

**UNIVERSAL PERIODIC REVIEW (UPR)**

**37th SESSION**

**NEPAL**

**JULY 2020**

**JOINT SUBMISSION BY**



**INTERNATIONAL CAMPAIGN FOR TIBET**

**fidh**

## Contact information

### **INTERNATIONAL CAMPAIGN FOR TIBET (ICT)**

1825 Jefferson Place NW  
Washington, D.C. 20036  
USA

Tel: +1-202-785-1515

Fax: +1-202-785-4343

Email: [info@savetibet.org](mailto:info@savetibet.org)

### **FIDH – INTERNATIONAL FEDERATION FOR HUMAN RIGHTS**

17 Passage de la Main d'Or  
Paris, 75011  
France

Tel: +33-(0)-143-55-25-18

Fax: +33-(0)-143-55-18-80

Email: [asia@fidh.org](mailto:asia@fidh.org)

## SUMMARY

1. This submission identifies three main human rights issues concerning Tibetans in Nepal. First, Tibetans don't have legal status in Nepal and are vulnerable to arbitrary restrictions of their rights. As a result, they cannot enjoy the rights to: equal treatment before the law; education (primary to tertiary); own land; freedom of movement, and work. While a previous system of Refugee Identity Cards (RCs) recognized Tibetans' legal status to reside in Nepal, the Nepali government ceased issuing the RC in 1994. All human rights issues faced by Tibetans derive from this basic lack of legal recognition, and have, in the last two decades, been exacerbated by the Nepali government's restrictions on the cultural rights of Tibetans.
2. The second human rights issue relates to the Nepali government's failure to apply the principle of non-refoulement, which prohibits states from returning persons to a place where they might be tortured or face persecution. Non-refoulement is prohibited by Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Nepal is a state party. Recent developments such as the signing of a 'Boundary Management System' and a 'Treaty on Mutual Legal Assistance on Criminal Matters' between Nepal and China in October 2019, and an intended Nepal-China extradition treaty<sup>1</sup> raise serious concerns about Nepal's commitment to the principle of non-refoulement.<sup>2</sup> This trend, which indicates the Nepali government's willingness to restrict and monitor Tibetans in Nepal and deport them to China, not only violates a fundamental principle of international law, but also breaches the 1990 'Gentleman's Agreement' between the Nepali government, the United Nations, and other international stakeholders, which grants Tibetans fleeing Chinese rule safe passage on to India.
3. Lastly, the public space for freedom of expression, including freedom of the press, in matters related to China and Tibet is increasingly shrinking in Nepal, not only for Tibetan residents in Nepal, but also for Nepali citizens, such as members of civil society, government representatives, and journalists.
4. This submission is based on information gathered through verified information concerning developments in Nepal since its second UPR cycle in 2015.

## BACKGROUND AND FRAMEWORK

5. From 1974 to 1990, the Nepali government issued Tibetans Refugee Identity Cards (RC), a state-recognized document that allows holders to reside and have freedom of movement within Nepal. RC holders are obligated to renew their cards with local Nepali authorities annually. Beginning in 1990, RCs were only issued to Tibetans over the age of 16 and if they or their parents had entered Nepal in 1989 or earlier. From 1994, the Nepali government further restricted the allocation and renewal of RCs, leaving this largely to the discretion of immigration officers. This has resulted in very few RCs being issued or renewed in recent years, leaving the provision of valid RCs susceptible

---

<sup>1</sup> State Council of the People's Republic of China, 22 June 2018, 'Joint Statement between the People's Republic of China and Nepal', [https://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/2649\\_665393/t1570977.shtml](https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1570977.shtml).

<sup>2</sup> The Himalayan Times, 25 November 2019, 'US Congressmen urge govt not to sign treaty', <https://thehimalayantimes.com/nepal/us-congressmen-urge-govt-not-to-sign-treaty/>.

to bribes. Currently, RCs are the only form of identification or registration that Tibetans (both those newly arrived and those who have resided in Nepal for decades) have in Nepal.

6. 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.”<sup>3</sup> A 2017 study conducted by the Human Rights Organization of Nepal found at least 12,331 Tibetan refugees without refugee cards, of whom 40% were individuals under the age of 16 and born in Nepal.<sup>4</sup> We estimate that at the beginning of 2020 the total number of Tibetans in Nepal was likely to exceed 20,000.

## **REFUGES LACK PROTECTION, REMAIN AT RISK OF DEPORTATION**

7. Nepal is not a party to the 1951 Convention Relating to the Status of Refugees (hereafter, Refugee Convention) and its 1967 additional Protocol. In addition, Nepal is not a state party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. During the second UPR of Nepal in 2015, the Nepali government “noted,” and did not support, two recommendations made by France (124.6) and Portugal (124.5) to ratify international conventions on refugees and stateless persons. Four states (France, Portugal, Germany, and the US) made a total of five recommendations on the situation of Tibetans in Nepal or, more broadly, on refugees. The Nepali government supported only one recommendation on upholding the principle of non-refoulement, made by Germany.
8. Nepal is bound by international law to respect the principle of non-refoulement, which prohibits states from returning persons to a place where they might be tortured or face persecution. The principle of non-refoulement is enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), to which Nepal is a state party. During its second UPR cycle in 2015, Nepal supported Germany’s recommendation (121.29) to strictly uphold and respect the principle of non-refoulement. However, Nepal’s signing of two new agreements (the agreement on a ‘Boundary Management System, and the ‘Treaty on Mutual Legal Assistance on Criminal Matters’)<sup>5</sup> 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.
9. In addition to the internationally binding principle of non-refoulement, a ‘Gentleman’s Agreement’ exists between the UNHCR and the Nepali government concerning the treatment of Tibetan refugees who arrived in Nepal after 1989.<sup>6</sup> According to this agreement, Nepal allows Tibetans fleeing Tibet a safe passage through Nepali territory on to India, with the assistance of the UNHCR, and ensures the respect of the principle of non-refoulement. Cases of forcible repatriation of Tibetan refugees from Nepal were reported in 2003 and in 2007. In both instances Tibetan refugees

---

<sup>3</sup> UNHCR Global Appeal 2010-2011, undated, ‘Nepal’, <http://www.unhcr.org/4b03d32b9.pdf>, p. 34.

<sup>4</sup> Human Rights Organization of Nepal, 21 June 2017, ‘HURON with Tibetan refugees’, <https://huronnepal.wordpress.com/2017/06/21/huron-with-tibetan-refugees/>.

<sup>5</sup> 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/>.

<sup>6</sup> For more information on the Gentleman’s Agreement, see: Tibet Justice Center (TJC), June 2002, ‘Tibet’s Stateless Nationals: Tibetan Refugees in Nepal’, <http://www.tibetjustice.org/reports/nepal.pdf>, p. 88.

were first detained in Kathmandu and then repatriated to Tibet.<sup>7</sup> The last known reported case occurred on 5 September 2019, when six Tibetans were deported to 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.<sup>8</sup> 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.

10. Nepal has no specific domestic law regarding refugees. Its 1992 Immigration Act covers all judicial aspects associated with foreigners in Nepal, and does not include any reference to refugees or asylum seekers.
11. Most human rights provisions in Nepal's 2015 Constitution apply exclusively to citizens, therefore excluding refugees, asylum seekers, and other migrants who do not hold Nepali citizenship.<sup>9</sup> These provisions relate to the rights to: freedom of assembly, expression, and movement (Article 17); equality before the law (Article 18); education (Article 31); culture (Article 32); and to live in a clean environment (Article 30).

## **NEPAL TIGHTENS RELATIONS WITH CHINA**

12. Over the past three decades, the governments of Nepal and China have strengthened their cooperation, particularly with regards to each country's policies towards Tibetan refugees and national security.
13. Recently increased border cooperation between Nepal and China is rendering Tibetan refugees even more vulnerable. In July 2017, a 'joint action center' in Rasuwa, Nepal, was established in order to ensure "cooperation between the two countries in border law enforcement."<sup>10</sup> The center, which is based in a border town where there is a Tibetan settlement and a primary school, is manned by Nepali police and immigration employees. The body is responsible for controlling "cross-border crimes, terrorism, and illegal movement of people and enhance exchange information to ensure peace and tranquility in the bordering areas."<sup>11</sup>
14. This development links to tighter border regulations implemented by China in Tibet in January 2017, which Beijing said were necessary in order to "battle the risks of terrorism and 'separatism.'" The recent 'Border Management Regulations of the Tibet Autonomous Region', which became effective from January 1, 2017, expand the scope of an earlier law in place since 2000, covering "land ports, trade zones and scenic spots."<sup>12</sup>

---

<sup>7</sup> International Campaign for Tibet, 3 August 2007, 'New refoulement case in Nepal: Tibetan exile returned to Tibet', <https://savetibet.org/new-refoulement-case-in-nepal-tibetan-exile-returned-to-tibet/>.

<sup>8</sup> Radio Free Asia (RFA), 9 September 2019, 'Nepal Deports 6 Tibetan Asylum Seekers to China', <https://www.rfa.org/english/news/tibet/nepal-deport-09092019064318.html>.

<sup>9</sup> Nepal Law Commission, 20 September 2015, 'The Constitution of Nepal', <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/09/constitution-of-nepal-2-2.pdf>.

<sup>10</sup> MyRepublica, 8 July 2017, 'Nepal, China to establish joint action center', <https://myrepublica.nagariknet-work.com/news/23345/>.

<sup>11</sup> Ibid.

<sup>12</sup> Reuters, 3 January 2017, 'China tightens Tibetan border security to combat 'separatism'', <https://www.reuters.com/article/us-china-tibet-lawmaking/china-tightens-tibetan-border-security-to-combat-separatism-idUSKBN14NOL7>; International

15. In October 2019, in a joint statement by the governments of Nepal and China, the Nepali side reiterated its “firm commitment” to the one China policy, acknowledged that “Tibet Affairs are China’s internal affairs,” and expressed its determination not to allow “any anti-China activities on its soil.”<sup>13</sup> In June 2018, while visiting China, Nepali Prime Minister PK Oli signed a joint statement with an almost identical reference to “anti-China” activities. Even more explicitly, in April 2013, former Nepali Prime Minister Pushpa Kamal Dahal, also known as Prachanda, assured China<sup>14</sup>’s President Xi Jinping that the Nepali government will repress all “anti-China” activities by Tibetan refugees in Nepal. So-called<sup>15</sup> ‘Free Tibet’ protests, such as demonstrations and gatherings with an overtly political tone, clearly fall into the category of “anti-China” activities, but human rights challenges for Tibetans in Nepal have gone well beyond their expression of political messages and have include many aspects of their cultural, social, civil and economic lives.
16. China demands that all governments with whom it has relations commit to a ‘one China policy,’ and it sees any assertion by Tibetans of their unique identity as a threat to China’s sovereignty and territorial integrity. In Nepal, this has resulted in the Nepali government treating assertions of Tibetan identity as unwelcome “anti-China activities.”<sup>16</sup> However, what constitutes an “anti-China activity” has never been clearly defined by either China or Nepal, leaving the term dangerously open to repressive interpretation by both governments.
17. The two countries have also established an economic relationship through the Belt and Road Initiative. In October 2019, the two countries upgraded their relationship to a strategic partnership of cooperation, reflecting recognition of their intention to build long-term friendly and mutually-beneficial relations.<sup>17</sup>

## HUMAN RIGHTS SITUATION ON THE GROUND

### TIBETANS IN NEPAL LACK LEGAL STATUS

18. Tibetans interviewed by the International Campaign for Tibet highlighted the lack of official registration or government-issued identification documents as a matter of significant concern in their lives. Lack of documentation is at the root of many of the challenges they face, including lack of access to education, legal work opportunities, or medical and other government services, and leaves them vulnerable to crime and human rights violations with no recourse before the law.

---

Campaign for Tibet, 28 August 2017, ‘High-level Chinese visit to Nepal highlights difficulties for Tibetan community’, <https://savetibet.org/high-level-chinese-visit-to-nepal-highlights-difficulties-for-tibetan-community>.

<sup>13</sup> State Council of the People’s Republic of China, 13 October 2019, ‘Joint Statement between the People’s Republic of China and Nepal’, [https://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/2649\\_665393/t1707507.shtml](https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1707507.shtml).

<sup>14</sup> State Council of the People’s Republic of China, 22 June 2018, ‘Joint Statement between the People’s Republic of China and Nepal’, [https://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1570977.shtml](https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1570977.shtml).

<sup>15</sup> Human Rights Watch, 13 January 2014, ‘World Report 2014’, <https://www.hrw.org/world-report/2014/country-chapters/nepal>.

<sup>16</sup> Human Rights Watch, 13 January 2014, ‘World Report 2014’, <https://www.hrw.org/world-report/2014/country-chapters/nepal>.

<sup>17</sup> The Diplomat, 15 October 2019, ‘China’s Xi Visits Nepal, Elevating Ties to “Strategic Partnership of Cooperation”’, <https://the-diplomat.com/2019/10/chinas-xi-visits-nepal-elevating-ties-to-strategic-partnership-of-cooperation/>.

19. Currently, most Tibetan refugees in Nepal are effectively stateless. Tibetans have no government-issued identification indicating their status as Nepali citizens, residents, or refugees. In addition, most Tibetan refugees do not hold a Chinese passport.
20. Without government-issued identification documents, Tibetans, who have been residents of Nepal for decades, can be mistaken as newly arrived refugees, which can lead to arrests, detentions, threats of deportation from Nepal, and, most commonly, extortion by security agents.

## **FREEDOM OF MOVEMENT RESTRICTED**

21. Tibetans holding a valid RC are entitled to move freely within Nepal. However, only Tibetans who reside in remote settlements along the border are permitted into these areas with a valid RC card. 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.<sup>18 19</sup>
22. In addition, ahead of a state visit by Chinese President Xi Jinping to Nepal in October 2019, Tibetan Buddhist monks were reportedly prevented to leave or return to their monasteries in Nepal. At the same time, the Samdupling Tibetan Settlement at Jawalakhel near Kathmandu was placed under lockdown.<sup>20</sup>
23. The right to freedom of movement is guaranteed by Article 12 of the International Covenant on Civil and Political Rights (ICCPR)<sup>21</sup> for all persons “lawfully within the territory of a State,” including non-nationals. Article 12(3) of the ICCPR allows for restrictions to freedom of movement to protect national security, public order, public health or morals or the rights and freedoms of others. None of these criteria under which certain restrictions are permissible under the ICCPR justify the restrictions to the freedom of movement to which Tibetans are subjected, such as curbs on travels to attend religious or cultural gatherings.
24. 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.<sup>22</sup>

## **TIBETANS BARRED FROM SECONDARY EDUCATION**

---

<sup>18</sup> Human Rights Watch, April 1, 2014, ‘Under China’s Shadow’, <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>.

<sup>19</sup> 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/>.

<sup>20</sup> RFA, 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>.

<sup>21</sup> Nepal ratified the International Covenant on Civil and Political Rights (ICCPR) on 14 May 1991. See United Nations, 3 March 2020, ‘International Covenant on Civil and Political Rights’, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en).

<sup>22</sup> 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](https://www.savetibet.org/wp-content/uploads/2013/05/refugees2010_web-1.pdf), p. 88.

25. Tibetans with valid RCs are barred from enrolling in state-run high schools and universities.<sup>23</sup>

26. Article 31(2) of Nepal's Constitution guarantees the right to free education at the secondary level only for citizens. Preventing Tibetans without Nepali citizenship to access free state-run secondary education violates Nepal's obligations under Article 13(2)b of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>24</sup>, and Article 28(1)b of the Convention on the Rights of the Child (CRC).<sup>25</sup>

## **RIGHT TO WORK DENIED**

27. Tibetans who are not citizens of Nepal cannot gain employment in the public sector. This includes employment in government schools, hospitals, local and administrative offices and the security forces. In the private sector, Tibetans are discriminated against, as employers often believe that they would face serious consequences for hiring Tibetans.

28. Since May 2009, Tibetans with a valid RC are prohibited from registering any businesses in Nepal. As a result, Tibetan entrepreneurs usually hire Nepalese citizens to act as nominal owners of their businesses, exposing them to extortion or other types of abuses.

29. The right to work is guaranteed to all by Article 6.1 of the ICESCR. However, Article 33 of Nepal's Constitution guarantees this right only to its citizens.

## **FREEDOMS OF EXPRESSION AND PEACEFUL ASSEMBLY SHRINKING**

30. During the second UPR of Nepal in 2015, the Nepali government supported recommendations to ensure the freedom of assembly (by Cyprus, 122.74), elimination of all forms of discrimination (Thailand, 121.17), and to investigate all cases of threat and attacks against human rights defenders (Botswana, 122.60). However, such recommendations have not been implemented by the Nepali government with regard to Tibetans and other non-Nepali citizens residing in Nepal.

31. Despite supporting recommendations to ensure the right to freedom of expression online/offline in law and in practice (Estonia, 122.72), and to create and maintain a safe and enabling environment in which journalists, media workers, human rights defenders and civil society can operate free from hindrance and insecurity (Ireland, 122.73), the Nepali government has not upheld its commitment.

---

<sup>23</sup> Sambat Nepal, 28 February 2011, 'Unheard Voices of Tibetans in Nepal', [https://www.youtube.com/watch?v=VNJK1ELKIM&feature=em-share\\_video\\_user](https://www.youtube.com/watch?v=VNJK1ELKIM&feature=em-share_video_user) and [https://www.youtube.com/watch?v=Vzl6klMD2bs&feature=em-share\\_video\\_user](https://www.youtube.com/watch?v=Vzl6klMD2bs&feature=em-share_video_user).

<sup>24</sup> Nepal signed and ratified the International Covenant on Economic, Social and Cultural Rights on 14 May 1991. United Nations Treaty Collection, 5 March 2020, 'International Covenant on Economic, Social and Cultural Rights', [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en).

<sup>25</sup> Nepal ratified the Convention on the Rights of the Child 14 September 1990. United Nations Treaty Collection, 5 March 2020, 'Convention on the Rights of the Child', [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en).



32. Since 2015, Tibetans 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 continued 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.<sup>26</sup>
33. 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.<sup>27</sup> The Tibetan refugee representative and 23 other Tibetans were briefly detained.
34. 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. In 2018, authorities banned peaceful protests or public gatherings marking the 59th anniversary of the Tibetan national uprising.<sup>28</sup> This year, in the lead up to the 61st anniversary of the Tibetan National Uprising Day on 10 March, Tibetans in Nepal were urged not to commemorate the anniversary and warned of increased police surveillance.<sup>29</sup>
35. Nepali authorities also harassed local journalists following pressure by the Chinese government. 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.<sup>30</sup>
36. In May 2019, Nepali politicians Pradip Yadav and Iqbal Miya faced criticism for attending the 7th World Parliamentarians' Convention on Tibet in Riga, Latvia, co-hosted by the Tibetan Parliament in Exile and attended by Lobsang Sangay, President of the Central Tibetan Administration. Both Pradip and Miya subsequently claimed to be unaware of the motive of the event and expressed their "remorse" for attending the event. Subsequently, the Nepalese foreign ministry stated that attendance of such a convention would be "against the policy of the government of Nepal."<sup>31</sup>

---

<sup>26</sup> International Campaign for Tibet, 28 March 2018, 'Photo with Tibetan flag led to Tibetan activist's 10-day detention in Nepal', <https://savetibet.org/photo-with-tibetan-flag-led-to-tibetan-activists-10-day-detention-in-nepal/>.

<sup>27</sup> RFA, 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>.

<sup>28</sup> 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/>.

<sup>29</sup> Phayul, 10 March 2020, 'Tibetans living in Nepal urged not to observe 10th March Uprising Anniversary', <https://www.phayul.com/2020/03/10/42831/>.

<sup>30</sup> 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>.

<sup>31</sup> Kathmandu Post, 14 May 2019, 'Government officials say they were unaware of Nepali lawmakers' visit to Europe to attend Tibet convention', <https://kathmandupost.com/national/2019/05/13/government-officials-say-they-were-unaware-of-nepali-lawmakers-visit-to-europe-to-attend-tibet-convention>.

37. 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.

## **PRE-EMPTIVE ARBITRARY DETENTIONS CONTINUE**

38. Since 2015, pre-emptive detention of Tibetans suspected of organizing protests before politically sensitive days and events, such as the anniversary of the 10 March uprising, the Dalai Lama’s birthday (6 July), official meetings between Nepali and Chinese authorities, or high-level Chinese visits have continued. 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.<sup>32</sup> Local news agencies reported 24 activists were arrested and faced charges of indecent behavior.<sup>33</sup> It was reported that some of the activists were arrested wearing clothing or carrying bags with ‘Free Tibet’ slogans.<sup>34</sup>

39. There are no effective redress mechanisms available to Tibetans detained by police overnight or for short periods of time.

## **CULTURAL RIGHTS AND FREEDOM OF RELIGION VIOLATED**

40. Repression and even criminalization of Tibetan culture and 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 Chinese 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 cultural events such as the Dalai Lama’s birthday celebrations.

41. Such restrictions on the exercise of Tibetan culture has had a negative impact on Nepali citizens, who are Buddhists, such as Sherpas, Tamang, Hyolmos, Gurungs and others, and 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 the feelings of the Chinese people,” giving political color to a fundamentally spiritual and cultural tradition. In reaction, the Buddhist community, under the

---

<sup>32</sup> RFA, 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>.

<sup>33</sup> 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>.

<sup>34</sup> 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/>.

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.<sup>35</sup>

42. Infringements on free speech have also extended to the arts. In June 2018, Nepali authorities forced a theatre in Kathmandu to stop two planned showings 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.'<sup>36</sup>
43. In July 2019, the Nepali government also banned the public celebration of the Dalai Lama's birthday in Kathmandu arguing "infiltrators" could create trouble.<sup>37</sup> Nepali police also gathered in riot gear at the Boudha Stupa to block gatherings of Tibetans.<sup>38</sup>

## **RECOMMENDATIONS TO THE NEPALI GOVERNMENT**

### **COOPERATION WITH INTERNATIONAL HUMAN RIGHTS MECHANISMS**

44. Promote cooperation with the United Nations Special Procedures, including by accepting official visit requests by mandate holders to Nepal.

### **REGISTRATION AND LEGAL STATUS OF TIBETANS**

45. Undertake a comprehensive registration process of Tibetans residents to ensure that they have proper documentation.
46. Issue renewable refugee identification certificates (RCs) to all eligible Tibetans and their children.
47. Abolish restrictions on the rights of Tibetan residents to work, establish businesses, travel, and access education from primary to tertiary levels.
48. Amend national laws, including the 2015 Constitution, in order to ensure the protection of the rights of all people in Nepal, including legal residents, refugees, and asylum seekers who do not hold Nepali citizenship.
49. Amend all domestic laws to ensure that they comply with Nepal's human rights obligations under international instrument to which it is a state party, such as the Convention on the Rights of the

---

<sup>35</sup> 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/>.

<sup>36</sup> 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/>.

<sup>37</sup> 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>.

<sup>38</sup> 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/>.

Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).

50. Reform Article 14.2 of the 1992 Immigration Act to clearly and specifically define the specific acts that are “detrimental to the national interest” and the commission of which would justify denying the entry, stay, or departure of a foreigner in Nepal.
51. Ensure that all refugees and asylum-seekers are not subjected to arbitrary restrictions of their rights guaranteed by international human rights instruments to which Nepal is a state party.

### **NON-REFOULEMENT**

52. Immediately end policies and actions that violate the principle of non-refoulement.
53. Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 additional Protocol, the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness, and adopt implementing legislation at the domestic level.
54. Refrain from signing a bilateral extradition treaty with China and safeguard that all existing treaties and agreements with China are implemented in conformity with international human rights standards.

### **FREEDOMS OF EXPRESSION AND PEACEFUL ASSEMBLY**

55. Immediately cease the practice of pre-emptive detention and refrain from arresting or detaining Tibetans for the sole reason of having exercised their rights to freedom of peaceful assembly and expression.
56. Cease and investigate the widespread practices of intimidation and harassment of Tibetans for organizing peaceful political and cultural gatherings.

### **CULTURAL RIGHTS AND FREEDOM OF RELIGION**

56. Ensure the rights of Tibetans to practice and manifest their religion, and to participate in Tibetan cultural events.

ENDS