



**FIDH – International Federation for Human Rights
International Campaign for Tibet (ICT)**

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Background

Tibetans in Nepal do not have legal status and are vulnerable to arbitrary restrictions of their rights. While a previous system of Refugee Identity Cards (RCs) recognized Tibetans' legal status to reside in Nepal, the Nepali government ceased issuing the RCs in 1994. Violations of civil and political rights faced by Tibetans derive from this basic lack of legal recognition.

According to the United Nations High Commissioner for Refugees (UNHCR), in 2011 there were approximately 20,000 Tibetan refugees living in Nepal, with an additional 1,500 Tibetans living in "refugee-like situations."¹ A 2017 study conducted by the Human Rights Organization of Nepal found there were at least 12,331 Tibetan refugees without RCs, 40% of whom were individuals under the age of 16 and born in Nepal.² We estimate that at the beginning of 2020 the total number of Tibetans in Nepal exceeded 20,000.

Article 7 - Tibetans refugees remain at risk of deportation

Obligations under the International Covenant on Civil and Political Rights (ICCPR), as interpreted by the Human Rights Committee, impose an obligation on Nepal to respect the principle of non-refoulement, which prohibits Nepali authorities from returning persons to a place where they might be tortured or face persecution.

However, cases of forcible repatriation of Tibetan refugees from Nepal continue to be reported. The last known reported case occurred on 5 September 2019, when six Tibetans were deported to the People's Republic of China ("China") shortly after crossing the border into Nepal. A source described how the handcuffed Tibetan refugees wailed in distress and pleaded with the police not to take them back to China.³ It must be assumed that a number of cases of refoulement of Tibetans remain unreported, as access to the border areas to Tibet is limited.

Nepal's signing of two new agreements (the agreement on a Boundary Management System, and the Treaty on Mutual Legal Assistance on Criminal Matters)⁴ with China in October 2019 to strengthen cooperation on border management, criminal investigations, and the repatriation of illegal persons, are likely to further undermine respect of the principle of non-refoulement.

Questions

- Please provide information and statistics on cases of Tibetans handed over to the authorities of China, disaggregated by year, gender, and age.
- What measures has the government taken to ensure that its treaties and agreements with China are implemented in conformity with international human rights standards, and in particular with the principle of non-refoulement?
- Can the government indicate if and when it will resume issuing Refugee Identity Cards or introduce a similar system that provides Tibetans in Nepal with a protective legal status?

¹ UNHCR Global Appeal 2010-2011, undated, 'Nepal', <http://www.unhcr.org/4b03d32b9.pdf>, p. 34.

² Human Rights Organization of Nepal, 21 June 2017, 'HURON with Tibetan refugees', <https://huronnepal.wordpress.com/2017/06/21/huron-with-tibetan-refugees>.

³ Radio Free Asia, 9 September 2019, 'Nepal Deports 6 Tibetan Asylum Seekers to China', <https://www.rfa.org/english/news/tibet/nepal-deport-09092019064318.html>

⁴ International Campaign for Tibet, 11 February 2020, 'New China-Nepal Agreements could deny Tibetans freedom' <https://savetibet.org/new-china-nepal-agreements-could-deny-tibetans-freedom/>.

Article 9 - Pre-emptive arbitrary detentions of Tibetans continue

Pre-emptive arbitrary detentions of Tibetans suspected of organizing protests or gatherings before politically sensitive days and events, such as the anniversary of the Tibetan national uprising of 10 March 1959, the Dalai Lama's birthday, official meetings between Nepali and Chinese authorities, or high-level Chinese visits, continue. Authorities have recently used pre-emptive detention against Nepali citizens as well.

In October 2019, 27 Nepali citizens and Tibetans were detained ahead of Chinese President Xi Jinping's visit to Nepal.⁵ Local news agencies reported 24 activists were arrested and faced charges of indecent behavior.⁶ It was reported that some of the activists were arrested for wearing clothing or carrying bags with 'Free Tibet' slogans.⁷

Questions

- What redress mechanisms or appeal procedures are available for Tibetans detained by Nepali police for short periods of time?
- Please clarify how preemptive detentions of Tibetans are compatible with Nepal's obligations relating to the right of freedom of expression and the right to freedom of peaceful assembly under the ICCPR.

Article 12 - Tibetans' freedom of movement restricted

The right to freedom of movement is guaranteed by Article 12 of the ICCPR for all persons "lawfully within the territory of a State," including non-nationals. However, while Tibetans holding valid RCs are entitled to move freely within Nepal, only Tibetans who reside in remote settlements along the border are permitted into these border areas with a valid RC card. In addition, the International Campaign for Tibet has documented accounts of Tibetans who hold valid RCs being subjected to increased scrutiny when travelling within Nepal. This appears to apply to Tibetans travelling to attend religious ceremonies or anniversary gatherings. Some refugees reported being harassed or turned back by police at checkpoints.⁸

In addition, ahead of a state visit by Chinese President Xi Jinping to Nepal in October 2019, Tibetan Buddhist monks were reportedly prevented from leaving or returning to their monasteries in Nepal. During the same time, the Samdupling Tibetan Settlement at Jawalakhel near Kathmandu was placed under lockdown.⁹

For international travels, Tibetan refugees need to have a travel document issued by the Nepali authorities, and this is extremely difficult, and sometimes impossible, to obtain. It is also conditioned on having no record of being involved in political protests.¹⁰

⁵ Radio Free Asia, 15 October 2019, 'Tibetans harassed, detained in Nepal ahead of visit by China's President', <https://www.rfa.org/english/news/tibet/visit-10152019171717.html>.

⁶ Online Khabar, 13 October 2019, 'Free Tibet activists arrested before Xi visit to face indecent behavior charge', <https://english.onlinekhabar.com/free-tibet-activists-arrested-before-xi-visit-to-face-indecent-behaviour-charge.html>.

⁷ Tibetan Review, 16 October 2019, 'Nepal to charge Xi-visit arrested Tibetans for "indecent behavior"', <https://www.tibetanreview.net/nepal-to-charge-xi-visit-arrested-tibetans-for-indecent-behaviour>.

⁸ Human Rights Watch, 1 April 2014, 'Under China's Shadow', <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>; Also see United States Department of State, '2019 Country Reports on Human Rights Practices: Nepal', <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/nepal>.

⁹ Radio Free Asia, 15 October 2019, 'Tibetans Harassed, Detained in Nepal Ahead of Visit by China's President', <https://www.rfa.org/english/news/tibet/visit-10152019171717.html>.

¹⁰ International Campaign for Tibet, June 2011, 'Dangerous Crossing: Conditions impacting the flight of Tibetan refugees', https://www.savetibet.org/wp-content/uploads/2013/05/refugees2010_web-1.pdf, p. 88.

Questions

- Please clarify how the restrictions on the freedom of movement placed on Tibetans, such as curbs on travels to attend religious or cultural gatherings, are compatible with Nepal's obligations under Article 12 of the ICCPR.
- Please explain how the requirement of having no record of involvement in political protests in order for Tibetans in Nepal to obtain a travel document complies with Article 12 of the ICCPR.

Article 18 - Tibetans and Tibetan Buddhists' right to freedom of religion increasingly violated

Repression and criminalization of the right of Tibetans to freedom of religion by the Chinese government's policies in Tibet is one of the main reasons why Tibetans risk their lives to cross the Himalayas to seek asylum abroad. In exile, Tibetans have been able to perform, explore, and develop their own unique cultural heritage away from the restrictions of Beijing's rule, including celebrating key Tibetan festivals such as Losar (Tibetan New Year, in February/March) and the Dalai Lama's birthday.

However, in recent years, the Nepali government has imposed severe curbs on celebrating these Tibetan festivals, including restricting the movement of monks and nuns planning to attend religious events such as the Dalai Lama's birthday celebrations. In July 2019, the Nepali government also banned the public celebration of the Dalai Lama's birthday in Kathmandu, arguing "infiltrators" could create trouble.¹¹ Nepali police also gathered in riot gear at the Boudha Stupa to block gatherings of Tibetans.¹²

Such restrictions on the exercise of the right of Tibetans to freedom of religion have also had a negative impact on Buddhist Nepali citizens, such as Sherpas, Tamang, Hyolmos, Gurungs and others, who also revere the Dalai Lama as their spiritual teacher. In March 2019, a Member of Parliament from Nepal's Communist Party, Khaga Raj Adhikari, asserted at a public event that the use of the *khata*, a traditional Tibetan scarf, in Nepal "hurt[s] the feelings of the Chinese people," giving political color to a fundamentally spiritual and cultural tradition. In reaction, the Buddhist community, under the banner of the Nepal Buddhist Federation, held large demonstrations by people from different ethnic groups, including monks and lay people, to challenge Adhikari and call for the protection of their tradition.¹³

Questions

- How do restrictions on Tibetan Buddhist religious events comply with Article 18 of the ICCPR?
- Please clarify what measures the government plans to take to guarantee that Tibetans are able to exercise their right to freedom of religion without any restrictions and interferences by the authorities.

Articles 19 and 21 - Freedom of expression and freedom of peaceful assembly shrinking

Tibetans in Nepal who publicly express opinions about the human rights situation in Tibet and display objects, such as flags or T-shirts that make reference to Tibetan national symbols or political activism, continue to be subjected to arrests and harassment. On 14 March 2018, Tibetan activist Adak was detained for nine days for posting a picture of himself with a Tibetan flag on Facebook and for writing to international embassies in Kathmandu about human rights issues in Tibet.¹⁴

¹¹ Reuters, 7 July 2019, 'Nepal denies Tibetans' request to hold Dalai Lama birthday celebration', <https://www.reuters.com/article/us-nepal-china-dalailama/nepal-denies-tibetans-request-to-hold-dalai-lama-birthday-celebration-idUSKCN1U2074>.

¹² International Campaign for Tibet, 9 July 2019, 'Nepal prevents Dalai Lama birthday celebrations in Kathmandu, further undermining Tibetans' rights', <https://savetibet.org/nepal-prevents-dalai-lama-birthday-celebrations-in-kathmandu-further-undermining-tibetans-rights>.

¹³ International Campaign for Tibet, 2 April 2019, 'Buddhists in Nepal unite in solidarity against a politician's condemnation of traditional greeting scarves', <https://savetibet.org/buddhists-in-nepal-unite-in-solidarity-against-a-politicians-condemnation-of-traditional-greeting-scarves/>

¹⁴ International Campaign for Tibet, 28 March 2018, 'Photo with Tibetan flag led to Tibetan activist's 10-day detention in Nepal',

Tibetans have also faced restrictions on the celebration of religious and political anniversaries, and Nepali authorities have continued to impose bans on their public gatherings. On 6 July 2016, Nepali police dispersed a crowd of several hundred Tibetans who gathered at a government-approved celebration of the Dalai Lama's 81st birthday.¹⁵ A Tibetan refugee representative and 23 other Tibetans were briefly detained in connection with the incident. In 2018, authorities banned peaceful protests or public gatherings marking the 59th anniversary of the Tibetan national uprising.¹⁶ In 2020, in the lead up to the 61st anniversary of the Tibetan national uprising on 10 March, Tibetans in Nepal were urged not to commemorate the anniversary and warned of increased police surveillance.¹⁷

Due to growing influence and pressure by the Chinese government, the public space for freedom of expression in matters related to China and Tibet is also increasingly shrinking for Nepali citizens, such as members of civil society and journalists.

For example, in May 2019, three journalists from Nepal's national news agency *Rastriya Samachar Samiti* were investigated for translating and disseminating a globally published news item about the Dalai Lama being discharged from a hospital in New Delhi. The investigation was initiated after pressure from Chinese officials in Kathmandu. While the three journalists submitted their clarifications on the incident, they also expressed concerns about the working environment and the lack of press freedom in the national news agency.¹⁸

Infringements on free speech have also extended to the arts. In June 2018, Nepali authorities forced a theatre in Kathmandu to stop two planned shows of a play that depicted the struggles of Tibetan refugees in Nepal and India, after Nepal's Ministry of Foreign Affairs warned that the play violated the country's one China policy.¹⁹

Article 17 (2) of Nepal's Constitution guarantees the right to freedom of assembly and expression only to Nepali citizens. This is incompatible with Nepal's international human rights obligations under the ICCPR, which grant these rights to everyone regardless of his or her citizenship.

Questions

- Please provide statistics on the number of investigations that have been conducted into cases of intimidation and harassment of Tibetans for organizing peaceful political and cultural gatherings since 2015.
- Please clarify how restrictions on the right to freedom of peaceful assembly of Tibetans comply with the requirements of legality, necessity, and proportionality under Article 21 of the ICCPR.
- What measure has the government taken to guarantee a free, uncensored, and unhindered press, including with regards to issues related to China and Tibet?
- What concrete steps has the government taken to bring its domestic legislation into compliance with Article 19 and 21 of the ICCPR?

<https://savetibet.org/photo-with-tibetan-flag-led-to-tibetan-activists-10-day-detention-in-nepal/>.

¹⁵ Radio Free Asia, 6 July 2019, 'Nepal Police Break up Tibetan refugees' Celebration of Dalai Lama's Birthday', <https://www.rfa.org/english/news/tibet/celebration-07062016152945.html>.

¹⁶ Tibetan Review, 11 March 2018, 'Nepal bars Tibetans from marking their 59th national uprising anniversary', <https://www.tibetanreview.net/nepal-bars-tibetans-from-marking-their-59th-national-uprising-anniversary/>.

¹⁷ Phayul, 10 March 2020, 'Tibetans living in Nepal urged not to observe 10th March Uprising Anniversary', <https://www.phayul.com/2020/03/10/42831/>.

¹⁸ Kathmandu Post, 12 May 2019, 'Three journalists are under investigation over publishing news about the Dalai Lama', <https://kathmandupost.com/national/2019/05/12/three-journalists-face-probe-over-publishing-dalai-lama-news>.

¹⁹ Tibetan Review, 27 June 2018, 'Nepal cracks down on Tibet theatre play, citing sanctity of 'one China policy'', <https://www.tibetanreview.net/nepal-cracks-down-on-tibet-theatre-play-citing-sanctity-of-one-china-policy>.