

Submission to the OHCHR for the Universal Periodic Review of Bhutan, 2009

**by the
Bhutanese Refugee Support Group (UK and Ireland)**

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Introduction

1. This submission is made by the Bhutanese Refugee Support group (UK and Ireland), some of whose members witnessed at first hand the events of the late 1980s and early 1990s leading to the exodus of tens of thousands of Lhotshampas (southern Bhutanese people of Nepalese ethnicity) from Bhutan. The group responded to Bhutan's reports under the Convention on the Rights of the Child in 1999 and 2007, in the knowledge that no response could or would be made from within Bhutan.

2. In this submission we address three of the issues raised by the Committee on the Rights of the Child in its concluding observations on Bhutan in September 2008 (CRC/C/BTN/CO/2): the right to a nationality, the right to education, and the issue of Bhutanese refugee children. Our access to information is limited, and it is therefore not in our capacity to do more than set down some indicators. This short submission is prompted by developments which indicate that the Royal Government of Bhutan may be attempting to address some of the concerns raised and recommendations made by the CRC.

The right to a nationality

3. In paragraph 34 of its concluding observations, the Committee on the Rights of the Child urges that the state party take the necessary measures to ensure that no child is or risks being stateless, in accordance with article 7 of the Convention.

4. In 1988, Lhotshampas in Bhutan were divided into seven categories, as follows:

- F1: genuine Bhutanese;
- F2: returned migrants;
- F3: people not available during the census;
- F4: a non-national woman married to a Bhutanese man;
- F5: a non-national man married to a Bhutanese woman;
- F6: children legally adopted;
- F7: non nationals - migrants and illegal settlers.

Since then, categorisation has been used as a tool to evict Lhotshampas or to declare them non-national. Placement in the seven categories has often been arbitrary. Status has been subject to change from one year to another. In some cases members of the same family have been placed in different categories. The Ministry of Home and Cultural Affairs began issuing new Citizenship ID cards with biometric data in 2004. Cards were only issued to people falling into categories F1 and F4. Following a nationwide census carried out in Bhutan in 2005, the total population of Bhutan was declared to be 634,972. Of these, 552,996 were said to be Bhutanese citizens, and

81,976 non-national residents. (These figures exclude migrant workers.) It is likely that most or all of those classified as “non-national residents” are Lhotshampas whose citizenship status was eroded by various measures taken since the end of the 1980s, their children and children’s children.

5. It has emerged recently that the status of people categorised as F5 is being reviewed by the Department of Immigration and Census on a case by case basis. If people in F5 meet “all the criteria”, they will enjoy the same rights as those in F4. It is not clear what is meant by “meeting all the criteria”. Nor is it clear whether these people will be given full citizenship.

6. Thousands of people placed in F7 were forced to leave Bhutan. Those who have managed to remain in the country have consistently been denied access to services including education and health, the right to work, to own property, to marry, to travel freely.

7. There are some slight signs of hope for people in F7. Some have been able to appeal to the King. On a case by case basis and on his order, some have been granted temporary travel permits, renewable every six months, allowing them to travel freely through checkpoints in the country. The citizenship status of these people is said to be “under review”.

The right to education

8. On the issue of the right to education of children of Nepalese ethnic origin, the Committee on the Rights of the Child noted as positive the re-opening of schools in southern Bhutan and the abolition of the “no objection certificate” announced by the State party. It recommended that the State party, in light of its obligations under articles 28, 2 and 30 of the Convention on the Rights of the Child, provide education for all children within its jurisdiction, including for children of Nepalese ethnic origin, non-Bhutanese and stateless children.

9. It is reportedly now easier for Lhotshampa children to get enrolment in schools. However, parents are required to produce their marriage certificate, biometric ID card numbers, and the child’s birth certificate. This clearly excludes children whose parents are not recognised as Bhutanese citizens, and children whose birth has not been registered (a problem highlighted by Lhotshampas, and by the Committee on the Rights of the Child in paragraph 31 and 32 of its concluding remarks).

10. The Royal Government announced in January 2009 that about nine schools in southern Bhutan, closed for more than a decade for security-related issues, are to re-open this year. Since the early 1990s, Lhotshampa children have been systematically excluded from schools in southern Bhutan which served northern Bhutanese settled in the south (many on land owned and previously occupied by Lhotshampas in exile), and children of members of the security forces.

11. The “no objection certificate” (NOC), or security clearance certificate (SCC) is still in operation and must be sought each time a person applies for training, a job, or promotion. The Bhutan Broadcasting Service reported on April 10, 2009, that from

June or July this year, people will not have to get different security certificates for different purposes.

12. The origin of the SCC can be traced to a Home Ministerial circular dated August 17, 1990, instituting the policy of guilt by association. The circular stated: “*Any Bhutanese national leaving the country to assist and help the anti-nationals shall no longer be considered as Bhutanese citizens. It may also be made very clear that such person’s family members living under the same household will be held fully responsible and forfeit their citizenship.*” The practice of discrimination on the basis of relationship to or association with people termed anti-nationals (known in Dzongkha as *ngolops*), including people associated with anyone living in the refugee camps in Nepal or said to have been involved in widespread demonstrations which took place in 1990, continues to this day. Young people (not only Lhotshampas but people from eastern Bhutan whose family members were involved in pro-democracy demonstrations in 1997) have been denied access to primary, secondary and third level education through the withholding of SCCs.

13. That the SCC can still be withheld on the basis of “guilt by association” is evidenced in an opinion poll currently (April 2009) running in the Bhutan Times (www.bhutantimes.com) . The opinion poll is entitled *How to resolve the NOC/SC issue*. Respondents are asked to choose between the following options:

1. The NOC requirement should be revoked immediately and unconditionally as it is unconstitutional and goes against the rights of the people of this country.
2. The NOC requirement should apply only to those directly involved in subversive activities and their aiders and abettors. NOC should be required for government jobs and executive positions in business associations and NGOs.
3. The NOC requirement was created because of the treachery of some segments of our society. The NOC requirement should not change until all the refugee camps in Nepal are closed.
4. No idea.

A contributor adds this comment: *Definitely NOC should not be done away with... But they shouldn’t ask for an NOC for every damn thing you do under the sun. And they shouldn’t hassle the whole country because they are worried about a few people.*

14. It was reported in Bhutan’s national newspaper Kuensel on December 25, 2008, that among the issues tabled for discussion at the second session of the new parliament were *security clearance for those involved in the 1990 anti-national demonstrations, census regulation of F5 cases, dropout cases from the 1992 national census of those part of whose family migrated and due to other reasons*. The outcome of the discussion of these issues was not made public, as far as we know.

Refugee children

15. The committee of the Rights of the Child recommended the State party to enhance efforts in negotiations in order to find a peaceful and prompt solution for either the

return or resettlement of people living in refugee camps, and to ensure the transparency of the procedure for the determination of the nationality of refugees. The procedure should be based on the right to a nationality and the right to leave and return to one's country, with due consideration of the best interests of the child.

16. Over 100,000 Bhutanese refugees have been living in refugee camps in South East Nepal since they were expelled from Bhutan in the early 1990s, representing nearly one-sixth of the population of Bhutan. Resettlement of refugees to third countries began in November 2007, and in January 2009 UNHCR reported that more than 8,000 refugees had been resettled, the vast majority in the United States. A further 16,000-18,000 are expected to resettle in 2009. Since the first expulsion of Lhotshampas in 1991, however, not a single Bhutanese refugee has been able to return to Bhutan. The Bhutanese government has not only succeeded in the mass expulsion and denationalization of a large proportion of its Lhotshampa population, but also in systematically denying the rights of the refugees to return to their own country.

Bhutan's commitment to its obligations under the Convention on the Rights of the Child

17. In article 9.24 of the Constitution of the Kingdom of Bhutan, which came into force in 2008, the state undertakes to *foster respect for international law and treaty obligations*. Article 10.25 states that International Conventions, Covenants, Treaties, Protocols and Agreements entered into by Bhutan shall continue in force subject to section 10 of Article 1. Article 1.10 states that *the provisions of any law, whether made before or after the coming into force of this constitution, which are inconsistent with this constitution, shall be null and void*. The Constitution of Bhutan takes precedence over Bhutan's commitments under the CRC and other human rights instruments.

18. Under Bhutan's existing citizenship laws, there is not adequate provision for a child to acquire a nationality at birth in accordance with article 7 of the CRC. For those people who through the F1-F7 categorisation process have been marginalised and rendered *de facto* stateless in their own country, the provisions of the 1985 Citizenship Act make it difficult to regularise their status. It would be impossible for Bhutanese refugees seeking repatriation to their own country to fulfil the conditions set out in the 1985 Citizenship Act. The option of repatriation for those refugees who wish to and have the right to return to their country depends on a proper resolution of the nationality status of those people in Bhutan who are currently denied citizenship.

19. Bhutan's undertaking to "foster respect" for treaty obligations falls short of a commitment to fully uphold them.

For Reference:

- Reports by Amnesty International and Human Rights Watch at www.amnesty.org and www.hrw.org
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- Hoping to Return Home. Housing, Land and Property Restitution Rights for Bhutanese refugees and Displaced Persons. Centre of Housing Rights and Evictions, 2008. www.cohre.org
- www.bhutanese-refugees.com