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**\*911 TIBETAN REFUGEES IN NEPAL: FROM ESTABLISHED SETTLEMENTS TO  
FORCIBLE  
REPATRIATION**

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I. Introduction

In 1949, the People's Liberation Army of China invaded and occupied Tibet. After massive uprisings against Chinese rule in March, 1959, the Dalai Lama and 80,000 refugees fled Tibet for Nepal and India. [FN1] Since 1959, over 130,000 refugees have escaped Tibet. Today, the rate continues at approximately 2,500 per year. The only viable route for the refugees to take is over the mountain passes of the Himalayas from Tibet into Nepal.

Today, Tibetans entering Nepal from Tibet without valid travel documents are considered illegal migrants by the Nepali government. Nepal does, however, permit the United Nations High Commissioner for Refugees (UNHCR) to process new Tibetan refugees and to send to India those considered to be "of concern to the High Commissioner." [FN2]

Tibetan refugees are routinely harassed by Nepali border guards. There are also incidents of forcible repatriation of some refugees, which have been interpreted by some legal experts to be in violation of international law. [FN3] The treatment of Tibetan refugees in Nepal has been directly linked to Nepal's relationship to the Chinese government. The forcible repatriation of Tibetans intensified in 1995 under the Marxist-Leninist government of Prime Minister Adhikari, which had good relations with the Chinese government.

II. Background

In the initial years following the Dalai Lama's escape, fifty-two refugee settlements were set up in India, Nepal, and Bhutan with the assistance of the host governments and the UNHCR. As of 1992, there \*912 were approximately 16,000 Tibetan refugees living in Nepal. [FN4] While in recent decades the Nepali government has not permitted the Tibetan refugees to remain in Nepal, they have been provided with safe passage to India with the assistance of the UNHCR. From the late 1960s to the mid 1980s, the border between Nepal and Tibet was closed, although every year some Tibetan refugees still managed to cross into Nepal. The border was opened again in 1985, mostly to promote tourism, but was closed again after large-scale demonstrations against Chinese rule occurred in Tibet in 1989 and martial law was imposed. The border reopened in late 1989 and a steady flow of tourists, business persons, and refugees has traversed the border into Nepal ever since.

When the Dalai Lama arrived in India as a refugee in 1959, he established a Tibetan Government in Exile and placed a high priority on establishing religious, educational, and cultural institutions in India in order to provide an environment where Tibetan refugees could continue to learn about their national heritage. As a result of these now well-established institutions, a large percentage of the new Tibetan refugees are Buddhist monks and nuns who hope to pursue their religious studies in India, as they are not permitted to freely practice their religion in Tibet. Similarly, many Tibetan parents send their children to study in India where they can be assured of a safe environment and an

education in Tibetan language and customs. [FN5]

### III. Processing of Tibetan Refugees in Nepal

In Nepal the Tibetan refugees are interviewed and processed by the UNHCR, based in Kathmandu. After crossing the border into Nepal, new Tibetan refugees find their way to the UNHCR reception center on the outskirts of Kathmandu either on their own or with a hired guide. It is common for refugees to be intercepted by Nepali police who take them to the immigration office in Kathmandu where they are held until a UNHCR official is able to interview them.

The UNHCR provides the primary financial support for the new refugees. [FN6] The UNHCR's staff in Nepal interview each new refugee to determine if they fall within the category "of concern to the High Commissioner." [FN7] The UNHCR staff also offer protection to the refugees and act as formal liaisons between the Tibetans and the Nepali \*913 government. The UNHCR has a contract with the Tibetan Refugee Welfare Office, a non-governmental organization in Kathmandu, which carries out the day-to-day operations of receiving the new refugees. [FN8] It can take one to three weeks to conduct interviews, fill out the paper work, and provide transportation for the new refugees to India. While waiting to be sent to India, the refugees are housed in dorms and provided with meals and basic medical care. [FN9]

About 97 percent of the new Tibetan refugees who arrive at the UNHCR reception center in Nepal are deemed "of concern" by UNHCR interviewers and are therefore eligible to receive funds for their bus fare to India. [FN10] Once in India, the majority of the new refugees travel to Dharamsala to see the Dalai Lama, after which they are provided with housing and job placement assistance by the Central Tibetan Administration of the Tibetan Government in Exile.

### IV. Repatriation and Mistreatment of New Refugees

Not all refugees who cross the border from Tibet to Nepal make it into UNHCR custody, and those that do are often met with severe harassment by Nepali border guards. Nepali guards at the border and along the many check points leading to Kathmandu extort extensive bribes from the refugees. [FN11] Often by the time the new refugees arrive in Nepal all of their money and/or belongings have been confiscated. [FN12] Some Tibetans have been beaten by border guards, including one Tibetan man who was kicked and beaten with rifle butts by a dozen soldiers in February, 1995. [FN13] In August, 1995 Nepali police fired at a group of ten refugees, injuring three. [FN14] Some refugees have been killed by border guards, including two in October, 1995. [FN15]

Repatriation of Tibetan refugees is also an ongoing phenomenon, with an increase of such incidents in 1995. [FN16] A congressional delegation that traveled to Nepal in April, 1994 interviewed recent arrivals and "heard accounts of Nepali border guards robbing and assaulting refugees, or turning them over to Chinese border guards." [FN17] An earlier \*914 delegation in 1992 reported that an estimated 200 Tibetan refugees were forcibly repatriated in 1991 alone. [FN18]

As of late 1995, the number of repatriations for the year far exceeded that of previous years. Between April 23 and July 26, 1995 alone there were over 200 Tibetans repatriated, although figures may be as high as 400. [FN19] This figure includes three prominent dissidents who had recently been freed from prison in Lhasa and who were reportedly detained immediately upon delivery to Chinese authorities. [FN20] At the same time there has been an increase in security patrols in the areas where Nepali authorities suspect refugees may be hiding. These actions have been protested by the governments of the U.S. and Australia, as well as by the UNHCR. [FN21]

Mistreatment and detention by Chinese authorities of those who have been forcibly repatriated has

been reported. One refugee who managed to escape after having been handed over to Chinese authorities by Nepali border guards said that the repatriated refugees were handcuffed together and placed in jail before being moved to prisons inland. [FN22] Under Chinese law, people caught crossing "the border without permission face a sentence of up to one year in prison, or many more if accused of trying to contact the Dalai Lama and his government." [FN23]

#### V. The Nepali Government and its Relationship with China

Over the past several years there has been considerable change and instability in the Nepali government. Formerly ruled by an absolute monarchy, in 1990 the King liberalized political parties and established an interim government. Now, Nepal is designated a constitutional monarchy with a parliamentary form of government. [FN24]

On September 10, 1995, Prime Minister Man Mahon Adhikari of Nepal was forced to resign as a result of a vote of no-confidence in the Parliament. His communist party, the Unified Marxist-Leninist party, had been in power for only nine months. [FN25] Following the collapse of Adhikari's government, King Birendra appointed a centrist Prime Minister, Sher Bahadur Deuba of the Nepali Congress party, who has since formed a coalition government. This new government has "promised a program of human rights, liberal economic policies and a foreign policy \*915 that gives equal weight and friendship to Nepal's gigantic neighbors, China and India." [FN26]

Nepal has always been sensitive to the size and strength of both India and China, and the Tibetan community in Nepal had long been restricted from coordinating any perceived political activity against the Chinese government. In the 1960s and early 1970s, the CIA funded and trained Tibetan guerrillas to fight against Chinese rule in Tibet. The guerrillas were based in Mustang, a remote area in Nepal. For over twelve years the Nepali government did nothing to stop these activities. After the U.S. began its rapprochement with China in 1972 and the Nepali government became more confident that the Chinese were not interested in mounting an attack, Nepal forced the guerrillas to stop their activities. [FN27]

In recent years, China has contributed significantly to the Nepali economy and relations have steadily improved. This has been evidenced clearly in expanding contacts between the two countries in recent years. In 1989, Chinese Premier Li Peng visited Nepal, causing concern in India for "Nepal's increasingly friendly relations with China." [FN28] In March, 1992 then Nepali Prime Minister Koirala visited Beijing and in 1993, he visited Tibet, the first visit by a Nepali premier to Tibet since the 1950s. [FN29] The recently deposed Prime Minister Adhikari visited Beijing in April, 1995, hoping to increase exports to China and boost tourism with Tibet. [FN30]

When democracy swept through Nepal in the early 1990s and a constitution was developed, there was hope that the Tibetan community would be allowed more open political activity. It became clear that this was not the case as early as February, 1991 when a visit by the Dalai Lama to Nepal was canceled following "Chinese protests made to the Nepalese Government against the proposed visit." [FN31] When he took power, Prime Minister Adhikari took actions to limit political activities by Tibetans in Nepal. [FN32] This came shortly after Major-General Zhong Guogang of China asked the Nepali government not to allow "anti-China activities" by Tibetan refugees in Nepal. [FN33] On August 7, 1995 Ganesh Prasad Bhattari, Nepal's Director of Immigration told Reuters that "China wants Nepal to restrict undesirable activities of Tibetans in \*916 Nepal." [FN34]

The wave of repatriations in 1995 began within days of Nepal's Prime Minister Adhikari's first official visit to Beijing, although the Nepali government has denied consistently that there is any formal policy of forcible repatriation. The government has said that these actions are taken independently by corrupt border guards who hope to make a profit by turning over Tibetan refugees

to Chinese authorities. It has been noted, however, that few attempts have been made by the Nepali government to warn, punish, or train guards who do send Tibetan refugees back to Tibet against their will.

#### VI. Nepal's Obligations to Refugees Under International Law

The right of refugees not to be returned to a country where their lives or freedom would be threatened is embodied in Article 33 of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as in various other United Nations documents including Article 3 of the Declaration on Territorial Asylum. [FN35] In particular, Article 33 prohibits the return of any refugee "[t]o the frontiers of territories where [a refugee's] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion." [FN36] Furthermore, the United Nations General Assembly in several resolutions, and the UNHCR in its own guidelines, have concluded that repatriation should only occur if voluntary. [FN37]

The Chinese government has committed egregious violations of the fundamental human rights of the Tibetan people since it invaded Tibet in 1949. Over one million Tibetans have died as a direct result of the occupation and over 6,000 monasteries and religious institutions, the principle centers for education and religious practice, have been destroyed. [FN38] These violations have been condemned in three United Nations General Assembly resolutions. [FN39]

Given the Chinese government's record of human rights violations against the Tibetan people, including those who have been caught fleeing Tibet, the repatriation of Tibetan refugees from Nepal puts individuals at great risk of detention and mistreatment by the Chinese authorities.

\*917 Nepal is not a signatory to the 1951 Refugees Convention or its 1967 Protocol, nor does it have any domestic legislation relating to the protection of refugees. [FN40] "Regardless of ratification, however, all governments are bound to respect the fundamental human rights of refugees as well as those aspects of refugee, humanitarian and human rights law which have achieved the status of customary international law." [FN41] It is argued by some legal experts that not engaging in forcible repatriation "is a moral obligation and has developed into a legal obligation derived from related rules of conventional and customary international law." [FN42] According to this perspective, therefore, the Nepali government should discontinue the repatriation of Tibetan refugees as it puts them in immediate danger and is in violation of customary international law.

#### VII. Conclusion

The Tibetan community has relied on the Nepali government to allow new refugees to pass safely through the country to India. In 1995, under the communist government of Prime Minister Adhikari, there was a marked increase in forcible repatriations of Tibetan refugees. Such repatriation violates international customary law and is a violation of the fundamental rights of the Tibetan refugees seeking asylum from persecution in Tibet. [FN43]

The new coalition government of Prime Minister Deuba has been in office for too short a time to determine whether this pattern of repatriation will continue. There are already indications, however, that Nepal has reverted to its practice of routinely handing over new refugees to the UNHCR for status determination and eventual transfer to India.

FN1. See JOHN F. AVEDON, *IN EXILE FROM THE LAND OF SNOWS* (1984).

FN2. Evaluation of US Humanitarian Assistance to the Tibetan Community, *TIBET FUND AND THE*

INTERNATIONAL CAMPAIGN FOR TIBET (1994).

FN3. General Principles Relating to the Promotion of Refugee Repatriation, LAWYERS COMMITTEE FOR HUMAN RIGHTS, May 1992, at 4.

FN4. 138 Cong.Rec. S12734 (daily ed., Aug. 12, 1992).

FN5. Information Note on Tibetan Asylum-seekers in Nepal, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Feb. 10, 1994.

FN6. Since 1990, funding has been provided by the U.S. Department of State specifically for the UNHCR work with Tibetan refugees. Similarly, funding has been provided to the Central Tibetan Administration through the Tibet Fund, a U.S. based non-governmental organization, to assist with the refugees in India. See Evaluation of US Humanitarian Assistance to the Tibetan Community, supra note 2.

FN7. Id.

FN8. Information Note on Tibetan Asylum-seekers in Nepal, supra note 5.

FN9. Evaluation of US Humanitarian Assistance to the Tibetan Community, supra note 2.

FN10. Id.

FN11. Country Reports on Human Rights Practices for 1994, Department of State, S. Prt. 12. 104th Cong., 1st Sess., 1241 (Feb. 1995).

FN12. Based on personal interviews with Tibetan refugees in 1992.

FN13. World Refugee Survey, U.S. COMMITTEE FOR REFUGEES (1995), at 106.

FN14. Id.

FN15. Based on oral information received by U.S. Department of State, Nov., 1995.

FN16. The Europa World Year Book 1995, EUROPA PUBLICATIONS INC., at 2194; see also Country Reports on Human Rights Practices for 1994, supra note 11.

FN17. 140 Cong.Rec. S5763-4 (daily ed., May 16, 1994).

FN18. Cong.Rec., supra note 4.

FN19. Over 200 Tibetans Repatriated by Nepal Despite U.N. & U.S. Protests, TIBET INFORMATION NETWORK, July 26, 1995.

FN20. Id.

FN21. Id.

FN22. Id.

FN23. Id.

- FN24. Country Reports on Human Rights Practices for 1994, *supra* note 11.
- FN25. Binaya Guruacharya, Communist Government Defeated in Nepal, ASSOC. PRESS, Sept. 10, 1995.
- FN26. Reuters, Nepalese Centrist Succeeds Marxist as Prime Minister, WASH. POST, Sept. 11, 1995, at A13.
- FN27. AVEDON, *supra* note 1, at 122-8.
- FN28. The Europa World Year Book 1995, *supra* note 16, at 2194.
- FN29. *Id.*
- FN30. Gopal Sharma, Nepal Seeks Better Trade, Tourism Ties with China, REUTERS, Apr. 10, 1995.
- FN31. Europa World Year Book 1995, *supra* note 16.
- FN32. Voice of America, Apr. 12, 1995 (New Delhi).
- FN33. China Asks Nepal to Control Tibetan Refugees, REUTERS, Aug. 7, 1995.
- FN34. Maura Moynihan, Tibetan Refugees—A Continuing Exodus (1994-95), at 1.
- FN35. General Principles Relating to the Promotion of Refugee Repatriation, LAWYERS COMMITTEE FOR HUMAN RIGHTS, May 1992, at 4.
- FN36. *Id.*, at 8.
- FN37. U.N.G.A. res. 1285 (XIII); U.N.G.A. res. 428(v); General Conclusions, Conclusion 36 (XXXVI), 36th Session (1985) (Text in Conclusions on the International Protection of Refugees, UNHCR.).
- FN38. See AVEDON, *supra* note 1.
- FN39. U.N.G.A. 1353(XIV) (1959); U.N.G.A. 1723(XVI) (1961); U.N.G.A. 2079(XX) (1965).
- FN40. World Refugee Survey, *supra* note 13.
- FN41. General Principles Relating to the Promotion of Refugee Repatriation, *supra* note 35, at 3-4.
- FN42. Cong.Rec. E1917 (daily ed., May 25, 1989).
- FN43. See General Principles Relating to the Promotion of Refugee Repatriation, *supra* note 35.

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