

NEPAL

Nepal is not a signatory to the UN Refugee Convention, and treats asylum seekers other than the Bhutanese and Tibetan populations as illegal immigrants who may be detained at any time.¹ It is a state party to the International Covenant on Civil and Political Rights, and to its First and Second Optional Protocols. Nepal was host to nearly 131,000 refugees at the end of 2001, the majority of whom were Bhutanese and Tibetan.² Section 9 of the Immigration Act of 1992 empowers immigration officers within the Ministry of Home Affairs to investigate infractions of immigration regulations and to detain, fine, and deport persons charged with their violation.³ Although Nepal's government has no official refugee policy, it cooperates with UNHCR to assist refugees from Bhutan and Tibet. Bhutanese refugees are subject to a Joint Verification agreement entered into between Bhutan and Nepal in late 2000. Under the agreement, Bhutanese refugees are verified in order to determine their nationality status at UNHCR camps in Nepal, with a view to ultimate repatriation to Bhutan.⁴

Tibetans who arrived in Nepal prior to 1989 are issued refugee identity cards (RCs), which technically entitle them to "refugee status." Many Tibetans, particularly young adults and children, lack RCs. RCs must be renewed annually, a reportedly cumbersome and difficult procedure.⁵ According to an unpublished report by the Tibetan Justice Center, Tibetans residing and arriving in Nepal continue to be subject to detention. Even with an RC, Tibetan residents are subject to arrest and detention, especially near the northern border with China (Tibet). For example, in December 2000, the Nepalese police arrested a Tibetan resident because he traveled to a restricted area without a permit. He was held in custody until he paid a fine of 100,000 Rs (~\$1,300).⁶

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 143, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002]; TIBET JUSTICE CENTER, TIBET'S STATELESS NATIONALS: TIBETAN REFUGEES IN NEPAL 47 (June 2002), *available at* <http://www.tibetjustice.org> (last accessed Sept. 13, 2002) [hereinafter TIBET JUSTICE CENTER REPORT].

² USCR WORLD REFUGEE SURVEY 2002, *supra* note **Error! Bookmark not defined.**, at 143.

³ TIBET JUSTICE CENTER REPORT, *supra* note 1, at 47.

⁴ USCR WORLD REFUGEE SURVEY 2002, *supra* note **Error! Bookmark not defined.**, at 143; Human Rights Watch, *Bhutan/Nepal: A Solution For Bhutanese Refugees In Nepal?* (Feb. 27, 2001), *available at* <http://www.hrw.org/press/2001/02/bhutan0227.htm> (last accessed Aug. 29, 2002).

⁵ TIBET JUSTICE CENTER REPORT, *supra* note 1, at 59-60.

⁶ *Id.* at 65.

Despite the lack of an official refugee law, since about 1990 the Nepalese government has acceded to an informal arrangement, known as the “gentleman’s agreement,” with UNHCR and with the Tibetan government-in-exile’s office in Kathmandu. The terms of the agreement provide for the transit through Nepal of newly arriving Nepalese refugees, but does not permit the resettlement of Tibetan refugees in Nepal.⁷ The effectiveness of the gentleman’s agreement, however, is strained by Nepal’s relations with China. Due to increased pressure from China, Tibetans arriving in Nepal after 1989 are considered illegal immigrants and thus are subject to a much stricter border policy, including detention and deportation under the Immigration Act. Those who make it past the border, if apprehended by the police, are detained or threatened with deportation and turned over to the Department of Immigration. In theory, Nepalese police officers accompany them to the Department, which then contacts UNHCR.⁸

While in UNCHR’s custody, Tibetans stay at the Tibetan Refugee Reception Centre situated near Swayambunath on the outskirts of Kathmandu. The Office of Tibet (Tibetan Welfare Office) administers and supervises the Reception Centre with funds received from UNCHR and foreign donors.⁹ Within two weeks of their arrival, Tibetans leave for India, where they may be received as refugees. There have been reports that Tibetans caught within the Nepalese border are often detained and physically mistreated by Nepalese police. Others have been forced to pay bribes or pushed at gunpoint to return to Tibet.¹⁰ Tibetans charged with immigration violations may also be detained for failure to pay a fine calculated according to the number of days they have purportedly been present in Nepal. As of September 2002, ten Tibetans were reportedly jailed in Kathmandu on these grounds.¹¹

Is there an independent review of the detention decision? No.¹²

Detention is carried out by Nepalese police. Tibet Justice Center reports that the conduct of the Nepalese police is often erratic and abusive.¹³

Is there a limit on period of detention? No.¹⁴

⁷ *Id.* at 89-90.

⁸ *Id.* at 93-99.

⁹ *Id.* at 110-11.

¹⁰ *Id.* at 114-17.

¹¹ E-mail from Robert Sloane, Tibet Justice Center to Min Jung Lee, Debevoise & Plimpton (Sept. 13, 2002) (on file with Debevoise & Plimpton) [hereinafter Tibet Justice Center Correspondence].

¹² *Id.*

¹³ TIBET JUSTICE CENTER REPORT, *supra* note 1 at 114,

Tibet Justice Center interviewed a number of Tibetans who had been detained by Nepalese police. The period of detention ranged from several hours to as long as a few days.¹⁵

Is there periodic review of detention? None discovered in research.

Is there access to government-funded legal aid? None discovered in research.

¹⁴ Tibet Justice Center Correspondence, *supra* note 11.

¹⁵ *Id.* at 114.