



HUMAN
RIGHTS
WATCH

UNDER CHINA'S SHADOW

Mistreatment of Tibetans in Nepal



Under China's Shadow

Mistreatment of Tibetans in Nepal

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Map of Nepal.....	i
Summary	1
Chinese Pressure on Nepal	5
The Gentleman's Agreement	8
Key Recommendations	11
Methodology.....	12
I. Tibetans in Nepal.....	14
Nepal's International Legal Obligations	15
II. The "Gentleman's Agreement"	19
III. Nepal's Justifications for Imposing Restrictions on Tibetans	21
IV. China's Role	24
China's Top Priority: Tibet	24
Chinese Aid and Investment	26
Nepal's Commitments to China	27
Security Cooperation: "A Handshake over the Himalaya"	28
V. Nepal's Forced Returns of Tibetans	34
Threats of Deportation	35
Ongoing Refoulement Concerns	36
VI. China's Treatment of Tibetans at the A f g I _+Lcn_j @mpbcp.....	38
China's Refusal of Re-Entry to Some Chinese Citizen Tibetans	38
Abuses in Custody in China	43

VII. Nepal's Restrictions on Expression, Assembly, and Association	47
Arbitrary Curbs	47
Prohibitions Imposed on Political Protests	48
Restrictions on Public and Private Gatherings	50
Pressures on NGOs and Activists Defending Tibetans	53
Reaction to Self-Immolation Cases.....	57
VIII. Arbitrary Arrest and Detention	60
Arrests	61
Shortcomings in the Administration of Justice.....	62
Lack of Judicial Review of the Powers of Chief District Officers	63
Preventive Detention and Habeas Corpus Rights	64
Blacklists of those to be Detained.....	66
Surveillance	69
Inadequate Police Protection from Anonymous Threats	72
IX. Other Restrictions on Tibetans in Nepal.....	75
Identity Documents and Residency Rights	75
Citizenship	76
Freedom of Movement within Nepal	77
International Travel	79
Travel to India.....	80
Property and Employment.....	81
X. Recommendations	85
To the Government of Nepal	85
To the Government of China	87
To the Office of the United Nations High Commissioner for Refugees in Nepal (UNHCR)	87
Acknowledgments	90
Appendix I.....	91
Letter from Human Rights Watch to the Government of Nepal	91
Appendix II.....	95
Translation of <i>Huanqiu Shibao</i> Interview with Nepal's Deputy Inspector General of Police	95

MAP OF NEPAL



Main Tibetan refugee settlements in Nepal



Current and planned border crossing points between Nepal and China

Summary

We have our own values regarding the policy on refugees. [O]ur policies are guided by geopolitical sensitivities.

—Deputy prime minister and foreign minister Narayan Kaji Shrestha,
September 2012

Tibetans who have crossed the border illegally are not refugees.

—A spokesperson of the Chinese embassy in Kathmandu, March 2012

I thought I would be safe here. But now I realize China is telling Nepal what to do about us.

—Tibetan refugee Dorje Tsering, Kathmandu, March 2013

Since the 2008 Tibetan uprising, the largest, most widespread unrest among Tibetans in decades, the Chinese government has significantly tightened its control in Tibetan areas of China. It has also pressured Nepal, which shares a long border with China and is home to a sizeable Tibetan community, to become China's partner in restricting Tibetans' basic rights.

Since 2008 Nepal has signed several security and "intelligence-sharing" agreements with China; operationalized border security cooperation; partially enforced a ban on Tibetan public demonstrations; implemented close monitoring of the Tibetan community, its leaders, and real or perceived activists; and deployed intimidating numbers of Nepali armed police in Tibetan neighborhoods on politically sensitive dates, such as the anniversary of the Dalai Lama, International Human Rights Day (December 10), or high-level visits by Chinese dignitaries.

The consequences are being felt across the Tibetan community. Partly as a result of this pressure, Tibetans face excessive use of force by police, preventive detention, torture and ill-treatment when detained, intrusive surveillance, and arbitrary application of vaguely formulated and overly broad definitions of security offenses.

Chodak Namgyal, a former Tibetan monk in his twenties, arrived as a refugee in Nepal in January 2009. A former member of the Tongkor monastery in Amdo (Kardze prefecture, Sichuan province), he had spent several months in hiding following a clash in April 2008 in which Chinese security forces shot at a crowd of Tibetan protesters, killing up to a dozen people. Many monks and participants in the protest, fearing arrest, fled into the mountains, where they remained in hiding, living in harsh conditions for many months, to escape the large and sustained operation by the local Chinese authorities to capture fugitives, whose pictures were on wanted posters in the area. Relatives were monitored and pressured for information about their relatives.

Chodak and a companion decided to flee Tibet. They made their way to the border with Nepal, first hiding in the back of trucks and then continuing on foot, walking only at night. In January 2009, a Tibetan guide on the Chinese side near Dram took them overnight across the border. From there, they went to Kathmandu, travelling by motorbike and circumventing by foot numerous Nepali police checkpoints on the road. The two men took refuge in a Tibetan monastery in the Kathmandu valley for several weeks, before having to leave and hide in a Tibetan district in Kathmandu.

I am very afraid that if I am arrested I will be sent back to China. The Chinese put my picture on the [wanted] posters in Kardze, and they always say that we are criminals. They don't want anyone to tell the truth about the shootings so they will invent any pretext to arrest us. When I arrived here [in Nepal] I was so happy I had finally managed to escape Tibet. I thought I would be safe and I can finally openly pray for His Holiness [the Dalai Lama]. But now I can see Nepal is not safe for Tibetans. The police are there doing the surveillance and there are many informers. Even in the monasteries there are informers and this is why we had to leave the monastery that initially sheltered us.

The Tibetans here are always afraid. I have no document, not even a single piece of paper, and I don't speak Nepali. If I am arrested I fear what can happen to me. Even once I joined the celebrations for His Holiness at the monastery here [in Boudhanath] the police came inside the courtyard with their weapons and tore down the banner with His Holiness' portrait. I fear going to [public Tibetan] events but our brothers and sisters are in Tibet, so

many have self-immolated, how could we remain silent? Every time the police arrest some people just for participating in peaceful prayers. The police take picture, I am sure it is for China. There are cameras everywhere around here [in Boudhanath] now. How can we have any guarantee about how these images are used? In Lhasa there are cameras everywhere, and now I fear that Boudhanath is going the same direction. For all we know, the Chinese police could be sitting in Lhasa watching us as we speak.

Dorje Lhundup, a 24-year-old Tibetan born in a settlement in Kathmandu, told Human Rights Watch he had been arrested multiple times in 2008 and 2009 because of his participation in Tibetan public events. Since then, the Nepali police have kept a close eye on him, often detaining him before high-level Chinese official visits or planned Tibetan public events.

Last time I was arrested by the police the day before some Chinese official arrived to visit. The police came to my home and arrested me even though I had done nothing. At the police station, one policeman told me, “Oh, you are a real troublemaker, we are going to deport you to China, you know? It is very easy for us to send you back to China and no one will ever know.” I am born here, but I don't have any document. Thankfully, I can speak good Nepali. It's like they just want Tibetans to disappear. But if we stopped protesting, would all problems be solved? If we Tibetans lose our voice it won't be long before we disappear.

China has targeted Nepal because it has long been the first destination for Tibetans wanting to escape China, leave temporarily, or send their children outside the country. The long and often treacherous walk across the Himalayas into Nepal is the most direct way to reach Dharamsala, in northern India, where the Dalai Lama, the Tibetan government-in-exile, and 80,000 Tibetans are based.

Nepal's Tibetan community of about 15,000-20,000 is made up of the relatives and descendants of an initial wave of refugees who arrived in Nepal following the Dalai Lama's escape to India in 1959, and of periodic flows since then of new refugees and migrants coming from Tibet or returning from India.

From 1959 to 1989, the Nepalese government recognized and registered Tibetans crossing the border as refugees. In 1989, following a diplomatic rapprochement with China, the King of Nepal stopped allowing Tibetan refugees to settle permanently in Nepal. Under the terms of an informal, unwritten, “Gentleman’s Agreement” with the United Nations High Commissioner for Refugees (UNHCR), however, Nepal continued to permit the “safe passage” of refugees from Tibet to India.

For several months during and after the 2008 protests in Tibet, Kathmandu became a focal point of pro-Tibetan political activity, with almost daily street demonstrations, gatherings, and political events. Under intense diplomatic pressure from China—some of it overt and public—the Nepalese government curtailed Tibetan demonstrations, with the police often clashing with demonstrators or rounding up Tibetans they suspected of planning public action. International media, barred from Tibet itself, prominently featured these clashes. The suppression of Tibetan political activities in Nepal in 2008 was the subject of a report Human Rights Watch published in August of that year, titled “Appeasing China: Restricting the Rights of Tibetans in Nepal.”

This report analyzes conditions for Tibetans in Nepal five years later. Restrictions on Tibetans’ rights in Nepal and on the Nepal-China border have grown much more stringent since 2008. While Nepal has maintained some basic protections for Tibetans, it has restricted their freedom of assembly and expression and engaged in arbitrary arrest and detention of protesters or those believed to be planning protests. The government has also made it harder for Tibetans to obtain documentation that would allow them to go to school, seek employment, run businesses, or engage in other activities.

The political repression has been explicit. In March 2009, in an interview in a Chinese newspaper (the English language translation is presented for the first time in this report, see Appendix II), Nepal deputy inspector general of police Bharat Bahadur G.C. spoke of Nepal’s intensifying crackdown on Tibetan political speech. As he explained it, the orders came from the highest levels:

Nepal Prime Minister Khil Raj Regmi and Deputy Prime Minister/Minister for Home Affairs Krishna Bahadur Mahara gave [the] order to crackdown on all “Tibetan Independence” activities in Nepal. Prime Minister Khil Raj Regmi said that Nepal and China enjoy a strong friendship, so the Nepalese

government will not allow any “Tibetan Independence” activities on its soil. Deputy Prime Minister Krishna Bahadur Mahara personally called me and asked me to combat “Tibetan Independence” activities at all cost, with no reservation and no mercy. The police see the leadership’s determination as reassurance to act on this issue...

In the same interview, Bharat Bahadur G.C. boasted of Nepal’s sharp increase in surveillance of Tibetans and declared that, following the 2008 uprising in Tibet, “combating ‘Tibetan Independence’ is my main task.”

Chinese Pressure on Nepal

It is no surprise that China would pressure Nepal to pushback Tibetans or to crackdown on their political activities in Nepal. Beijing continues to assert that the 14th Dalai Lama and supporters of the Tibetan cause in exile or abroad play a major role in seeding discontent among ethnic Tibetans in China. It also continues to see this purported negative influence as a substantial hurdle to inculcating the kind of undivided political loyalty to the Communist Party and the state that it would like to see among Tibetans in China. For these reasons, measures to limit foreign and cross-border influence have featured prominently in the policies that Beijing has meticulously deployed since the 2008 protests.

These policies have included militarily sealing off Tibet’s international borders to end the constant trickle of Tibetans fleeing the region. The approach seems to be working: the number of Tibetans crossing the border has dropped from an average of 2,200 per year before the 2008 protests, to under a thousand between 2009 and 2012, to 171 in 2013. The available evidence suggests that Tibetans detained by Chinese authorities for crossing the border irregularly from Nepal are routinely imprisoned and physically abused in China.

Chinese authorities have confiscated the passports of many Tibetans and require that all Tibetans submit to pre- and post-trip debriefings with police as a condition of international travel. They maintain registers of Tibetans who have family members abroad. Tibetans within Tibet must now also endure rigorous scrutiny before obtaining domestic travel permits. In recent years Tibetans have been arrested and sentenced for passing, receiving, or simply consuming information critical of China’s policies in Tibet.

There is now substantial evidence of increased Chinese government monitoring and censoring of telecommunications, Internet activity and messaging, and increased limitations on access to foreign Tibetan language broadcasts through the jamming and confiscation of satellite reception dishes. Chinese authorities have also stepped up efforts to prevent Tibetan communities in neighboring countries from assisting, documenting, or protesting conditions in the Tibetan Autonomous Region (TAR) and adjoining provinces with significant Tibetan populations. As detailed below, China frequently imprisons, and tortures or otherwise mistreats Tibetans who leave China without permission.

Official Chinese government reports and testimonies of Nepali officials suggest that, in line with China's general strategy to suppress the influence of the Dalai Lama and the Tibetan exile community inside China and to combat or minimize international pressure, Beijing has had three primary objectives with respect to Nepal:

1. Ensuring Nepal's effective cooperation with China's efforts to put an end to clandestine border-crossing by Tibetan asylum seekers and migrants, including children sent to study in Tibetan schools in India by their families;
2. Enforcing a de-facto ban on pro-Tibetan political mobilization in Nepal, including demonstrations and all activities linked to the Dalai Lama or Central Tibetan Administration (the Tibetan government-in-exile);
3. Enrolling Nepal's intelligence and law-enforcement apparatus to monitor and infiltrate Tibetan communities living in Nepal, as to provide up-to-the-minute intelligence for China.

Beijing seems to have recognized early on that the Nepali state did not have the capacity or resources to carry out the significant expansion of the security sector that Beijing had in mind. It also recognized that Nepal had no strong national interest in curbing the activities of a community that has lived peacefully and played an important role in the tourism and export economy in Nepal for many decades, and whose well-being has been a consistent concern of representatives in Nepal of the United States and of a number of European countries. China's decision to significantly scale up its economic and diplomatic engagement with Nepal after 2008—which culminated with then-premier Wen Jiabao's state visit in January 2012 and with China becoming one of the top foreign direct investors in the country—was in part aimed at influencing Nepal's calculations about where its national interests lie. This strategy appears to have been at least partially effective.

The Chinese authorities have kept some Tibetans, apparently on an ad hoc basis, from returning to China. Since January 2013, more than 20 ethnic Tibetan citizens of China seeking to return to China, all carrying valid PRC documents, have been refused re-entry by Chinese officials and forced to remain in Nepali territory. The reasons are not entirely clear, but it appears to be an effort by China to discourage surreptitious visits to Dharamsala by Tibetans from China.

Yet in recent years Chinese officials have become more aggressive on Tibetan issues in Nepal. In 2008 the Chinese embassy attempted to influence a decision by the Nepali Supreme Court regarding the registration in Nepal of the Tibetan Welfare Office, the de facto representative office of the Dalai Lama and the Central Tibetan Administration (CTA). The effort succeeded, even though an unofficial office has continued to operate in the same location.

Nepal and China have a longstanding agreement “not to allow their territories to be used to carry out activities against the other,” a commitment regularly reiterated in diplomatic statements. Nepal’s adherence to the “One China policy” and its resistance to “allowing its territory to be used for activities against China” are reaffirmed at every meeting between China and Nepal. Yet Chinese expectations of Nepal have grown. Nepal now commits to “not allowing its territory to be used by any force to carry out ‘anti-China’ activities” and to “crack down on anti-China activities.”

Since 2009, China’s foreign policy has made increasing reference to demands for the respect of its “core interests,” which remain ill-defined but are widely understood to include Taiwan, Tibet, and Xinjiang. In January 2012, former Nepali Prime Minister Baburam Bhattarai of the Communist Party of Nepal (Maoist) announced during a state visit by Chinese Premier Wen Jiabao that:

Nepal attaches great importance to China's core interests, firmly adheres to the One-China policy and deems Taiwan and Tibet as an integral part of China. The Nepalese government will never allow any anti-China activities on its territory.

Much of China’s pressure remains invisible. According to a former government chief secretary interviewed by Human Rights Watch, Nepal is not in a position to resist these demands:

The level of pressure from China is great, and often not seen. This kind of pressure is not seen openly but this is how it is happening. Over the years I have seen how a low-level Chinese person has high-level access on the Nepali side. It's completely unequal. Nepal has no capacity to fight back against this pressure. The US is the only international actor who speaks up on the issue.

The Gentleman's Agreement

The "Gentleman's Agreement" was established between Nepal and UNHCR guaranteeing the "safe passage" of refugees from Tibet to India. The agreement states that Tibetan refugees apprehended by the Nepali authorities be handed over to UNHCR for processing and transit to Dharamsala. China rejects the categorization of Tibetans who have fled Tibet as "refugees."

When we began this research, many refugee experts and analysts said they believed the Gentleman's Agreement was working well for all Tibetans in Nepal. The agreement appears to be working well for Tibetans apprehended far inside the territory of Nepal, but less well and much more erratically for those apprehended at or near the border.

Our research suggests that border police forces forcibly return to China many Tibetans intercepted at the border or intercepted before they reach inhabited areas. A former senior Nepali Home Ministry official told Human Rights Watch that under pressure from China between 300 and 1,000 Tibetans found at or near the border with China are forcibly repatriated every year, as determined by border police. Another official with operational knowledge of the situation at the border also told Human Rights Watch that Tibetans are regularly forced back. As the former Home Ministry official phrased it:

Armed police are returning Tibetans who manage to cross the border into Nepal. But we do that according to our national laws. We check to make sure that each individual who has crossed over is in Nepal with proper travel documents and that they are not national security threats or economic migrants. The police at the border make the determination and return these people back to Tibet....

The numbers vary year to year; sometimes it's 300, sometimes up to a 1000. We apply the agreement with UNHCR only if the border police make the determination that an individual has a legitimate asylum case.

While Human Rights Watch is not able to corroborate these claims, we believe they are credible and require further investigation, not least because such individuals could face a risk of persecution upon return to China. Nepal bars UNHCR staff from visiting border areas to monitor the situation directly. The number of refugees from Tibet registered by UNHCR fell to an unprecedented low of 171 individuals in 2013, compared to an annual average between 1991 and 2008 of more than 2,200.

The multiplication of police and administrative controls on individuals and businesses has made them increasingly vulnerable to arbitrary fines and petty corruption. Obstacles to education, housing, movement, employment, and public and private services (such as renewal of driver's licenses, bank services, and various administrative registration requirements) have become more severe as Nepalese government perceptions of Tibetans as an irritant in relations with China have increased. Tibetans say that this perception is also frequently shared among a growing number of Nepalese due to the negative reporting in the local media.

While many such issues are not new, they were often mitigated before 2008 by flexible responses from local authorities, in particular the central district officers (CDOs), the highest civil servant in each of the country's 75 districts. Tibetans interviewed for this report told us that such local government officials are far less willing today to consider requests from Tibetan community leaders.

Since 2008, Nepalese government officials have justified their increasingly restrictive policies toward Tibetan refugees citing "geopolitical sensitivities," Nepal's official adherence to the "One China principle," and what they present as the corollary duty of not allowing "Nepali soil to be used for anti-China activities."

There is no legal basis for these policies. The term "anti-China activities" has no meaning or force in Nepali law. Any policies or practices specifically targeting Tibetan political speech are clearly discriminatory and violate international law. To the extent that Nepal

prohibits peaceful political protests by all noncitizens, it also violates well-established international human rights law: Nepal is bound to guarantee freedom of speech and assembly for all residents; any restrictions must be set out in domestic law and not restrict peaceful exercise of political speech. For the Nepalese government to use China's opinion as the basis for determining whether a specific activity is or not "anti-China" is a short step from accepting that any Tibetan criticism of China, as well as any promotion of Tibetan identity, ought to be suppressed.

The increased surveillance and monitoring of Tibetan communities in Nepal facilitates discrimination against them, and makes them more vulnerable to police and criminal justice system abuse whether or not they are politically active. A member of a leading local human rights NGO told Human Rights Watch that, "the treatment of Tibetans is having a corrosive effect on the entire Nepali judicial system ...it conveys the perception that some categories of people can be excluded from the protection of the law. Today, it's the Tibetans, but tomorrow, who will it be? The law should apply equally to all, without exceptions."

The government's emphasis on taking China's political sensitivities into account in handling Tibetan issues has increasingly affected Nepal's civil society and media. A leading human rights NGO executive told Human Rights Watch that working on Tibetan issues is "too sensitive and risks jeopardizing work on other, more mainstream issues." A newspaper editor acknowledged that self-censorship across major newspapers means that "controversial" issues such as Tibet and China's human rights record are sidestepped. Nongovernmental organizations that have continued to monitor the human rights situation of the Tibetan community, such as Human Rights Organization of Nepal (HURON), have been subjected to pressures and accused of disloyalty towards the state.

Nepal is an important haven for many Tibetans. As the political crisis in Tibet continues and deepens, Nepalese government policies and practices toward them become ever more critical in protecting them, and serve as a barometer of how influential the Chinese government is in pressuring its neighbors to join it in violating the free expression and other rights of Tibetans. The findings of this report suggest China's influence is sharply rising and, as a result, the situation of Tibetans is ever more precarious.

Key Recommendations

To the Government of Nepal

- Immediately stop forcibly returning Tibetans to China unless their right to seek asylum is protected, including those rejected at the border or apprehended in Nepal.
- Strictly uphold and respect international law prohibiting refoulement.
- Immediately provide all eligible Tibetans with refugee identification certificates (RCs);
- Issue RCs, as appropriate, to Tibetans who fled to Nepal after 1989 and are unable or unwilling to go to India to lodge asylum claims.
- Ease renewal modalities and issue refugee certificates to eligible Tibetans as well as to their dependents (spouse and children).
- Protect the rights of all persons in Nepal, including Tibetans, to freedom of expression and assembly, regardless of legal status, and cease dispersing peaceful protests by Tibetans.
- Repeal restrictions on the rights of Tibetan residents to own property, work, establish and incorporate businesses, and travel freely.

To the Government of China

- Immediately end the torture and other ill-treatment of Tibetans arrested for having crossed or attempting to cross the border without proper documentation.
- Provide passports and end restrictions on Tibetans who wish to leave the country.
- Allow re-entry to all Tibetans who are Chinese citizens.
- End pressure on the government of Nepal or individual Nepali officials to engage in policies or take measures that are in contradiction with international human rights and refugee law.

Methodology

Human Rights Watch conducted research for this report in Nepal from November 2012 to October 2013. We conducted 41 in-depth interviews with Tibetans in Nepal. Human Rights Watch also visited four refugee settlements located in Kathmandu and Pokhara, and spoke with Tibetans at the border crossing in Kodari, Sindhupalchok District.

In addition, we spoke by phone and in person with dozens of Nepali officials, foreign diplomats in Nepal, UN agency representatives, and members of NGOs with firsthand information about the issues covered in this report.

Human Rights Watch also wrote to the Nepalese government inviting it to respond to our finding. As of this writing, we had received no response (a copy of the letter is included as an appendix to this report).

We conducted interviews primarily in English and in Tibetan with English interpretation. In a few cases, we conducted interviews in English. In both the body of the report and in footnotes, we have generalized locations of interviews in Nepal to the district level so that those interviewed and their families cannot be easily identified. We have used pseudonyms or initials for all Tibetans named in this report unless otherwise indicated. In some cases other identifying information has been withheld in the interest of confidentiality and security.

Whenever possible, and in a majority of cases, interviews were conducted on a one-on-one basis. All those interviewed were informed of the purpose of the interview, its voluntary nature, and the ways in which the information would be used. All interviewees were told they could decline to answer questions or end the interview at any time. All provided oral consent to be interviewed. None received compensation.

In addition to the interviews described above, we drew on a number of secondary sources, including Chinese official and media sources, United Nations reports, academic studies and other publications, previous Human Rights Watch reporting, and other nongovernmental organization reports.

In this report, the term “Tibet” refers to the Tibet Autonomous Region (TAR) and the Tibetan Autonomous Prefectures (TAP) of the adjoining provinces of Qinghai, Gansu, Sichuan, and Yunnan.

I. Tibetans in Nepal

About 15,000 to 20,000 Tibetans reside in Nepal, according to estimates by the UNHCR, the Tibetan Central Administration (the government-in-exile in Dharamsala), and the government of Nepal. The majority of Tibetans live in the Kathmandu valley, in the Boudhanath and Sayambunath districts of the city, and in the Jawalakhel settlement. The second largest community is found in and around Pokhara. A few thousand live in isolated settlements such as in Namgyaling, Mustang, and Chilasa, close to the border with China.¹

Out of this population, roughly half (estimates range from six to eleven thousand) lack formal proof of legal status in Nepal and live in a precarious legal situation.²

Approximately 13,000 Tibetans live in Nepal, according to a 2009 census published by the Tibetan Central Administration (the Tibetan government-in-exile, based in Dharamsala).³ The majority of Tibetans live in the Kathmandu valley, in the Boudhanath and Sayambunath districts of the city, and in the Jawalakhel settlement. The second largest community is found in and around Pokhara. A few thousand live in isolated settlements such as in Namgyaling, Mustang, and Chilasa, close to the border with China.⁴

Recent information suggests that fewer than 25% of Tibetans recorded in the settlements hold valid Refugee Certificates (RCs), Nepali identity documents that the government at one time issued to Tibetan refugees and their descendants. The government stopped accepting new Tibetan refugees and therefore issuing RCs after December 31, 1989, following a diplomatic rapprochement with China. Until the mid-1990s, it continued to issue RCs to children born in Nepal to Tibetan parents holding RCs once they turned 16.

¹ "Refugees in Nepal: A Short Glimpse," Government of Nepal, Ministry of Home Affairs, National Unit for Co-ordination of Refugee Affairs (NUCRA), December 2008.

² Ibid.

³ UNHCR, 2013 UNHCR country operations profile – Nepal, <http://www.unhcr.org/pages/49e487856.html#> (accessed October 2, 2013).

⁴ "Refugees in Nepal: A Short Glimpse," Government of Nepal, Ministry of Home Affairs, National Unit for Co-ordination of Refugee Affairs (NUCRA), December 2008.

From 1994 to 1998, it gradually stopped issuing RCs altogether—even for children born before the 1990 cut-off date.⁵

A RC serves as an official identity document and grants its holder the right to reside and travel in Nepal (with the exception of some areas). It does not, however, entitle its owner to a wide range of rights, including property ownership, employment, higher education, and travel abroad.

Some Tibetans have other status. Some hold full Nepali citizenship, acquired either through naturalization or as a result of marriage to a male Nepali citizen; some grew up in India, moved to Nepal for family reasons or employment, but retain Indian identity papers; some still hold the nationality or passport of another country and are legal foreign residents.

Between 1990 and 2007, over 40,000 Tibetans successfully transited through Nepal to India under the terms of the informal Gentleman's Agreement between Nepal and UNHCR, an average of 2,200 per year. From 2008 to 2012, the average number fell to about 650 per year. In 2013, following significant strengthening of security on the Chinese side of the border and introduction of strenuous restrictions on movement within Tibet, the number fell to 171 only.⁶

Nepal's International Legal Obligations

While Nepal is not a party to the 1951 Refugee Convention or its 1967 Protocol, it is a party to other treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC)⁷. These treaties establish the obligation to respect the principle of nonrefoulement, which holds that refugees should not be forcibly returned to a place where their lives or freedom would be

⁵ Tibet Justice Center: *Tibet's Stateless Nationals: Tibetan Refugees in Nepal*, June 2002, p. 104, www.tibetjustice.org/reports/nepal.pdf (accessed November 27, 2013).

⁶ Human Rights Watch interviews and email correspondence with representatives of the Tibetan government in Exile and volunteers working with Tibetan refugees, January to December 2013.

⁷ The Committee on the Rights of the Child has stated that the CRC, in article 6, establishes an obligation that states party to the CRC "[...] shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6." Committee on the Rights of the Child, General Comment No. 6, *Treatment of Unaccompanied and Separated Children Outside their Country of Origin* (Thirty-ninth session, 2005), U.N. Doc. CRC/GC/2005/6 (2005).

threatened, and that no person should be returned to a place where he or she would be subjected to torture or to cruel or inhuman and degrading treatment or punishment.

Article 3 of CAT forbids the return or expulsion of any persons to states where they would be in danger of being tortured. Article 7.1 of the ICCPR forbids subjecting anyone to torture or to cruel, inhuman, or degrading treatment or punishment. The United Nations Human Rights Committee, in Comment 20 (1992), has emphasized that states “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment of punishment upon return to any country by way of their extradition, expulsion or refoulement.”⁸

Article 2.1 of the International Covenant on Civil and Political Rights requires Nepal as a state party to ensure rights to “all individuals within its territory and subject to its jurisdiction.” The UN Human Rights Committee, in its General Comment No.15 on the ICCPR, has unambiguously stated that aliens “have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association.” Nepal is therefore clearly obligated to uphold the right of Tibetans in Nepal, regardless of their status, to freedom of expression and peaceful assembly, even if the Interim Constitution only extends these rights to citizens.

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.”⁹ The UN General Assembly reinforced the international consensus that the nonrefoulement obligation adheres to all states, not just parties 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.¹⁰

⁸ General Comment No.20 (1992) of the Human Rights Committee, HRI/HEN/1/Rev.1, 28 July 1994.

⁹ UN High Commissioner for Refugees (UNHCR), Conclusions Adopted by the Executive Committee on the International Protection of Refugees, December 2009, 1975-2009 (Conclusion No. 1-109), <http://www.refworld.org/docid/4b28bf1f2.html> (accessed 27 November 2013).

¹⁰ UN General Assembly Resolution 51/75, A/RES/51/75, 12 February 1997, para. 3.

On the occasion of the 50th anniversary of the Refugee Convention in 2001, the Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees acknowledged “the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of nonrefoulement, whose applicability is embedded in customary international law.”¹¹ Later that year, the UN General Assembly welcomed the Declaration.

The principle of nonrefoulement as a customary norm of international law applies not only to refugees within the territory of a state, but also to rejection of asylum seekers at the frontiers. In its October 2004 meeting, UNHCR’s Executive Committee issued Conclusion 99, which calls on States to ensure “full respect for the fundamental principle of nonrefoulement, including non-rejection at frontiers without access to fair and effective procedures for determining status and protection needs.”¹²

Fears that Tibetans forcibly returned to China would face persecution are well established. Severe, longstanding human rights violations by the Chinese state against Tibetans—ranging from sharp statutory restrictions on basic rights and freedoms, to religious persecution against the clergy and laity, socio-economic and political discrimination, political prosecutions and torture, and mistreatment of prisoners—have been authoritatively documented over the years, including by inter-governmental bodies such as the United Nations.¹³

In recent years Human Rights Watch has documented severe and systematic human rights abuses in Tibet, including religious repression, torture, disappearances, politically

¹¹ Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol adopted at the Ministerial Meeting of States Parties of 12–13 December 2001, HCR/MMSP/2001/09, 16 January 2002, <http://www.unhcr.org/home/RSDLEGAL/3d60f5557.pdf> (accessed on 30 October 2006).

¹² UN High Commissioner for Refugees (UNHCR), Conclusions Adopted by the Executive Committee on the International Protection of Refugees, December 2009, 1975-2009 (Conclusion No. 1-109), <http://www.refworld.org/docid/4b28bf1f2.html> (accessed 27 November 2013).

¹³ UN bodies that have raised concerns about the situation of Tibetans in recent years include the United Nations Committee on the Elimination of Racial Discrimination; the Committee on the Rights of the Child; the Committee on the Elimination of Discrimination Against Women; the Committee on the Elimination of All Forms of Discrimination; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Representative of the Secretary-General on the Situation of Human Rights Defenders; and the UN special rapporteurs on, respectively, freedom of religion or belief, the right to education, the right to food security, and the promotion and protection of the rights to freedom of opinion and expression. For a complete list of relevant documents, see the China country page of the United Nations Office of the High Commissioner on Human Rights, <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/CNIndex.aspx>, (accessed November 19, 2013).

motivated trials, disproportionate use of force by security forces, and large-scale involuntary rehousing and relocation campaigns.¹⁴

In view of the above, Human Rights Watch believes that Tibetans who flee or have fled China without permission, as well as those fitting the profiles previously described, would be at high risk of persecution if forcibly returned to China. They should be granted full refugee status and protection.¹⁵

¹⁴ Human Rights Watch, *"They Say We Should Be Grateful": Mass Rehousing and Relocation Programs in Tibetan Areas of China*, June 2013, <http://www.hrw.org/reports/2013/06/27/they-say-we-should-be-grateful-o>

¹⁵ The Chinese government has leveled accusation of terrorism against non-violent political groups such as the Tibetan Youth Congress. "Tibetan Youth Congress" is pure terrorist organization," *Xinhuanet.com*, April 10, 2008, http://news.xinhuanet.com/english/2008-04/10/content_7954661.htm (accessed November 10, 2013).

II. The “Gentleman’s Agreement”

The Gentleman’s Agreement, an informal agreement between the government of Nepal and UNHCR, has been critical in ensuring the safe passage of Tibetans seeking to escape from China and/or reach India.¹⁶ It serves the following objectives:

- 1) Ensuring access to the territory of Nepal for Tibetans seeking to reach India;
- 2) Ensuring respect for the prohibition against forced returns (refoulement), including at the Nepal-China border itself;
- 3) Ensuring that Tibetans are neither detained nor penalized on immigration grounds for “unlawful entry”;
- 4) Ensuring that the Nepalese government will provide exit permits to newly arrived Tibetan asylum seekers verified by UNHCR to allow their prompt, unhindered departure to India.

Under the Gentleman’s Agreement, Tibetans who are apprehended are first detained by the police and then turned over to the Department of Immigration (DoI). Police bring the Tibetans to the DoI in Kathmandu, for which the UNHCR, via the DoI, pays the police a stipend to defray their costs, since bringing Tibetans from remote areas can take several days. The DoI then contacts UNHCR, which helps ensure their transfer to the Tibetan Reception and Transit Centre (TRTC), where they receive food, shelter, accommodation, and medical attention. The TRTC, which also acts as a liaison with the Central Tibetan Administration in Dharamsala, is supported by UNHCR and other international donors, including the United States. It is staffed with volunteers selected by the Central Tibetan Administration.

A summary interview is conducted with the Tibetans at the Center to determine that they are Tibetan refugees. The interviews are conducted by TRTC staff with oversight from UNHCR. The interviews explore the reasons of the Tibetans new arrivals for leaving Tibet and immediate plans in India.

¹⁶ For a detailed explanation of the origin and nature of the Gentleman’s Agreement, see: Tibet Justice Center: Tibet’s Stateless Nationals: Tibetan Refugees in Nepal, June 2002, p. 104, www.tibetjustice.org/reports/nepal.pdf (accessed November 27, 2013).

Tibetans then applies to the Indian Embassy for an entry permit to India and once the Special Entry permit has been issued UNHCR sends a request to DoI for exit permits to be issued.

The DoI exit permits only provide Tibetans with the right to travel from the TRTC to the Indian border. The TRTC generally waits until it has a sufficient number of Tibetans to charter a bus, and then takes them to the Indian border at Sonauli. On the day of departure, the DoI dispatches TRTC officers to verify the identity of all those who have been issued exit permits.

Since 1990, the Nepali authorities have generally upheld the Gentleman's Agreement for Tibetans who have managed to make their presence on Nepali soil known to parties concerned with the fate of Tibetan refugees (members of the Tibetan community, NGOs, UNHCR staff, and others), or whose arrest by Nepali security forces was witnessed by third parties who could report an eventual forced return. The Agreement is still key to protect Tibetans fleeing China or arriving in Nepal, and wanting to go to India.

However, since the early 2000s, and even more so since 2008, Nepali authorities have increased their pressure on Tibetans. Intimidation is common, with many incidents in which local police order but do not force Tibetans to return to China; well-founded concerns that the Department of Immigration is sharing details on who is transiting through Nepal with Chinese authorities.

It has also become more difficult for Tibetans to reach Nepal. China has devoted significant efforts and resources since 2008 to seal off its border with Nepal by imposing a much tighter system of internal travel permits on Tibetans. It has stationed border defense posts of the People's Armed Police at critical locations, including in mountain passes previously used as routes to clandestinely reach Nepal. Plainclothes Chinese security agents have been seen several kilometers inside Nepal territory, especially at the main border point of Kodari. Cooperation between Nepal's Armed Police Force, which patrols the border, and the Chinese Public Security Bureau has deepened significantly. The result has been a dramatic decrease in the number of Tibetans who manage to reach Nepal territory. From an average of two to three thousand per year before 2008, the numbers fell to 600 in 2008, less than 1,000 annually between 2008 and 2011, and 171 in 2013.¹⁷

¹⁷ Human Rights Watch interview with Kathmandu-based diplomats, November 2013.

III. Nepal's Justifications for Imposing Restrictions on Tibetans

Nepal does not deny that it prevents Tibetans from exercising the right to peaceful expression and assembly, and instead gives three reasons for its prohibitions on “political activities”: that the constitutional protection for freedom of expression and assembly applies only to citizens; that Nepal has no legal obligations towards Tibetan refugees, especially since it is not a party to the Refugee Convention; and that Nepal’s foreign policy commitments to China supersede its legal obligations.¹⁸

Nepal’s Interim Constitution guarantees “(a) freedom of opinion and expression; (b) freedom to assemble peaceably and without arms... [and] (e) freedom to move and reside in any part of Nepal,” but limits the protections to “citizens.”¹⁹ The government has at times openly argued that it is justified in denying the enjoyment of these basic rights to Tibetans, who are not recognized as Nepali citizens.

Nepal’s international legal commitments forbid this.²⁰ The ICCPR recognizes that, in certain circumstances, temporary restrictions and limitations on the exercise of rights such as freedom of assembly may be justified. Article 4 of the ICCPR allows states to ““derogate”” from some of the standards in times of “public emergency which threatens the life of the nation and the existence of which is officially proclaimed.”²¹ Such measures must be necessary and “strictly required by the exigencies of the situation.”²² But to date, the Nepalese government has never claimed that Tibetan protests constituted a public emergency, and it is highly unlikely that independent courts would accept that peaceful protests meet this test.

¹⁸ "Exclusive Interview with Nepal's Deputy Inspector General of Police: 'Tibetan Pro-independence elements' Won't Be Able To Stir Up Trouble in Nepal," *Huanqiu Shibao*, March 29, 2009 ["专访尼泊尔警察副总监: “藏独”在尼闹不起来”, 2009/03/29, 环球时报], <http://world.huanqiu.com/roll/2009-03/417537.html> (accessed October 10, 2013).

¹⁹ Interim Constitution of Nepal, article 12 (3).

²⁰ Article 2 (1) of the ICCPR provides that “[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

²¹ ICCPR, art. 4(1).

²² U.N. Human Rights Committee, General Comment No. 29 States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11, August 31, 2001, para. 6.

The Nepalese government also justifies its approach to Tibetan protests and public gatherings by citing its commitment to the “One China principle” and its pledge that it will “not to allow its territory to serve for organizing activities against a neighbor.”²³

In a typical statement issued in June 2011, then-Deputy Prime Minister and Home Minister Krishna Bahadur Mahara said that “Nepal does not have policy to allow any activities against its neighbors. We are aware about Free Tibet activities. We won't let such activities take place in Nepali soil.”²⁴ The standard public statement by Nepali officials on the Tibet issue is that “Nepal respects the One China policy²⁵ and will not allow Nepalese territory to be used against China.”²⁶ This justification is routinely invoked by law enforcement officials in their dealings with Tibetans to justify prohibiting planned gatherings, restrictions on movement, summonses for questioning, and detentions.

Nepal may make such declarations as statements of foreign policy, but they do not trump Nepali law, or Nepal’s international legal obligations. The term “anti-China activities” has no meaning or force in Nepali law. Since speech or actions that are critical of the Chinese government or its policies are not formally prohibited under Nepali law, the standard protections provided for freedom of speech and freedom of assembly apply: Nepal is bound to guarantee freedom of speech and assembly under international human rights law, which means any restrictions must be set out in domestic law and not restrict peaceful political speech.

Long-standing diplomatic pledges that Nepal “will not allow its territory to be used against China” are also routinely invoked to justify the prohibition on a wide range of Tibetan activities. In one of the most expansive iteration of this pledge, the January 2012 Joint Declaration issued at the outcome of the visit of then Premier Wen Jiabao to Nepal stated:

²³ Joint Statement Between Nepal and the People’s Republic of China, Kathmandu, January 14, 2012

²⁴ “China asks Nepal to curb anti-China activities,” June 27, 2011, *Republica* (Kathmandu), <http://ktminside.com/blog/2011/10/03/china-asks-nepal-to-curb-anti-china-activities/> (accessed November 27, 2013).

²⁵ The “One-China Principle” (in Chinese, ‘yige zhongguo yuance’) is in a cornerstone of the People’s Republic of China’s foreign policy. It is accepted by most countries around the world—including the United States, India, and Nepal. However, it only refers to one specific issue, which is the status of Taiwan. It has no bearing on the status of Tibet, what constitutes “anti-China activities,” or any other issue aside from Taiwan. See China’s White Paper: The One-China Principle and the Taiwan Issue, February 21, 2000, in particular section V, “Several Questions Involving Adherence to the One-China Principle in the International Community,” <http://www.china.org.cn/english/7956.htm> (accessed October 7, 2013).

²⁶ Joint Statement Between Nepal and the People’s Republic of China, Kathmandu, January 14, 2012 May 8, 2012, <http://www.mofa.gov.np/en/news/detail/510> (accessed October 7, 2013).

The Nepalese side firmly supports the efforts made by the Chinese side to uphold state sovereignty, national unity and territorial integrity, and does not allow any forces to use Nepalese territory for any anti-China or separatist activities.²⁷

The term “separatist activities” is how China characterizes political mobilization in favor of the independence or autonomy of any part of the PRC (it also applies to advocacy on behalf of Taiwanese independence). It is broadly construed as any attitude that goes against the Communist Party’s doctrine of “ethnic unity” (*minzu tuanjie*, or “unity between the nationalities,”), which stipulates, “the Han and the minority nationalities are inseparable.” “Separatism” and “incitement to separatism” are explicit crimes under Chinese law.

As a result, China criminalizes and suppresses many forms of speech or assembly that are clearly protected under international law provisions guaranteeing freedom of expression and assembly. Beijing also accuses the Dalai Lama, and other exile organizations of promoting “separatism.” By extension, it considers the activities of the “Dalai Clique” as separatist in nature, hence China’s opposition to foreign political leaders and institutions meeting with the Dalai Lama or the Tibetan government-in-exile.

Nepal’s frequent use of the term “anti-China” and the new inclusion of the term “separatist activities” in the 2012 Joint Statement are especially problematic because they legitimize the replacement of a legal test—whether or not an activity is legal—with a political one—whether the content offends, or is likely to offend, China’s sensitivities. It is also a short step from accepting that any Tibetan criticism of China, or promotion of the distinctiveness of Tibetan culture, ought to be suppressed.

Under Nepali law, “anti-China” sentiment or activity, “separatism,” and “separatist activities” are not criminal offenses. It is immaterial under Nepali law whether the content of speech is believed to be “anti-China” or “separatist.”

²⁷ Ibid.

IV. China's Role

Tibet-related matters remain China's top concern in Nepal.²⁸ Beijing sees the presence of a large Tibetan community, the ties they maintain with Tibetans in China, and the fact that the long border along the Himalayas can still be crossed clandestinely as critical factors that must be addressed to prevent challenges to its rule in Tibet.²⁹

Since 2008, the Chinese government has redoubled its efforts to sever the links between Tibetans living in China and the Tibetan diaspora, in particular the Dalai Lama, so as to limit the diaspora's perceived influence and conceal the extent of human rights violations that take place in Tibet.³⁰

China's Top Priority: Tibet

Enlisting Nepali authorities' cooperation in Tibetan matters has long been the key objective of China's diplomacy and engagement in Nepal. Beijing's clarity on this matter is plain even in the public remarks of its Nepali interlocutors: after meeting with President Xi Jinping in Beijing in April 2013, Pushpa Kama Dahal, leader of the main Maoist party and former prime minister of Nepal, acknowledged that "[The Chinese government's] major concern was security in Tibet."³¹

²⁸ "Expert analysis: Friendly relations between China and Nepal benefit the stability of Tibet," Wenweipo (Hong Kong), January 15, 2012 ["专家解读: 中尼友好利西藏稳定", 文汇报 (香港), 2012 / 01/15] <http://trans.wenweipo.com/gb/paper.wenweipo.com/2012/01/15/CH1201150002.htm> (accessed November 19, 2013).

²⁹ "Xi Jinping meets with Nepal UCPNM President Prachanda," *Xinhua News Agency*, April 18, 2013 [习近平会见尼泊尔联合尼共 (毛) 主席普拉昌达, 新华网, 2013/04/18] http://news.xinhuanet.com/politics/2013-04/18/c_115444446.htm (accessed November 19, 2013).

³⁰ See Human Rights Watch, *"I Saw it With my Own Eyes: Abuses by Chinese Security Forces in Tibet, 2008-2010"*, July 2010, <http://www.hrw.org/reports/2010/07/22/i-saw-it-my-own-eyes-o>; "China: Alarming New Surveillance, Security in Tibet," Human Rights Watch news release, March 20, 2013, <http://www.hrw.org/news/2013/03/20/china-alarming-new-surveillance-security-tibet>; "China: Attempts to Seal Off Tibet from Outside Information," Human Rights Watch news release, July 13, 2012, <http://www.hrw.org/news/2012/07/13/china-attempts-seal-tibet-outside-information>; "China: Arbitrary Expulsions of Tibetans from Lhasa Escalate," June 19, 2012, <http://www.hrw.org/news/2012/06/19/china-arbitrary-expulsions-tibetans-lhasa-escalate>.

³¹ "Tried to allay China's federalism fears," *The Katmandu Post*, April 21, 2013, <http://www.ekantipur.com/the-katmandu-post/2013/04/20/top-story/tried-to-allay-chinas-federalism-fears/247799.html> (accessed October 10, 2013).

Similarly, after a July 2012 Ministry-level meeting in Beijing, a member of the Nepali delegation told the Nepali daily *Republica* that, “More than anything else, the Chinese seemed wary about the anti-China activities of Tibetan refugees living in Nepal.”³²

They demanded that Nepal punish the Tibetans illegally entering into Nepalese territory as per the law of the land, instead of handing them over to the UN refugee agency.³³

In March 2012, the spokesperson from the Chinese Embassy in Kathmandu told Chinese journalists that “Tibetans who have crossed the border illegally are not refugees.”³⁴ China has on occasion requested the return of Tibetan refugees already in Nepali custody, and the involvement of the UNHCR has often been the only safeguard that prevented Nepal from doing so.³⁵

The selection of diplomatic personnel for the Chinese embassy in Kathmandu may also reflect Beijing’s priorities in the country: Wu Chuntai, the new ambassador installed in 2013, was previously the deputy-head of the Department of External Security Affairs of the Ministry of Foreign Affairs, whose role is to study “external security issues” that affect China. The Department is currently headed by a previous ambassador to Nepal, Qiu Guohong.³⁶ Wu’s previous postings include a seven-year stint in Turkey, home to the largest refugee community from Xinjiang, China’s other restive ethnic area.³⁷

³² “Nepal, China to combat cross-border crimes,” *Republica* (Kathmandu), July 27, 2012, http://www.myrepublica.com/portal/index.php?action=news_details&news_id=38712 (accessed October 10, 2013).

³³ Ibid.

³⁴ “Nepal Entrapped,” *The Global Times (Beijing)*, March 8, 2012, www.globaltimes.cn/DesktopModules/DnnForge%20-%20NewsArticles/Print.aspx?tabid=99&tabmoduleid=94&articleid=766645&moduleid=405&PortalID=0 (accessed October 10, 2013).

³⁵ In September 2011, the Chinese Embassy in Kathmandu requested that a group of 23 Tibetans who were in custody at the Department of Immigration be deported back to China instead of being handed over to the UNHCR as per the terms of the Gentleman’s Agreement. The Department released them to the UNHCR after the NGO Huron filed habeas petition to the Supreme Court. “Nepalese Supreme Court rules against forcible return of Tibetan refugees to Tibet,” International Campaign for Tibet, September 23, 2011, <http://www.savetibet.org/nepalese-supreme-court-rules-against-forcible-return-of-tibetan-refugees-to-tibet/> (accessed October 10, 2013).

³⁶ Official website of the Ministry of Foreign Affairs, www.fmprc.gov.cn/eng/wjb/zzjg/swaqsws/ (accessed October 31, 2013).

³⁷ Official website of the Chinese Embassy in Kathmandu, <http://np.china-embassy.org/eng/EmbassyInfo/Bioam/> (accessed October 31, 2013).

Chinese Aid and Investment

China is an increasingly important economic and diplomatic partner of Nepal. As a small and impoverished country landlocked between India and China, Nepal sees in its expanding relationship with China an opportunity for much-needed economic development, foreign direct investment, and aid, as well as a way to balance its traditional dependence on India.³⁸

China's aid has steadily risen since 2008, most of it in the form of soft loans. The three most important aid packages—each including a security component—were announced in a rapid succession of high-level Chinese visits between March 2011 and January 2012:

- In March 2011, General Chen Bingde, chief of general staff of China's People's Liberation Army, signed a military aid package worth US\$19 million during his visit to Kathmandu.³⁹
- In August 2011, China's domestic security chief, Zhou Yongkang, accompanied by a 60-member delegation, pledged loans and aid worth US\$50 million, including a US\$24 million soft loan for a hydropower transmission line project.⁴⁰
- In January 2012, Chinese Premier Wen Jiabao announced that China would offer 750 million RMB (US\$113 million) in aid to Nepal as well as a US\$20 million one-time special grant. He also pledged to provide a three-year, 750 million RMB grant to assist with economic and technical cooperation.⁴¹

The Chinese government also provides 3 million Nepali rupees (US\$42,500) to each of the 14 districts in Nepal bordering China for the development of their Village Development Committees (VDCs), the local administrative structure.⁴²

³⁸ "Tried to allay China's federalism fears," *The Kathmandu Post*, April 21, 2013, <http://www.ekantipur.com/the-kathmandu-post/2013/04/20/top-story/tried-to-allay-chinas-federalism-fears/247799.html> (accessed October 10, 2013).

³⁹ "Chinese Army Chief Concludes Nepal Visit," *The Times of India*, March 26, 2011, http://articles.timesofindia.indiatimes.com/2011-03-26/china/29192236_1_nepal-visit-chinese-army-political-stability (accessed October 21, 2013).

⁴⁰ "China's Nepal engagement tempo steps up; neighbourhood a priority," *eKantipur.com*, August 18, 2011, <http://www.ekantipur.com/2011/08/18/editors-pick/chinas-nepal-engagement-tempo-steps-up-neighbourhood-a-priority/339285.html> (accessed October 21, 2013).

⁴¹ "China pledges Rs 9.75b grant," *Republica* (Kathmandu), January 15, 2012, http://archives.myrepublica.com/2012/portal/?action=news_details&news_id=40812 (accessed October 21, 2013).

⁴² International Alert: Security and justice from a district perspective Rasuwa, Nepal, November 2010; D. P. Bhattarai, "Nepal at the first and second cross-roads: opportunities for a win/win in the new development context," Kathmandu, Nepal: Institute of Foreign Affairs, p.4, www.ifa.org.np/pdf/new1.pdf (accessed November 27, 2013).

Improving Infrastructure Along the Nepal-China Border

Reflecting China's preoccupation with border control, many infrastructure projects focus on the construction of road links and dry ports. China has been supporting the construction of a 16km-long road linking Syprubesi in Rasuwa with Kyirong county in the Tibet Autonomous Region (TAR) in China. On the Nepal side, a 105km road from Trisuli to Sombdang, the Pasang Lahmu Highway, is being improved with support from the Chinese government.⁴³ Nepal and China also plan to develop cross border roads through Simikot-Hilsa (85 km), Jomsom-Korala (80 km), and Khandbari-Kimanthanka (80 km).⁴⁴ To facilitate trade between the two countries, China is now in the process of constructing a dry port at Larcha in the Sindhupalchowk district. Further dry ports are being planned at Yari-Pulam, Rasuwa-Jilong, Kodari-Zangmu (Khasa), Kimathanka-Dingri, Olangchungola-Riwa, and Mustang-Lingzi.⁴⁵

Nepal's Commitments to China

Nepal and China have a long-standing agreement "not to allow their territories to be used to carry out activities against the other,"⁴⁶ a commitment regularly reiterated in diplomatic statements. Nepal's adherence to the "One China policy" and its resistance to "allowing its territory to be used for activities against China" are reaffirmed at every meeting between China and Nepal.⁴⁷

Chinese expectations of Nepal have grown, as the shift in rhetoric shows. Nepal now commits to "not allowing its territory to be used by any force to carry out 'anti-China' activities,"⁴⁸ and, even more directly, commits to "crack down on anti-China activities."⁴⁹ Since 2009, China's foreign policy has made increasing reference to demands for the

⁴³ Hari Bansh Jha, "Nepal's Border Relations with India and China," *Eurasia Border Review*, 2013: 4(1): 63-75, <http://hdl.handle.net/2115/53301> (accessed October 10, 2013).

⁴⁴ "Nepal to Seek US\$ 5b Credit during Wen Visit," *Republica* (Kathmandu), December 13, 2011.

⁴⁵ "Nepal gets Rs 12 billion, China's Largest Grant," *The Kathmandu Post*, January 15, 2012.

⁴⁶ "Nepal to Seek US\$ 5b Credit during Wen Visit," *Republica* (Kathmandu), December 13, 2011, http://www.myrepublica.com/portal/index.php?action=news_details&news-id=39512 (accessed October 10, 2013).

⁴⁷ Hari Bansh Jha, "Nepal's Border Relations with India and China," *Eurasia Border Review*, 2013: Vol. 4, Iss.1. p. 63-75, <http://hdl.handle.net/2115/53301> (accessed October 10, 2013).

⁴⁸ This position has been clearly articulated by all recent governments in Nepal. See for instance: "Nepal-China Relations," official website of the Nepal Embassy in China, http://www.nepalembassy.org.cn/nepal_dimension.php (accessed March 10, 2014).

⁴⁹ "China, Nepal to boost law enforcement cooperation," *People's Daily Online*, February 10, 2010, <http://english.people.com.cn/90001/90776/90883/6892196.html> (accessed October 31, 2013).

respect of its “core interests,” which remain ill-defined but are widely understood to include Taiwan, Tibet, and Xinjiang.⁵⁰ In January 2012, Nepali Prime Minister Baburam Bhattarai announced during a state visit by Chinese Premier Wen Jiabao that:

Nepal attaches great importance to China's core interests, firmly adheres to the one-China policy and deems Taiwan and Tibet as an integral part of China. The Nepalese government will never allow any anti-China activities on its territory.⁵¹

Much of China’s pressure remains invisible. According to a former government chief secretary, Nepal is not in a position to resist these demands:

The level of pressure from China is great, and often not seen. This kind of pressure is not seen openly but this is how it is happening. Over the years I have seen how a low level Chinese person has high-level access on the Nepali side. It’s completely unequal. Nepal has no capacity to fight back against this pressure. The US is the only international actor who speaks up on the issue.⁵²

Security Cooperation: “A Handshake over the Himalaya”

Reflecting China’s foremost concern in Nepal, security cooperation has grown hand-in-hand with the development of economic ties and the scaling up of aid and investment. Shortly after the 2008 protests, the Chinese government submitted a comprehensive security agreement to Kathmandu. But political instability in Nepal delayed its adoption until August 2011, when it was reportedly signed on the occasion of the visit by China’s domestic security chief, Zhou Yongkang, mentioned above.

⁵⁰ Michael D. Swaine, “China’s Assertive Behavior Part One: On ‘Core Interests,’” *China Leadership Monitor*, no. 34 (February 2011) <http://www.hoover.org/publications/china-leadership-monitor/article/67966> (accessed October 10, 2013).

⁵¹ “Premier Wen Jiabao Holds Talks with Nepalese Prime Minister Bhattarai,” *Xinhua News Agency*, January 14, 2012, http://om.chineseembassy.org/eng/xwdt_2_1_1/t896571.htm (accessed October 10, 2013). The joint-declaration signed at this occasion states: “The Nepalese side firmly supports the efforts made by the Chinese side to uphold state sovereignty, national unity and territorial integrity, and does not allow any forces to use Nepalese territory for any anti-China or separatist activities. The Chinese side highly appreciated the position of the Nepalese side.” Joint-Statement between Nepal and the People’s Republic of China, January 14, 2012, available on the website of the Ministry of Foreign Affairs of the PRC at <http://www.mofa.gov.cn/en/news/detail/510> (accessed October 9, 2013).

⁵² Human Rights Watch interview with G. R., Kathmandu, October 2013.

Various other agreements have been put in place over the years, covering “intelligence-sharing,” “Illegal immigration” (which is how China terms Tibetans seeking refuge in across the border), deployment of additional Nepali Armed Police Forces (APF) at the border, and training of Nepali police forces:

- In July 2009, Nepal’s Home Ministry announced it had agreed to set up new border security bases along the Chinese border to “curb illegal activities” at Tatopani, (Sindhupalchok district), Lomanthang (Mustang), Kimathanka (Sankhuwasabha), Limi (Humla), and Tinker (Darchula). Each of the new border security bases is or will be staffed by an Armed Police Force (APF) squad under the command of a superintendent of police.⁵³
- In August 2010, Nepal and China reached a 13-point agreement to establish a “high-level mechanism to share intelligence and information on security matters to contain anti-China activities in Nepal.”⁵⁴ A senior government official cited by the *Kathmandu Post* reported that China had assured Nepal of its “full support to enhance capacity building,” “train Nepali security personnel to be deployed across the northern border,” and “seek Nepal’s full commitment on information sharing on anti-China activities with effective law enforcement mechanism to contain such activities.”⁵⁵
- In November 2010, China held a two-week security training in Beijing for Nepali security officials, including officers from Nepal Police and Armed Police Force (APF) stationed in Rasuwa, Sindhupalchowk, Dolakha, Mustang, and Solukhumbhu as well as the Chief District Officers of Hanumandhoka, Kaski, and Dolpa. A spokesperson from the Ministry of Home Affairs said that training was “part of regular cooperation to bolster the country’s immigration system.”⁵⁶
- In November 2010, Nepal and China convened a security meeting of senior district officials in Chautara, near the border. The local Chief District Administrative Officer disclosed that “the two sides had agreed to tighten the entry of Tibetan nationals

⁵³ “Govt mulls security deployment to Nepal-China border,” *nepalnews.com*, July 16, 2009, <http://test.nepalnews.com/index.php/politics-archive/463-govt-mulls-security-deployment-to-nepal-china-border> (accessed October 21, 2013).

⁵⁴ “Nepal-China info sharing cell,” *eKantipur.com*, August 7, 2010, <http://www.ekantipur.com/2010/08/07/top-story/nepal-china-info-sharing-cell/319978.html> (accessed October 21, 2013).

⁵⁵ *Ibid.*

⁵⁶ “China hosts security meet,” *The Kathmandu Post*, November 9, 2010, <http://www.ekantipur.com/the-kathmandu-post/2010/11/09/nation/china-hosts-security-meet/214629/> (accessed October 21, 2013).

into Nepal and systematize the distribution of temporary entry cares as part of the 13-point agreement reached between the two sides.”⁵⁷

- In December 2010, a six-member delegation headed by the Chinese director of the Public Security Department of the Tibet Autonomous Region (TAR) visited Nepal, and offered to assist Nepal’s security forces being deployed along the Nepal-China border, stressing “the need to control illegal immigrants from both sides.”⁵⁸ The delegation met with the Minister of Home Affairs, as well as chiefs of the Nepal Police, the Armed Police Force, and the National Investigation Department. The delegation from the TAR offered to provide half a million yuan (US\$80,000) to Nepali security agencies for logistic support. A Nepali official told the press that the Chinese delegation had “raised the issues of illegal drug trafficking and human trafficking across the border.”⁵⁹
- In March 2011, General Chen Bingde, head of the Chinese military, conducted a three-day visit to Nepal during which he signed a military aid package worth US\$19 million.⁶⁰
- From June 30 to July 14, 2011, China held a “high-level” training for Nepal security officials in Beijing, organized by the Ministry of Public Security’s own university. According the website of the Ministry of Public Security, the training focused on “striking illegal border exit-entry activities.”⁶¹
- In August 2011, as noted, Nepal and China reportedly signed the comprehensive security agreement during the three-day visit of China’s domestic security chief, Zhou Yongkang. The agreement covers border security, inter-agency cooperation, smuggling, trafficking, and “illegal border crossing.” The agreement also establishes a mechanism for intelligence-sharing and cooperation between Chinese and Nepali security agencies and border forces.⁶² The new security

⁵⁷ “Nepal, China to check movement of Tibetans,” *Press Trust of India*, November 29, 2010.

⁵⁸ “China seeks measures to curb cross-border crime,” *The Kathmandu Post*, December 22, 2010, www.ekantipur.com/the-kathmandu-post/2010/12/22/nation/china-seeks-measures-to-curb-cross-border-crime/216358/ (accessed October 21, 2013).

⁵⁹ Ibid.

⁶⁰ “Chinese Army Chief Concludes Nepal Visit,” *The Times of India*, March 26, 2011, http://articles.timesofindia.indiatimes.com/2011-03-26/china/29192236_1_nepal-visit-chinese-army-political-stability (accessed October 21, 2013).

⁶¹ “Department Head Zhou Shukui and senior police officer delegation from Nepal hold talks,” PRC Ministry of Public Security Website, July 7, 2011[“周书奎副局长与尼泊尔内政部高级警官代表团举行会谈” 公安部网站, 2011/07/07] <http://www.mps.gov.cn/n16/n80254/n81081/3134813.html> (accessed October 21, 2013).

⁶² Human Rights Watch interview with a former Nepalese government official, Kathmandu, December 2012.

agreement was immediately followed by a high-level 8-day visit of senior Nepali officials to the Tibet Autonomous Region at the invitation of the head of the Chinese Public Security Border Defense force. The 29-member Nepali delegation consisted of top officials from the Ministry of Home Affairs, the Police Armed Forces, the Department of Immigration, and the civil service.⁶³ The visit established “an effective system of repatriation of illegal immigrants” and aimed to create a “border to border, point to point, police to police” joint communication and cooperation “comprehensive mechanism.”⁶⁴

- In December 2011, on the occasion of the visit of Nepal’s deputy prime minister, China’s public security minister, Meng Jianzhu, expressed China’s satisfaction at the cooperation between the two countries’ security agencies, and called for “joint efforts with Nepal to enhance coordination in exit and entry administration, intelligence and information sharing, and law-enforcement education and training, in a bid to push forward bilateral law-enforcement cooperation.”⁶⁵
- In January 2012, during Premier Wen Jiabao’s landmark visit, Beijing pledged, among major economic and trade deals, a specific financial and technical assistance worth 10 million yuan (US\$1.6 million) to “enhance the capacity” of the Nepal Police. Another technical assistance package of 400,000 yuan (about US\$65,000) was also signed to support the establishment of a new Nepali Armed Police Force (APF) academy.⁶⁶
- In June 2012, China and Nepal met in Lhasa and reached an agreement to develop district-level mechanisms to bolster border control and monitoring. Nepal’s delegation included representatives from the Home Ministry and Foreign Ministry and one deputy inspector general level officer from the Nepal Police, the Armed Police Force (APF), and the National Investigation Department (NID).⁶⁷

⁶³ “Delegation of Nepalese Border Police Concludes Visit to the Tibet Autonomous Region,” *People’s Daily Online*, September 2, 2011 [“尼泊尔边境警务代表团圆满结束对西藏自治区参观访问”, 人民网, 2011/09/02], <http://bf.people.com.cn/GB/15569569.html> (accessed October 21, 2013).

⁶⁴ *Ibid.*

⁶⁵ “Meng Jianzhu: Actively Promoting law enforcement security cooperation between China and Nepal,” *Chinanews.com*, December 26, 2011 [“孟建柱：积极推动中国与尼泊尔两国执法安全合作”, 中国新闻网, 2011/12/26] www.chinanews.com/gn/2011/12-26/3560546.shtml (accessed October 21, 2013).

⁶⁶ “China pledges Rs 9.75b grant,” *Republica* (Kathmandu), January 15, 2012, http://archives.myrepublica.com/2012/portal/?action=news_details&news_id=40812 (accessed October 21, 2013).

⁶⁷ “Mechanism to check crime on China border,” *Republica* (Kathmandu), June 5 2012, www.myrepublica.com/portal/index.php?action=news_details&news_id=35995 (accessed October 21, 2013).

- In July 2012, the two sides “agreed to develop mechanisms to ensure exchange of information on a real-time basis and establish effective cooperation between the security agencies of the two countries to control illegal activities in border areas.”⁶⁸ Betraying Beijing’s desire to accelerate the implementation of the 2011 security cooperation agreement, China asked Nepal to submit “a proposal for financial and infrastructure aid required to enforce an effective security strategy along the Sino-Nepali border to check cross-border crime.”⁶⁹ China also expressly pressed their counterparts not to hand over to UNHCR Tibetans caught in Nepal.”⁷⁰

China has made extensive use of its newly acquired leverage in Nepal, including by directly interfering with security work. According to a senior diplomat in Kathmandu, officials from the Chinese Embassy in Kathmandu and Chinese security officers now often play a role in monitoring and suppressing Tibetan activities.⁷¹

There is considerable pressure from China on the Nepalese government. Not only from Foreign Ministry or regular diplomats but also from the party and the military attaché, directly to their counterparts in Kathmandu. It’s not true that diplomatic protocol [that requires] going through the Home Ministry and Foreign Ministry is complied with. The interface between Chinese and Nepali officials has gone to the local level.

So you have intelligence agents in Chinese embassy who go directly to area police stations and tell them what to do. There is no protocol in place about this but it’s being done. It’s at a very crude level, and local Nepali police resent it. But they are unable to do anything about it—they get intimidated very easily by that kind of action. It’s very rude, the Chinese will shout and scream at the local official.⁷²

According to the same source, the Nepalese government finds itself bound by its

⁶⁸ “Nepal, China to combat cross-border crimes,” *Republica* (Kathmandu), July 27, 2012, www.myrepublica.com/portal/index.php?action=news_details&news_id=38712 (accessed October 10, 2013).

⁶⁹ “Security Talks: China seeks aid proposal,” *The Kathmandu Post*, July 23, 2012, www.ekantipur.com/2012/07/24/top-story/security-talks-china-seeks-aid-proposal/357639.html (accessed October 21, 2013).

⁷⁰ *Ibid.*

⁷¹ Human Rights Watch interview with I. L., senior South Asian foreign diplomat, October 2013.

⁷² *Ibid.*

dependence on Chinese aid and ever more detailed security agreements:

I give credit to the Nepalese government, they do try to push back against this, but it's tough at the local level and at the national level. Nepalese government is doing its level best to just do the minimum that China asks, they do not go out of their way to help China.⁷³

⁷³ Ibid.

V. Nepal's Forced Returns of Tibetans

Tibetans crossing over from Tibet who are detained inside Nepal, or who manage to inform relatives or contacts that they are being detained by Nepali police or border forces, stand a good chance of being handled according to the Gentleman's Agreement between Nepal and UNHCR and making it to India.

But Tibetans arrested when no other witnesses are present at the border or within Nepali territory are sometimes, perhaps even routinely, forcibly returned to China by Nepali authorities.

According to a former senior Nepali home ministry official, on average Nepali border and police forces return to China between 300 and 1,000 Tibetans intercepted at the border each year.⁷⁴ He said the Armed Police Force (APF) makes on-the-spot determinations of the validity of the asylum claims of the Tibetans they have caught, and notifies UNHCR only of individuals they consider "legitimate" refugees.⁷⁵

According to the senior official:

It is true that the armed police are returning Tibetans who manage to cross the border into Nepal. But we do that according to our national laws. We check to make sure that each individual who has crossed over is in Nepal with proper travel documents and that they are not national security threats or economic migrants. The police at the border make the determination and return these people back to Tibet.

The numbers vary year to year, sometimes it's 300, sometimes up to a 1000. We apply the agreement with UNHCR only if the border police make the determination that an individual has a legitimate asylum case. We cannot accept that everyone who crosses over is a real asylum seeker. There are

⁷⁴ Human Rights Watch interview with a former senior government official in the Home and Immigration Ministries, Kathmandu, October 2013. The official asked that we withhold his name because of the sensitivity of the issue.

⁷⁵ Ibid.

national and international laws we apply in making the determination as to whether someone should be accepted as an asylum seeker.⁷⁶

If this allegation is accurate, such on-the-spot decisions by the armed police are inherently arbitrary, fail to afford individuals the right to make an asylum or other claim, and violate Nepal's international legal obligations and the terms of the Gentleman's Agreement.

Threats of Deportation

Police routinely threaten Tibetans during arrest or while they are in detention with deportation to China. In 2008, nearly all Tibetans interviewed by Human Rights Watch who had been involved in public protests said that they had threatened, some of them repeatedly. Most people interviewed described junior police officers saying, "If you protest tomorrow we will send you back to China," or "I will confiscate your Refugee Card and send you back to China."

The frequency with which this threat is leveled at Tibetans suggests it may be a tactic approved or ordered by senior law enforcement officials. Nepal deputy inspector general of police Bharat Bahadur G.C., in a wide-ranging interview with Chinese journalists from *Huan Qiu* (Global Times), said that Tibetans lacking identification "ought to be deported" but that doing so was not possible "for the moment" because of pressures from UNHCR:

Under Nepali law, no foreigner has the right to participate in political activities, including attending demonstrations. Most Tibetans in Nepal have no legal passport, visa, Nepali ID, or even refugee ID. They are illegal residents. Actually, we should deport them. We haven't done that because of the pressure from the UNHCR. They plead leniency for the Tibetans and pledge that they won't join "Tibetan Independence" activities. So, for the moment we have dropped [the idea of deporting them.]⁷⁷

⁷⁶ Ibid.

⁷⁷ "Exclusive Interview with Nepal's Deputy Inspector General of Police: 'Tibetan Pro-independence elements' Won't Be Able To Stir Up Trouble in Nepal," Huanqiu Shibao, March 29, 2009 ["专访尼泊尔警察副总监: '藏独'在尼闹不来", 2009/03/29, 环球时报], <http://world.huanqiu.com/roll/2009-03/417537.html> (accessed October 10, 2013).

Under the Convention against Torture, Nepal may not deport anyone to a country where they may face torture. Customary international law also prohibits refoulement (return of refugees to places where they would face persecution). Individuals of Tibetan origin who have been protesting Chinese rule in Tibet would almost certainly be treated as national security suspects and at high risk of torture and ill treatment if forced to return.

Ongoing Refoulement Concerns

Between 2003 and 2010 there were only a handful of documented instances of forced returns:

- In 2003, Nepali officials transferred a group of 18 Tibetans, including four children, from Kathmandu to the Chinese border, and then deported them to China⁷⁸;
- In 2008, police arrested a man at the TRTC and deported him⁷⁹; and
- In 2010, three Tibetans were handed over at the border to the Chinese police at Hamli, in Humla district.⁸⁰

While there is no public acknowledgement from China that Nepal forcibly returns Tibetans at the border, Beijing has pushed in recent years for the formalization with Nepal of a joint-system to handle what it terms “illegal immigration.” In August 2011, for instance, during a visit by a 29-member strong delegation of Nepali border security officials to the Tibet Autonomous Region, the Chinese delegation, headed by a general in the Public Security Bureau’s Border Defense section, called on the Nepali side to “establish an effective system of repatriation for illegal immigration,” and to create a “border to border, point to point, police to police” joint communication and cooperation system. Clearly Chinese officials want a heightened surveillance and repatriation scheme for those they believe to be leaving China irregularly.⁸¹

⁷⁸ “Nepal deports 18 Tibetan refugees to Chinese authorities; refugees face immediate danger,” International Campaign for Tibet, May 31, 2003, <http://www.savetibet.org/nepal-deports-18-tibetan-refugees-to-chinese-authorities-refugees-face-immediate-danger/> (accessed October 31, 2013).

⁷⁹ “Nepal deports Tibetan refugee ahead of China envoy visit,” *Indo-Asian News Service* (via Refugees Daily), February 3, 2008, www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=47cba2298 (accessed October 31, 2013).

⁸⁰ “UN ‘concerned’ over Nepal’s Deportation of Tibetans,” *Voice of America*, July 28, 2010, www.voatibetanenglish.com/content/un-concerned-over-nepals-repatriation-of-tibetans-99556124/1275353.html. (accessed October 31, 2013).

⁸¹ “Delegation of Nepalese Border Police Concludes Visit to the Tibet Autonomous Region,” *People’s Daily Online*, September 2, 2011 [“尼泊尔边境警务代表团圆满结束对西藏自治区参观访问”, 人民网, 2011/09/02], <http://bf.people.com.cn/GB/15569569.html> (accessed October 21, 2013).

According to a detailed report from HURON, in October 2012, Nepali police attempted to forcibly return to China two Tibetans who had crossed by foot into Himla district and intended to take a flight from Simikot airport. Police arrested the two men and walked them to a hill two hours in the direction of the border, ordering them to return to China and warning them that the police would shoot them if they tried to turn back. The men went into hiding and ultimately made their way to Kathmandu and the TRTC. Several similar incidents were reported in 2013.

One Nepali official told Human Rights Watch off the record that, “We do returns from the border, but not at the behest of China.”⁸²

Until the late 1990s, UNHCR was allowed to access border areas in remote parts of Nepal. Such missions were used to observe local conditions and inform local border police of the mechanisms of the Gentleman’s Agreement set up after 1989. The government of Nepal stopped authorizing these visits around 1998, apparently out of concern that the UNHCR might raise the “Tibet issue” in a way that would upset the Chinese government.⁸³ UNHCR has resorted to organizing trainings of border police in other locations, while the monitoring of remote border areas has largely fallen on one of Nepal’s main national human rights NGOs, Human Rights Organization of Nepal (HURON).⁸⁴

Through a network of local correspondents, HURON’s refugee desk in Kathmandu is alerted whenever Tibetan refugees are identified. Typically HURON then contacts the relevant CDO and police offices, as well as the Home Affairs Ministry and the Department of Immigration in Kathmandu, to remind them of the mechanisms and obligations stemming from the Gentleman’s Agreement.⁸⁵ While this monitoring system generally appears to work well, HURON itself has come under repeated pressure from Nepali officials for its involvement with the “Tibetan issue,” while its role has in effect become critical to the operation of the Gentleman’s Agreement.⁸⁶

⁸² Human Rights Watch interview with a former government official at the Home and Immigration Ministries, Kathmandu, October 2013.

⁸³ Tibet Justice Center: Tibet’s Stateless Nationals: Tibetan Refugees in Nepal, June 2002, p. 104, www.tibetjustice.org/reports/nepal.pdf (accessed November 27, 2013).

⁸⁴ Human Rights Watch interviews with HURON, Kathmandu, June and December 2012.

⁸⁵ Human Rights Watch interview with HURON’s Refugee desk director, Kathmandu, June 2012.

⁸⁶ Ibid.

VI. China's Treatment of Tibetans at the China-Nepal Border

China's Refusal of Re-Entry to Some Chinese Citizen Tibetans

Since 2012, there have been several cases of China refusing re-entry to its own citizens of Tibetan ethnicity, in effect exiling them in flagrant violation of domestic and international law. In some cases, the Tibetans were simply refused entry, and had no choice but to stay in Nepal; in others they were told by Chinese police that they should go to the Chinese Embassy in New Delhi and apply for a special permit that allows "Tibetan compatriots" to re-enter Tibet.⁸⁷ These cases, sometimes followed by periods of detention or imprisonment in Tibet, appear to be a consequence of a larger policy introduced after 2008 aimed at deterring Tibetans from crossing the border.⁸⁸

China's closer scrutiny of Tibetans at the border seems aimed at discouraging Tibetans from attending major events involving the Dalai Lama, such as the mass Kalachakra teachings, which often draw thousands of pilgrims.⁸⁹ In late 2011, in an unusual move, the authorities in the Tibet Autonomous Region (TAR) started allowing large numbers of Tibetans to apply for and obtain passports so that they could travel to attend the Dalai Lama's Kalachakra scheduled for January 2012. About 7,000 Tibetans from China attended the event, including several hundred who had made their way clandestinely to India.

⁸⁷ Tibetans living or having emigrated abroad who do not have a foreign passport can apply for a special travel document designed for "Tibetan compatriots." This document, colloquially called "blue book," allows a single entry into China for the purpose of visiting Tibetan areas. Relatives in Tibet must agree to be listed as "guarantor" and the visitor must register with the local Public Security Bureau on arrival. Both Kathmandu and New Delhi Chinese embassies can deliver the permit.

⁸⁸ In 2012, the Tibet Autonomous Region introduced even more restrictive measures on the delivery of passports to Tibetans, mandating systematic questioning by the police before any international travel, and the signing of pledges not to engage in activities that "harm state security and interests" while outside the country. "No Exit: China Uses Passports as Political Cudgel," *The New York Times*, February 22, 2013, http://www.nytimes.com/2013/02/23/world/asia/chinese-passports-seen-as-political-statement.html?pagewanted=all&_r=0 (accessed October 10, 2013).

⁸⁹ The Kalachakra initiation is one of the few forms of tantric initiation in the Gelugpa tradition of Tibetan Buddhism that are given to large masses, and they are regularly attended by thousands of people. The most recent one was held in Bodhi Gaya, Bihar, India. "China Said to Detain Returning Tibetan Pilgrims," *The New York Times*, April 7, 2012, www.nytimes.com/2012/04/08/world/asia/china-said-to-detain-returning-tibetan-pilgrims.html?_r=0 (accessed November 19, 2013); "China: End Crackdown on Tibetans Who Visited India," Human Rights Watch news release, February 16, 2012, www.hrw.org/news/2012/02/16/china-end-crackdown-tibetans-who-visited-india.

The true aim of this apparent relaxation only became clear when hundreds of people were detained upon return to China in February 2012, regardless of whether they had travelled there legally or not.⁹⁰ They were detained for periods ranging from several days to several weeks, and forced to undergo interrogation and intensive sessions of political indoctrination.⁹¹ Some Tibetans who were still in India delayed their return in the hope of avoiding this fate. Of those who subsequently crossed back into China, a number were expelled back to Nepal, as detailed below.

In April 2013, Human Rights Watch interviewed a group of 11 Tibetans from Naqu (Nagchu) prefecture, Tibet Autonomous Region, who had been expelled at the Kodari border crossing and were being held in custody at the Department of Immigration (Dol) in Kathmandu. According to one of them:

After the Chinese police caught us when we crossed back into Tibet, we were detained and interrogated every day for several days. They told us we had broken the law and confiscated our Chinese ID cards. They also forced us to sign a document written in Chinese that we didn't understand. One day, they took us from our cell and put us in a minibus, accompanied by several cars. They didn't say where they were taking us. Suddenly we saw we had arrived at the Friendship Bridge, and we understood the police wanted to send us back to Nepal. We said no, we said that we didn't want to go back to Nepal, that we were from Naqu [in Sichuan province]. But they just shoved us forward to the Nepali side and into the [Nepali] immigration building.⁹²

There, a Nepali immigration official, who they said spoke some Tibetan, refused to take custody of the men, pointing out that they were Chinese citizens and had no travel documents. After some discussion, the Chinese policemen who had brought the group took them back across the border to the Chinese immigration compound, and locked them in an underground basement for several days:

⁹⁰ "China: End Crackdown on Tibetans Who Visited India," Human Rights Watch news release, February 16, 2012, <http://www.hrw.org/news/2012/02/16/china-end-crackdown-tibetans-who-visited-india>.

⁹¹ Ibid.

⁹² Human Rights Watch interview with a group of nine Tibetans in custody at the Department of Immigration, Kathmandu, April 2012.

We were detained in an underground place, it was always very dark. We were very afraid. We didn't know what was going to happen to us. For three days we were kept there, and they didn't let us out for a single minute. Nobody told us anything, they just gave us some food that we shared between ourselves.⁹³

On the third day Chinese police again took the men back to the Nepali side of the border, where Nepali immigration officials took them into custody in an apparently previously agreed procedure. Nepali officials took a series of pictures of the 11 men, as if documenting their expulsion, first at the border post, then as they boarded the van in which they were taken to Kathmandu, and finally as they entered the Dol to be detained. According to the account given by the group to Human Rights Watch:

The day the police took us out of the basement we resisted walking over the bridge [to Nepal], we didn't want to go! But the Chinese policemen just grabbed us by the neck and forced us across the bridge. Our families are waiting for us back in Naqu. What are we going to do now? They say we are going to be sent back to India, but we don't have money, we don't have identity documents anymore. We don't speak the language, how can we survive there? We just want to go back to our families in Tibet.⁹⁴

The men were expelled to India several days later after they were able to raise money in the Kathmandu Tibetan community to pay fines imposed by the Dol for illegal entry. It is not clear why Nepali officials accepted custody of individuals who clearly were Chinese citizens, and were being expelled from China against their wishes, in clear breach of immigration laws.

Chinese law does not allow banishment through expulsion or refusal of re-entry, and international law clearly prohibits arbitrary deprivation of the right of citizens to enter their country.⁹⁵ The International Covenant on Civil and Political Rights sets forth that “no one

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ While China has consistently exiled government critics and dissidents not renewing their travel documents or denying them reentry at the border, there is only one recorded case in recent years in which the police attempted to forcibly expel a citizen. Yet the man, who had been put on a plane to Japan, refused to leave the international zone of Narita airport and the

shall be arbitrarily deprived of the right to enter their own country.”⁹⁶ The Human Rights Council General Comment 27, on the freedom of movement, has reaffirmed:

In no case may a person be arbitrarily deprived of the right to enter his or her own country... The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.⁹⁷

To date, several similar, unexplained cases of banishment from China have been recorded:

- In June 2013, Chinese police handed over two Tibetan men, Pema Choge, 32, and Choka, 25, to their Nepali counterparts at the border between Humla district and Ngari prefecture. According to the account they gave to HURON, the two men had travelled from India through Nepal in May, and had been arrested by the police after walking for five days in the direction of Ngari.⁹⁸ Chinese police took them to Purang (Burang, Chinese: Pulan), Ngari Prefecture, where they were interrogated about whether they were members of the Tibetan Youth Congress and had come back to Tibet to incite people to commit acts of self-immolation. Police then interrogated the two men separately, taking Pema Choge to Ali, Ngari prefecture headquarters. Police in Purang interrogated and tortured Choka, forcing him to stand and denying him food and water for three days.

After a month in detention in Ngari, police reunited the two men and handed them over to the Nepali police, who dispatched them first to Simikot (Humla's district headquarter) and then to Kathmandu, in the custody of the Department of Immigration. As the men were not considered “recent arrivals” Nepali authorities did not hand them over to the UNHCR but instead deported them to India on June 13. According to their account, Nepali police in Humla initially refused to take them from

Chinese government was ultimately forced to let him return to China three months later. See: “Chinese activist grounded at Japan airport,” *The Financial Times*, November 16, 2009, <http://www.ft.com/cms/s/o/3fod3dae-d2dd-11de-af63-00144feabdco.html>; “‘Terminal man’ returns to China,” *The Financial Times*, February 20, 2010, <http://www.ft.com/intl/cms/s/o/edad2d90-1d80-11df-a893-00144feab49a.html> (accessed January 20, 2013).

⁹⁶ ICCPR, art. 12(4).

⁹⁷ HRC General Comment No 21.

⁹⁸ HURON email update to Human Rights Watch dated June 14, 2013. On file with Human Rights Watch.

the Chinese police, but ultimately accepted them after “Chinese police came back with boxes of beer and whisky... and discussed [the matter] for about an hour.”⁹⁹

- On August 23, 2012, Chinese police handed a group of five Tibetans, aged 24 to 55, to Nepali Immigration Officials at Kodari border crossing. All the members of the group had been caught by Chinese police after they crossed back clandestinely into China in April and May, and had been detained for several months in a detention facility in Shigatse. All of them except one, who had left China to attend the Dalai Lama’s Kalachakra teachings in Dharamsala in January 2012, had spent several years living in India.¹⁰⁰ Nepal’s DoI fined the five for breaching the immigration laws and sent them to India shortly afterwards.

China’s unlawful pushbacks of its citizens have trapped some individuals in a vicious circle of serial expulsions involving China, Nepal, and India. In one instance, three Tibetans who had left China to attend the Kalachakra in January 2012 were arrested upon their return to China.¹⁰¹ Along with several hundred other people who had attended the teachings, they were arbitrarily detained for several weeks as punishment and for political indoctrination, and permitted to return to their home villages.¹⁰² Shortly thereafter, police arrested them again, detained them for about six months in Shigatse prison, and then handed them over to Nepali officials at the border.¹⁰³

The DoI labeled the three as “new arrivals,” and handed them over to the UNHCR and the TRTC; they were sent to India shortly thereafter. In April 2013, the three men crossed back into Nepal from India and made their way to the border with China, only to be arrested by Nepalese police in Namche Bazaar, in Solukumbu district. This time no longer considered as “new arrivals,” the three men were brought to the Immigration Department on April 21 and sent back to India the next day.¹⁰⁴ Human Rights Watch learned subsequently that one or two had returned to Nepal shortly afterwards, possibly to make another attempt at crossing back into China.

⁹⁹ Ibid.

¹⁰⁰ The members of the group were identified as Aka Ngawa, 55 year-old, Kunchok Choepel, 27, Tsering Dorjee, 32, Chorthop, 32, and Sonam Detso, 24. HURON email update to Human Rights Watch, dated August 24, 2012. On file with Human Rights Watch.

¹⁰¹ The three men were identified as Angdu Tsering, Norbu Tatse, and Angdu Chunga.

¹⁰² “China: End Crackdown on Tibetans Who Visited India,” Human Rights Watch news release, February 16, 2012, <http://www.hrw.org/news/2012/02/16/china-end-crackdown-tibetans-who-visited-india>.

¹⁰³ Email Update from HURON to Human Rights Watch, April 26, 2013.

¹⁰⁴ Ibid.

Abuses in Custody in China

In the wake of the 2008 protests across the Tibetan plateau, Chinese authorities took active steps to control and limit the movement of Tibetans through strict enforcement of the internal travel permit (*tongxingzheng*) system.¹⁰⁵ Access to areas bordering Nepal was also tightened, with authorities in the Tibet Autonomous Region pledging to “expand the anti-separatist and stability struggle” and establish as soon as possible a long-term security system.”¹⁰⁶ For instance the Shigatse Public Security Border Defense Force reported in March 2010 that the adoption of a host of new measures to enhance border area control and monitoring had made an important contribution to “smashing the sabotaging activities from the Dalai Clique.”¹⁰⁷ These measures included “setting up 22 public order joint-teams” linking government, police, and militias, as well as “establishing motorbike patrols, party members defense teams, and other joint-defense organizations.”¹⁰⁸

As detailed in the following section, border control and prevention of “illegal activities” have become central areas of China-Nepal cooperation, with China providing the funding and training but also requesting ever-closer cooperation with the Nepalese Armed Police Forces in their enforcement activities.

Tibetans caught by the Chinese authorities for crossing the border irregularly from Nepal appear to be uniformly subjected to detention and imprisonment in abusive conditions. From the moment they are arrested, detainees are beaten by the police. When they are in detention, interrogators and guards routinely beat and torture detainees to coerce confessions or obtain information. Physical abuse, ill treatment, and torture are also used on detainees for no other apparent purpose than to terrorize them and break them psychologically.¹⁰⁹

¹⁰⁵ Human Rights Watch, “*I Saw it With my Own Eyes*” *Abuses by Chinese Security Forces in Tibet, 2008-2010*, July 21, 2010, www.hrw.org/reports/2010/07/22/i-saw-it-my-own-eyes-o; “China: Alarming New Surveillance, Security in Tibet,” Human Rights Watch news release, March 20, 2013, <http://www.hrw.org/news/2013/03/20/china-alarming-new-surveillance-security-tibet>.

¹⁰⁶ “Tibet Autonomous Region’s Public Security Bureau Head: Strengthen the Control and Protect the Stability of Border Areas,” Tibet Daily, April 23, 2009 [“西藏自治区公安厅:加强边境管控 维护边境稳定”, 西藏日报, 2009/04/23] <http://www.chinanews.com/gn/news/2009/04-23/1660974.shtml> (accessed October 10, 2013).

¹⁰⁷ “Several Work Methods of the Shigatse Area Public Security Border Defense Force in Deploying “Twin Role” Work,” www.mzb.com, March 22, 2010 [“日喀则地区公安边防支队开展双拥工作的几点做法”, 中国民族宗教网, 2010/03/22] <http://www.mzb.com.cn/html/report/120995-1.htm> (accessed October 10, 2013).

¹⁰⁸ Ibid.

¹⁰⁹ Human Rights Watch interviews with former detainees at Shigatse detention facilities, Kathmandu, June and November 2012.

Under Chinese law, penalties for violating entry-exit regulations are limited: they range from fines and short term-administrative detention (between one and fourteen days) to a maximum of one-year imprisonment (article 320 of the Criminal Law).¹¹⁰ More severe penalties apply only to those who organize, transport, or traffic people (articles 321 and 322 of the Criminal Law).¹¹¹ In the Tibet Autonomous Region, however, the authorities appear to follow a specific, well-established procedure, designed to punish and deter Tibetans from going clandestinely abroad and to gather information about the Tibetan community in exile.

Those caught crossing in either direction by People's Armed Police border security—sometimes acting on tips given by bounty-earning informants in local communities—are briefly detained and interrogated, and then shipped to Shigatse, either to Nyari prison or to a special purpose facility for Tibetan immigration offenders set up in the early 2000s, called “Reception Center for Tibetans.”

Police typically beat the detainees on arrival, before subjecting them to intense interrogation for several days.¹¹² Interrogators—many if not most of them Tibetan themselves—systematically torture and beat detainees as a way to elicit information. Those questioned are asked to provide information about their motives for going to India or Nepal, the route they took, and their ties to “separatist” organizations such as the government-in-exile, the Tibetan Youth Congress, or exile monastic communities. They are also interrogated extensively about the activities of the Tibetan community in Nepal and India, and are required to go through a large collection of computerized pictures of individuals and events—including protests—from these places to identify specific individuals or person that they know or recognize.¹¹³

¹¹⁰ On July 1, 2013, China enacted a new law that replaced the previous modalities governing Chinese citizens and foreigners, Exit and Entry Administration Law of the People's Republic of China (Adopted at the 27th meeting of the Standing Committee of the Eleventh National People's Congress on June 30, 2012), <http://www.mps.gov.cn/n16/n84147/n84196/3837042.html> (accessed October 10, 2013).

¹¹¹ Criminal Law of the People's Republic of China art. 318 to 322.

¹¹² Human Rights Watch interview with three former detainees, Kathmandu, June 2012. For background see: “Brutal treatment reportedly awaits repatriated Tibetans,” International Campaign for Tibet, January 23, 2004, www.savetibet.org/brutal-treatment-reportedly-awaits-repatriated-tibetans/ (accessed November 19, 2013); International Campaign for Tibet, Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees, 2011, October 11, 2012, www.savetibet.org/dangerous-crossing-2011-update/ (accessed October 31, 2013).

¹¹³ Ibid.

Unless they are deemed to be of political value or have prior convictions, in which case they may be transferred to the Public Security Bureau (PSB) in Lhasa for further interrogation, detainees are held in these facilities for up to six months, and put to hard labor during their detention. They are then returned to county-level PSBs in their place of origin, processed, and released to relatives, most of the time on payment of a large fine. They are often prohibited from travelling, employment, or rejoining their monastery if they are monks or nuns; put under some form of surveillance; and required to report regularly to the local PSB.¹¹⁴

In July 2005, Human Rights Watch interviewed a 26-year-old monk who had been caught with two other friends after returning from India through Nepal. In his account he described detention conditions in Shigatse and Nyari prison:

We went via Dram [Zhangmu]. When we reached Shigatse, we were arrested by police personnel of the State Security Bureau of Shigatse Prefecture. We were arrested because they discovered pictures from His Holiness the Dalai Lama when they checked our baggage. We were handcuffed for the whole night, and beaten severely with stick and electric baton, to the point of losing conscience. We were severely beaten and asked questions such as: “Which organization send you here? Is it the Tibetan Youth Congress? Where do you want to distribute these photos?” We were not allowed to sleep and not given food for three days.¹¹⁵

Police first dispatched him to Lhasa where he was held in custody for 16 days, and subjected him to three sessions of interrogation during which he was given electric shocks. He was then sent back to Shigatse, for detention at Nyari prison:

We were imprisoned there for more than four months. During that time, we were interrogated many times, during which we were beaten and poked with electric wires. Machu County Police personnel also came and

¹¹⁴ Human Rights Watch Interview with Tenzin Samdup, Nepal, April 2005. See also International Campaign for Tibet, “Brutal treatment reportedly awaits repatriated Tibetans,” January 23, 2004, <http://www.savetibet.org/brutal-treatment-reportedly-awaits-repatriated-tibetans/> (accessed October 10, 2013); “Seven of 18 Tibetans repatriated from Nepal still imprisoned, new prison in Shigatse designated for Tibetan refugees,” December 22, 2003, <http://www.savetibet.org/seven-of-18-tibetans-repatriated-from-nepal-still-imprisoned-new-prison-in-shigatse-designated-for-tibetan-refugees/> (accessed October 10, 2013).

¹¹⁵ Human Rights Watch Interview with Jigme Choepel, Nepal, July 2005.

interrogated us. Nyari prison is a prison where those trying to escape to India, those trying to return to Tibet and the local criminals are imprisoned. During that time, there were more than 300 prisoners. After about four months of imprisonment, we were taken to the Intermediate People's Court of Shigatse Prefecture and sentenced [to two years imprisonment].

There is reason to believe such mistreatment continues. In December 2013, Human Rights Watch interviewed in detail a Tibetan man who had been arrested in December 2010. His arrest came after he had been tricked by a business contact into crossing clandestinely to China from Kodari. The man, who the Chinese police apparently suspected of being a member of the Tibetan Youth Congress, was so severely and repeatedly tortured during his several months of detention that he suffered permanent physical and psychological damages.

VII. Nepal's Restrictions on Expression, Assembly, and Association

Arbitrary Curbs

Since 2008 the government of Nepal has imposed ever-more stifling restrictions on the exercise of freedom of expression and assembly of Tibetans. The Tibetan community in Nepal has now effectively lost the right to overtly organize political protests and faces considerable difficulty holding cultural, social, or religious activities that have an indirect political dimension, such as celebrating Tibetan New Year or the Dalai Lama's birthday.

The Nepalese government's suppression, at the vocal behest of the Chinese government, of protests by Tibetans in Kathmandu in March to August 2008 was marked by unnecessary and excessive force, arbitrary and preventive detention, beatings and sexual assaults in detention, threats to deport Tibetans to China, and restrictions on freedom of movement for Tibetans in the Kathmandu Valley. Nepali authorities arrested at least 8,350 Tibetans between March 10 and July 18.¹¹⁶

That there has been no repeat of the 2008 protests in Kathmandu is largely a result of Nepali authorities' efforts to prevent such gatherings. As early as mid-2008, Nepali authorities took preventive action and counter-measures, including, but not limited to:

- Systematically dispatching large contingents of riot police to Tibetan areas on politically sensitive dates;
- Posting smaller police forces in front of key Tibetan locations such as the Jawalakeel settlement, the Tibetan Reception and Transit Centre, and the offices or residences of Tibetan government-in-exile officials;
- Preventively arresting or briefly detaining of known Tibetan activists;

¹¹⁶ Many people were arrested more than once. These events were the subject of a 60-page report by Human Rights Watch in July 2008: *Appeasing China: Restricting the Rights of Tibetans in Nepal* (available at: www.hrw.org/reports/2008/07/23/appeasing-china-o). Human Rights Watch investigations found that at least 1,779 Tibetans and 13 Nepali human rights activists were arrested for participating in demonstrations in Kathmandu between March 10 and April 2, 2008, and that, as of July 18, 2008, a further 6,571 protesters had been arrested since protests resumed on April 15. Official Nepali statistics on the number of Tibetans arrested are not available. The numbers in this report are based on information provided by formerly detained Tibetans to Human Rights Watch and are similar to those of other human rights organizations.

- Pressuring of Tibetan community leaders to cancel or scale down scheduled gatherings and events;
- Conducting police raids on premises where Tibetan events were being held;
- Establishing police check points targeting Tibetans to prevent potential participants from travelling to an event location;
- Dispatching plain-clothes officers from the Special Branch—a body tasked with dealing with major criminal and national security cases—to the event venues.¹¹⁷

Nepal does not deny that it prevents Tibetans refugees from exercising the right to peaceful expression and assembly. In September 2012, Deputy Prime Minister and Foreign Minister Narayan Kaji Shrestha, stated: “We have our own values regarding the policy on refugees, our policies are guided by geopolitical sensitivities.”¹¹⁸

Prohibitions Imposed on Political Protests

The Tibetans we interviewed in Kathmandu and Pokhara in 2012 and 2013 all told us that since the 2008 protests it has become almost impossible to organize political rallies or gatherings in public places, and that even events held within Tibetan settlements are tightly restricted by the police. According to a Tibetan community leader in Boudhanath:

We have completely lost our right to demonstrate now. Anyone who goes out to protest is immediately stopped by the police. We can’t even hold public events to celebrate the Dalai Lama’s birthday, which we always did in the past.¹¹⁹

One Tibetan activist from the Tibet Youth Congress told Human Rights Watch:

¹¹⁷ “See Exclusive Interview with Nepal’s Deputy Inspector General of Police: ‘Tibetan Pro-independence elements’ Won’t Be Able To Stir Up Trouble in Nepal,” *Huanqiu Shibao*, March 29, 2009 [“专访尼泊尔警察副总监: “藏独”在尼闹不起来”, 2009/03/29, 环球时报], <http://world.huanqiu.com/roll/2009-03/417537.html> (accessed October 10, 2013) ; International Campaign for Tibet, *Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees*, 2011, October 11, 2012, www.savetibet.org/dangerous-crossing-2011-update/ (accessed October 31, 2013).

¹¹⁸ “Nepal Rejects U.S. Plea for Tibetans,” *Radio Free Asia*, September 13, 2012, www.rfa.org/english/news/tibet/rejects-09132012163640.html (accessed October 31, 2013).

¹¹⁹ Human Rights Watch Interview with P.L., Kathmandu, June 2012.

In 2008 I used to go demonstrate every day. Every day I was arrested, every next day I would come against to protest! We demonstrated in front of the Chinese Embassy, we demonstrated in front of the UN, we demonstrated in Bodha, even though the police broke our demonstrations it was still possible to do it. But now it is impossible, the police will prevent us from going anywhere.¹²⁰

One resident from the Jawalakei settlement said that ahead of sensitive political dates, the police systematically station riot police outside of the settlement to prevent people from coming out and staging or joining a protest:

We are used to this now. Every March 10, every September 2 [on which Tibetans observe “Democracy Day”], every time there is a high-level visit from a Chinese official, the police come. They park their vehicles in front of the settlement, they tell our representatives that it is prohibited to go out, and they don’t let anyone go out.¹²¹

The police also regularly take into detention individuals who engage in activities they regard as political statements of opposition to China, such as wearing “Free Tibet” T-shirts or displaying posters of the Dalai Lama, stating that such signs constitute a violation of the Public Offences Act.

In an incident in June 2011, Deputy Superintendent of Police (DSP) Shyam Lal Gyawali told AFP that police had to intervene after the Tibetan exiles sporting headbands and T-shirts reading “Free Tibet” tried to stage an anti-China protest.

One resident from the Jawalakei Settlement told Human Rights Watch that she had resorted to tattooing herself to protest the confiscation of “Free Tibet” material:

They confiscated all my Free Tibet items so I made this [“Free Tibet”] tattoo. And I want to know what they will do with it. They will have to cut off my arm

¹²⁰ Human Rights Watch interview with S.D., Kathmandu, June 2012.

¹²¹ Human Rights Watch interview with a Tibetan resident of Boudhanath, Kathmandu, December 2012.

because it has “Free Tibet” written on it? I want to see what they will do with that...¹²²

Restrictions on Public and Private Gatherings

The prohibition on Tibetan protests also extends to Tibetans joining other public and private events. For instance, despite the approval of the organizers, Tibetans were prohibited from joining a public gathering organized by Nepali human rights organizations on December 10, 2012, International Human Rights Day. According to a Tibetan organizer who tried to join the meeting:

We were planning to join the march with a couple of banners saying “Human Rights for Tibetans,” nothing more. The morning of the event I took a taxi with three other friends. Ten minutes later we were stopped at a small police checkpoint. I think they were looking for us. After they verified we were Tibetans they detained us and took us to the police station. We spent the entire day detained at the police station. Representatives from Nepali human rights organizations came to see us and talk to the police; they said they could not release us.¹²³

In 2010, police warned organizers of a birthday celebration for the Dalai Lama, in the Jawalakhel settlement compound, that the event should not be turned into “anti-China activities.” In order to limit participation, police set up checkpoints throughout the city, pulling over from buses and taxis with passengers who looked Tibetan. Tibetans and people lacking identification were ordered to turn back.¹²⁴

One respondent said that this method was regularly employed to prevent Tibetans and Nepali monks and nuns from Tibetan monasteries from converging towards Buddha Stupa, a prominent monument in Kathmandu, on specific dates:

¹²² Human Rights Watch interview with Kunsang, Kathmandu, August 2013.

¹²³ Human Rights Watch interview with a member of Tibetan Youth Congress, Kathmandu, June 2013.

¹²⁴ International Campaign for Tibet, “Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees, 2011,” October 11, 2012, www.savetibet.org/dangerous-crossing-2011-update/ (accessed October 31, 2013).

At the checkpoints the police look for Tibetans or monks: they ask for their identity document and tell them to step out. There are many check-points on the way so even if you manage to get through one you end up being caught.¹²⁵

The same respondent said that such controls were affecting the entire Tibetan community, not only those who intended to join the gatherings:

As a result lots of Tibetans don't dare to take public transportation or go out on these days. It's better to stay home. If you have a job it's a big problem, but there is nothing you can do.¹²⁶

In 2011, the authorities went one step further and explicitly prohibited the Tibetan community from holding public ceremonies to celebrate the Dalai Lama's birthday. The ban was announced by Laxmi Prasad Dhakal, chief government administrator of Kathmandu district. The authorities said they would allow celebrations inside monasteries provided there were "no banners or slogans against China."¹²⁷ On the day of the celebration, riot police surrounded the elementary school where the public ceremony was due to take place. Tsewang Dolma, the president of the Nepal chapter of the Tibetan Youth Congress, told the Associated Press that "[p]olice officers were there from the early morning, 2 o'clock. We tried to celebrate, but the police didn't allow anyone inside the gate."¹²⁸ Police also entered the compound of the Samten Ling monastery in Boudhanath and confiscated posters of the Dalai Lama and a celebratory banner.

Outside Kathmandu, police have limited where Dalai Lama birthday celebrations can be held. One community worker in Pokhara's main Tibetan settlement told Human Rights Watch:

These restrictions are all new. We used to celebrate His Holiness' birthday freely here, and we would even have a procession in Pokhara. Many ordinary Nepali would join, it was a happy occasion. We always invited

¹²⁵ Human Rights Watch interview with D.L. Kathmandu, June 2013.

¹²⁶ Human Rights Watch interview with T.D., Kathmandu, June 2013.

¹²⁷ "Nepalese authorities ban Tibetan celebrations on Dalai Lama's birthday," Associated Press, July 6, 2011, <http://www.nydailynews.com/news/world/nepalese-authorities-ban-tibetan-celebrations-dalai-lama-birthday-article-1.156038> (accessed October 7, 2013).

¹²⁸ Ibid.

Nepali officials to come, and they often came and shared the food. Now we still invite them but they don't come anymore, and there is a police vehicle stationed at the settlement entrance.¹²⁹

Community leaders in Kathmandu and Pokhara told of being repeatedly called by police and officials from their respective Central District Office in the days and hours that preceded that celebration day.

They call me many, many times. They ask for all sorts of details: 'What are you planning?' 'How many people are involved?' 'Will you shout slogans?' Sometimes they ask me to come to their office. It's a lot of pressure. I try my best to explain that we just want to celebrate His Holiness's birthday, but they impose all sorts of restrictions: they even asked me not to have pictures of His Holiness. The ceremony is for his birthday, how can we not have his picture up?

After lengthy negotiations, we were allowed to hold a small event, only for the local residents of Boddha, inside our building. Several policemen came, some in plain clothes, to monitor the event. They stood there, in the room, they took pictures. It feels very oppressive; we are not doing anything criminal.¹³⁰

The prohibition on gatherings has at times extended to Tibetan cultural events with no obvious political dimension. For instance, in October 2011, the police stopped a performance by the local Tibetan Opera Association (Lhamo Tsokpa), and ordered the performers and the organizers to cancel the event. The police said they had received instructions from the Central District Administrative Office.¹³¹

Tibetan NGOs have become victims of police suspicion about any kind of Tibetan-themed event. Groups that address community issues, such as drug-use prevention, education, and women's rights, say that they have met with increased difficulties in their operations since 2008.¹³²

¹²⁹ Human Rights Watch interview with a refugee settlement community worker, Pokhara, June 2013

¹³⁰ Human Rights Watch interview with a representative of the Tibetan Boudhanath Community, December 2012.

¹³¹ "Nepali authorities bar Tibetans from cultural performance," *Phayul*, October 03, 2011, www.phayul.com/news/article.aspx?id=30103 (accessed October 8, 2013).

¹³² Human Rights Watch interview with the head of a Tibetan women's group, Kathmandu, June 2013.

The leader of a women's rights organization, which is supported by, but not part of the Central Tibetan Administration in Dharamsala, told Human Rights Watch that the restrictions have come at a time when their services are particularly needed by the community, noting that Nepal's refusal to confer legal status on many Tibetans has increased their employment difficulties and put new stresses on families and relationships.

We used to set up a booth in Boudhanath at special occasions, where we would do outreach to the community and raise funds for our activities. But this has become impossible. The police won't let us do that anymore. Last time, we just set up a table with some leaflets and a banner with the name of our organization. Immediately the police arrived and told us to leave. I tried to argue with them but we had no choice. They didn't tell me why it was illegal, but we can't afford to bring problems with the authorities to our organizations. So we just packed and left.¹³³

A community leader in Kathmandu similarly recounted:

They [the Central District Office] say this is because of Nepal's One China policy, we cannot have anti-China activities. But I tell them, our activities are peaceful, they are open, we are not breaking the law. Anyone can come. Nowadays Chinese Buddhists are travelling to hear His Holiness [the Dalai Lama] teachings in Dharamsala. But they just say: "I have my orders."¹³⁴

Pressures on NGOs and Activists Defending Tibetans

The Nepali authorities have also adopted a hard line towards human rights organizations, lawyers, and NGOs who are working on Tibetan-related issues or cases.

Sudip Pathak, head of Human Rights Organization of Nepal (HURON) told Human Rights Watch that the Nepalese government was "not giving any space to discuss the issue" and was always putting pressure on the organization for its work on Tibetans:

¹³³ Ibid.

¹³⁴ Human Rights Watch interview with C.W., Kathmandu, June 2012.

As a human rights organization we have the duty to protect the refugees who are living in Nepal. But when we stand for the Tibetan refugee in Nepal, it's really difficult. Lots of the time, the government pressures us: "Don't work for the Tibetans, do not protect the Tibetans inside the Nepal."¹³⁵

In meetings with government officials they tell us: "Why you are supporting the Tibetans? Nepal supports the One-China policy. So you don't have the right to protect the Tibetans in Nepal."¹³⁶

Pathak also reported anonymous calls and threats made in apparent connection to challenges brought by HURON on detention cases:

We provide legal representation to Tibetans. And things can be really difficult. Sometimes we get the anonymous calls made from public telephone booths, for instance after we make applications [for legal representation of detained Tibetans] after the police file their First Information Reports.¹³⁷

The Nepali authorities have also tried to discourage legal activism on Tibetan cases by portraying lawyers who litigate on behalf of Tibetans as security risks and "anti-China" elements. Hari Phuyel, a lawyer and consultant for the International Commission of Jurists, told Human Rights Watch that such attacks had affected their own security and compromised their work.¹³⁸

My name, together with Govinda Bandi and Sudip Pathak, has been mentioned negatively in the press because of our work with Tibetan refugees and asylum seekers. It was an article in which the Intelligence Department was interviewed about Tibetan activities in Nepal. We were labelled anti-China in the article.

¹³⁵ Human Rights Watch interview with Sudip Pathak, Human Rights Organization of Nepal (HURON), Kathmandu, May 2013.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Human Rights Watch interview with Hari Phuyel, Kathmandu, October 2013.

After this article appeared, I went to senior people in the Intelligence Department and asked them why they had published our names, that it affected our security and compromised our work. They said to me “It’s not just about you three. We know everything about anyone connected to Tibet work. This time your names appeared, next time it will be others.”

Subsequently I had an interview with the Chief Secretary to the government (Lila Mani Poudyel). I know him well. As soon as I started raising this issue, he said, “Talk to me about any other subject, do not talk to me about Tibetans,” indicating that his hands were tied on the matter.¹³⁹

Govinda Bandi, another prominent human rights lawyer who litigated several Tibetan cases before the Supreme Court, told Human Rights Watch that the Chinese Embassy had placed restrictions on his ability to obtain visas to China as a consequence of his work:

After my name appeared in the article mentioned by Hari Phuyel. I was denied a visa to Hong Kong. I have spent a lot of time in Hong Kong, and have never ever been denied a visa, so this was a surprise. I found out through contacts that the Chinese embassy had blocked my name as a result of the article and my name being connected to my work with Tibetan asylum seekers. I managed to get a visa later on, but only after getting letters of invitation and guarantees from the university, which had invited me, something I’ve never had to do before.¹⁴⁰

Negative press coverage of Tibetan issues in Nepali media, and the publication of stories that allege that Tibetan activists and monasteries are engaging in activities that are serious national security threats against China, are also making it more difficult to work on Tibetan issues.

According to Yubaraj Ghimire, a journalist who has covered the China-Nepal relationship, the Chinese government is directly involved in the publication of some of the stories:

¹³⁹ Ibid.

¹⁴⁰ Human Rights Watch interview with Govinda Bandi, Kathmandu, October 2013.

I can't prove it but from talking to journalists and editors, there is a concerted effort made by China to plant stories—which are simply not true—in the Nepali press to make the Tibetans look like a serious national security threat to China.¹⁴¹

Because of the negative press coverage of Tibetan issues in the Nepali media, many organizations are choosing to stay away from the issue, for fear of jeopardizing their other work. A leading human rights NGO coordinator told Human Rights Watch:

Working on Tibetan issues is too sensitive and risks jeopardizing work on other, more mainstream issues. We have discussed taking up projects on Tibetan refugees but our board members think it would bring too much difficulties to our work. It could be used by people who oppose our work for accountability and justice.¹⁴²

Tibet is also a sensitive issue for local politicians. Siddhartha Gautam, an MP candidate in Lumbini, told Human Rights Watch that his public pro-Tibet stance had caused him to be placed under investigation by the police, reportedly at the demand of the Chinese Embassy in Kathmandu:

I know that my name is on the blacklist of the Chinese embassy due to my pro-Tibet activities. I know this because I have friends in the right places who tell me things. When I announced my candidacy for MP from Lumbini district, the local police station went around my village asking for information about me and my activities. This happened on the directive of the Nepal Department of Investigation who in turn had been warned about me by the Chinese embassy. This has all been confirmed to me by friends in the intelligence and police. I am unable to campaign in Lumbini because I get threatening phone calls, on my mobile, on my home phone; my family get threats as well. The threats are always about my pro-Tibet work.¹⁴³

¹⁴¹ Human Rights Watch interview with Yubaraj Ghimire, Kathmandu, October 2013.

¹⁴² Human Rights Watch interview with L.R., Kathmandu, June 2012.

¹⁴³ Human Rights Watch interview with Siddhartha Gautam, Kathmandu, June 2012.

Reaction to Self-Immolation Cases

Since February 2009, more than 120 Tibetans have self-immolated inside Tibet in what appear to be protests against Chinese policies in Tibet. The Chinese government immediately blamed the self-immolations on Tibetan “forces” abroad, and deployed extensive measures to prevent self-immolations from multiplying, including by bringing criminal charges against relatives and individuals accused of having helped those who self-immolate; in some cases, such alleged “accomplices” have been charged with murder.¹⁴⁴

On November 10, 2011, about a month ahead of a scheduled state visit to Nepal by China’s then-premier Wen Jiabao, a man only identified as Bhutuk attempted to set himself on fire in front of the Buddha Stupa in Kathmandu, a gesture that seemed to echo the dozen or so self-immolations in protests at Chinese policies that had taken place in Tibet by that time.¹⁴⁵ The attempt failed, but the Nepali authorities were unable to question the man, who managed to flee and disappear.

Rather than take steps to discourage suicide or pursue other legitimate public policy responses, the Home Affairs Ministry responded to this incident by threatening to take retaliatory measures against the entire Tibetan community. The *Telegraph Nepal* reported the Ministry’s spokesperson as stating:

The government is in a very difficult situation since the Tibetans have begun setting themselves on fire. The government of Nepal is committed on its One China policy. We will not allow any activities that go against the interest of our neighbors. This will lead to a situation where the government may have to slash all the facilities being granted to the Tibetans residing in Nepal, such as that of their freedom to move even.¹⁴⁶

¹⁴⁴ The Dalai Lama has to date refused to condemn self-immolation as a form of protest, while the Tibetan government-in-exile has called for an end to this form of protest. “Tibetan ‘government in exile’ calls for end to self-immolations,” *The Guardian*, October 25, 2012, <http://www.theguardian.com/world/2012/oct/25/tibetan-government-end-self-immolations> (accessed October 7, 2013).

¹⁴⁵ Many in the Tibetan world, both inside and outside of China, view the people who commit self-immolation as “heroes/martyrs” who have sacrificed their life for the Tibet cause. They tend to see the immolations as a vindication of their claims about Chinese oppression of Tibet, and as symbolic victories against the large security apparatus mobilized to prevent self-immolations from happening. Large posters featuring a mosaic of pictures of people who have self-immolated feature prominently in Tibetan settlements in Nepal.

¹⁴⁶ “Tibetan Refugees in Nepal: Difficult days ahead,” *Telegraph Nepal*, November 13, 2011, <http://www.telegraphnepal.com/headline/2011-11-13/tibetan-refugees-in-nepal:-difficult-days-ahead.html> (accessed October 9, 2013).

Following successive self-immolations by Tibetans in Kathmandu in February and October 2013, the Nepalese government reacted by secretly disposing of the bodies. Both incidents were followed by a surge in police presence in the area, the questioning of community leaders and Tibetan activists, and the prevention of public funeral-related events or activities.

On February 13, Druptchen Tsering, a 25-year-old Tibetan monk who had recently arrived from China, set himself on fire in front of the Buddha Stupa. He was taken to Kathmandu Teaching Hospital but died within a few hours. Police immediately stepped up the security presence in the Boudhanath area, and issued warnings to the Tibetan community and religious leaders in the area that they should not use the incident to politically agitate. The authorities did not accede to the demand by Tibetan community representatives that the body be handed over for a religious ceremony, and on March 25 had the body secretly cremated, only informing the clerics of one Tibetan monastery about the timing of the cremation so that funeral rites could be held in the monastery.¹⁴⁷

Some Nepali officials said they were merely implementing Nepali law, under which next of kin or close relatives have 35 days to claim a body, after which the authorities can dispose of the remains themselves. But this provision does not explain why the date and time of the cremation were kept from the public, especially in light of repeated demands by members of the Tibetan community to be allowed to organize a ceremony.

On August 5, 2013, Karma Ngedon Gyasto, a former monk who had escaped to Nepal a few months earlier, set himself on fire at the Buddha Stupa. He was pronounced dead on arrival at Tribhuvan University Teaching Hospital.¹⁴⁸ Immediately afterward, the authorities deployed a heavy security presence in and around Buddha Stupa, and briefly detained several Tibetan community representatives for questioning. Seeking to prevent a repeat of the secret disposal of the body by the authorities, on August 12, the Tibetan Welfare Office filed an application to the Central District Office of Kathmandu to hand over the remains to representatives of the Tibetan community for the purpose of arranging funeral rites.

¹⁴⁷ "Dismay over hasty secret cremation of Tibetan monk who self-immolated in Nepal," International Campaign for Tibet, March 28, 2013, <http://www.savetibet.org/dismay-over-hasty-secret-cremation-of-tibetan-monk-who-self-immolated-in-nepal/> (accessed October 8, 2013).

¹⁴⁸ "Tibetan monk dies after self-immolation in Kathmandu, Nepal," International Campaign for Tibet, August 7 2013, <http://www.savetibet.org/tibetan-monk-dies-after-self-immolation-in-kathmandu-nepal/> (accessed October 8, 2013).

HURON, the International Commission of Jurists, and other nongovernmental organizations interceded with the authorities as well, requesting at a minimum the presence of a cleric at the cremation.¹⁴⁹

On August 31, a public notice was placed in a Nepal-language newspaper, calling next of kin or relatives of Karma Ngedon Gyasto to claim the body within seven days. But on the evening of September 2, before the expiration of that 7 days limit, the authorities had the body cremated. The timing of the cremation, which took place 27 days after the authorities had taken custody of the body, violated the legal requirement that any unclaimed body be kept for a minimum of 35 days. According to HURON, the Chief District Officer of Kathmandu and several other Nepalese government officials left for a scheduled visit to China at the invitation of the Chinese government on September 4-5, raising suspicion that the authorities had wanted to dispose of the body before their arrival in China.¹⁵⁰

The police subsequently allowed a small ceremony to take place indoors, on the condition that no political posters or slogans would be displayed. A small police presence monitored the event but did not otherwise interfere. Since this second self-immolation case, police have been dispatched to the Buddha Stupa area on politically sensitive dates. The authorities' prevention of funeral-related public activities violated the Tibetans' rights to peaceful assembly and freedom of religion, both guaranteed under Nepal's Provisional Constitution and under international law.

¹⁴⁹ Letter from HURON to District Administration Office and Ministry of Home Affairs, September 2, 2013.

¹⁵⁰ Human Rights Organization of Nepal (HURON), "Update Regarding Cremation of Karma Ngedon Gyatso," September 12, 2013.

VIII. Arbitrary Arrest and Detention

In recent years, the sharp curbs on Tibetan protests in Nepal have led to a reduction in the number of Tibetans arrested and detained for participating in “illegal” protests. Nepali authorities, however, appear to be using short-term detentions, often under the Public Offense Act, to prevent possible protests, to question activists, or to simply intimidate the Tibetan community.

Most detentions last less than 24 hours, although they sometimes extend to several days.¹⁵¹ Under Nepali law, persons arrested must be produced before the adjudicating authority, typically a court or the chief district officer (CDO), the highest civil servant in each of the country’s 75 districts, within 24 hours of the detention.¹⁵² By that point, they must either be charged with a crime or released. Under the Public Security Act, however, the CDO is allowed to carry out “preventive detention” for up to 90 days. This can be extended for up to six months on the simple approval of the Home Ministry.¹⁵³

Most detentions of Tibetan protesters or people suspected of wanting to protest take place under the Public Offense Act and not the Public Security Act; as detailed below, the Supreme Court has repeatedly quashed detentions of Tibetans under the latter. In most cases, the authorities make no real effort to charge any of those arrested with criminal offenses, suggesting that the reason for the detention is simply to prevent Tibetans from gathering or protesting.

¹⁵¹ Human Rights Watch interview with Boudhanath’s Tibetan Community leader, Kathmandu, June 2012. See also International Campaign for Tibet, “Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees, 2011,” October 11, 2012, www.savetibet.org/dangerous-crossing-2011-update/ (accessed October 31, 2013).

¹⁵² See International Commission of Jurists, “Nepal – National Security Laws and Human Rights Implications,” August 2009.

¹⁵³ Section 3.1 of the Public Security Act, states: “The Local Official, if there are reasonable and sufficient grounds to prevent a person immediately from committing specific activities likely to jeopardize the sovereignty, integrity, or public tranquility and order of the Kingdom of Nepal, may issue an order to hold him/her under preventive detention for specified term and at specified place.”

Arrests

A Tibetan who lives in the Jawalakeel settlement told Human Rights Watch:

I have been arrested so many times that I have lost count. Every time the police tell me that we cannot hold our demonstrations because of China policy. We are guests here we have no rights.

One member of the Tibetan Youth Congress told Human Rights Watch she had been repeatedly detained without ever being charged with a crime:

Now if there is a Chinese delegation visiting Nepal, the police just arrest us, without any reason or cause. They just accuse us [of pro-Tibet activities] and we are arrested. Sometimes they come to our houses in the middle of the night to arrest us. We wouldn't mind being arrested if we had broken Nepali law! All our activities have always been nonviolent. Whatever we do, whether it's a protest or a hunger strike, we do it in a peaceful way, respecting the country's laws and regulations.¹⁵⁴

In March 2013, Nepalese police arrested 18 people in Kathmandu on suspicion of “anti-China activities” on the eve of the anniversary of the 1959 uprising. All but three were released on the same day after having been questioned. The detentions were clearly designed to prevent any public demonstration in Kathmandu, and were part of what a spokesperson from the Home Ministry had described a week earlier as “necessary security arrangements in areas deemed sensitive, to foil any untoward incidents.”¹⁵⁵

One activist from the Tibetan Youth Congress was detained preemptively ahead of the visit by a high-level Chinese dignitary:

The police came to my apartment, four of them, and took me to the police station. I said, “Why are you detaining me? I haven’t done anything!” One of

¹⁵⁴ Human Rights Watch interview with P.A., August 5, 2013.

¹⁵⁵ “Nepal police arrest Tibetans on uprising anniversary,” *AFP*, March 10, 2013, http://www.google.com/hostednews/afp/article/ALeqM5jPNfpoe5vJRnUrbX2cbo_BvDuvYg?docId=CNG.e212c175479248485d206b2cd5875c3a.4b1 (accessed October 10, 2013).

the inspectors told me later at the police station: ‘You know that Nepal abides by the One China Principle; that’s why you cannot have your Free Tibet activities here.’ I was released in the evening.¹⁵⁶

One volunteer working with Tibetan refugees told Human Rights Watch police had come to his home in the middle of the night to arrest him, as a “preventive measure”:

I was sleeping at home with my wife and two children when the police came to arrest me. It was around midnight. First they just said they wanted to check some documents, and ask me some questions. One of the police officers I knew, the two others I didn't, I think they were from CID [Criminal Investigation Department]. They said they knew I was involved in “anti-China” activities” and asked if we were planning any action. After that they took me to the police station. They kept asking the same questions, whether there was something planned, if I had received instructions from Dharamsala, and what monasteries were involved.

They kept me all night and then the day after. I was finally released at the end of the day. After I was released, I learned that all my colleagues had been questioned too.¹⁵⁷

Shortcomings in the Administration of Justice

The extensive restrictions imposed on the basic rights of Tibetans since 2008 have been greatly facilitated by the general weakness of Nepal’s legal institutions, the impunity enjoyed by perpetrators of most human rights abuses in Nepal, and a political vacuum resulting from the political stalemate that followed the establishment of the Constituent Assembly in 2008.¹⁵⁸ Nepal’s judicial framework offers few protections for defendants and victims of abuses and is subject to widespread political interference.¹⁵⁹

¹⁵⁶ Human Rights Watch interview with an elected member of the Tibetan Youth Congress, Kathmandu, December 2012.

¹⁵⁷ Human Rights Watch interview with a Tibetan volunteer working with refugees, Kathmandu, June 2013.

¹⁵⁸ See HRC, “Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal,” A/HRC/16/23, February 16, 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/107/67/PDF/G1110767.pdf?OpenElement> (accessed January 29, 2013); and International Commission of Jurists, “Nepal – National Security Laws and Human Rights Implications,” August 2009.

¹⁵⁹ Ibid.

In this context, Nepal's security agencies, encouraged by the country's political authorities and actively courted by the Chinese government and security organs, have exercised—and at time abused—their wide-ranging powers to stifle the Tibetan minority without meaningful checks and balances.

Lack of Judicial Review of the Powers of Chief District Officers

The wide discretionary powers conferred on CDOs have long been a human rights concern in Nepal.¹⁶⁰ The CDO has authority over all government offices in his/her district, with the exception of courts and defense-related matters.¹⁶¹ CDOs supervise and issue orders to the police to maintain law and order and “tranquility” in the districts.¹⁶² As such, they are empowered to prevent and disperse gatherings, and to approve police detentions of suspects, without judicial review.

Many human rights organizations have expressed concerns regarding the expansive powers CDOs enjoy under the Local Administration Act (LAA), the Public Security Act (PSA), and the Public Offences Act (POA).¹⁶³

The CDO is the main interlocutor for Nepal's Tibetan refugee settlement officers, who depend on CDO offices for the issuance of routine official documents, authorizations, and decisions necessary for settlement operations and for the life of the Tibetan community in general. By virtue of exercising both administrative and security powers, CDOs are in a position to influence the organization of public events, gatherings, and even the activities of specific individuals within the community.¹⁶⁴

The head of a Tibetan community organization told Human Rights Watch that the Nepali authorities regularly reiterate the prohibition on any form of political protest by Tibetans:

¹⁶⁰ See International Commission of Jurists, “Nepal – National Security Laws and Human Rights Implications,” August 2009.

¹⁶¹ Section 5(2) and r(4) of the LAA 1971.

¹⁶² Section 5(5) of the LAA 1971.

¹⁶³ According to a 2009 report by the International Commission of Jurists (ICJ): “Unfettered powers granted to the CDO to prohibit and prevent assembly, even peaceful gatherings, with no effective oversight on the exercise of these powers, results in severe restrictions on the right to assemble. Given the extraordinary nature of powers conferred on the CDO, without any independent judicial review, the provisions of the LAA could lead to arbitrary detention of demonstrators, suppression of non-violent assemblies and other peaceful expressions of opinion.” Source: International Commission of Jurists: Nepal – National Security Laws and Human Rights Implications, August 2009, p. 41.

¹⁶⁴ Human Rights Watch interview with the head of a Tibetan community organization, Kathmandu, November 2013.

The CDO and officials from the Home Ministry routinely call to remind me that any kind of political protest is prohibited. This happens every time there is a high-level Chinese visitor, or it's His Holiness' birthday, or March 10. They tell me "You'd better make sure that nothing happens. If there is some 'Free Tibet' or 'anti-China' incidents you will be held responsible because you are the head of the Tibetan community. This is because our government follows the 'One China policy.'"¹⁶⁵

One elected Tibetan settlement representative told Human Rights Watch how difficult it had been for him to obtain CDO approval for even a small nonpolitical public event. As he emphasized:

We cannot function without CDO goodwill and cooperation. Some CDO officers are understanding towards Tibetans, some are not. Everything depends on the CDO. We have no rights here, so we have to compromise.¹⁶⁶

This reality means that Tibetan representatives often must discourage community members from protesting or organizing protests in order to protect the larger interests of the community.

We are in a difficult position, having to always justify limitations that are imposed on us. Especially the young people, they don't understand. They tell me, "Why do you listen to the Nepali?" But I have no choice. If I don't cooperate, things will be much worse.¹⁶⁷

Preventive Detention and Habeas Corpus Rights

The CDO also plays a central role in preventive detentions, which Nepal's Interim Constitution allows in situations where a person is deemed to pose a threat to the sovereignty, integrity, or law and order of the country.¹⁶⁸ The Public Security Act (PSA) allows preventive detention of up to 90 days "to maintain sovereignty, integrity or public

¹⁶⁵ Human Rights Watch interview with the head of a Tibetan community organization, Kathmandu, November 2013.

¹⁶⁶ Human Rights Watch interview with a Boudhanath Tibetan Elected Representative, Kathmandu, April 2013.

¹⁶⁷ Ibid.

¹⁶⁸ Article 25(1) of the Interim Constitution of Nepal.

tranquility and order.”¹⁶⁹ This can be extended for up to six months on the approval of the Home Ministry. But neither the Interim Constitution nor the PSA clearly states what actions constitute violating “integrity or public tranquility and order.”¹⁷⁰

Under section 3(2) of the Public Offences Act and section 6(1)(d) and 6(2) of the Local Administration Act the police do not need court approval for such detentions, but only a referral from the CDO. The 24-hour timeframe within which such a referral is supposed to be sought is often ignored, and police delay recording the time of arrest until they are ready to have the detention approved or ready to release the suspect.

A detainee can challenge the lawfulness of his detention in court if he or she is presented before one, or by petitioning the Supreme Court for a writ of habeas corpus.¹⁷¹ The Supreme Court has the power to issue a writ to compel release of detainees it determines have been arbitrarily detained.

On several occasions, the Supreme Court has ordered the release of Tibetan detainees:

- On July 10, 2011, the Supreme Court ordered the release of 12 Tibetans after finding that their 20-day detention was “without reasonable explanation” and “illegal.” The 12 men had been arrested on June 21 for their participation in a candlelight vigil in solidarity with Tibetans in Tibet. The court criticized the public prosecutor, the CDO of Kathmandu, and officers at the Boudhanath police station for having failed to provide an arrest warrant and a written explanation of grounds for the detention. One of the detainees alleged that he had been assaulted in detention in an attempt to force him to confess he was one of the organizers of the vigil.
- On March 22, 2010, the Supreme Court ordered the release of three Tibetans—Sherap Dhondup, Sonam Dhondup, and Kelsang Dhondup—who had been detained on March 9 and accused of “posing a threat to the relationship between Nepal and China.” The Court found that their detention was in violation of the Public Offense Act, and that the initial detention order of the Kathmandu District Administration Office was illegal.

¹⁶⁹ Section 3(1) of the PSA 1989.

¹⁷⁰ Section 4(20) of the PSA 1989

¹⁷¹ Article 107(2) of the Interim Constitution.

- On July 8, 2008, the Supreme Court ordered the release of three Tibetans—Nawang Sangmo, Tashi Dolma (both Nepalese nationals), and Kelsang Chung, who had been held under Nepal’s Public Security Act (PSA). The court stated that the order issued by the Kathmandu CDO and the written submission of the Home Ministry had failed to “show cause” and satisfy the grounds set forth in the PSA. The detained activists had been sentenced to three months in prison under the Public Security Act. “There is no basis for reaching a conclusion that they threatened peace and security just by chanting slogans,” the judges said in their ruling.¹⁷²

While these habeas corpus cases have been successful, we are aware of no evidence they have led to a decrease in the Nepali police practice of detaining Tibetans for short periods of time. There are no effective redress mechanisms available to Tibetans detained overnight or for short periods of time.

Moreover, the human rights organizations and lawyers who helped take these cases to the Supreme Court say that officials tried to deter them, saying it could lead to harsher measures against Tibetans. As the president of HURON put it:

Sometimes they threaten us like this: “If [the] Tibetan community continues to pressure for their activities [in protest at China], one day we’ll have to tell them ‘you cannot stay anymore in Nepal.’”

Blacklists of those to be Detained

As early as March 2008, Nepali police, under Chinese pressure to suppress the Tibetan protests in Kathmandu, started drawing up lists of leaders of Tibetan organizations who could be targeted for preventive arrests. As Human Rights Watch noted at the time:

On March 17, members of the Tibetan community learned from a reliable source that a list had been drawn up of 11 Tibetans who were current or former leaders of local Tibetan organizations. Human Rights Watch was

¹⁷² Human Rights Watch interviews with the lawyer of the detainees, Govinda Sharma, Kathmandu, between June 19 and July 8, 2008; and “Nepal SC orders release of three pro-Tibetan activists,” *The Economic Times (India)*, July 8, 2008, http://articles.economictimes.indiatimes.com/2008-07-08/news/28437982_1_kathmandu-activists-tashi-dolma (accessed October 11, 2013).

provided with the names of the 11 people on the list. When a senior Nepali lawyer asked a senior member of the Nepal Police about this list, he was told that arrest warrants had not been issued for the people on the list, but that the possibility of preventive detention could not be ruled out. Human Rights Watch was told by leading figures in the Tibetan community that another five people were later added to the list.¹⁷³

The list was of particular concern given the government practice before Nepal's 2006 Comprehensive Peace Accord of drawing up "blacklists" of Nepali human rights activists and political activists, some of whom were subsequently detained or even killed.¹⁷⁴

The existence of the list was confirmed in 2009 by the deputy inspector general of police, Bharat Bahadur G.C., who acknowledged not only that his services had established a list of Tibetan activists, but also that it had been used as the basis to carry out preventive detentions of "leaders of Free Tibet organizations" ahead of the anniversary of the protests in Tibet:

The Tibetan Youth Congress, the Tibetan Women's Association, Students for Free Tibet, and other important 'Free Tibet' organizations have branches in Nepal. In the past they were extremely active. After working on this for a while, the police acquired the names, addresses and individual details of the leaders of these organizations, and we also got evidence that they were planning illegal gatherings. In the middle of the night of March 8 [2009] we carried out a blitz operation involving over a hundred policemen, arresting 14 leaders of 'Free Tibet' organizations.¹⁷⁵

¹⁷³ Human Rights Watch, *Appeasing China: Restricting the Rights of Tibetans in Nepal*, July 2008, p. 48.

¹⁷⁴ In December 2005, the names of five Nepali human rights activists were circulated by the then Royal Nepal Army in what local and international human rights organizations perceived as an attempt to instill fear in the human rights community. See Human Rights Watch press release, "'Nepal: Human Rights Defenders Under Threat: Enhanced International Protection Urgently Needed,'" <http://hrw.org/english/docs/2004/12/17/nepal9910.htm>. In February 2005, a list of 21 human rights defenders was circulated immediately following the King's takeover for the apparent purpose of arrests, restrictions on freedom of movement, and surveillance. See Human Rights Watch press release, "*Nepal: Danger of 'Disappearances' Escalates: International Monitoring, Pressure Vital to Protect Rights*," <http://hrw.org/english/docs/2005/02/09/nepal10152.htm>

¹⁷⁵ "Exclusive Interview with Nepal's Deputy Inspector General of Police: 'Tibetan Pro-independence elements' Won't Be Able To Stir Up Trouble in Nepal," *Huanqiu Shibao*, March 29, 2009 ["专访尼泊尔警察副总监: '藏独'在尼闹不起来", 2009/03/29, 环球时报], <http://world.huanqiu.com/roll/2009-03/417537.html> (accessed October 10, 2013).

One interviewee told Human Rights Watch that being listed by the police as a Tibetan activist raised the risks of having his rights further abridged:

Because your name appears on a list, it's like you're considered a criminal already. The police can detain you at will, and they can always say that it was for security reason.¹⁷⁶

Preventive detention of individuals featuring on the police's list of Tibetan activists has now become a routine occurrence ahead of politically sensitive dates as well as official visits of high-ranking Chinese leaders.

Ahead of the state visit of then-premier Wen Jiabao on January 14, 2012, Nepali authorities launched a comprehensive pre-emptive clampdown, detaining over a dozen Tibetan activists whose names were on the list, dispatching several hundred riot police to key Tibetan areas, and restricting the movements of elected Tibetan community leaders. Police also detained 114 Tibetans from India who had arrived in four buses, according to a communiqué by the Nepal's Metropolitan Police. They were subsequently handed over to the Department of Immigration and sent back to the border.¹⁷⁷

Nepali police implemented similar, although not as extensive, clampdowns during the three-day visit of Zhou Yongkang, then head of China's domestic security apparatus, in August 2011. Shortly after the visit, the Nepali Home Affairs Ministry instructed the police, the Armed Police Force, and the National Investigation Bureau to find out the details of individuals "involved in pro-Tibetan activities."¹⁷⁸

Of particular concern among Tibetans interviewed for this report was the fear that such lists are shared with the Chinese government or the Chinese Embassy in Kathmandu. One Tibetan businessman told Human Rights Watch that many were worried about potential implications for those who have relatives in China:

¹⁷⁶ Human Rights Watch interview with T.J., Kathmandu, June 2012.

¹⁷⁷ "Chinese PM Wen to make brief stopover in Nepal en route Qatar," *Nepalnews.com*, January 14, 2012, <http://www.nepalnews.com/archive/2012/jan/jan14/news03.php> (accessed October 9, 2013).

¹⁷⁸ "Nepal Home Ministry demands details of anti-China activists," *Telegraph Nepal*, August 25, 2011, citing the Kantipur National Daily, <http://www.telegraphnepal.com/headline/2011-08-25/nepal-home-ministry-demands-details-of-anti-china-activists.html> (accessed October 10, 2013.)

We are afraid that the Nepali authorities share all this information with China. Many of us have relatives back in Tibet, and we fear that the authorities there might retaliate against them.¹⁷⁹

One Tibetan activist who was forced while in custody to sign a document pledging not to engage in further “illegal” activities in Nepal was told that four copies of the documents would be made, including one “for the Chinese Embassy.” It is unclear whether this was true or was made to intimidate him.¹⁸⁰

Surveillance

A number of Tibetans interviewed for this report described having been placed under regular surveillance. They said they noticed people in civilian clothes watching their homes or following them on the street. They also reported that relatives, neighbors, or colleagues had been approached by people working for the police, asking questions about them. Although the individuals carrying out the surveillance appear to change regularly, some Tibetans said that from time to time they recognized those who were watching them. Interviewees also said they assumed that their telephone call and text messages were monitored.

One former journalist told Human Rights Watch:

There are many Nepali police, intelligence-types, and informers now. I have often been followed, and Special Branch officers have questioned people I work with and relatives. I haven’t done anything wrong, but I really feel Nepal is not safe anymore. Because why would they do that if not for China?¹⁸¹

At times such surveillance is perceived as a form of intimidation:

This year when I have been meeting with people from human rights organizations, or diplomats, or even some journalists I have noticed these people. They don’t actually try not to be seen, they will sit right next to us,

¹⁷⁹ Human Rights Watch interview with J.T., business owner in Thamel, Kathmandu, December 2012.

¹⁸⁰ International Campaign for Tibet, *Dangerous Crossing: Conditions Impacting the Flight of Tibetan Refugees*, 2011, October 11, 2012, www.savetibet.org/dangerous-crossing-2011-update/ (accessed October 31, 2013).

¹⁸¹ Human Rights Watch interview with K.C., Kathmandu, December 2012.

or have a motorbike follow the taxi. As a result I have to be a bit careful about who I meet.¹⁸²

Several locations are under regular police surveillance. In Boudhanath, residents assume that some of the people joining the daily circumambulation of the stupa are in charge of monitoring the Tibetan population, and say that it is better not to talk about anything sensitive there.

In the 2009 interview given to *Huan Qiu*, Nepal's deputy inspector general of police Bharat Bahadur G.C., acknowledged dispatching plainclothes officers to Tibetan areas:

There are also many plainclothes officers in all sensitive areas, they are constantly watching the activities of 'Tibetan pro-independence elements.'¹⁸³

More specifically, he acknowledged a significant increase in surveillance efforts after the 2008 protests, including deployment of the Special Branch and use of informers in both the Nepali and Tibetan communities:

We are really getting better and better at this [intelligence gathering]. Nepal's police force has an intelligence department; in the past its main duties were related to major criminal cases, and had nothing to do with Tibetan issues. After coming to Kathmandu, I realized that in order to better deal with Tibetan issues, we needed to rely on powerful intelligence. That is why I ordered the intelligence department to investigate the situation in Tibetan settlement areas, especially the illegal activities of "Tibetan pro-independence elements." Now this force has already infiltrated all these areas, and they are gathering information from local Nepali citizens as well as from ordinary Tibetan people. The results are obvious and the intelligence department coordinates efficiently with the actions of the police.¹⁸⁴

¹⁸² Human Rights Watch interview with a volunteer at the Tibetan Refugee Reception and Transit Center, Kathmandu, December 2012.

¹⁸³ "Exclusive Interview with Nepal's Deputy Inspector General of Police: 'Tibetan Pro-independence elements' Won't Be Able To Stir Up Trouble in Nepal," Huanqiu Shibao, March 29, 2009 ["专访尼泊尔警察副总监: "藏独"在尼闹不起来", 2009/03/29, 环球时报], <http://world.huanqiu.com/roll/2009-03/417537.html> (accessed October 10, 2013).

¹⁸⁴ Ibid.

Photographs and Video

Like many other police forces around the world, Nepali authorities have started systematically videotaping gatherings in public spaces and police operations. Many Tibetans detained during or after the 2008 protests reported having their photos taken or being filmed,¹⁸⁵ and concerns about being photographed or filmed have become more acute since the formal announcement of the Intelligence-Sharing Agreement between Nepal and China in 2010.

One Tibetan community leader told Human Rights Watch:

Earlier this year we were allowed to conduct our meeting, but the police were standing there at the entrance, and there was someone filming every person coming in or out.¹⁸⁶

Surveillance cameras have been installed in Boudhanath, and especially around the Buddha Stupa. The surveillance system was set up in two stages. In late 2011, the Boudhanath Development Office, a semi-official business promotion body, installed about 20 cameras around the stupa, officially “to monitor crime,” and not “for the purpose of curbing friendly Tibetan activities.”¹⁸⁷

In July 2013, the Metropolitan Police commissioner announced that as part of an “Integrated Security System” a total of 35 “state-of-the-art” surveillance cameras with night-vision had been installed around the Buddha Stupa and on the road connecting Kathmandu’s ring road to Boudhanath, as part of a “Integrated Security System” installed at a cost of around Rs 2.5 million (US\$25,000). Under this scheme the surveillance cameras installed around the Buddah Stupa were upgraded and connected to the Metropolitan Police Circle control room. Officials said the cameras would “monitor all

¹⁸⁵ Human Rights Watch report, *Appeasing China: Restricting the Rights of Tibetans in Nepal*, July 2008, <http://www.hrw.org/reports/2008/07/23/appeasing-china-o> .

¹⁸⁶ Human Rights Watch interview with K.T., Kathmandu, November 2012.

¹⁸⁷ “Buddhist Site Closely Watched,” Radio Free Asia, October 11, 2012, <http://www.rfa.org/english/news/tibet/watched-10112012162949.html> (accessed October 10, 2013).

public activities, including traffic movement and movement of pedestrians and devotees thronging the stupa for rituals.”¹⁸⁸

Tibetan residents and visitors expressed concern when the first set of cameras were installed, saying that the footage could be used to identify refugees, activists, or Tibetans visiting legally from China, who could then be at risk upon their return to China.¹⁸⁹ Those concerns persist:

There are cameras everywhere around here now. How can we have any guarantee about how these images are used? In Lhasa there are cameras everywhere, and now I fear that Boudhanath is going the same direction. For all we know, the Chinese police could be sitting in Lhasa watching us as we speak.¹⁹⁰

Tibetans detained in China after going abroad, legally or otherwise, have consistently reported being shown pictures of individuals and asked by Chinese police to identify them. Concerns that the Nepali authorities might be sharing photographs and video recording of Tibetans living in Nepal has induced fear in the Tibetan community, many members of which have relatives across the border in Tibet. Some Tibetan activists from India have also reported being turned away at the border after border agents recognized them from photos.

Inadequate Police Protection from Anonymous Threats

Most individuals exercising public responsibilities in the Tibetan community, such as NGO leaders, representatives of the Dalai Lama or the Central Tibetan Administration, settlement officers, or volunteers at the Tibetan Reception and Transit Centre (TRTC), told Human Rights Watch they had received anonymous threats. These threats are often made through anonymous phone calls, or delivered through third parties conveying vague “advice” and “warnings” about the personal risks involved if they continue their activities on the behalf of the Tibetan community.

¹⁸⁸ “Bouddha under surveillance for anti-China acts,” Himalayan News Service, July 28, 2013, <http://thehimalayantimes.com/rssReference.php?headline=Bouddha+under+surveillance+for+anti-China+acts&NewsID=385420> (accessed October 10, 2013).

¹⁸⁹ Written communication to Human Rights Watch by a visitor to the Boudhanath Development Office, December 2012. On file with Human Rights Watch.

¹⁹⁰ Human Rights Watch interview with L. T., Kathmandu, March 2013.

The head of the Tibetan Welfare Office, the unofficial representative of the Dalai Lama and the Tibetan Central Administration, told Human Rights Watch:

After I took the position I started receiving all sorts of threats. People calling my phone and saying I should be careful because it's very easy to attack me, or to kill me. They say things like 'if you don't stop, we'll take care of you'. Sometimes they speak Tibetan, sometimes Nepali. What can I say? There is nothing I can do about it, so I just ignore it and carry on.¹⁹¹

The leader of a Tibetan youth group reported receiving similar threats:

I receive threats all the time. People call and they say, 'We know where you live, at such and such address, you'd better be careful. Stop your activities.' But it doesn't deter me. Sometimes, if the caller is Tibetan, I reply to them: 'You are Tibetan too, aren't you ashamed to do this dirty work? Why are you hiding, making anonymous calls like that? Come and meet me if you have something to tell me.' Sometimes that really angers them and they start insulting me. I knew for sure that if I undertook this work, I would receive that kind of threat.¹⁹²

One interviewee with responsibilities for Tibetan asylum seekers who have just arrived from Tibet said that such threats had to be taken seriously.

Now I am extra careful when I drive my motorbike. It's very easy to arrange an accident; a car runs over me and then what?¹⁹³

A correspondent for a Tibetan news outlet told Human Rights Watch that such threats were effective in deterring people in the community from assuming positions of responsibility:

¹⁹¹ Human Rights Watch interview with the head of a Tibetan community organization, Kathmandu, December 2012.

¹⁹² Human Rights Watch interview with the coordinator of the Nepal chapter of the Tibetan Youth Congress, Kathmandu, December 2012.

¹⁹³ Ibid.

There is already a lot of pressure on the Tibetan community. Families are afraid of the consequences if their son or daughter gets involved in Tibetan activities, they know that it is dangerous work. Even the business people, they are afraid that there may be consequences if they take a high-profile position.¹⁹⁴

All Tibetans who described to Human Rights Watch having received anonymous threats said they felt it was futile to report the threats to the police. They said they believed the police would refuse to investigate complaints because they could not prove who was threatening them. They also said they believed the police would not undertake serious investigations because the police themselves were actively engaged in suppressing Tibetan activities.

One interviewee in Kathmandu explained that it would be “a waste of time” to turn to the police:

If I go to the police they will ask me to show some evidence. But the calls are always anonymous; the caller-number doesn't appear, so how could I prove anything? Even if they were to register my complaint, they still wouldn't do anything about it.¹⁹⁵

Another respondent said that the police knew about the pattern of intimidation and threats but never offered to investigate or to provide protection:

I am meeting regularly with the police. They call me, they question me, they ask to meet, and I have been detained many times. They know exactly what my situation is. If they wanted to investigate or find who called me it would be very easy for them.¹⁹⁶

Individuals told Human Rights Watch that people without proper identification are even less likely to report threats because they fear police may fine, arrest, or deport them.

¹⁹⁴ Human Rights Watch interview with a former Tibetan journalist, Kathmandu, June 2012.

¹⁹⁵ Human Rights Watch interview with a volunteer working at the Tibetan Refugee and Transit Center, Kathmandu, December 2012.

¹⁹⁶ Human Rights Watch interview with the President of the Nepal Branch of the Tibetan Youth Congress, Kathmandu, June 2013.

IX. Other Restrictions on Tibetans in Nepal

Most Tibetans in Nepal also continue to face a host of restrictions on movement within and outside Nepal, problems finding or retaining jobs, and a ban on property ownership. Many of these restrictions are due to Tibetans' lack of legal status or their inability to obtain documentation of their status.

Identity Documents and Residency Rights

The Nepalese government stopped allowing newly arrived Tibetans to settle in Nepal after 1989, following a diplomatic rapprochement with China. The overwhelming majority of Tibetans who arrived in Nepal after this date have proceeded to India in line with the terms of the Gentleman's Agreement. Others, unable or unwilling to go or to stay in India, have remained in Nepal, but vulnerable to threats and exploitation because of the lack of legal documentation.

While the government allowed Tibetans who arrived before 1990 to remain in Nepal, it did not recognize them as "refugees" in the full legal sense of the word, even though it issued them identity documents called "Refugee Certificates"¹⁹⁷ and even though Nepalis commonly refer to them as refugees.

"Refugee Certificates" (RCs) provide such pre-1990 arrivals a modicum of protection, including "the right to reside in Nepal" and to move freely within the country, with the exception of some restricted areas. The police and the authorities generally accept the RCs as valid proof of identity and residence. However they do not, as mentioned above, entitle their holders to own property, gain official employment, or access higher education. While these restrictions were somewhat easily circumvented in the past, they have become much more strictly enforced recent years. Under the terms of the interim Constitution, RC holders are not guaranteed freedom of expression and assembly, which are specifically limited to citizens.

¹⁹⁷ China does not consider these populations as refugees either, because this would amount to an acknowledgement of persecution in Tibet.

Between 1995 and 1998, the Nepali government stopped issuing new RCs to children of Refugee Certificate holders when they reached the age of 16. As a result, Tibetan children who had not yet reached this age by 1995-1998, as well as those born after 1998, have been unable to obtain any form of official identification from the Nepali state. For a time, the last tenuous proof of identity for those born after the government stopped issuing RCs was a mention of their birth on their parent's RCs, but that, too, was discontinued in the early 2000s.

In effect, Tibetans born in Nepal after the government stopped issuing RCs have been rendered stateless and, from the perspective of Nepali law, their continued residence in Nepal is entirely at the discretion of Nepali authorities. For the government of Nepal to issue the children of pre-1990 refugees identification documents would present no logistical or practical difficulties, be consistent with the pre-1989 decision to allow Tibetan refugees to settle in Nepal, and avoid violating the principle of maintaining family unity.

Citizenship

With very few exceptions Tibetan residents are barred from applying for Nepali citizenship. Before 2006, it was technically possible for Tibetans to become Nepali citizens, although this was actively discouraged by the government. The largest wave of nationality acquisition took place in the 1970s when King Mahendra offered a special kind of citizenship, called *angrikta*, to about 1,500 former US-backed Tibetan guerrilla fighters who had settled down in Nepal.¹⁹⁸ *Angrikta* holders enjoy full citizenship rights. Subsequently, the Nepalese government carried out a program to grant citizenship to hundreds of thousands of inhabitants of the Himalayan regions, and some Tibetans were able to take advantage of the program and acquire regular citizenship or *nagarikta*.

In 2006, Nepal adopted the Citizen Act, which provides that “any person born before [April, 13, 1990] within the territory of Nepal and having domiciled permanently in Nepal shall be deemed a citizen of Nepal by birth.” However, this provision does not apply to children of Tibetan refugees, who are considered to have inherited the refugee status of their parents. As a result Tibetans can acquire Nepali citizenship only through descent, if one of their parents already holds Nepali citizenship, or if a Tibetan woman marries a male Nepali

¹⁹⁸ “The Cia's Secret War on Tibet,” The Chicago Tribune, January 26, 1997, http://articles.chicagotribune.com/1997-01-26/news/9701270002_1_dalai-lama-tibetan-suicide-bomber (accessed November 19, 2013).

citizen. Tibetan men cannot obtain citizenship by marrying Nepalese women. The Citizen Act limits naturalization, under certain conditions, to “foreigners,” and therefore does not apply to Tibetans.

Because non-citizen residents are barred from owning property, an almost insurmountable hurdle for many entrepreneurs, over the years some Tibetans resorted to acquiring Nepali citizenship through illegal means, such as the submission of fake documents and the payment of large bribes. Most successful Tibetan entrepreneurs belong to the generation that was able to obtain citizenship legally. Yet, as detailed in the next section, they too are denied the rights, in particular the political rights, of regular citizens, on the basis of their ethnicity and identity.

It should be noted that lack of citizenship identification is a widespread problem in Nepal. An analysis conducted by the non-governmental organization Forum for Women, Law & Development in April 2013 estimated that over 4.3 million people were without citizenship identification in Nepal.¹⁹⁹

Freedom of Movement within Nepal

Refugee Certificate holders are guaranteed freedom of movement within Nepal, with the exception of “restricted areas”—mostly remote areas along the border with China—if they do not reside there.

However, since 2008, a growing number of Tibetans holding valid Nepali identification documents have complained that they receive increased scrutiny when traveling. At police checkpoints, they claim, they are viewed with more suspicion than before, and, if travelling by bus, are often pulled aside from the other passengers for questioning. “They say things like ‘it’s not valid,’ or ‘this is not a proper ID.’ We have to explain, to plead. The other passengers who are being held up resent us Tibetans. It’s really a way to intimidate us,” one interviewee told Human Rights Watch.

At times, the police appear to be under instructions to identify Tibetans among Kathmandu-bound travelers and ensure they are not traveling to participate in “political

¹⁹⁹ “Over 23 percent people without citizenship in Nepal says a report,” *Nepal 24.com*, April 14, 2013, www.nepal24hours.com/en/?p=20418 (accessed December 29, 2013).

activities” such as gatherings or protests. “They [the police] checked our bags, looking if we had any free Tibet material, like flags, T-Shirts, etc.,” another interviewee told Human Rights Watch.²⁰⁰

Tibetan residents who do not have Refugee Certificates face more harassment and intimidation than RC holders. The main objective of the police often seems to make sure that they are residents and not recent arrivals from Tibet or activists from India—a test that most of the time can be satisfied with producing a photo ID document such as a driver’s license or other proof of residence. But this increases the opportunity for bribe seeking. Several Tibetan interviewees expressed concern that the amount they had to pay has increased dramatically since 2008. “It used to be no more than a few hundred Rupees,” one Pokhara resident told Human Rights Watch. “Now, it is as high as a few thousand. It makes travelling very difficult for us.”

The biggest restrictions on movements apply within Kathmandu, due to the heightened attention to the Tibetan population there by the police. Tibetans living in Boddha and other areas in and near Kathmandu with a concentration of Tibetan residents complain of thorough identity checks, especially at night. All interviewees said that obtaining bribes seem to be one motivation for the police. “Before 2008 I used to often wear traditional Tibetan clothing,” one Tibetan woman told Human Rights Watch. “I don’t do that anymore, because the police will immediately stop you [to check your identity].”

As a result of these increased controls, many young Tibetans who lack identification have resorted to a self-imposed curfew. “The civil war is over, right? Yet we have more police control than ever before!” one respondent from Boddha told Human Rights Watch. One restaurant manager said he preferred sleeping in his restaurant during politically sensitive periods rather than risk police checks on his journey back to his home in the periphery of Kathmandu.

On November 13, 2011, after the incident described above in which a monk attempted to set himself on fire in front of the Buddha Supa, Nepal’s Home Ministry spokesperson told the *Rajdhani Daily*:

²⁰⁰ Human Rights Watch interview with D.N., Pokhara, December 2012.

The government is in a very difficult situation since the Tibetans have begun setting themselves on fire. The government of Nepal is committed on its One China policy. We will not allow any activities that go against the interest of our neighbors. This will lead to a situation where the government may have to slash all the facilities being granted to the Tibetans residing in Nepal, such as that of their freedom to move even.”

The newspaper reported that the spokesperson had also made it clear that the government “may decide to put a ban on their business activities and their free movement.”

Such statements have generated fear within the Tibetan community that the government may not only continue to restrict the freedom of movement of undocumented Tibetans born in Nepal, but also of Refugee Certificate holders.

International Travel

By law Tibetan residents are not entitled to obtain a Nepalese passport. To travel internationally, Tibetans must apply for a travel document. The travel document issued is usually valid for one year. The issuance of such a document is discretionary, and applications are considered on a case-by-case basis. To qualify for a travel document, an applicant must present a valid Refugee Certificate and documents detailing the purpose of the trip, and must pay a fee. Bureaucratic red tape and pervasive petty corruption make the process lengthy and uncertain. Tibetans who do not have RCs are not eligible for such travel documents.

As one Refugee Certificate holder told Human Rights Watch:

Last year I applied for a travel document to visit my relatives abroad. I cannot get a passport so I have to obtain a travel document from the Department of Immigration. Even though I had all the documents requested, I had to pay a bribe, otherwise the officials will not even look at your application.

Travel to India

Before 2001, Tibetan residents were able to travel to India freely, as Nepali citizens do under the “open border” arrangement between India and Nepal. Since the adoption of new Nepali legislation in October 2000, Tibetan residents are required to obtain a travel document to do so. Until 2005, border immigration officials were generally satisfied when presented with a letter of recommendation from the Office of the Representative of the Dalai Lama. However, after the Office of the Representative of the Dalai Lama was denied re-registration in 2005 (even though, as noted below, it was allowed to reincarnate as the Tibetan Welfare Office in the same location) Nepali officials stopped accepting these letters as valid travel documents.

For many years in practice crossing overland to or from India was a process negotiated with immigration officers of both countries at the border, and subject to a payment of a bribe of a variable amount. Crossing was rarely refused if the person can produce some form of identification, such as a Refugee Certificate, a driver’s license, or a school ID.²⁰¹ Even Tibetans without any form of documentation were generally able to cross the border, although they were liable to be turned away, fined, forced to pay a bribe, see their goods confiscated, or delayed.

Because of difficulties obtaining travel or identity documents, some Tibetans have resorted to buying or faking them. This has had the unintended effect of bringing under suspicion those who hold genuine documents, who end up enduring the same types of administrative frustration and demands for unspecified “fees” endured by those without documents.

Tibetans interviewed for this report say it has become increasingly difficult for them to travel to or from India in recent years: arbitrary fines, solicitation of bribes, confiscation of goods, and administrative harassment are becoming more and more severe, making the journey increasingly daunting. Delays and even detention—mostly as a way to extract fines or bribes—are becoming more frequent.

The Nepalese government may have legitimate reasons to implement stricter border controls, but it appears that Tibetans are the only group systematically pulled aside by

²⁰¹ Human Rights Watch interviews with Tibetan residents, Kathmandu and Pokhara, June and November 2013.

Nepali border guards. Nepal police are eager to prevent Tibetan activists from India from entering the country and carrying out political activities, and seek to prevent Tibetans who have transited or previously been expelled from Nepal from coming back. As a result, the police increasingly try to limit the passage of persons lacking identification. This effort, however, is frustrated by the lack of avenues for bona fide travelers to obtain the required documentation.

Children of Tibetan residents in Nepal, many of whom study in Tibetan boarding schools in India, face particular challenges. The overwhelming majority of the children do not have Refugee Certificates, much less travel documents, due to the decision of the Nepalese government to stop issuing RCs to them in the mid-1990s. At the beginning of the school term, chartered buses bring these children to schools in India, and they return to Nepal in the same way at the end of the term. While in the past immigration officials were satisfied with documents showing enrolment and the payment of a small fee, in recent years the crossing has become more difficult. In one case, the police detained some children travelling on a chartered bus until an appropriate “fine” was negotiated. This situation has generated great anxiety among Tibetan parents interviewed for this report, who stress that the foremost reason for them to send their children to India is the lack of viable educational options for their children in Nepal, given that they are not entitled to enroll in Nepali public schools and the families often do not have sufficient financial means to enroll them in private schools.²⁰²

Tibetan refugees also say that the increasingly strict, if erratic, behavior of Nepali immigration officials has induced their Indian counterparts to also start pressing Tibetan travelers for higher bribes and fees.

Property and Employment

Housing

Tibetans who lack Nepali citizenship have no right to own property, including land, houses, offices, and vehicles (except motorbikes, see below). With a couple of exceptions, the land on which Tibetan settlements have been established is owned by the Nepali Red Cross, which holds it in trust for their residents. Tibetans living outside of the settlements generally rent their accommodation from Nepalese citizens or Tibetans who have Nepalese citizenship.

²⁰² Human Rights Watch interview with the head of a Tibetan women’s group, Kathmandu, June 2013.

Housing difficulties in the Kathmandu area have increased in recent years. In the settlements, the main problem is scarcity of available living space, so two or three generations of a family often share accommodations not designed for so many people.

Outside of the settlements, the main difficulty has been the substantial increase in rents. Kathmandu's construction boom over the past decade has reached once peripheral areas where Tibetan communities have traditionally clustered, such as Boudhanath and Swayambu. The resulting price hikes, especially when combined with limited economic and income-generating opportunities for the younger generation, are putting a growing strain on poor and medium-class families.

To secure accommodations and obtain business premises, Tibetans have long resorted to making arrangements with citizenship holders—ethnic Tibetan or Nepali—in whose name property can be registered. But the increased administrative monitoring of Tibetans and Tibetan-owned businesses in recent years is making these types of arrangements more difficult to maintain or to set up. Tibetans say that Nepali landlords are increasingly wary of fronting or renting property to a population that they know is under political scrutiny by the authorities.

Employment

Non-citizen Tibetans with Refugee Certificates traditionally have sought jobs in the settlement camps as camp staff or local business employees, or outside the camps either in the tourism, food, religious artifacts, and carpet industry sectors or as self-employed tourist guides, hawkers, etc.²⁰³ As non-citizens, they are not eligible for government jobs.

In recent years, moreover, employment opportunities have dwindled. The carpet industry has drastically declined, with most factories—once Nepal's top export—closing over the past decade. The settlements' own businesses—often carpet and souvenir manufacturing—have significantly declined. Tourism and trekking guide licenses are formally limited to citizens, as is owning or registering a business.²⁰⁴

²⁰³ Human Rights Watch interviews with Tibetan refugee settlements officers, Pokhara, December 2012, and Kathmandu, June 2012.

²⁰⁴ Ibid.

The situation is even worse for Tibetans born since 1990, after Nepal stopped issuing RCs. Many Tibetan youth find that they qualify for jobs but cannot obtain them due to their lack of citizenship. Nepali companies are reluctant to hire staff who lack valid identification documents, and who are increasingly perceived as belonging to a group held in suspicion by the state. And because of the commonly shared perception in Pokhara and Kathmandu that the Tibetan community is wealthy by Nepali standards, they receive little sympathy from Nepali society at large.

An increasing number of families are seeing emigration for their youngsters as the only path ahead, but it is beyond the reach of the poorest and least-educated segment of the population. Combined with what many perceive as increased pressure on their community from the state, at the behest of China, many are discouraged and have delusions about their prospects in the country.²⁰⁵

The inability of an entire generation of Tibetans born in Nepal to earn a livelihood should be of concern to the Nepali state, yet there has been no official acknowledgement or response to the situation.

Motorbike Ownership and Driver's Licenses

Motorbike ownership has always been an exception to Nepal's ban on property ownership by RC holders, a reflection of the essential role of this mode of transportation in everyday life, both in the settlement areas and in the Kathmandu valley. Until 2011 Refugee Certificate holders were entitled to apply for and to renew driver's licenses without difficulty. Even applicants without RCs managed to obtain driver's licenses as long as they could demonstrate that they were residents.

In early 2011, the Department of Transport Management in Kathmandu modified the application requirements, and stopped accepting RCs as substitutes for citizenship certificates. All RC holders in the Kathmandu valley were suddenly unable to renew their licenses, leaving them with the choice of abandoning this mode of transportation or taking the risk of driving without a valid license.

²⁰⁵ Human Rights Watch interviews with Tibetan refugee settlements officers in Kathmandu, June 2012, and Pokhara, December 2012.

“I’ve never had any problem renewing my license,” a Tibetan resident of Kathmandu told Human Rights Watch. “Then suddenly I was told at the [Transportation] Department that they would not accept my RC for the application. Normally you can always ‘arrange’ things [pay a bribe] but in this case it was just impossible. So I feel this must be a move against us Tibetans.”

In reality, the tightening of the driver’s license application process seems to have come as a result of efforts to reign in corruption in the Transportation Department. But the government has been unreceptive to the need for flexibility when it comes to RC holders, and at times has denied there has been any change.

“I talked to the CDO, and to the Home Ministry, and to the Transportation Department: I told them this was creating lots of difficulties for Tibetan families,” a Tibetan community leader told Human Rights Watch. “But they all said that it was not their responsibility, and that they couldn’t do anything about it. This really places us [representatives] in a difficult situation, that we cannot resolve such a pressing problem.”

Beyond giving holders the right to drive motorcycles, driver’s licenses play an important role as proof of identification for Tibetans, especially for those lacking RCs, and the inability to renew them has had a severe impact on many Tibetan families in the Kathmandu valley. Outside of Kathmandu, Tibetans we spoke with say they have had no difficulties renewing driver’s licenses, and some Kathmandu drivers have had their licenses renewed in Pokhara, or even have resorted to acquiring fake licenses.

All such solutions come at a price, and at a risk. One shop employee in the Boudhanath area said that his daily commute had become “a nightmare”:

Now, I drive without a license, so I’m always afraid I’m going to run into a checkpoint and have the police control me. I’m Tibetan, I don’t have a Nepali identity document, so it’s even more problems if I’m stopped. Every day I worry about being controlled by the police, that I will be late for work or I will have to pay a lot of money if it happens. This is no way to live.²⁰⁶

²⁰⁶ Human Rights interview with Tashi Samdup., Kathmandu, December 2012.

X. Recommendations

To the Government of Nepal

On Border Security and Forced Returns

- Immediately stop forcibly returning to China Tibetans unless their right to seek asylum is protected, including those rejected at the border or apprehended in Nepal.
- Strictly uphold and respect international law prohibiting refoulement.
- Cooperate fully with the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate its mandate to protect refugees, asylum seekers, and stateless persons. Establish and maintain a strong and effective working relationship with UNHCR, including by having UNHCR train relevant officials and allowing UNHCR to resume systematic border monitoring visits.
- Call on China through diplomatic channels to reverse course when its authorities or agents refuse to allow Tibetans to reenter China or expels its nationals to Nepal.

On Refugee Status

- Immediately provide all eligible Tibetans with refugee identification certificates (RCs).
- Issue RCs, as appropriate, to Tibetans who fled to Nepal after 1989 and are unable or unwilling to go to India to lodge asylum claims.
- Ease renewal modalities and issue refugee certificates to eligible Tibetans as well as to their dependents (spouse and children).
- Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Adopt implementing legislation immediately after ratification.
- Enact legislation to establish a formal asylum procedure for Tibetan asylum seekers who have entered Nepal since 1989. Define and guarantee the rights and status of refugees and asylum seekers by law in accordance with internationally recognized human rights standards.
- Implement Nepal's obligation under the Convention on the Rights of the Child to provide children with the means to acquire a nationality.

- Repeal the present restrictions on the rights of Tibetan residents to own property, work, establish and incorporate businesses, and travel freely.

On Respecting the Rights of Assembly, Association, and Expression

- Protect the rights of all persons in Nepal to freedom of expression and assembly, regardless of legal status, and cease dispersing peaceful protests by Tibetans.
- Take all actions necessary to end arbitrary arrests, including unlawful and preventive arrests, of Tibetans and others engaged in peaceful political activity or otherwise going about their daily lives.
- Do not permit Chinese law enforcement personnel to unlawfully operate in Nepal.
- Ensure respect for freedom of movement without discrimination, including by issuing orders to local officials to end arbitrary restrictions on the movement of Tibetans in Kathmandu Valley based on their nationality or ethnicity.
- Take all steps necessary to ensure that the Nepal police respect Tibetans' right to protest peacefully. End harassment of protesters, including threats of deportation or other dire consequences should they participate in future protests.

On Preventive Detention and Powers of Chief District Officers (CDOs)

- The preventive detention provisions of the Interim Constitution of Nepal and the Public Security Act should be amended to ensure that:
 - Preventive detention is permissible only under exceptional circumstances as provided under international law;
 - The time period is strictly limited;
 - There is judicial oversight of each detention in accordance with article 9 of the ICCPR.
- Introduce legislative amendments to ensure that the wide discretionary administrative powers of the CDO, conferred under provisions of existing security laws, are subjected to effective judicial review. Specifically, the *Local Administration Act*, the *Public Security Act*, and the *Public Offences Act* should be amended to ensure that all judicial powers are vested in judicial bodies, not the

CDO, in accordance with separation of powers principles, article 14(1) of the ICCPR, and principle 5 of the Basic Principles on the Independence of Judiciary 1985.

On Citizenship

- Establish clear and transparent procedures to enable long- term Tibetan residents to acquire Nepalese citizenship.

On Livelihood Issues

- Repeal restrictions on the rights of Tibetan residents to own property, work, establish and incorporate businesses, and travel freely.
- Support the identification and implementation of durable solutions for Tibetan refugees in Nepal.

To the Government of China

- Immediately end the torture and other ill-treatment of Tibetans arrested for having crossed or attempting to cross the border without proper documentation.
- End restrictions on Tibetans who wish to obtain passports and travel abroad.
- Allow re-entry to all Tibetans who are PRC citizens.
- End pressure on the government of Nepal or individual Nepali officials to engage in policies or take measures that are in contradiction with international human rights and refugee law.
- Allow all citizens of the PRC, regardless of ethnicity, to obtain passports to leave and reenter the country. The only exceptions should be people facing valid travel restrictions or currently under investigation for crimes, and only if those restrictions and crimes are cognizable under international law and defined in a manner consistent with human rights standards.

To the Office of the United Nations High Commissioner for Refugees in Nepal (UNHCR)

- Urge the government of Nepal to cease forcibly returning Tibetans to China and to adhere to the terms of the Gentleman's Agreement, which prohibits refoulement in line with international law.

- Urge the government of Nepal to issue identity documents to Tibetan residents.
- Provide technical assistance and advice to the Nepalese government in drafting domestic legislation intended to ensure refugee protection and to avoid and reduce statelessness.
- Urge the Nepalese government to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness, and to make it a priority to adopt relevant implementing legislation.
- Implement UNHCR's mandate to prevent statelessness for Tibetan refugees.
- Work with foreign governments to promote and facilitate the third-country resettlement of Tibetan refugees in appropriate cases, such as refugees who need to be resettled for protection reasons, for stateless Tibetans with ties to third countries, or for refugees for whom other durable solutions are not feasible in the foreseeable future.

Regarding Tibetan Residents of Nepal

- Assist the Nepalese government in formalizing a procedure for the issuance of fraud-proof RCs and travel documents for all resident Tibetans.
- Urge the Nepalese government to repeal existing discriminatory restrictions on the rights of Tibetan residents to own property, work, establish and incorporate businesses, and travel freely.

Regarding Tibetans in Transit through Nepal

- Encourage and provide assistance to the Nepalese government in creating an information sheet for distribution to all border police and immigration patrols explaining their obligations under the Gentleman's Agreement.
- Renew and emphasize UNHCR's request to the Nepalese government to permit its staff, and qualified non-governmental organizations willing to lend assistance, to resume border missions to educate border police on the terms of the Gentleman's Agreement and relevant international human rights standards. Take steps to reassure the Nepalese government that such missions will be carried out in a low-profile manner that will not interfere with its diplomatic relationship with China.

- Issue documentation to all Tibetans new arrivals found to be “of concern” such that, should they subsequently seek asylum in third countries, they possess proof of UNHCR’s finding that they are “of concern to the High Commissioner,” their date of arrival in and departure from Nepal, and their birthplace.

To Donor Governments

- Press Nepal to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.
- Press the government to comply with its international legal obligation of nonrefoulement.
- Urge the government to cooperate with the efforts of UNHCR and concerned governments to protect the rights of Tibetan refugees.
- Urge Nepal immediately to issue RCs to all Tibetan residents eligible for them.
- Make clear that Nepal’s official position that Tibet is an integral part of China is not inconsistent with recognition that Tibetans may face persecution there, making them eligible for refugee status or asylum under international law.
- Work with the Nepal government and UNHCR to promote and facilitate the third-country resettlement of Tibetan refugees in appropriate cases, such as refugees who need to be resettled for protection reasons, for stateless Tibetans with ties to third countries, or for refugees for whom other durable solutions are not feasible in the foreseeable future.
- Respond favorably to requests to specifically fund assistance for Tibetan refugees.

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December 6, 2013

Lila Mani Pokharel

Home Minister and Secretary to the Government
Government of Nepal

Fax : +977 4211257, +9774211286

Email: gunaso@moha.gov.np

Re. The situation of Tibetans in Nepal

Dear Minister Pokharel,

Human Rights Watch is an independent, international human rights organization that conducts research into the human rights situation in more than 90 countries globally.

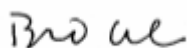
We are currently preparing a report on the situation of Tibetans in Nepal, focused on Tibetans residing in Nepal and Tibetan refugees from China attempting to transit through Nepal.

We write to you to present a summary of our findings, to pose some remaining questions, and to offer your government the opportunity to respond so that we may accurately reflect the government's views in our report.

So that we can incorporate all relevant information in our report, we request your response by December 20, 2013.

Thank you in advance for your assistance in this matter and we look forward to your response.

Sincerely,



Brad Adams,
Executive Director
Asia Division

Main Findings

During several visits to Nepal in 2012 and 2013, Human Rights Watch researchers spoke with around 60 Tibetans, including Nepali citizens, legal residents, undocumented residents, recent arrivals, and the Department of Immigration detainees. We also met with embassies and consulates in Nepal, journalists, lawyers, and human rights and refugee rights advocates.

Nepal is to be commended for having allowed refugees to settle in the country following the escape of the Dalai Lama from Tibet in 1959, and since 1990 for generally observing the terms of the “Gentleman’s Agreement” between Nepal and UNHCR by allowing Tibetans from China trying to reach India to transit through Nepal.

However, our research indicates that Nepal forcibly returns to China many Tibetans arrested at the border or in the border area in clear contravention of the Gentleman’s Agreement and the international prohibition on refoulement. Former government officials told Human Rights Watch that several hundred such cases take place every year, with the Armed Police Force making on-the-spot decision about whether to allow refugees to proceed further or to forcibly return them to China.

Our research also found that Nepal is falling short of its obligations under international and domestic law in respect to refugee rights, that the suspension of the issuance of Refugee Certificates (RCs) has created a class of undocumented derivative refugees with tenuous rights, and that Tibetan refugees and Nepali citizens of Tibetan descent are facing increasing restrictions on the exercise of their cultural, religious, and political rights.

Our research shows that the government of Nepal has placed stringent restrictions on freedom of expression and assembly for Tibetans, especially since 2008. We found that many Tibetans in Kathmandu regularly confront illegal and abusive acts by police, including arbitrary detention, physical abuse, threats of deportation, and, not least, obstacles to effective redress.

Request for Information

We present for your review the following questions regarding government policy on the topics of international legal obligations in respect to refugees, forced returns (*refoulement*), handling of cases of deportations from China, issuance of Refugee Certificates and other identity documentation, policing, and cooperation with China.

We look forward to receiving the comments of the Ministry of Home Affairs, the Department of Immigration and other relevant ministries on the above issues, information on any reforms the Nepali government is considering, and any additional comments you or other officials may wish to provide.

1. In respect to Tibetans reaching Nepal from China

- 1.1. Please confirm whether it is government policy to forcibly return some Tibetans who have reached the border, or the border area, coming from China?
- 1.2. Please provide details about what criteria are applied by border security forces, including the APF, to determine whether to forcibly return Tibetans arriving from China or, in accordance with the Gentleman's Agreement, to allow them to proceed to Kathmandu.
- 1.3. Please provide the total number of Tibetans forcibly returned at the border for each year since 1990.
- 1.4. Please provide the total number of Tibetans allowed to proceed to Kathmandu in accordance with the terms of the gentleman's agreement after having been intercepted at the border or in a border area for each year since 1990.
- 1.5. Please detail the procedure for deporting back Tibetans to China. Is UNHCR informed of these returns? Are the Chinese authorities informed of these returns? Are there cases in which refugees are handed over directly to the Chinese authorities at the border?
- 1.6. Please indicate to what extent the Armed Police Forces collaborates with China's People's Armed Police border security in cases of forced returns.

2. In respect to Tibetans of Chinese Citizenry Forcibly Deported to Nepal

- 2.1. How many cases of Tibetans carrying valid Chinese identification documents trying to re-enter China have been "deported" to Nepal by the Chinese authorities since 2008?

3. In respect to Tibetans residing in Nepal

- 3.1. Does the government of Nepal intend to issue Refugee Certificates to Tibetans who arrived in Nepal before 1990 or were born in Nepal before the government stopped issuing Refugee Certificates?
- 3.2. What other forms of official identification does the government of Nepal plan to issue, or to allow UNHCR to issue, to undocumented Tibetan residents?
- 3.3. On what basis does the government of Nepal prevent lawful, peaceful, public demonstrations by Tibetans and their supporters, including individuals who have full Nepali citizenship?
- 3.4. On what legal basis does the government of Nepal prevent lawful, peaceful, expression of Tibetans on political issues such as the status of Tibet, the nature of Chinese policies carried out in Tibetan areas of China, the human rights situation in Tibet and China, and other issues that are regularly characterized by the police and senior government officials as being "anti-China?"

4. In respect to security agreements between Nepal and China

- 4.1. What safeguards exist or are being put in place to ensure that security cooperation with China does not violate human rights or leads to human rights violations by the Chinese government, including *refoulement*?

Appendix II

Translation of *Huanqiu Shibao* Interview with Nepal's Deputy Inspector General of Police

Original article: "专访尼泊尔警察副总监：“藏独”在尼闹不起来", 环球时报, 2009/03/29.

"Exclusive Interview with Nepal's Deputy Inspector General of Police: 'Tibetan Pro-independence elements' Won't Be Able To Stir Up Trouble in Nepal," Huanqiu Shibao, March 29, 2009

"Some 'Tibetan Pro-independence elements' plan to stir up trouble in Kathmandu on this sensitive date, March 28... I can assure you that they won't be able to stir up trouble here." —This came from Nepal's Deputy Inspector General of Police, Bharat Bahadur G.C. In his 40's, with his small frame and refined look, you could never tell that Bharat Bahadur G.C. has been a policeman for 26 years.

In the hour-long interview, more than 20 policemen came in to the office asking for his instruction, and his phones never stopped ringing. This is because Bharat Bahadur G.C. is in charge of over ten thousand policemen and the safety of 3 million people living in the Kathmandu Valley area. Today, combating the 'Tibetan Independence' movement is Bharat Bahadur G.C.'s main job and he told many unknown stories to the Huanqiu Shibao reporter.

At one point, there were 4,000 policemen deployed to combat the "Tibetan Independence" movement.

Huanqiu Shibao: Has the work of combating the "Tibetan Independence" movement taken up a lot of your time lately?

Bharat Bahadur G.C.: It is like this. When things were dire at the beginning of this March, I had 4,000 policemen dealing with Tibetan issues. You have to understand, the sum of the police force here is only ten thousand men. In Nepal, there are 56 thousand policemen in total, about 100 men stationed at the Prime Minister's residence. If it were not for all the

illegal activities from the “Tibetan Independence” movement, my job would be much easier. During this period, combating “Tibetan Independence” is my main task.

Huanqiu Shibao: The spirit of the “Tibetan Independence” movement was totally dampened in Nepal this March; there was no major demonstration in Kathmandu like the Western countries anticipated.

Bharat Bahadur G.C.: Under Nepali law, no foreigner has the right to participate in political activities, including attending demonstrations. Most Tibetans in Nepal have no legal passport, visa, Nepali ID, or even refugee ID. They are illegal residents. Actually, we should deport them. We haven’t done that because of the pressure from the UNHCR. They plead leniency for the Tibetans and pledge that they won’t join “Tibetan Independence” activities. So, for the moment we have dropped [the idea of deporting them.]

Since this February, there has not been a single “Tibetan Independence” demonstration, nothing like the huge gatherings and “Hunger Strike” that took place last year. This is the result of cooperation between the Chinese and Nepali governments. It is also the result of a major crackdown carried out by the Interior Ministry and the Police.

According to the information we gathered, this January the Kathmandu branches of the Tibetan Youth Congress, the Tibetan Women’s Association, and The Dalai Lama's representative office in Nepal held numerous meetings calling independent activists to carry out orders from the Dalai Lama group and to hold protests and gatherings in Nepal in order to commemorate the 50th anniversary of Tibetan Uprising.

Nepal Prime Minister Khil Raj Regmi and Deputy Prime Minister/Minister for Home Affairs Krishna Bahadur Mahara gave [the] order to crackdown on all “Tibetan Independence” activities in Nepal. Prime Minister Khil Raj Regmi said that Nepal and China enjoy a strong friendship, so the Nepalese government will not allow any “Tibetan Independence” activities on its soil. Deputy Prime Minister Krishna Bahadur Mahara personally called me and asked me to combat “Tibetan Independence” activities at all cost, with no reservation and no mercy. The police see the leadership’s determination as reassurance to act on this issue; therefore we arrested 14 “Tibetan pro-independence” leaders and talked to monks in the temples.

Huanqiu Shibao: Can you talk about the actual action plan?

Bharat Bahadur G.C.: First of all, we deployed more police force to cover the Tibetan settlement areas. There are three major Tibetan settlements in the Kathmandu Valley: Boudhanath, Swayambhunath and Jawalakhel. Take Boudhanath for example, usually there are 150 policemen stationed there, but we sent 350 people there. In Swayambhunath area, usually there are 85 policemen, but we sent 300 people over this time. We also stationed 360 policemen around the Chinese Embassy in Nepal on a 24-hour watch. There are also many plainclothes officers in all sensitive areas, they are constantly watching the activities of ‘Tibetan pro-independence elements.’ Once they spot any gathering, they will inform the HQ right away.

The Tibetan Youth Congress, the Tibetan Women’s Association, Students for Free Tibet, and other important ‘Free Tibet’ organizations have branches in Nepal. In the past they were extremely active. After working on this for a while, the police acquired the names, addresses and individual details of the leaders of these organizations, and we also got evidence that they were planning illegal gatherings. In the middle of the night of March 8 [2009] we carried out a blitz operation involving over a hundred policemen, arresting 14 leaders of ‘Free Tibet’ organizations.

Thirdly, we re-educate the main participants of those “Tibetan Independence” movements: monks. In Kathmandu alone, there are over 100 major Tibetan Buddhist temples; most of them are under the control or influence of the Tibetan government-in-exile. Monks and nuns from those temples played a key role in the “Tibetan Independence” movement last year. This time, the police worked with Kathmandu City government. We sent people to the temples talking to leaders in the temples, making sure they understand Nepali government’s position. If they stay here for pure religious reason, like chanting and performing ceremonies then there is no problem. But they should stay out of politics. Monks cannot go on the street to protest otherwise we will be compelled to enforce the law. You can see now the temples have been much more quiet since this March, there are no more large groups of monks protesting on the street.

Huanqiu Shibao: I heard that there are still some hard-core “Tibetan Pro-independence elements” trying to stir up trouble.

Bharat Bahadur G.C.: We received a tip this March that there were over 100 “Tibetan Pro-independence elements” trying to cross the Chinese-Nepali boarder. We did find about 140 Tibetans at 40-50 kilometers from the border. I gave the order to stop those Tibetans and convinced them to go back to Kathmandu. We didn’t arrest them because no actual “Tibetan Independence” activities had happened yet. At the end, those Tibetans returned to Kathmandu peacefully. You can say this was an “attempted” “Tibetan Independence” movement. I also know three other incidents where Tibetans tried to cross the Chinese-Nepali border carrying out so-called “Peaceful Liberation.” They will not succeed this year. This is the triumph of our “Preemptive Plan.”

Huanqiu Shibao: In order for the “Preemptive Plan” to succeed, you need to have accurate intelligence.

Bharat Bahadur G.C.: We are really getting better and better at this [intelligence gathering]. Nepal’s police force has an intelligence department; in the past its main duties were related to major criminal cases, and had nothing to do with Tibetan issues. After coming to Kathmandu, I realized that in order to better deal with Tibetan issues, we needed to rely on powerful intelligence. That is why I ordered the intelligence department to investigate the situation in Tibetan settlement areas, especially the illegal activities of “Tibetan pro-independence elements.” Now this force has already infiltrated all these areas, and they are gathering information from local Nepali citizens as well as from ordinary Tibetan people. The results are obvious and the intelligence department coordinates efficiently with the actions of the police.

I can also tell you, now we know that some “Tibetan Pro-independence elements” plan to stir up trouble on the sensitive date of “3/28” [March 28]. This is because Chinese government announced that March 28 will be the “Liberation Day for Millions of Farmers” [by the Chinese Communist Party], and the Dalai group is upset about this so they want to sabotage this. We already received tips regarding this so I can assure you that they will not succeed.

Right now we are discussing the possibility of turning in to the Chinese government those Tibetans who do not have legal ID’s here and are involved in anti-Chinese movements.

Huanqiu Shibao: Weeks ago in India, the Prime Minister of the Tibetan government-in-exile publically condemned the Nepali government's cracking down on the "Tibetan Independence" movement, and asked the Nepal government to respect the Tibetan people's rights to democracy and freedom. What do you think about that?

Bharat Bahadur G.C.: First of all, he is no prime minister, not a single country in the world recognizes this "government." Also, everything that Nepal Police do is in accordance with the law. Our bottom line is that Tibetans cannot carry out anti-Chinese movements in Nepal, the Dalai government-in-exile knows this well. We are also discussing the possibility of turning in to the Chinese government those Tibetans who do not have legal ID's here and are involved in anti-China activities.

What's alarming is that we found that some of the "Tibetan Independence" movement leaders and key members in Nepal actually came from India. This means that they are sent by the Dalai clique. On February 27, the police detained over 20 "Tibetan Independence" activists who were organizing demonstrations. One of them admitted that he met with the Dalai Lama in India one week prior.

Huanqiu Shibao: I heard that the police are under a lot of pressure from Western countries and the UN.

Bharat Bahadur G.C.: Yes, we get a lot of foreign visitors here at the office. (Laugh) Just a few days ago, a UN officer came here and asked us to release the detained "Tibetan Independence" leaders. I said to him that if there is no "Tibetan Independence" movement in the following three months, then they will be released under the guarantee that they will no longer engage in anti-Chinese movements. Also I heard that our Prime Minister and Minister for Home Affairs often face protest or lobbying from foreign deputies, they ask us to guarantee the "freedom of speech" for Tibetans in Nepal. They also accuse us of cracking down on "peaceful demonstrations of the Tibetan people". All nonsense.

Actually, starting this year because of the precaution plan we adopted, most of the "Tibetan Independence" movement has been put out. The police don't have to use guns or weapons to "crack down" on anyone. I have noticed that a lot of Western journalists and human rights activists will be stationed at all vantage points on sensitive dates, ready to

record any “crackdown” actions. Surely they are disappointed this year, nothing has happened so they have no “hot gossip” for the U.N.

Huanqiu Shibao: What is your view on the “Tibetan Issue”?

Bharat Bahadur G.C.: I knew nothing about the history of Tibet, but now because of my job I studied Tibetan history. You see, I am forced into being some kind of a “Tibetan Expert.” In my opinion, “Tibetan Issues” equals to Chinese territorial integrity. It is an issue of anti-secession. The West camouflaged the “Tibetan Issue” now and coated it with “Human Rights” and “Freedom of Religion,” but the core issues still lays with the Dalai Lama and his big boss, the USA. That has never changed.

UNDER CHINA'S SHADOW

Mistreatment of Tibetans in Nepal

Tibetans in Nepal face increasingly tight government restrictions on freedom of expression, assembly, and movement, and increasing obstacles to obtaining the documentation necessary to attend school, work, and run businesses. These restrictions in turn reflect growing Chinese pressure on Nepali authorities since 2008. In that year, Chinese authorities responded to an unprecedented series of Tibetan demonstrations in China by systematically clamping down on Tibetans, and by pressuring neighboring governments with significant Tibetan exile populations, most notably Nepal, to do so as well.

Since 2008, Nepal has signed several security and “intelligence-sharing” agreements with China that have led to closer monitoring of the Tibetan community in Nepal, and to a drastic reduction of the number of Tibetans crossing the border into Nepal to escape China: fewer than 200 did so in 2013, down from an annual average of more than 2,000 before 2008. There have been few documented cases of forced returns of Tibetans to China, but there are few monitors at the borders and the actual numbers may be much higher.

Nepal, historically a gateway for Tibetans fleeing repression in China, maintains some basic protections for Tibetans, but their conditions have worsened as Nepal’s agreements with China have gone into effect.

Under China’s Shadow—based on interviews with long-term Tibetan residents and recent arrivals in Nepal, Nepali officials, rights activists, and foreign diplomats, as well as Chinese-language sources—provides the most comprehensive study to date of conditions facing Tibetans in Nepal.

The report urges Nepal to take specific measures to better guarantee the basic rights of Tibetans in the country. It calls on China to lift restrictions on and end abuses against Tibetans, and to stop pressuring Nepal to take measures inconsistent with Nepal’s international human rights and refugee law obligations.



Nepalese police stand guard at the premises of the Boudhanath Stupa after a Tibetan monk self-immolated in Kathmandu on February 13, 2013.

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