituent assembly scheduled for June 2007. These people, also known as Madhesis, have traditionally been marginalized and have in the past been denied Nepali citizenship. Under the Act, anyone who has permanently resided in Nepal since April 13, 1990, and is eligible for Nepalese citizenship, provided three Nepali citizens who reside in the applicant's area supply statements on the applicant's behalf. "Country Gets New Citizenship Act," *Himalayan Times* (Kathmandu), November 26, 2006. The cut-off date of April 13, 1990, excludes the Bhutanese refugees, the first of whom arrived in Nepal in late 1990.

Bhutanese refugees also cannot satisfy the requirements for acquiring citizenship through naturalization under the 2006 Act. These include residence in Nepal for at least 15 years, employment in Nepal, and citizenship of a country that has a legal arrangement or practice for granting citizenship of that country to a national of Nepal (see UN Office of the High Commissioner for Human Rights in Nepal, "OHCHR Comments on Citizenship Bill," November 23, 2006, p. 2). Bhutanese refugees are unable to meet the Citizenship Act's employment requirement, since they are in fact prohibited from working in Nepal (see below).

The only Bhutanese refugees who are eligible for Nepalese citizenship under the 2006 Act are Bhutanese women who are married to a Nepali husband (Citizenship Act 2006, s. 5(1)), and children born to a Nepalese father and a Bhutanese mother (Citizenship Act 2006, s. 4(1)). A child born to a Nepalese mother and a foreign father is entitled to Nepalese citizenship only if the child has permanent residence in Nepal, and has not acquired the citizenship of a foreign country on the basis of his father's citizenship (Citizenship Act 2006, s. 4(1)).

¹⁷⁹ The restrictions on refugees' freedom of movement are contained in the "Camp Rules," an administrative directive of the government of Nepal. See UNHCR Country Operations Plan 2006 – Nepal (September 1, 2005), <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDCOI&id=4332c56e2> (accessed January 26, 2007), p. 1.

camps for more than a day; so-called “out passes” are issued only for a maximum of one week.¹⁸⁰ Under article 12 of the International Covenant on Civil and Political Rights, to which Nepal is a party, everyone lawfully within the territory of a State has, within that territory, the right to liberty of movement and freedom to choose his residence.¹⁸¹ Exceptions to this right are allowed only on strictly necessary national security or other narrowly prescribed grounds.¹⁸² Thus the continuing use of the camps and the restrictions on the Bhutanese refugees’ freedom of movement could only be justified if it were shown to be clearly in the interest of refugee security or overall national security.¹⁸³

Not only are Bhutanese refugees denied freedom of movement, but they are also prohibited from engaging in income-generating activities, even within the confines of the refugee camps.¹⁸⁴ By being denied the right to work, the refugees have been forced into a situation where they are entirely dependent on the support of the

¹⁸⁰ Each camp has a camp supervisor appointed by the government who is authorized to issue out passes to refugees, allowing refugees to leave the camps for a specific purpose and for a specific period of time. In practice, the authorities often turn a blind eye to refugees leaving the camps without first applying for permission. At times, however, the provision is strictly enforced, most recently after refugee protests had been organized outside the camps. “Bhutanese Refugees Virtually Imprisoned In Camps,” *Himalayan Times Online* (Kathmandu), August 2, 2006, <http://www.thehimalayantimes.com> (accessed January 31, 2007).

¹⁸¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 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 March 23, 1976, art 12(1). Nepal acceded to the ICCPR on May 14, 1991.

¹⁸² Under ICCPR, art. 12(3), restrictions on the right to freedom of movement are allowed if they are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and only to the extent that any such restrictions are consistent with the other rights recognized in the ICCPR.

¹⁸³ UNHCR Executive Committee, Note on International Protection, ExCom 52nd Session, A/AC.96/951, September 13, 2001, A/AC.96/951, <http://www.unhcr.org/excom/EXCOM/3bb1c6cc4.pdf> (accessed January 31, 2007), para. 44. At the time of a large refugee influx, refugees’ confinement to camps may be necessary as a compromise solution between refugee needs and host state concerns. However, any such compromise should be temporary. More than 16 years after the first Bhutanese refugees arrived in Nepal, the restrictions on their freedom of movement can clearly no longer be justified on these grounds. UNHCR, *Operational Protection in Camps and Settlements* (Geneva: UNHCR, Division of International Protection Services, 2006), <http://www.unhcr.org/publ/PUBL/448d6c122.pdf> (accessed January 31, 2007), p. 51.

¹⁸⁴ The prohibition on engagement in gainful activities is also contained in the “Camp Rules.” See UNHCR Country Operations Plan 2006 – Nepal (September 1, 2005), <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDCOI&id=4332c56e2> (accessed January 26, 2007), p. 1. A number of small income-generating projects are operated in the camps, where refugees produce goods that are then bought by one of the relief agencies for redistribution in the camps. For example, the Bhutanese Refugee Women Forum (BRWF) runs a small program for the production of jute mats, which are bought by Caritas for use in the camp schools. The BRWF also has projects for the production of chalk for use in the schools in the camps, and for the production of sanitary cloth that is bought by the Association of Medical Doctors of Asia (AMDA) and then distributed to all women of reproductive age in the camps. However, other projects have had to be shut down after the district authorities received complaints from Nepalese traders who found they could no longer sell their products to the relief agencies, as happened for example with a soap-making project run by the BRWF. Human Rights Watch interview with UNHCR staff (Field Officer – Protection, Community Services Officer, Assistant Protection Officer), UNHCR sub-office, Damak, November 10, 2006; and Human Rights Watch interview (B5/K14), Beldangi II-extension refugee camp, November 11, 2006.

international community for their survival.¹⁸⁵ With the passage of time, this support system has come under increasing strains, with budgetary constraints necessitating cuts in the provision of essential services, including food, fuel, and medical care. These cutbacks, and the heavy toll they exact on the refugees, show that a policy that denies refugees the means to achieve self-sufficiency cannot be sustained.

That Nepal has taken no meaningful steps in more than 15 years to integrate Bhutanese refugees is due, in part, to its relations with Bhutan. Nepal sees the refugees as fundamentally a Bhutanese responsibility and is unwilling to suggest by naturalizing them that Bhutan was in any way justified in denying them citizenship and expelling them in the first place. While Nepal might be willing ultimately to naturalize some residual population of refugees who are unable or unwilling to repatriate or resettle, it is unlikely to take the first step.

¹⁸⁵ Under article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), everyone has the right to the opportunity to gain his living by work which he freely chooses or accepts. Under article 6 state parties are bound to take appropriate steps to safeguard this right to work. International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art 6(1). Under article 2(3) of the ICESCR, developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

X. Divergent Views, Rising Tensions

Despite their concerns and questions about the U.S. resettlement offer, many refugees are thrilled at the prospect of starting a new life in the US, and are keen to register their interest in the scheme. Indeed, by November 2006 the U.S. Embassy in Kathmandu, the UNHCR offices, and the government of Nepal had each received several thousand spontaneous written appeals from refugees for resettlement.¹⁸⁶ For the first time in 15 years, a durable solution appeared finally to be within reach, and many refugees expressed their gratitude to the U.S. for giving them hope:

We want to go [to the US]. The educated ones will get jobs. We will at least have a place to live and at least we will get our basic rights, like other human beings in the world. Earlier we were sad, because we didn't see any solutions, no prospects of going home. Now we are hearing that some countries are ready to take us. That gave us hope. We began to dream of a normal life. That encourages us to speak. We are very hopeful.¹⁸⁷

Refugee parents frequently referred to their immeasurable relief that they could finally allow themselves to have some hope for their children's future. A refugee father said, "The children's future is the first thing. They need an identity in this world. They have no identity in either Bhutan or Nepal."¹⁸⁸ A refugee mother stated, "Our future went, but we want to see the future of our children. It would be nice if we could take our children to America, because at last we could send them to a good school."¹⁸⁹

¹⁸⁶ Human Rights Watch interview with Abraham Abraham, UNHCR Representative in Nepal, Kathmandu, November 28, 2006; and Human Rights Watch interview with Rodney Hunter, Political/Economic Officer, U.S. Embassy, Kathmandu, November 9, 2006.

¹⁸⁷ Human Rights Watch interview (K41), Beldangi II camp, November 17, 2006.

¹⁸⁸ Human Rights Watch interview (B9), Beldangi II-extension camp, November 11, 2006.

¹⁸⁹ Human Rights Watch interview (K41), Beldangi II camp, November 17, 2006.

On the other hand, there are also refugees who, for various reasons, are not interested in the offer of resettlement. For some repatriation still is the only acceptable durable solution, and they have no use for an offer that does nothing to bring the day of repatriation closer:

For me, the first priority would be repatriation. I want to be repatriated. I wouldn't like to go anywhere else, but would stay here as a Bhutanese refugee and whenever the political environment will be favorable, then I will go to my own country. I would not accept another citizenship. I will stay a refugee until I can return to Bhutanese citizenship. Let it be the rest of my life.¹⁹⁰

Others, including older people in particular, expressed concerns about the difficulties of leaving behind everything with which they are familiar, and relocating to a country where they know neither the language nor the culture. A 57-year-old refugee man said:

If I do not go back to Bhutan, my choice would be to stay in Nepal. I want Nepal to give me land and citizenship. I don't want to sit in the camp. I want land and a house. But if Nepal says no, I prefer to stay in this camp. I know nothing of the United States. I am only a farmer. I am unskilled. I don't speak their language. I can only find work here. My life is here. I want my life to stay the same way. I don't want to go to some unknown place. I am only a farmer. I want my land. My country is Bhutan. That is my first choice. Otherwise, Nepal or India.¹⁹¹

But older refugees were not the only people to express a preference for repatriation or local integration. A refugee student said, "I have already spent half my life in Nepal, I love Nepal, it is the country of the Nepalese. If given a choice, I would

¹⁹⁰ Human Rights Watch interview (B41), Khudunabari camp, November 15, 2006.

¹⁹¹ Human Rights Watch interview (B38), Sanischare camp, November 14, 2006.

choose Nepal. If I were taken to another country, it would take time to get used to another place again.”¹⁹²

Some of the people who see no realistic option for repatriation and who prefer local integration to resettlement expressed concern about what would happen to those who decline the resettlement offer. A young refugee woman asked, “What happens to those people who want to stay? Many people in Nepal are stateless. Will the Bhutanese also be left stateless?”¹⁹³ Others were concerned that the international relief agencies would cease to provide assistance to the remaining refugees in Nepal after the bulk of the refugees had been resettled. Another refugee woman described some of the rising anxiety among the refugees worrying about their future: “People ask, ‘Will they only take educated people for resettlement, the youth? Will the international agencies still give assistance to the others?’ So these kinds of questions are an additional problem here in the camp.”¹⁹⁴

Opponents of Resettlement

While most refugees who rule out resettlement for themselves have no objections to other refugees being resettled, a vociferous and influential minority is opposed to the resettlement offer, not just for themselves, but for all refugees. In particular, a number of prominent refugee leaders and refugee political organizations, almost exclusively based in Kathmandu, have denounced the resettlement offer on the grounds that it undermines the struggle for the right to repatriation. They accuse those refugees who speak out in favor of resettlement of betraying the cause of the refugees and of aiding and abetting the continued oppression of the remaining ethnic Nepalis in Bhutan. As a refugee woman said, “Some say we have to go to Bhutan and fight against the king. Some youth groups say that we are Bhutanese, why should we surrender to a third country? We should go to Bhutan and fight for our rights to be bona fide citizens of our own country.”¹⁹⁵

¹⁹² Human Rights Watch interview (K58), Kalimpong, India, November 22, 2006. Those refugees who did not want to be resettled did not insist on being allowed to remain in Nepal, but considered local integration in India equally acceptable: “If the Nepalese government and India allowed us to resettle, then that is preferred.” Human Rights Watch interview (B13), Goldhap camp, November 12, 2006.

¹⁹³ Human Rights Watch interview (K31), Khudunabari camp, November 15, 2006.

¹⁹⁴ Human Rights Watch interview (K20), Beldangi I camp, November 13, 2006.

¹⁹⁵ Human Rights Watch interview (K20), Beldangi I camp, November 13, 2006.

Of the various groups, organizations, and people who argue that the goal of repatriation must take precedence over all other concerns, the single most prominent figure is Tek Nath Rizal. Rizal became a member of the National Assembly of Bhutan in 1974, and was elected a Royal Advisory Councilor in 1984. When the disastrous consequences of the 1988 census became clear, Rizal petitioned the Bhutanese king to reverse the stripping of ethnic Nepalis' Bhutanese citizenship. Subsequently, Rizal fell out of favor with the king and fled the country. The Nepalese authorities arrested him in his home in Birtamod, in Nepal's Jhapa district, on November 16, 1989, and handed him over to the Bhutanese authorities. Upon his arrival in Bhutan Rizal was imprisoned. In 1993 he was sentenced to life imprisonment. The King later granted him a pardon, but made it conditional on the success of the bilateral refugee negotiations between Bhutan and Nepal. Rizal was finally released from prison on December 17, 1999.¹⁹⁶

During his time in prison, Rizal acquired an almost mythical status among the refugee population. Upon his release in December 1999 refugees had high hopes that they had in Rizal a leader of great stature and personal courage who would be able to change the dynamics of the situation and bring an end to their plight. He soon became their largely unopposed leader.¹⁹⁷

Rizal heads a number of Bhutanese organizations in Nepal, notably the Bhutanese Refugee Representative Repatriation Committee (BRRRC), which has long advocated for the repatriation of the Bhutanese refugees, and the Bhutanese Movement Steering Committee (BMSC).¹⁹⁸ But Rizal and his organizations have been unable to lead the refugees back to Bhutan. A rift has opened between the refugee leaders

¹⁹⁶ For a detailed description of the events leading up to Rizal's arrest and imprisonment, see Tek Nath Rizal, *Ethnic Cleansing and Political Repression in Bhutan: The Other Side of Shangri-La* (Kathmandu: Human Rights Council of Bhutan, 2004), pp. 36-58.

¹⁹⁷ After his release from imprisonment, Rizal initially remained in Bhutan, relocating to Kathmandu in October 2003. However, on December 28, 2001, the camp secretaries of the seven refugee camps wrote a joint letter which declared "that all the Bhutanese refugees wholeheartedly accept you as the singular [sic] leader of the Bhutanese refugees human rights movement and believe that you are the most desirable person to represent us in the protection and promotion of the fundamental rights of the Bhutanese people, particularly we the Bhutanese refugees in Nepal and India." The letter is reproduced in Rizal, *Ethnic Cleansing and Political Repression in Bhutan*, pp. 87-88. On July 13, 2003, seven Bhutanese refugee organizations agreed to establish the Human Rights Council of Bhutan (HRCB) and declared that "we ... solemnly pledge to work under the leadership of Mr. Tek Nath Rizal, the founding father of the human rights movement in Bhutan, and give him full authority to streamline the ongoing human rights movement in the best interest of the Bhutanese people and in the manner he deems appropriate." The declaration is reproduced in Rizal, *Ethnic Cleansing and Political Repression in Bhutan*, pp. 89-90.

¹⁹⁸ The BMSC, of which Rizal is chairman, is a relatively new organization that was founded in June 2006.

based largely in Kathmandu and supporting Rizal, and those based in the camps, including the elected refugee representatives on the Camp Management Committees (CMCs).

The sudden and unexpected announcement of the U.S. resettlement offer has dangerously accelerated this dynamic. Faced with the prospect of thousands of refugees opting for third country resettlement, refugee leaders in Kathmandu have hardened their stance significantly, arguing that any endeavor to resettle Bhutanese refugees to third countries rewards the Bhutanese government for its misdeeds, 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 expulsion, and undermines the efforts to realize the right to return for the Bhutanese refugees in Nepal.¹⁹⁹

Most proponents of resettlement readily agree that this would, in effect, let Bhutan get away with expelling more than 100,000 of its own citizens in violation of its international legal obligations, and its subsequent inflexibility during negotiations with Nepal to end the refugee crisis. But they feel equally strongly that the refugees should no longer be held hostage to the outcome of negotiations with a government that has signaled time and time again that it is not willing to change its position and allow the refugees to repatriate.²⁰⁰

Rizal and other Kathmandu-based refugee leaders have shown themselves to be immune to the force of these arguments. Not only do they continue to reject

¹⁹⁹ A Pamphlet by the Bhutanese Movement Steering Committee (BMSC), of which Rizal is chairman, states that “resolving the Bhutanese issue by taking the fraction of the population for resettlement as a measure of resolving the impasse will only help supporting the regime and will be like leaving a snake with a severed tail.” Thinley Penjore, “Unveiling Bhutan,” Bhutanese Movement Steering Committee, November 2006, unpublished document on file with Human Rights Watch, p. 10.

²⁰⁰ The Bhutanese government would not appear to have changed its stance since the last round of bilateral talks in October 2003. In a Human Rights Watch interview, the Bhutanese Ambassador to India insisted that Bhutan was willing to allow refugees in categories one and four to return to Bhutan, and blamed the lack of progress with respect to these categories on Nepal, saying, “We told [former U.S. Assistant Secretary of State Gene] Dewey that we would take all category one and category four people and that they could repatriate. But first we wanted a note from the Nepalese government saying that this is okay with them. We wanted clearance from the Nepalese government, but it never came.” Regarding the refugees in categories two and three, he stated, “[the verification exercise in] Khudunabari amply demonstrates what these people are: non-Bhutanese, people with criminal records.” The ambassador further stated that Nepal “does not try for a solution. Maybe [the refugee population] is a boon for them, not a problem. Many Nepalese are employed by Caritas and the other organizations working in the camps.” Human Rights Watch interview with Ambassador Dago Tshering, Ambassador of the Kingdom of Bhutan to India, Nepal and Japan, New Delhi, India, November 24, 2006.

categorically the resettlement offer, but they also refuse to countenance any opposition to their stance, resorting to increasingly high-handed tactics to impose their views. After six of the seven camp secretaries organized a press conference to welcome the U.S. resettlement offer, Rizal dismissed all six from the BRRRC.²⁰¹

The enmity is by no means confined to the refugee leaders in Kathmandu and the elected refugee representatives in the camps. While most opponents of resettlement in the camps do not dispute the right of others to choose the resettlement option, some use threats and intimidation to try to silence those who advocate for resettlement. Disaffected youths who have spent all or nearly all of their lives in the camps with nothing to do and nowhere to go are most prone to resort to threats to intimidate proponents of resettlement.²⁰²

Some of them identify with, or belong to, the Bhutanese Maoists.²⁰³ Little is known about the Bhutanese Maoists, their membership, and their level of organization. While there is much speculation about the Bhutanese Maoists in the camps, facts are hard to come by and few people are willing to declare openly to foreign visitors that they belong to this group. Nevertheless, they have stepped up their activities in the camps, having grown more confident after King Gyanendra of Nepal was forced to step down and reinstate the Nepalese parliament in April 2006, in what was seen as a major victory for the Nepalese Maoists.²⁰⁴ In the main, these activities are limited to so-called “cultural programs” in the camps where youths march with wooden rifles and exhort the refugees to fight for their right to return to Bhutan.²⁰⁵

²⁰¹ Human Rights Watch interview with members of the BRDSCC, Damak, November 17, 2006.

²⁰² As some of the more politically astute refugees pointed out, many of the refugees who agitate against resettlement and insist on repatriation do not have any clear ideas about the conditions that would need to be in place for large-scale repatriation to be made a reality. A refugee said, “Those [ethnic Nepalis] who are in Bhutan, they don’t have security. The people who are still advocating for repatriation, they are not clear about the terms and conditions. Simply saying repatriation is not enough. We have to educate our children, we have to be settled.” Human Rights Watch interview (K25), Sanischare camp, November 14, 2006.

²⁰³ More precisely, the Bhutanese Communist Party (Marxist-Leninist-Maoist) or BCP (MLM).

²⁰⁴ While the BCP (MLM) is supported ideologically by the Communist Party of Nepal, it does not receive either weapons or funds from the Nepalese Maoists, and there would thus appear to be little danger at this stage of the camps becoming militarized. Human Rights Watch interview with Harka Bahadur Khadka, leader of the Nepalese Maoists in Jhapa district, Birtamod, November 16, 2006; and Human Rights Watch interview (K18), details withheld.

²⁰⁵ Human Rights Watch interviews (K18, K30), details withheld.

However, some refugees did claim that the Bhutanese Maoists were gaining in strength. “The Maoists will never let the king be. See what they have done in Nepal?” A refugee said. “After 17 years, it looks as though the King is still unwilling to listen to the language of peace. He will then be forced by the language of the gun.”²⁰⁶

In interviews with Human Rights Watch, some refugees reported feeling intimidated by the Bhutanese Maoists in the camps. A young refugee woman, said:

We have been here too long. We are suffering. I want resettlement, but I can’t speak out because these Maoists, they say we should all go back. People say, “We will cut you.” Many people here want resettlement, but they can’t speak out because of fear.²⁰⁷

A representative of an international humanitarian organization working in the camps said, “It is important that durable solutions come soon, because youths especially are frustrated and are joining radical groups. They also see the example of the Nepalese Maoists. They want to do radical activities in Nepal as well as in Bhutan.”²⁰⁸

Threats and Intimidation

So far serious threats have only been directed at refugees in leadership positions who speak out publicly in favor of resettlement. Members of the newly formed Bhutanese Refugees Durable Solutions Coordination Committee (BRDSCC), including six of the camp secretaries, are generally regarded as pro-resettlement. During the time of the Human Rights Watch mission to the camps, young refugees hand-delivered a death threat to two of the camp secretaries. Signed by a hitherto unknown group, the letter said, “If you speak of resettlement, your head will be in a bag and your body will be at the side of the river.”²⁰⁹

²⁰⁶ Human Rights Watch interview (K52), details withheld.

²⁰⁷ Human Rights Watch interview (K26), Sanischare camp, November 14, 2006.

²⁰⁸ Human Rights Watch interview with NGO staff member, Damak, November 13, 2006.

²⁰⁹ Human Rights Watch interviews (K18, K30), details withheld.

One of the two camp secretaries whose life was threatened, Hari Adhikari Bangaley, who is the executive director of the BRDSCC, told Human Rights Watch:

We have experienced problems from people who are trying to take up aggression. There is total confusion in the camps. We campaign for all three options [repatriation, resettlement, and local integration] but they say we are only campaigning for resettlement. There are demonstrations against us. They burn effigies of us. They have damaged my motorbike. They have surrounded me, and have threatened to cut my throat. Some are very emotional about taking up guns. But I should not be afraid or withdraw.²¹⁰

A third camp secretary, Manoj Rai, told Human Rights Watch that he, too, had been threatened several times on account of his advocacy for resettlement. “I receive many threats,” he said. “Sometimes they write letters without an address or a name.” One threat he had previously received stated, “If anyone talks about America, they are the traitor. We will break your feet.”²¹¹ Yet another camp secretary said, “We camp secretaries, we cannot do anything, because they threaten us. They don’t allow us to speak. If one bad person comes, he can kill 10.”²¹²

Some refugees in the camps are frustrated and angry that the Kathmandu-based refugee leaders (now frequently referred to as “our so-called leaders” or “self-proclaimed leaders”) claim to speak for the entire refugee population when they reject the resettlement offer. These leaders, some refugees argue, have no personal understanding of what it is like to live in the camps. They can afford to reject the resettlement offer and insist on repatriation only because they do not have to contend with the hopelessness of life in the camps. One refugee said:

Usually, when people want to know what the refugees want, they ask Tek Nath Rizal, or they ask the human rights groups, and then they say

²¹⁰ Human Rights Watch group interview with Hari Adhikari Bangaley at BRDSCC office, Damak, November 17, 2006.

²¹¹ Human Rights Watch interview with Manoj Rai, Khudunabari camp, November 15, 2006.

²¹² Human Rights Watch group interview with members of the BRDSCC, Damak, November 17, 2006.

that this is what the refugees want. But this should not be done. The refugees should be asked, hut by hut. Rizal doesn't know that my wife is suffering from the coal, that my children are suffering from asthma. The leaders don't stay in the camps. Nobody has asked the children. Nobody has gone to the women. They are the real sufferers. Rizal doesn't hear the women crying, he doesn't hear the children crying. We ask the international community, please go hut by hut.²¹³

Human Rights Watch did not come across any actual violence against refugees favoring resettlement who are not in leadership positions. The fear of being attacked or otherwise harmed is widespread, however, and the strong impression is given that most refugees who would opt for resettlement do not feel free to express this opinion openly. A young refugee man described how the opponents of resettlement target everyone who speaks out in favor of it: "If they say your view is not correct, they will tell this to the leader [Rizal]. They are mobilizing, coming against those who are speaking against the leader."²¹⁴ A woman refugee said, "We can speak, but the environment is not favorable in the camps. There are groups that want to force us to go back to Bhutan."²¹⁵

The cramped conditions in the camps compound the problem, since they allow for little privacy. Some refugees are afraid to speak their mind on this subject even within the confines of their own huts. A refugee man said, "I feel fear. Unidentified people make threats. Every person is tormented by this fear. I have a burning desire for a better life, but I can't express myself publicly because I feel fear from unknown sources."²¹⁶ A young refugee man said:

People feel insecure. If others hear that you are looking for other options than repatriation, they will condemn you as not favoring

²¹³ Human Rights Watch interview (K40), Damak, November 17, 2006.

²¹⁴ Human Rights Watch interview (K40), Damak, November 17, 2006.

²¹⁵ Human Rights Watch interview (K41), Beldangi II camp, November 17, 2006.

²¹⁶ Human Rights Watch interview (B67), Beldangi I camp, November 19, 2006.

repatriation, of diluting the prospects for repatriation. Others will accuse you of having no love for the country.²¹⁷

A member of the BRDSCC, referring to the spontaneous applications for resettlement that refugees have started sending to UNHCR and the U.S. embassy, said:

Hundreds of people have made applications for resettlement, but they can't say this in the camps. If there was no intimidation, people saying, "I will chop off your head," then people would speak out. Many people have applied for resettlement, but quietly. They don't want their neighbors to know, because overnight there might be problems.²¹⁸

²¹⁷ Human Rights Watch interview (K43), Birtamod, November 18, 2006.

²¹⁸ Human Rights Watch interview with members of the BRDSCC, Damak, November 17, 2006.

XI. The Right to Free Expression and the Need for Information

In this climate of fear and intimidation the lack of information about the resettlement offer has its most pernicious consequences. In the absence of reliable information, refugees are besieged by rumors, leaving many feeling confused, frightened, and above all, vulnerable to intimidation. Without reliable information to dispel the rumors, refugees are ill-equipped to withstand the attempts that are made by certain opponents of resettlement to stifle the debate. Conversely, if refugees had access to reliable and accurate information about the resettlement offer, they would be less susceptible to the disinformation that militant opponents of resettlement are spreading in the camps. A member of the Durable Solutions Coordination Committee said:

There is a lot of fear of the unknown with third country resettlement. We need a concrete plan. There are a lot of questions about the practice of culture in third countries. If information is available, many will decide for third country resettlement. But many cannot decide. It is hard to decide. It would help to get information. They have been saying the information is untrue. There are recurring threats.²¹⁹

With reliable information about the resettlement offer, camp refugees would be able to make informed decisions.²²⁰

A respected, independent nongovernmental organization could reduce tensions immediately by conducting an information campaign on durable solutions. Such a campaign could, for example, provide information about the rights and benefits that are included as part of any resettlement or local integration option, affirm that under

²¹⁹ Human Rights Watch group interview with members of the BRDSCC, Damak, November 17, 2006.

²²⁰ UNHCR ExCom Conclusion 101 “[e]mphasiz[ed] that in the context of voluntary repatriation countries of asylum have the responsibility to protect refugees from threats and harassment, including from any groups or individuals who may impede their access to information on the situation in the country of origin or may impede the exercise of their free will regarding the right to return.” Conclusion 101 (LV), “Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees,” October 8, 2004, <http://www.unhcr.org/excom/EXCOM/417527674.html> (accessed February 10, 2007), para. (d). The principle applies equally with respect to access to information about resettlements countries, and the need to protect refugees’ right to exercise their free will regarding resettlement.

international law, the refugees have a right to return, but also explain what terms and conditions would need to be in place in order for viable repatriation to occur. Former Southeast Asian refugees who had been resettled to the United States and who have naturalized, and perhaps returned for visits to Vietnam or Cambodia, could share their experiences. Trustworthy information that is provided in an objective manner, and is not perceived as a sales pitch for resettlement or any other particular option, would help to dispel rumors and to foster open and respectful discussion of the options for the future.

Refugees in the camps are extremely eager to learn about life in the U.S. and in particular about their legal status and the conditions for acquiring citizenship. They no doubt will be similarly interested in the conditions that might await them in other resettlement countries. Other governments that have expressed a willingness to resettle Bhutanese refugees should announce as soon as possible how many Bhutanese refugees they envisage resettling. A woman refugee said, “We are happy with the [resettlement] proposal, but we are afraid that if we do not fall in the 60,000, what will happen to us?”²²¹

UNHCR’s Multilateral Framework of Understandings on Resettlement states that refugees must be provided “with information and counseling on their options for durable solutions.”²²² Refugees can only make a truly informed choice about their future if they have information about all three durable solutions (repatriation, resettlement, and local integration), so that they can weigh the advantages and disadvantages of each.

UNHCR Executive Committee’s conclusions also emphasize that refugees considering repatriation need information on the situation in the country of origin. In Conclusion 101 the Executive Committee “encourage[d] the country of origin, host countries and UNHCR in cooperation with other relevant actors to provide refugees with complete, objective and accurate information, including on physical, material

²²¹ Human Rights Watch interview (K41), Beldangi II camp, November 17, 2006.

²²² UNHCR, Convention Plus Core Group on the Strategic Use of Resettlement, “Multilateral Framework of Understandings on Resettlement,” June 21, 2004, <http://www.unhcr.org/protect/PROTECTION/40e409a34.pdf> (accessed February 17, 2007), para. 30.

and legal safety issues, prior to their voluntary repatriations to and integration in the country of origin.”²²³

At present, the refugees in the camps have very little or no information about the situation in Bhutan. An important reason for that circumstance is the Bhutanese government’s lack of openness about the situation for ethnic Nepalis inside Bhutan itself. Refugees’ relatives inside Bhutan expose themselves to considerable risks by maintaining contact with their family members in the camps and informing the refugees about the circumstances of ethnic Nepalis in Bhutan, and few are willing to take these risks. The refugees in the camps have almost no access to newspapers, radio, television, the internet, or any other source of information about Bhutan.²²⁴ As a consequence most refugees are not able to assess for themselves the likelihood that they would be allowed to return to Bhutan or the conditions they would face in Bhutan upon return. Such information would be necessary, however, for refugees to properly evaluate the comparative advantages and disadvantages of repatriation relative to the other durable solutions. To the extent that reliable information about the current treatment and conditions of ethnic Nepalis in Bhutan can be obtained, independent NGOs should relay this information to the refugee population.

Similarly, refugees need clear information about the prospects for local integration. The government of Nepal needs to clarify and publicize its policy with respect to refugees who either do not want to be resettled or who, for various reasons, including marriage to Nepalese citizens, are not accepted by any of the resettlement countries, and who are not willing or able to repatriate. The government of Nepal should allow these people to integrate locally. It should give them the means to earn a livelihood, and make them eligible for Nepalese citizenship.

²²³ UNHCR, ExCom Conclusion 101 (LV), “Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees,” October 8, 2004, <http://www.unhcr.org/excom/EXCOM/417527674.html> (accessed February 10, 2007), para. (r). Conclusion 18 of 1980 “recognized the importance of refugees being provided with the necessary information regarding conditions in their country of origin in order to facilitate their decision to repatriate.” Conclusion 18 (XXXI), “Conclusion on Voluntary Repatriation,” October 16, 1980, <http://www.unhcr.org/excom/EXCOM/3ae68c6e8.html> (accessed February 10, 2007), para. (e).

²²⁴ A refugee said, “There is no infrastructure in the camps to distribute information. We have a large number of people in the camps, but we don’t have radios, and it is costly to buy Nepalese newspapers. The refugee community publishes two newspapers, each published once a month, in Nepali, but only 1000 copies of each are printed.” Human Rights Watch interview (K15), Beldangi II-extension, November 11, 2006.

Finally, all relevant parties should ensure that refugee women have equal access to any information provided to refugees in the camps in line with Conclusion 73 adopted by UNHCR’s Executive Committee in 1993, which “calls upon states and UNHCR ... to encourage the participation of refugee women as well as men in decisions relating to their voluntary repatriation or other durable solutions.”²²⁵ Asked whether spouses generally agreed on the question of what durable solution they preferred, a refugee woman said, “No, there is disagreement. And it leads to quarreling. The husband is saying: ‘You don’t love me, you do your own thing, I will not keep you.’ That kind of threatening is going on. Even the educated families, they suppress their wives and daughters.”²²⁶

²²⁵ Conclusion 73 (XLIV), “Conclusion on Refugee Protection and Sexual Violence,” October 8, 1993, <http://www.unhcr.org/excom/EXCOM/3ae68c6810.html> (accessed February 17, 2007), para. (c).

²²⁶ Human Rights Watch interview (K20), Beldangi I camp, November 13, 2006.

XII. Unregistered Refugees in Nepal and India

The U.S. offer of resettlement for up to 60,000 Bhutanese refugees is a major development that promises to provide a durable solution for a significant proportion of the Bhutanese refugees. Other countries, including member states of the “core group,”²²⁷ that have indicated a willingness to resettle Bhutanese refugees should take the next steps and indicate how many refugees they will be willing to resettle and details about the time frame, process, and rights and entitlements of the resettlement package.

If the ultimate aim is, as it must be, to bring an end to the Bhutanese refugee crisis, it must be clear from the outset what the true scale of the problem is. While the refugees in the camps in Nepal constitute the majority of the ethnic Nepalis who fled or were forced to leave Bhutan, significant populations of Bhutanese refugees reside outside the camps, in both Nepal and India.

Unregistered Bhutanese Refugees in Nepal

The government of Nepal estimates that between 10,000 and 15,000 Bhutanese have settled in Nepal outside the camps.²²⁸ They fall in a number of different categories. Some Bhutanese, wanting to avoid the dependency of life in the camps, never registered as refugees in Nepal. Instead, they settled amongst the Nepalese and tried to make their own living.

Other Bhutanese have applied for refugee status in Nepal, but are still waiting for a decision. The Nepalese government recognized all Bhutanese refugees who arrived in Nepal prior to June 1993 on a *prima facie* basis. In June 1993 the government instituted individual refugee status determination (RSD) procedures for all new

²²⁷ The core group comprises Australia, Canada, Denmark, Netherlands, New Zealand, Norway, and the United States.

²²⁸ UNHCR-Nepal, “Bhutanese Refugees in Nepal,” August 2003, p. 1. See also Farzana Shaikh, “Nepal: Early Warning Analysis,” *Written Report*, August 2004, <http://www.unhcr.org/publ/RSDCOI/4186626c4.pdf> (accessed January 25, 2007), p. 9.

Bhutanese arrivals.²²⁹ With the start of the joint verification exercise in Khudunabari camp in early 2001, however, the government suspended all RSD activities, and it was not until October 2003 that the RSD operation was resumed.²³⁰ By the end of 2004 the government had decided all applications that had been pending when RSD was suspended in late 2000. However, the government of Nepal has continued to receive applications from people claiming to be Bhutanese refugees who have never gone through the RSD process, and the RSD process continued until it was suspended again with the start of the census in the camps in November 2006. UNHCR is aware of 1,343 individuals who have yet to receive a decision on their asylum claim.²³¹

On November 15, 2006, UNHCR and the government of Nepal began a joint “census” in the refugee camps. The census is in fact a re-registration: its purpose is to consolidate different data sets held by UNHCR, the government of Nepal, and the camp authorities. In principle, people whose names are not registered on at least one of these lists are not included in the census. However, by early February several hundred people claiming to be non-registered Bhutanese refugees had approached the census team. In a welcome development the government of Nepal has agreed to register these people as asylum seekers.²³² The government must now ensure that all Bhutanese asylum seekers receive a decision on their application for refugee status. Those who are found to be refugees should be considered for resettlement on the same basis as the Bhutanese refugees in the camps.

One category of particular concern is that of unregistered refugee children. A significant number of children who were born in the camps did not have their births

²²⁹ In 1993 Nepal adopted an internal directive for refugee status determination for Bhutanese asylum seekers called “Modus Operandi of the Screening Operation Post for Asylum-seekers from Bhutan at Kakarbhitta.” UNHCR-Nepal, “Bhutanese Refugees in Nepal,” August 2003, p. 5. UNHCR-Nepal exercises its mandate to conduct refugee status determination for asylum seekers from countries other than Bhutan. UNHCR, “Country Operations Plan 2006 – Nepal,” September 1, 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDCOI&id=4332c56e2> (accessed January 26, 2007), p. 1.

²³⁰ UNHCR-Nepal, “Bhutanese Refugees in Nepal,” August 2003, p. 5; and email from UNHCR-Nepal to Human Rights Watch, March 12, 2007.

²³¹ This includes people who, when the RSD process was resumed in October 2003, stated that they had never received formal notification of the rejection of their asylum claim at first instance, and who had therefore failed to lodge an appeal. The government of Nepal agreed to receive the appeals of the people concerned. Email from UNHCR-Nepal to Human Rights Watch, March 12, 2007.

²³² Email from Abraham Abraham, UNHCR-Nepal to Human Rights Watch, February 8, 2007.

registered. The government of Nepal has now agreed to include all such children in the census. Children born to a refugee father and a refugee mother are themselves registered as refugees, as are children born to a refugee father and a Nepalese mother. However, children born to a refugee mother and a Nepalese father are not considered to be refugees by the government of Nepal, and are not registered as such.²³³ In principle, these children qualify for Nepalese citizenship under Nepal's citizenship law. In practice, many of these children are not able to acquire Nepalese citizenship, particularly where the father has abandoned the refugee mother and her children. Nepal must ensure that it acts in accordance with its obligations under the Convention on the Rights of the Child (CRC).²³⁴ Under article 7 of the CRC:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Nepal must therefore ensure that all children who are entitled to Nepalese citizenship under its citizenship law because they are born to a Nepalese father, and who for that reason are not considered to be refugees by Nepal, receive the necessary administrative assistance to facilitate the acquisition of citizenship. Failure to do so would leave these children in the worst possible situation; not only would they be stateless, but without refugee status they would also be excluded from all prospects of a durable solution.²³⁵

²³³ Email from UNHCR-Nepal to Human Rights Watch, February 2, 2007; and email from UNHCR-Nepal to Human Rights Watch, March 12, 2007.

²³⁴ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990. Nepal ratified the CRC on September 14, 1990.

²³⁵ For the same reasons, Nepal should grant Nepalese citizenship to children of rejected asylum seekers who would otherwise be stateless.

Unregistered Bhutanese Refugees in India

India hosts a significant population of Bhutanese refugees; estimates of the numbers of ethnic Nepalis from Bhutan who reside in India range from 15,000 to 30,000.²³⁶ India is not a party to the 1951 Refugee Convention or its 1967 Protocol, and has no national refugee legislation. However, India is a member of UNHCR's Executive Committee.²³⁷ UNHCR undertakes refugee status determination under its mandate for refugees from countries other than Tibet, Sri Lanka, and Bangladesh.²³⁸ However, UNHCR has not considered any Bhutanese refugees in India for refugee status.

The absence of a legal framework for refugee-status recognition—or lack of access to procedures—does not obviate the reality of being a refugee. As UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status notes:

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.²³⁹

²³⁶ See U.S. State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices – 2006: Bhutan," March 6, 2007, <http://www.state.gov/g/drl/rls/hrrpt/2005/61706.htm> (accessed January 25, 2007) (15,000 Bhutanese refugees in India); Farzana Shaikh, "Nepal: Early Warning Analysis," *Writenet Report*, August 2004, <http://www.unhcr.org/publ/RSDCOI/4186626c4.pdf> (accessed January 25, 2007), p.9 (20,000 Bhutanese refugees in India); Minorities at Risk, "Assessment for Lhotshampas in Bhutan," <http://www.cidcm.umd.edu/inscr/mar/assessment.asp?groupId=76001> (accessed February 19, 2007) (30,000 Bhutanese refugees in India).

²³⁷ ExCom membership does not require accession to the Refugee Convention or Protocol, but requires only a "demonstrated interest and devotion to the solution of refugee problems" and membership in the United Nations or its specialized agencies. UNHCR, "How to apply for ExCom membership," <http://www.unhcr.org/excom/418b5ecc4.html> (accessed February 19, 2007).

²³⁸ UNHCR, "Country Operations Plan 2006 – India," September 1, 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDCOI&id=4332c6232> (accessed February 19, 2007), p. 1.

²³⁹ United Nations High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, reedited January 1992, para. 28.

Because the ethnic Nepalis from Bhutan who reside in India were expelled from Bhutan or fled Bhutan for the very same reasons as the ethnic Nepalis who are recognized as refugees in Nepal, they should also be considered as refugees.

Some of the Bhutanese refugees in India resided in the camps in Nepal for a number of years before going to India, but others came to India after they found that they could not get refugee status in Nepal. Yet others never went to Nepal and stayed in India after having fled Bhutan. All of them live on the margins of society, without citizenship and with no legal status in India.²⁴⁰

Many of those residing in India were among the poorest of the ethnic Nepali population in Bhutan. They did not have the resources to make it as far as the refugee camps. Several told Human Rights Watch that they fled across the border in the hope that the intimidation would soon cease, allowing them to go back. A 61-year-old woman said:

We came straight here. I did not know about the refugee camps. Later, I found out about them. But my children were very small and I was told it would be very hot there, so I decided not to go.²⁴¹

However, unlike the children in the refugee camps, this woman's children had no access to education. “We were very poor,” she said. “My children had to work so we could eat.”²⁴²

Another woman also said that she never tried to go to the refugee camps because, “We had no idea about them.”²⁴³ One man said that he had tried to register as a refugee in Nepal, but the authorities refused his application. He said he felt sad

²⁴⁰ The border between Bhutan and India is an open border for Bhutanese citizens. However, ethnic Nepalis who were expelled from Bhutan and were stripped of their Bhutanese citizenship do not enjoy the same freedoms in India as people with Bhutanese citizenship. One Bhutanese refugee in India said, “If you get into trouble with the police, if they find out you’re Bhutanese, the Indian police will take you to the Nepal border. If you come from Bhutan in a car with Bhutanese number plates, then you are not troubled: it is a free border for Bhutanese *citizens*.” Human Rights Watch interview (K52), details withheld.

²⁴¹ Human Rights Watch interview with Bhutanese refugee living in India (M4), details withheld.

²⁴² Human Rights Watch interview with Bhutanese refugee living in India (M4), details withheld.

²⁴³ Human Rights Watch interview with Bhutanese refugee living in India (M6), details withheld.

because if he had moved to the camps his children would have been educated. He said that he had not tried to apply for Indian citizenship, but when he had to go to government hospitals he claimed to be Indian.²⁴⁴

Bhutanese refugees in India told Human Rights Watch that they are as much in need of a durable solution as the Bhutanese refugees in Nepal. One Bhutanese refugee in India said, “I have heard about the U.S. proposal [resettlement offer]. If they [the refugees in Nepal] go, why not us? We were evicted from the same villages, for the same reason.”²⁴⁵ Another Bhutanese refugee in India said, “Whenever people from the international refugee organizations come, they go to the camps [in Nepal]. Of course, there are many more refugees there, but we are forced to live here and can go nowhere. We are trapped.”²⁴⁶

The Bhutanese refugees in India have as little hope of repatriation to Bhutan as the Bhutanese refugees in Nepal. Moreover, the conditions under which they currently reside in India do not represent a durable solution, since they do not enjoy legal safety in India. They should also be offered a durable solution, either by being allowed to legalize their status in India, or by being included in the resettlement efforts currently underway for the Bhutanese refugees in Nepal.

²⁴⁴ Human Rights Watch interview with Bhutanese refugee living in India (M7), details withheld.

²⁴⁵ Human Rights Watch interview with Bhutanese refugee living in India (K60), details withheld.

²⁴⁶ Human Rights Watch interview with Bhutanese refugee living in India (K64), details withheld.

XIII. Conclusion

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 should be a catalyst for a comprehensive solution to the Bhutanese refugee crisis.²⁴⁷ This requires a three-pronged strategy.

First, given that resettlement is likely to be the only feasible durable solution for the majority of the refugees at the present time, countries other than the U.S. should join in a coordinated effort to maximize the total number of resettlement places available for this refugee population. 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. Thus 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.

While the government of Nepal should continue to demand that the government of Bhutan honor its obligation to permit refugee repatriation, Nepal should not make cooperation with resettlement contingent on the outcome of further rounds of bilateral talks with Bhutan.²⁴⁸ As one refugee said, "The conclusion [of a new round

²⁴⁷ UNHCR's Working Group on Resettlement has emphasized the need for resettlement to be used strategically, that is, in such a way as to maximize its benefits over and above the provision of a durable solution to the resettled refugees. A prime example of the strategic use of resettlement is where it acts as a catalyst to create a comprehensive solution for an entire population of refugees from the same country of origin. UNHCR ExCom, Standing Committee, "The Strategic Use of Resettlement, A Discussion Paper prepared by the Working Group on Resettlement," UN Doc. EC/53/SC/CRP.10/Add.1, June 3, 2003, <http://www.unhcr.org/excom/EXCOM/3edf57cd4.pdf> (accessed February 13, 2007), paras. 9-14. ExCom Conclusion 95 of 2003 "[w]elcomes the report of the Working Group on Resettlement, particularly its important reflections on how this durable solution can be enhanced and used more strategically, including as part of comprehensive durable solutions arrangements and *reaffirms* the vital role of international resettlement in providing orderly, well targeted durable solutions." UNHCR, ExCom Conclusion 95 (LV), "General Conclusion on International Protection," October 10, 2003, <http://www.unhcr.org/excom/EXCOM/3f93aede7.html> (accessed February 10, 2007), para. (q). ExCom Conclusion 99 of 2004 "[e]ncourages States and UNHCR to put into practice the strategic use of resettlement in a spirit of international burden and responsibility sharing, in conjunction with other durable solutions, especially to resolve protracted refugee situations." UNHCR, ExCom Conclusion 99 (LV), "General Conclusion on International Protection," October 8, 2004, <http://www.unhcr.org/excom/EXCOM/41750ef74.html> (accessed February 10, 2007), para. (x).

²⁴⁸ A new round of bilateral talks between Nepal and Bhutan had been scheduled for November 2006, but they were postponed on the request of the government of Nepal, due to the political developments in Nepal. A new date for the talks has yet to be announced. The government of Nepal has so far insisted that it will not make any decisions about resettlement until after the bilateral talks. Thus while the government of Nepal has given permission to the U.S. to begin planning for a

of bilateral talks] might be that the government of Bhutan prolongs our refugee life by 15 or 20 years, by restarting the verification process. By that time our generation will be ruined totally.”²⁴⁹

Nepal should work together with the resettlement countries to ensure that those Bhutanese refugees in its territory who are offered resettlement places are issued exit permits without delay.²⁵⁰ Nepal must respect refugees’ right to leave the country, in accordance with article 12(2) of the ICCPR, which provides: “Everyone shall be free to leave any country, including his own.”²⁵¹

Second, refugees need a real alternative in the form of local integration, including guarantees of freedom of movement and the right to seek a livelihood in Nepal. Those refugees who express a preference for local integration over resettlement should also be given the possibility to acquire Nepalese citizenship.²⁵²

For the resettlement program to be truly voluntary, refugees need genuine choices whether to accept the offer of resettlement. Nepal’s willingness to integrate refugees

resettlement program, it has not, as yet, given permission for the resettlement program itself. Email from U.S. Embassy in Kathmandu to Human Rights Watch, March 12, 2007; email from U.S. State Department to Human Rights Watch, March 12, 2007; and email from UNHCR-Nepal to Human Rights Watch, March 12, 2007.

²⁴⁹ Human Rights Watch interview (K25), Sanischare camp, November 14, 2006.

²⁵⁰ In 2006 Nepal issued exit permits for sixteen vulnerable Bhutanese refugees who were referred by UNHCR for resettlement to the U.S. and Canada for the purpose of protection. Human Rights Watch interview with Abraham Abraham, UNHCR Representative in Nepal, Kathmandu, November 28, 2006; and Human Rights Watch interview with Rodney Hunter, Political/Economic Officer, U.S. Embassy, Kathmandu, November 9, 2006. In January 2007 UNHCR submitted a request to the government of Nepal for exit permits for another 36 vulnerable refugees who had been offered resettlement places for the purpose of protection, but by mid-March 2007 all 36 refugees had yet to receive exit permits. Email from UNHCR-Nepal to Human Rights Watch, March 12, 2007. Nepal must allow these refugees to exercise their right to leave the country without delay. Moreover, Nepal must also facilitate resettlement for durable solution purposes, in accordance with UNHCR’s Multilateral Framework of Understandings on Resettlement, which states that host countries must “facilitate the departure of refugees selected for resettlement, including by the timely issuance of exit permits and travel documents, and to avoid taking measures which might impede the process.” UNHCR, Convention Plus Core Group on the Strategic Use of Resettlement, “Multilateral Framework of Understandings on Resettlement,” June 21, 2004, <http://www.unhcr.org/protect/PROTECTION/40e409a34.pdf> (accessed February 17, 2007), para. 36.

²⁵¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, 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 March 23, 1976, art 12(1). Nepal acceded to the ICCPR on May 14, 1991.

²⁵² Under the agreement reached at the 12th round of bilateral talks between Nepal and Bhutan and Nepal, Nepal agreed that refugees in category 2 (“Bhutanese who emigrated voluntarily”) who did not wish to return to Bhutan would be “given the option to apply for Nepalese citizenship in accordance with laws of the kingdom of Nepal.” “Fourteenth Ministerial Joint Committee Meeting,” Nepal – Bhutan joint press release, May 21, 2003, Annex I: “Agreed Position on the Four Categories,” http://www.geocities.com/bhutanese/refugees/mjc_press_relese.html (accessed February 10, 2007). Nepal should extend the benefits of this agreement to all Bhutanese refugees who wish to integrate locally in Nepal.

would give the refugees real options. A refugee said, “I am fearful about the future. If they [resettlement countries] will not take us, maybe we are in the street here in Nepal or in India, maybe somewhere else, begging for food.”²⁵³

Third, the United States and other resettle countries should redouble their efforts to convince Bhutan to allow refugees who want to repatriate to do so under conditions that are compatible with human rights law. The possibility, now, that the majority of Bhutanese refugees currently in Nepal will opt for durable solutions other than repatriation ought to make it that much easier for Bhutan to accept repatriation, and for resettlement countries to press Bhutan for a genuinely comprehensive solution that utilizes all three durable solutions to resolve this protracted refugee situation.

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 refugee 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.²⁵⁴

To diffuse the current tensions in the camps between the proponents and opponents of resettlement, the U.S. and other resettlement countries should emphasize that the dichotomy between resettlement and the right to return is a false one. A member of the Bhutanese Refugees Durable Solutions Coordination Committee observed:

²⁵³ Human Rights Watch interview (K33), Khudunabari camp, November 15, 2006.

²⁵⁴ United Nations Principles on Housing and Property Restitution (Pinheiro Principles), endorsed by the Sub-Commission on the Promotion and Protection of Human Rights, 57th Session, August 11, 2005, <http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf> (accessed February 19, 2007), Principle 2.

Resettlement is not an option that is opposed to repatriation. We can lobby from other countries for change in Bhutan. If people are resettled to countries that respect human rights, they can exercise their right to go back. Moreover, there is nothing sure about being taken back to Bhutan from the camps in Nepal.²⁵⁵

The resettlement countries should 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 should 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. A young refugee man said:

The U.S. offer may be welcome to many of the refugees. People will begin to experience a new life. But America should also work with equal force to enable those refugees who want to go back to repatriate. I hope that the U.S. will keep an eye on Bhutan, and that Bhutan comes in the frontline with respect to democracy and human rights.²⁵⁶

Refugees voiced to Human Rights Watch persistent fears that Bhutan might use the resettlement offer as a pretext to force its remaining ethnic Nepali citizens to leave the country. One refugee said, "Government officials in villages are saying to Lhotshampas, 'Your relatives are going to America, now is the right time to meet them.' So they are encouraging people to leave, saying, 'This is your golden opportunity.'"²⁵⁷ Another refugee said, "Subdivision officers are going to Lhotshampas, saying to them, 'Your relatives are going to America, why are you still here?'"²⁵⁸ Yet another refugee said:

²⁵⁵ Human Rights Watch group interview with members of the BRDSCC, Damak, November 17, 2006.

²⁵⁶ Human Rights Watch interview (K43), Birtamod, November 18, 2006.

²⁵⁷ Human Rights Watch interview (K24), Sanischare camp, November 14, 2006.

²⁵⁸ Human Rights Watch interview with ethnic Nepali living in Bhutan (K52), details withheld.

The U.S. offer should not be an encouragement for the Bhutan government to evict more people. The U.S. and other countries should talk to Bhutan that these people in Bhutan should not be evicted. These conditions should be there, otherwise Bhutan will evict more people. The purpose of the [2005] Bhutan census is to clear the southern Bhutanese away. Our concern is that our relatives in Bhutan should not be made to suffer like us.²⁵⁹

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 Nepali population on a non-discriminatory basis, and in particular to ensure that all ethnic Nepalis in Bhutan are protected from arbitrary denationalization.

²⁵⁹ Human Rights Watch interview (K48), Damak, November 20, 2006.

Methodology

Human Rights Watch visited Nepal from November 6 to November 20, 2006, and from November 27 to November 30, 2006. The researchers spent eight days in the refugee camps; one day in each of the seven refugee camps, and one extra day in Beldangi-I camp for the specific purpose of interviewing refugees about the census. The researchers spent three days in Damak and Birtamod, two of the main towns in the district of Jhapa, to conduct interviews with Bhutanese human rights organizations and with Bhutanese refugees who had left the camps to settle in Nepal. The researchers also interviewed staff members of UNHCR, the Lutheran World Federation, and the Jesuit Refugee Service.

The team spent a total of seven days in Kathmandu for interviews with refugees who have settled there, refugee participants in an ongoing demonstration outside the UN House, members of Bhutanese refugee organizations, and Kathmandu-based refugee leaders. In Kathmandu the researchers also interviewed staff members of UNHCR, Nepalese government officials, members of staff at the UK and U.S. embassies, and Nepalese and international NGOs.

Human Rights Watch conducted 121 in-depth interviews with refugees in the camps in Nepal (64 men and 57 women), and three group interviews with refugee children and teenagers.

Human Rights Watch also visited India (West Bengal) from November 21 to November 26, 2006. Human Rights Watch conducted 30 in-depth interviews with Bhutanese refugees who live in India (21 men and 9 women), and 18 in-depth interviews with Bhutanese citizens (17 men and 1 woman). Of the 18 Bhutanese citizens interviewed, 13 were ethnic Nepalis, and the rest were Drukpa.

On November 24, 2006, in New Delhi, Human Rights Watch also interviewed the Bhutanese ambassador to India, Nepal, and Japan.

The names of Bhutanese refugees interviewed in the camps are not used in this report because of fears of intimidation in the camps and because of possible repercussions for relatives of the refugees in Bhutan. For the interviews with Bhutanese refugees in India, and interviews conducted with Bhutanese citizens, all details are withheld, including the date and place of the interview, because of the precarious legal status of the interviewees.

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Last Hope

The Need for Durable Solutions for Bhutanese Refugees in Nepal and India

There are more than 100,000 Bhutanese refugees in Nepal. They are ethnic Nepalis who were arbitrarily deprived of their Bhutanese citizenship in the early 1990s. Some were expelled from Bhutan, while others fled the country to avoid falling victim to a campaign of arbitrary arrests and detention.

For the past sixteen years, these refugees have languished in seven refugee camps in Nepal with no resolution to their plight. Bhutan has consistently refused to let the refugees exercise their right of return, condemning the refugees to an existence as stateless people. Nepal has generously hosted the refugees, but it has denied them the right to freedom of movement and has prohibited them from working. As a result, the refugees are completely dependent on international assistance.

In October 2006, the United States announced its willingness to resettle up to 60,000 of the refugees. Since then, other countries have stated that they too will offer resettlement places to Bhutanese refugees. The offers of resettlement have given hope to many of the refugees in the camps. However, some refugee opponents of resettlement are threatening refugees who speak out in favor of resettlement as traitors who are betraying the cause of the right to return. This climate of threats and intimidation has left many refugees fearful about expressing a desire to resettle or seeking information on their rights and anxious about their future.

An estimated 15,000-30,000 Bhutanese refugees reside in India, where they live on the margins of society. Both UNHCR and the government of India have failed to accord them refugee status, and these refugees do not receive any assistance. They are as much in need of a durable solution as the Bhutanese refugees in the camps in Nepal.

Bhutanese refugee in West Bengal, India, November 2006. This woman holds up her Bhutanese citizenship card, which was issued to her after she was determined to be a Bhutanese citizen under Bhutan's 1977 Citizenship Act. She was arbitrarily stripped of her Bhutanese citizenship in 1988, and the Bhutanese authorities coerced her into leaving Bhutan in late 1990. She has since been living as a stateless refugee in West Bengal, India.

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