



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/NGO/52
11 February 2005

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 14 (c) of the provisional agenda

**SPECIFIC GROUPS AND INDIVIDUALS: MASS EXODUSES
AND DISPLACED PERSONS**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 January 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Prolonging the Crisis of Bhutanese Refugees

1. In 2003, the Asian Legal Resource Centre wrote a statement to the fifty-ninth session of the Commission about the more than decade-long Bhutanese refugee crisis in southeastern Nepal [E/CN.4/2003/NGO/100]. The background to the refugee crisis is set out in that statement. Since then, the situation for the refugees has not changed, at least not for the better.

2. After up to 14 years, more than 100,000 Bhutanese refugees, one sixth of the Bhutanese population, continue to languish in seven refugee camps in Nepal. Fifteen rounds of bilateral negotiations between Bhutan and Nepal have failed to solve the crisis and the refugees' chances of repatriation are still as uncertain as they were when most of them first arrived in the camps in the early 1990s.

3. The Government of Bhutan has continued to neglect its international human rights obligations in terms of equality and non-discrimination by not making a genuine effort to bring the refugee crisis to an end. The Government of Bhutan has also fallen short of its commitment to international human rights treaties. Bhutan still has not ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Ratification of the CERD would prompt the government to make necessary domestic legislation against racial discrimination.

4. The 1977 and 1985 citizenship laws of Bhutan, which promoted discriminative policies making it difficult for the Lhotshampas to assert their Bhutanese citizenship, were key to the refugee exodus. Without the presence of just laws and institutions for administration of justice in Bhutan, anyone who is victimised has no other domestic legal remedy rather than to flee the country itself. Those Lhotshampas who have tried to petition the King and the administration about their grievances have been subjected to harsh treatment, including prolonged imprisonment, cruel, inhuman and degrading treatment, and torture. The Bhutanese refugees in Nepal have testified that threats, coercion, torture, rape, arrests and harassment have been used against them by the Bhutanese authorities.

5. For example, Tukka Sharma, a refugee who has lived in Beldangi II Extension camp since 1992, has testified to the events that forced her and her family to leave their homeland and become refugees:

"The army and police came to our area and abducted women. They said they needed girls for their base camp. They said that a piece of firewood from each house should be carried by a girl from the house to the camp. They needed girls to cook their food, but the girls were also forced to serve all the men sexually. To escape from this situation we all had to flee Bhutan. The families were not willing to send their daughters to serve the police and army. That's how we all became refugees."

6. As result of lengthy bilateral talks between Nepal and Bhutan, and international pressure, in March 2001 a Joint Verification Team (JVT) which consisted of Bhutanese and Nepalese authorities began identifying refugees in the camps. The JVT divided the refugees into four highly problematic categories: (1) bona fide Bhutanese who were forcefully evicted; (2) Bhutanese who emigrated "voluntarily"; (3) non-Bhutanese; and (4) Bhutanese who had committed "criminal" acts. Nepal's proposal that the refugees be categorised into only two categories of Bhutanese and non-Bhutanese was rejected by Bhutan. Only 2.5 per cent (293 people) out of the 12,183 refugees in Khundunabari camp were determined to belong to

category one, while 70 percent were category two, 24 percent were category 3, and three percent were put in category four. The result has caused outrage among refugees as well as civic groups working with them. Refugee rights groups claim that between 97 to 99.8 percent of the refugees have documents to prove that they are Bhutanese citizens.

7. A joint announcement by Bhutanese and Nepali governments in Khudunabari camp on 22 December 2003, stated that repatriation would begin in mid-February 2004. However, the following conditions were outlined by the head of the Bhutanese delegation:

a. People in category 1 or those who were forcefully evicted are to return with full citizenship rights. They will, however, not be able to return to their original houses and lands. They will be granted land equal in area to that which they left. Those who sold their land before leaving will not be granted land;

b. People in category 2 or those forced to sign “voluntary migration forms” under duress and thus deemed to have left the country voluntarily, will be taken back to Bhutan and held in closed camps for a probationary period of two years. During this period one member of each family will be employed as a labourer in road construction. They will not be able to move freely in Bhutan. Their eligibility for citizenship after the probationary period will depend on their knowledge of Dzongkha, the official language, of Bhutanese history and culture, and their proven loyalty to the Bhutanese crown. If any family member leaves the camps, or Bhutan, during the probationary period the entire family’s application for citizenship will be disallowed;

c. People placed in category 4 or those who are “charged” with criminal acts, will be handed over to the Bhutanese authorities to be dealt with according to Bhutanese law. Their relatives will be detained in a camp designated for relatives of criminals.

8. The Government of Bhutan refused to allow any presence by the United Nations High Commissioner for Refugees (UNHCR) to ensure the dignity and rights of the refugees are respected once inside Bhutan.

9. Thus it is apparent that the joint verification process itself has been not fair and certain conditions such as the need to speak Dzongkha and placing returnees in detention camps inside Bhutan are highly discriminatory and in violation of the rights of the returnees. Another question is how much Bhutanese law itself is in compliance with international human rights norms and standards and how independent and impartial the law enforcement agencies are that put those laws into practice. As a whole, this shows that the Bhutanese government has not made any genuine efforts to bring this crisis to an end.

10. While the international community has responded with outrage to other campaigns of ethnic cleansing around the world, little attention has been given to the plight of the Bhutanese refugees for over a decade. Governments and donor agencies continue to pour resources into Bhutan. Donor countries to Bhutan have recently held meetings with Bhutanese refugee leaders and expressed their deeper understanding of the ethnic-cleansing policies of the Government of Bhutan. However, donors like Denmark, Austria, the Netherlands, Switzerland and Japan continue to donate funds to the Government of Bhutan without directly addressing the refugee crisis or attaching conditions to the donations. India, Bhutan's largest donor country, has shown a complete lack of interest in being involved in resolving the refugee issue. It has so far insisted

that the refugee crisis is a bilateral issue between Nepal and Bhutan and should be solved without outside interference. However, with 15 bilateral meetings over 14 years having failed to produce concrete results, impartial third party involvement is essential. The Indo-Bhutan Treaty of 1949 states that while India will not interfere in Bhutan's domestic administration, Bhutan will be guided by India's advice on international relations. As the Bhutanese refugee situation is an international matter, and as India is a very influential regional power, the Government of India could play an important role in the negotiations.

11. The involvement of the UNHCR in efforts towards the repatriation of Bhutanese refugees has been disappointing. This does not mean that the role of the UNHCR in relation to Bhutanese refugees has diminished in any way. The UNHCR announced in its Annual Executive Committee Meeting in early October 2003 that it would be phasing out activities in the camps and promoting local integration in Nepal and third-countries instead. This would mean that the UNHCR will be disregarding the rights of the Bhutanese refugees to return to their own country. In fact the UNHCR should strengthen its presence in seeking a fair settlement to the refugee crisis, respecting the rights of Bhutanese refugees and try to seek other international cooperation to bring the Government of Bhutan to engage in finding a solution to the crisis. The so-called phase-out plan of the UNHCR to slash the size of its refugee programme in Nepal is unacceptable, short of a solution being found that is satisfactory for the refugees.

12. In light of the above the Asian Legal Resource Centre urges the Commission to

- a. Urge the governments of Bhutan and Nepal to continue with the verification and proceed only on the basis of two categories – Bhutanese and non-Bhutanese, using adequate resources, transparent criteria, an explicit timeline by which to monitor its progress, and take all other measures necessary to expedite the verification process.
- b. Pressure the Government of Bhutan to repeal and reform all discriminatory legislation and policies, notably the 1985 Citizenship Act and the “One Nation One People” policy, and bring the domestic legislation and processes in accord with the rights contained in the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), Convention on Rights of the Child (CRC) and Convention on the Status of Refugees (CSR) to each of which Bhutan is a state party. Specifically, the government must take effective and immediate steps to implement the concluding observations by the Committee on the Rights of the Child in June 2001 and the Committee on the Elimination of Discrimination against Women in January 2004, particularly to counter discrimination against Lhotshampas.
- c. Call on the Government of Bhutan to allow refugees from Khudunabari camp in category 1, 2 and 4 to return to their original homes and properties in Bhutan. In the event of competing claims for land, an independent land claims tribunal should be established to assess the claims, ensure restitution of land and property, and give compensation where necessary. This tribunal should have access to independent international legal-expert observers from UN agencies or other relevant bodies.
- d. Urge the Government of Bhutan to repeal clause 2(4) of the Land Act, which would make all refugees landless and further complicate repatriation.
- e. Encourage the Government of Bhutan to invite Special Rapporteurs, especially the Special Rapporteurs on torture, independence of judges and lawyers and human rights

defenders to visit Bhutan and have full access to visit all parts of the country, including correctional institutions, police stations, courts etc.

f. Request the Government of Nepal to take greater steps to speed the process of repatriation and respect the Bhutanese refugees' fundamental right to work and freedom of movement.

g. Propose to donor state parties of Bhutan, including Austria, Denmark, India, Japan, Kuwait, the Netherlands, and Switzerland to increase pressure on the Government of Bhutan to cease major human rights violations against Lhotshampas, and allocate resources for repatriation of refugees in keeping with the principles outlined above.

h. Invite the Government of India to take a greater role in bringing the governments of Bhutan and Nepal to a proper solution to the refugee crisis.

i. Communicate with the UNHCR to take a greater role in verification and repatriation of Bhutanese refugees and in particular remain in full capacity and take full responsibility for the refugees until the crisis has been fully resolved. The UNHCR should play a critical role in finding concrete ways for alternative solutions to the crisis, such as integration into Nepalese society or third country settlement, if return to Bhutan is regarded as impossible.
