

## Nepal

### Submission to the UN Universal Periodic Review

#### Tenth session of the HRC UPR Working Group, 24 January – 4 February 2011

In this submission, the International Campaign for Tibet (ICT) provides information under sections B, C and D of the General Guidelines for the Preparation of Information Under the Universal Periodic Review.

#### **Executive Summary**

The Tibetan people have enjoyed an historic and mutually beneficial relationship with the Nepalese people since ancient times. This submission deals with increasing constraints on the long-staying Tibetan refugee community in the exercise of their fundamental rights, including freedom of association and expression, and the failure of the Nepal government to provide adequate protections for both new and long-staying refugees. The overwhelming factor in the deterioration in the situation for Tibetans in Nepal is pressure on the Nepal government from the government of the People's Republic of China to comply with its policy directives on Tibetan issues.

#### **Background and framework**

The conclusions and recommendations in the submission are based on first-hand observations from ICT employees and contractors visiting or resident in Nepal, and the testimony of Tibetans living or transiting through Nepal.

ICT, founded in 1988, is a duly registered non-governmental organization with offices in Washington, D.C., Amsterdam, Brussels and Berlin, and in the field. ICT is a human rights monitoring and advocacy organization. ICT produces an annual report on Tibetan refugees entitled, *Dangerous Crossings*. Our findings on Nepal are made in consideration of the rights of refugees according to international laws, the assistance activities that should enhance the protection of these rights, and the behaviors and practices that diminish the protection of these rights.

According to the United Nations High Commissioner for Refugees (UNHCR), there are 20,000 Tibetan refugees living in Nepal, with an additional 1,500 Tibetans living in “refugee-like situations,”<sup>1</sup> although the real number is likely to be far higher.

- ICT urges safe passage of Tibetans through Nepal according to the “Gentlemen’s Agreement” and recommends that Nepal implements durable solutions for long-staying Tibetans residing in Nepal

#### **B. Normative and institutional framework for the promotion and protection of human rights**

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

### **Failure to implement a durable solution for Tibetan refugees**

ICT is concerned at the failure of Nepalese authorities to issue refugee [identity] certificates (RC) to all Tibetan refugees who meet the criteria set by the Nepal government, having entered Nepal before December 31, 1989, and their eligible offspring. The RC allows Tibetans to remain in Nepal with certain limited civil rights and serve to protect Tibetans from undue harassment and illegal deportation by authorities. Nepal has been unreliable in the issuance of RCs and thousands of Tibetans who are eligible have been waiting for years for processing to resume. In 2000, the Nepal Ministry of Home Affairs told a visiting US official that Nepal would issue RCs to all eligible Tibetans. This has not been done. ICT also notes a rise in tough language from Nepalese officials threatening the deportation of Tibetan refugees.

A Tibetan community leader in Kathmandu told ICT: “Tibetans stopped by Nepalese police on the way home without papers can be beaten up, often huge fines are demanded. They are always told that it will be worse for them if they tell the UNHCR or any other organization or individual. For this reason most harassment is not reported.” Multiple instances of this kind have been reported to ICT by trusted sources in Kathmandu.

In September, 2005, the United States proposed a program to resettle certain Tibetan refugees from Nepal in the United States.<sup>2</sup> This policy decision was made in consideration of the vulnerability of many long-staying Tibetan refugees in Nepal. Nepal has so far not allowed the resettlement program to begin.

- ICT calls on Nepal to find durable solutions for its long-staying Tibetan refugees, including issuance of RCs, opening the path to citizenship, and cooperation with the US -proposed refugee resettlement program for certain Tibetans in Nepal.

### **Increased dangers for Tibetans transiting through Nepal**

ICT has evidence of inconsistency in the treatment of Tibetan refugees by both Nepal officials and border forces, indicating an undermining of the “Gentlemen’s Agreement” with the UNHCR that allows safe passage for Tibetan refugees through the border areas to Kathmandu and onward to India.<sup>3</sup>

On February 23, 2009 members of the Young Communist League (YCL) detained five Tibetans attempting to cross the Tibet-Nepal border before turning them over to local police in Sindhupalchowk. The YCL members claimed the Tibetans were entering Nepal to take part in so-called “Free Tibet” activities. The detention marks the first time that Nepal’s Maoist party has directly intervened in attempting to capture Tibetans crossing the border.<sup>4</sup> The Tibetans were eventually turned over to UNCHR, as stipulated by the

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<sup>2</sup> See: ‘US proposes new Tibetan refugee admissions program,’ ICT, September 7, 2007, <http://www.savetibet.org/media-center/ict-news-reports/tibetan-protestors-without-nepalese-papers-face-removal-india>

<sup>3</sup> “Dangerous Crossing: conditions impacting the flight of Tibetan refugees 2009 update,” ICT, June 19, 2010, <http://www.savetibet.org/files/documents/Dangerous%20Crossing%202009.pdf>

<sup>4</sup> ‘Nepal Maoists ‘arrest’ five Tibetans for ‘anti-China’ activities,’ February 23, 2009, IANS, [http://www.thaindian.com/newsportal/politics/nepal-maoists-arrest-five-tibetans-for-anti-china-activities\\_100158620.html](http://www.thaindian.com/newsportal/politics/nepal-maoists-arrest-five-tibetans-for-anti-china-activities_100158620.html)

Gentlemen's Agreement, however, intervention by groups such as the YCL places the provisional protections afforded to Tibetans at greater risk of being abrogated.

- ICT urges Nepal to adhere to the Gentlemen's Agreement with the UNHCR, with heightened vigilance concerning possible violations of the agreement at or near the border. This includes upholding the principle of non-refoulement by taking the adequate policy and administrative steps, which include written policy instruction to immigration officials and border police, and training of Nepalese police, security forces and immigration authorities in proper procedures (as per the Gentlemen's Agreement) and international human rights norms.

There have been numerous documented incidents of theft of money and possessions from Tibetan refugees arriving in Nepal at the hands of Nepalese border security, with at least one such incident in 2009. Sometimes these thefts have amounted to thousands of yuan plus the confiscation of items such as mobile phones.

- ICT recommends that Nepal investigate incidents of theft from Tibetan refugees in transit through Nepal, in keeping with normal standards and practices and consistent with the government's attempts to fight corruption.

### **C. Promotion and protection of human rights on the ground**

#### **Preemptive detentions**

Nepalese police preemptively detain prominent Tibetans prior to key anniversary dates in Tibet and China. Nepalese authorities detained up to 25 Tibetans prior to the planned March 10, 2009 gathering to mark the anniversary of the failed Tibetan uprising in Lhasa, Tibet on March 10, 1959. Throughout 2009, ICT documented a comprehensive containment of Tibetan gatherings in Kathmandu. Some Tibetan celebrations were allowed but not without a heavy security presence in place. Armed police were deployed around Tibetan monasteries, nunneries and schools. The pre-emptive arrests of Tibetans, ID checks and house and hotel searches prior to the March 10 anniversary contributed to a widespread climate of fear and insecurity among Tibetans in Nepal.

Three Tibetans who were detained in Kathmandu on March 9 were released two weeks later when their detention was ruled 'illegal' by Nepal's Supreme Court. Hotels in the Tibetan pilgrimage area of Boudhanath in Kathmandu were raided in the week prior to the March 10 anniversary, with Tibetans taken into custody and released on payment of bribes to police.

Nepalese officials have banned protests near the Chinese embassy and consulate in Kathmandu, and one senior Nepalese official threatened to open fire on peaceful Tibetan protestors if they demonstrated outside the Chinese consulate. Dozens of Tibetan demonstrators were detained throughout 2009 as a result,<sup>5</sup> at times at the behest of Chinese embassy officials according to Kathmandu police.<sup>6</sup>

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<sup>5</sup> See: "A fragile welcome: China's influence on Nepal and its impact on Tibetans," ICT, June 19, 2010, <http://www.savetibet.org/media-center/ict-news-reports/fragile-welcome-china's-influence-nepal-and-its->

- ICT is concerned with the practice of preemptive detentions and the wide-scale use of security forces used to intimidate Tibetans residing in Nepal and calls on Nepalese officials to ensure the fair treatment of Tibetans under Nepalese law.

#### **D. Identification of challenges and constraints**

##### **Chinese pressure on the Nepalese government**

Nepal's geographic position as a transit point for Tibetans fleeing Tibet for India, as well as the estimated 20,000 Tibetans residing in Nepal, has made it a focal point of Chinese diplomatic pressure. As a result, Nepal has adopted a harder line stance against its Tibetan community, a significant shift from the humanitarian approach that had previously characterized Nepal's treatment of Tibetans.

In an article appearing in *Review Nepal*,<sup>7</sup> a source in Nepal's foreign ministry acknowledged intense pressure from China on Nepal to put an end to so-called "anti-China" activities by Tibetans, with one source reporting the Chinese embassy in Kathmandu sending over a dozen letters within one month concerning the situation. The source told of increased Chinese pressure on Nepal, holding it responsible for any activities carried out by the Tibetan community. The letters asserted that "being a neighboring country, Nepal would be able to control any form of Tibetan refugee activities or anti-China sentiment from Nepal."

##### **Closure of the Dalai Lama's office in Kathmandu**

As of July, 2010, the Office of the Representative of His Holiness the Dalai Lama and the Tibetan Welfare Office in Kathmandu, established in the 1960s and closed by King Gyanendra in 2005, remained closed. The closures, which were in response to Chinese pressure, deprive long-staying Tibetan refugees of important community services.

The closures of the Tibetan Welfare Office and the Office of the Representative of His Holiness the Dalai Lama exacerbates the 'protracted refugee situation' for long-staying Tibetan refugees and means that governments and NGOs have no established point of contact with experience and expertise in dealing with Tibetan issues in Nepal. Tibetans had once again been dramatically reminded of their vulnerability in Nepal.

Since the closure of the offices, several foreign embassies in Kathmandu have urged Nepal to register an alternative Tibetan office to partner with the UNHCR to provide urgent humanitarian assistance to the Tibetan refugees transiting through Nepal every year, and to provide social services to the long-staying Tibetan refugee community. In October 2005, the Nepal Home Ministry registered the Bhota Welfare Society, headed by

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[impact-tibetans](#), and "Dangerous Crossing: conditions impacting the flight of Tibetan refugees 2009 update," ICT, June 19, 2010, <http://www.savetibet.org/files/documents/Dangerous%20Crossing%202009.pdf>

<sup>6</sup> '16 Tibetan activists arrested in Nepal,' Zee News, March 1, 2009, <http://www.zeenews.com/southasia/2009-03-01/511637news.html>

<sup>7</sup> 'Nepalese foreign ministry officials says: China increases pressure Nepal asking to curb Tibetan movements,' Review Nepal, August 5, 2009

a Nepalese citizen of Tibetan origin. However, the organization was de-registered on October 24, 2006, by instruction of the Nepal Foreign Ministry.

- ICT urges Nepal to allow the reopening and fully functioning of the Tibetan Welfare Office and the Office of the Representative of His Holiness the Dalai Lama.

### **Operation of the Tibetan Refugee Reception Center**

Tibetans who arrive safely in Kathmandu are provided temporary shelter at the Tibetan Refugee Reception Center (TRRC). The TRRC is critical for the welfare of Tibetans arriving in exile, but it is already subject to considerable scrutiny from the Nepalese authorities due to Chinese government concern over the activities of Tibetans in Nepal. Prior to the 50th anniversary of March 10, a substantial police deployment was reported at the Reception Center, with plain-clothes Nepalese police officers entering the premises and demanding information about the names and movements of Tibetans staying there.

- ICT considers that Nepal is obligated to provide absolute guarantee for the preservation of the TRRC and its integrity as a secure place of temporary refuge and respite for Tibetans fleeing Tibet through Nepal and onward to India.

### **Chinese military and police intrusion into Nepal**

An incident occurred in June 2010 in which Tibetan refugees, including women and two sick children, were forced to hide in a forest in Nepal while Chinese armed police searched for them – after Nepalese police had started to transport them back to the Tibet-Nepal border.<sup>8</sup> This is not the first known incident of Chinese forces encroaching on Nepalese territory in the pursuit of Tibetan refugees and continues a worrying trend of an unchecked Chinese military presence on the Nepalese side of the border.

- ICT recognizes Nepal's legitimate commitment to securing its national borders, including in cooperation with Chinese border police. However, unauthorized or secret border crossings into Nepal by Chinese military and law enforcement personnel in pursuit of Tibetans risks violence against Tibetan refugees. ICT calls on Nepal to develop border protocols that prioritize the training of local Nepalese police units in the Gentlemen's Agreement and the maintenance of regular communication with stakeholders in Kathmandu. ICT strongly urges Nepal to take a clear position against any Nepal-China bilateral agreement that would codify China's position that Tibetans are economic migrants and turn Tibetan refugees in Nepal into criminal illegal aliens that could lead to their forcible return to Tibet where they would face persecution.

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<sup>8</sup> See: "A fragile welcome: China's influence on Nepal and its impact on Tibetans," ICT, June 19, 2010, <http://www.savetibet.org/media-center/ict-news-reports/fragile-welcome-china's-influence-nepal-and-its-impact-tibetans>