

HUMAN RIGHTS WATCH

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May 1, 2014

To: Minister of Foreign Affairs Mahendra B. Pande
Ministry of Foreign Affairs

Narayanhiy Kathmandu, Nepal

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CC: Minister for Home Affairs Bam Dev Gautam
Ministry of Home Affairs

Singhdurbar, Kathmandu, Nepal

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Subject: Situation of Tibetans in Nepal/Mofa Press Statement dated April 3, 2014

Dear Minister of Foreign Affairs Mahendra B. Pande,

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 have worked on China and Nepal for over two decades.

On April 1, 2014, we released a report, “Under China’s shadow: Mistreatment of Tibetans in Nepal,”¹ calling upon the government of Nepal to protect the rights of Tibetan refugees living in Nepal or reaching Nepal’s border from China. On April 3, 2014, the Ministry of Foreign Affairs (MFA) of Nepal issued a press release: “Nepal’s view on the recently published report of the Human Rights Watch entitled ‘Under China’s Shadow Mistreatment of Tibetans in Nepal.’”²

¹ <http://www.hrw.org/node/123804>

² <http://www.mofa.gov.np/en/news/detail/560#sthash.beGjTYih.dpuf>

We write now to respond to several issues raised by and in that press release. We are committed to the highest standards of accuracy and objectivity in our reporting, and remain willing to correct any factual mistake that the Government of Nepal would bring to our attention.

First, while the MFA statement is highly critical of the content of Human Rights Watch's report, we note that the government fails to specify errors or substantiate any of the accusations made against the report or Human Rights Watch.

Our report details specific and related allegations about denial of rights for Tibetans living in Nepal. It documents the consequences of Nepal's failure to provide official identification for Tibetans' livelihood, and it points to a pattern of abuses, including arbitrary arrests, ill-treatment, threats, and intimidation committed by security forces against Tibetans. Many of these issues are longstanding and some are corroborated by official sources quoted in the report.

Since the MFA statement actually does not dispute any of the facts or findings of the report, it is difficult to understand on what basis the MFA statement asserts that, "The report draws on unsubstantiated stories and notions, which have no legal base and objective reality."

This is particularly disconcerting given that a spokesperson from the Ministry had responded to *The New York Times* inquiries about the findings of Human Rights Watch's report two days earlier that "the government would investigate any security officials suspected of mistreating refugees"—a unambiguous acknowledgement that the issues raised by the report deserve to be taken seriously.³

Second, the MFA statement reiterates several of the points that originally prompted Human Rights Watch's attention to the status of Tibetans in Nepal. The statement repeats a misinterpretation of the government's obligations under international law, and suggests that foreign policy statements trump domestic and international law—a clear violation of Nepal's constitutional order. In addition, the MFA statement sidesteps critical issues documented by the report, such as the deleterious consequences for the independence of Nepal's judiciary and civil society.

Most disturbingly, the MFA appears not to be disputing the fact that the Nepal's infringements on basic fundamental rights of Tibetans living in Nepal documented in the report are in violation of Nepali and international law. Instead it simply attempts to justify such violations by citing foreign policy principles, writing that, "Nepal has

³ "Tibetans Repressed in Nepal, Rights Group Finds," *New York Times*, April 1, 2014, <http://nyti.ms/1n1Yzv8>

been making it clear time and again that refugees sheltered here cannot work in contravention of...the principled foreign policy path of the nation.”

As our report stresses, while Nepal is free to determine its foreign policy principles, neither these principles nor foreign policy statements, can trump domestic or international legal obligations. As the report notes:

“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.”

Third, the accusations of “subjectivity and selectivity” of the report, which is also described by the MFA as “ill-founded, provocative and malicious in intent,” are equally difficult to understand. The MFA statement fails to identify any examples of such “subjectivity and selectivity” or malice, and fails to acknowledge Human Rights Watch’s efforts to seek the views of the Government of Nepal.

We wrote to the Home Minister and Secretary to the government on December 6, 2013, presenting a summary of our findings and offering the government “the opportunity to respond so that we may accurately reflect the government’s views in our report.” The letter included twelve specific questions ranging from the nature of the government policy with respect to Tibetans reaching the border from China to a request for clarification of the precise *legal* basis on which the government prevents lawful, peaceful expression of Tibetans on political issues. (The letter is appended to the published report on page 90.) We received no reply to this letter.

In addition, in the weeks that preceded the April 2014 release of the report, Human Rights Watch repeatedly sought meetings with government officials to discuss the findings of the report. We requested meetings with the Deputy Prime Minister and Home Minister, the Minister of Foreign Affairs, the Officiating Foreign Secretary, the Law Minister, the Chief Secretary for Immigration and Border Issues, and the Inspector General of the Armed Police Force. The only official Human Rights Watch was invited to meet ahead of the publication of the report was the Foreign Secretary for International Organizations, whose portfolio did not involve the issue at hand.

Finally, Human Rights Watch conducted interviews with a wide-range of actors, including former Nepali officials. The report extensively cites public statements

made by Nepali and Chinese government officials, therefore reflecting comprehensively the views and positions of both governments.

We also wish to bring your attention to the fact that the conclusions adopted by the United Nations Human Rights Committee at its 110th session (10–28 March 2014) validate the findings of our report. In its conclusions⁴ the Committee writes that:

“[T]he Committee is concerned that identity documents have not been provided to Tibetan refugees since 1995, which places the majority of the Tibetan refugee population at risk of financial penalties under the 1994 Immigration Rules for irregular entry or presence in the State party, detention, deportation and refoulement. It also expresses concern at the restrictions imposed on Tibetan refugees’ rights should the State party deem any activity to undermine the friendly relationship with its neighbor. The Committee is also concerned about the lack of legislation that would ensure adequate protection against refoulement (arts. 2, 7, 9, 13, 19, 26 and 27).”

The UN Human Rights Committee also echoes several of the recommendations made in the report by Human Rights Watch (see the appendix to this letter) with respect to the status of Tibetan refugees:

“The State party should adopt national refugee legislation in accordance with international standards, strictly uphold the principle of non-refoulement, and exempt refugees and asylum-seekers from penalties under the 1994 Immigration Rules. It should undertake a comprehensive registration exercise of long-staying Tibetans to ensure that all persons have proper documentation and ensure, in law and in practice, that all refugees and asylum-seekers are not subjected to arbitrary restrictions of their rights under the Covenant, including freedom of expression, assembly and association. It should also guarantee access to its territory to all Tibetans who may have a valid refugee claim and refer them to UNHCR.”

In light of the above, however, it is difficult not to see the statement as anything other than a justification for deterring Human Rights Watch and other human rights organizations from documenting issues related to the status of Tibetans refugees in Nepal, rather than a *bona fide* response to the issues raised by our report and the situation of Tibetans living in Nepal.⁵

The MFA statement stresses in its final paragraph that Nepal is “committed to remain constructively engaged with the international community in observance of these fundamental [human rights] principles.” Human Rights Watch would welcome an opportunity to discuss the issues raised in our report with you and relevant officials

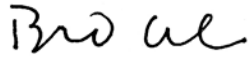
⁴ <http://www.ccprcentre.org/country/nepal/>

⁵ eKantipur, “Government refutes HRW report on Tibetan refugees,” April 3, 2014, <http://goo.gl/kKlpfv>

in the government. As mentioned earlier, should you find any erroneous statement of fact in our report we would be willing to correct it. Finally, it remains our hope that your new government will reject the mistakes of its predecessors and move swiftly to alter policies and practices that undermine the rights of Tibetans in Nepal.

We look forward to your response,

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Adams". The signature is written in a cursive, slightly slanted style.

Brad Adams
Executive Director
Asia Division

Attached: Recommendations

APPENDIX: HUMAN RIGHTS WATCH RECOMMENDATION TO THE GOVERNMENT OF NEPAL ON THE ISSUE OF TIBETAN REFUGEES

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.