



Human Rights Watch submission to the Committee on the Rights of the Child for the pre-session of the Federal Democratic Republic of Nepal

Human Rights Watch writes in advance of your upcoming pre-session review of Nepal to highlight areas of concern regarding the government's compliance with the Convention on the Rights of the Child (CRC). This submission highlights concrete steps the Nepal government should be asked to take to address these serious problems in the realization of children's rights.

Human Rights Watch closely monitors the human rights situation in Nepal. Our findings in this submission draw on investigations in Nepal by Human Rights Watch between 2011 and 2014. In particular, these reports were in the context of education for children with disabilities and problematic Nepali responses to Tibetan refugees. In the course of our research, we have interviewed children with disabilities and their parents, Tibetan refugees in Nepal, and government and civil society representatives.

Barriers to Inclusive Education for Children with Disabilities

Articles 23, 28, and 29

Children with disabilities enjoy all the rights enumerated in the numerous international and regional instruments discussed in this section. Indeed, all children have a right to education and it is required that "primary education [is] compulsory and available free to all."¹

Nepal's National Policy and Plan of Action on Disability, adopted in 2006, recognizes the need to improve the access of persons with disabilities to education, health, training, employment, rehabilitation, and communication. According to this policy, the government will focus on inclusive education "to increase educational opportunities for children with disabilities and for quality education."² The plan aims to provide free primary education to 50 percent of school-aged children

¹ Convention on the Rights of the Child (CRC), art. 28.

² Nepal Ministry of Women, Children and Social Welfare, "National Policy and Plan of Action on Disability," 2006, <http://rcrdnepa.files.wordpress.com/2008/05/national-policy-and-plan-of-action2006-eng.pdf> (accessed June 17, 2011), section 9.4.5. In an inclusive education system, children with and without disabilities

with disabilities by 2012. The plan also includes teacher training and the development of early identification and intervention programs.³

Despite an inclusive education policy, in practice, the government supports a system of segregated resource classes designated for children with disabilities in mainstream schools and separate schools for deaf, blind and children with physical and intellectual disabilities.

In 2011, Human Rights Watch interviewed nearly 100 disability advocates, teachers, government officials, and children or young people with disabilities and their families in Nepal, and published a report, *“Futures Stolen”: Barriers to Education for Children with Disabilities in Nepal*.

More than half of the 29 children and young people with physical, intellectual, and psychosocial disabilities or their family members interviewed by Human Rights Watch reported that the children did not attend formal school. All of the children who did not attend formal school either were denied admission by schools or had parents that did not know their child had a right to attend school.⁴

A significant barrier to education for children with disabilities is inaccessible school buildings. Several children and young people with disabilities and their families told Human Rights Watch about the lack of access to school—in terms of physical access (no ramps or disability-friendly toilets), communication barriers (no sign language instruction or Braille teaching materials), negative attitude of teachers, and a curriculum that does not adequately address children with different learning needs. As of 2011, the School Sector Reform Program, which aims to improve access and quality in the education system, contained little or no provisions about making schools accessible for children with disabilities.⁵ For one boy with a physical disability that limits his movement and speech, he did not start attending school until he was 14, and had to crawl to his classroom due to the lack of ramps outside the school.⁶

Human Rights Watch also found that schools and administrators in public and private schools deny admission to children with disabilities, particularly those with psychosocial and intellectual disabilities, because they have no curriculum or teachers with training to create an inclusive education environment.⁷

attend schools in their communities without discrimination. The focus of such a system is to adapt the environment and teaching methods to support the needs of all students.

³ Nepal’s 2010-2013 National Human Rights Action Plan identifies the need for targeted programs benefitting people with disabilities. While the plan contains concrete steps to improve access to education for children with disabilities, it appears to ignore the commitment to inclusive education expressed in the 2006 National Policy and Plan of Action on Disability.

⁴ Human Rights Watch, *“Futures Stolen”: Barriers to Education for Children with Disabilities in Nepal*. August 24, 2011, p. 4, <http://www.hrw.org/sites/default/files/reports/nepalo811ForWebUpload.pdf>.

⁵ Ibid., p. 43.

⁶ Ibid., p. 1.

⁷ Human Rights Watch interview with Rajeev Singh, father of an 11-year-old boy with autism, Kathmandu, April 2, 2011. Human Rights Watch interview with Jaya Prasad Lamsal, Inclusive Education Section, Ministry of Education, Kathmandu, April 2, 2011. Human Rights Watch interview with Pashupathi Parajuli, Principal,

Furthermore, schools are often inadequately staffed, have no flexible curriculum and limited teaching materials, leading to an inferior quality of education for children with disabilities, compared to other children. The government provides minimal special education training only to teachers working in special schools or resource classes. Teachers in mainstream schools do not receive adequate training on how to integrate children with disabilities in their classrooms, thereby undermining the principle of inclusive education. No training is provided by the government for staff at daycare centers run by nongovernmental organizations (NGOs) or parents' groups for children with intellectual or developmental disabilities.

Most students in resource classes for the blind, deaf, and intellectually disabled in Nepal stay in residential facilities at the school. There is one government-paid caretaker who looks after the 10 or more children (some of whom have severe disabilities) who stay at each of these schools. However, the deputy director of the Ministry of Education confirmed that these caretakers do not receive any training, even though they are with the children all day and night. This can lead to a host of problems including lack of supervision, physical neglect and opportunities for abuse.

All children with disabilities in Nepal are entitled to receive social security benefits, including disability identity cards and allowances based on the severity of the disability. Human Rights Watch found that children with disabilities are often not benefitting from these provisions because of long distances to the district administration office (where the cards are distributed), high transportation costs, and parental attitudes that such cards will further marginalize and thus foster discrimination against their children. Also, some children with disabilities have never been diagnosed while others have been wrongly diagnosed. This in turn has had a negative impact on their access to education.

However, Human Rights Watch found that, in some instances, at government-run schools, families are requested to pay fees for admission, exams or uniforms, and as a result, some parents may not enroll their children in school.

For many parents, the fact that their children with disabilities are not admitted to school presents profound dilemmas. Some see no choice but to lock their children with disabilities in a room or tie them to a post because they have other responsibilities (taking care of other children, doing daily chores, working, etc.). Human Rights Watch research indicates that this is most often the case for children with intellectual, psychosocial, or multiple disabilities.

In addition to physical abuse, children with all types of disabilities also experience stigma and verbal abuse in the school and the community.

Recommendations

The Committee on the Rights of the Child should urge the Nepali government to:

- Develop and implement a national education law that clarifies the concept of inclusive education and outlines steps to integrate children with disabilities, particularly intellectual, developmental, or psychosocial disabilities, into mainstream schools.
- Immediately ensure all schools are accessible for students with disabilities by updating facilities and incorporating accessibility guidelines for students with disabilities in the School Sector Reform Program.
- Revise teacher training materials to reflect inclusive education methods for children with disabilities, while also training teachers on inclusive education methods, including basic sign language.
- Strengthen and regulate the monitoring of schools to ensure that the inclusive education approach is being implemented, and ensure that schools are in compliance with the provisions of the CRC.
- Involve children with disabilities and their parents or family members in consultations and decision-making and monitoring processes.

Tibetan Child Refugees

Articles 2, 3, 6, 20(1), 22, 27, 28, and 37

Since the 2008 Tibetan uprising—the largest, most widespread unrest among Tibetans in decades—the Chinese government has significantly tightened its control in Tibetan areas of China. It has also pressured Nepal, which shares a long border with China and is home to a sizeable Tibetan community, to become China’s partner in restricting Tibetans’ basic rights.

From 1959 to 1989, the Nepal government recognized and registered Tibetans crossing the border as refugees. In 1989, following a diplomatic rapprochement with China, Nepal stopped allowing Tibetan refugees to settle permanently in Nepal. Under the terms of an informal, unwritten, “Gentleman’s Agreement” with the United Nations High Commissioner for Refugees (UNHCR), however, Nepal continued to permit the “safe passage” of refugees from Tibet to India. The agreement provides that Tibetan refugees apprehended by the Nepali authorities be handed over to UNHCR for processing and transit to Dharamsala.

The agreement appears to be working well for Tibetans apprehended far inside the territory of Nepal, but less well and much more erratically for those apprehended at or near the border. Human Rights Watch’s research suggests that border police forces have forcibly returned to China Tibetans intercepted at the border or before they reach inhabited areas. A former senior Nepali Home Ministry official told Human Rights Watch that local border police have pushed back or repatriated Tibetans

found at or near the border if the Nepali Armed Police Force determined that they were not “legitimate refugees,” although no formal process was undertaken to make such a determination.⁸

The CRC protects children from being forcibly returned to a place where their lives or freedom would be threatened, or where they would be subjected to torture or to cruel or inhuman and degrading treatment or punishment.⁹

Identity Documents and Residency Rights for Children

The overwhelming majority of Tibetans who arrived in Nepal after 1989 have proceeded to India in line with the terms of the Gentleman’s Agreement. Others, unable or unwilling to go or stay in India, have remained in Nepal, but vulnerable to threats and exploitation because of the lack of legal documentation. While the government allowed Tibetans who arrived before 1990 to remain in Nepal, it did not recognize them as “refugees” in the full legal sense of the word, even though it issued them identity documents called “Refugee Certificates.”¹⁰

“Refugee Certificates” (RC) provide such pre-1990 arrivals a modicum of protection, including the right to reside in Nepal. However they do not entitle their holders to own property, gain official employment, or access higher education. While these restrictions were somewhat easily circumvented in the past, they have become much more strictly enforced in recent years. Under the terms of the interim Constitution, RC holders are not guaranteed rights to freedom of expression and assembly, which are specifically limited to citizens.

The government stopped accepting new Tibetan refugees and therefore issuing RCs after 1989, but the government continued to issue RCs to children born in Nepal to Tibetan parents holding RCs once they turned 16. Between 1995 and 1998, the Nepal government stopped issuing new RCs to children of Refugee Certificate holders. As a result, Tibetan children who had not yet reached the age of 16 by 1995-1998, as well as those born after 1998 have been unable to obtain any form of official identification from the Nepali government. In effect, Tibetans born in Nepal after the government stopped issuing RCs have been rendered stateless and, from the perspective of Nepali law, their continued residence in Nepal is entirely at the discretion of Nepali authorities.¹¹

⁸ Human Rights Watch interview with former senior government official in the Ministry of Home Affairs, Kathmandu.

October 2013. The official asked that we withhold his name because of the sensitivity of the issue.

⁹ The Committee on the Rights of the Child has stated that the CRC, in article 6, establishes an obligation that states party to the CRC “shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6.” Committee on the Rights of the Child, General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin (Thirty-ninth session, 2005), U.N. Doc. CRC/GC/2005/6 (2005).

¹⁰ Human Rights Watch interview with Siddhartha Gautam, Kathmandu, June 2012.

¹¹ Tibet Justice Center: Tibet’s Stateless Nationals: Tibetan Refugees in Nepal, June 2002, p. 104, www.tibetjustice.org/reports/nepal.pdf (accessed November 27, 2013).

This submission focuses on Tibetan children, however, the same issues of identification papers haunt all refugee children in Nepal, including the sizeable Bhutani population and growing Rohingya Muslim population. Children of non-Nepali mothers, or mothers who cannot prove citizenship, face the same obstacles of receiving documentation.

Travel to India and Education

Children of Tibetan residents in Nepal, many of whom study in Tibetan boarding schools in India, face particular challenges. The overwhelming majority of the children do not have Refugee Certificates, much less travel documents, due to the decision of the Nepali government to stop issuing RCs in the mid-1990s. At the beginning of the school term, chartered buses bring these children to schools in India, and they return to Nepal in the same way at the end of the term. While in the past Nepali immigration officials were satisfied with documents showing enrollment and the payment of a small fee, in recent years the crossing has become more difficult. In one case, the Nepali police detained some children travelling on a chartered bus until an appropriate “fine” was negotiated. This situation has generated great anxiety among Tibetan parents, who say that the foremost reason for them to send their children to India is the lack of viable educational options for their children in Nepal, given that they are not entitled to enroll in Nepali public schools and the families often do not have the financial means to enroll them in private schools.¹²

Tibetan refugees also say that the increasingly strict, if erratic, behavior of Nepali immigration officials has induced their Indian counterparts to also start pressing Tibetan travelers for higher bribes and fees. As a result of this increasingly difficult border crossing, children are being denied their right to education.

Recommendations

The Committee on the Rights of the Child should urge the Nepali government to:

- Strictly uphold and respect international law prohibiting refoulement.
- Immediately provide all eligible Tibetans with refugee identification certificates.
- Cooperate fully with the Office of the United Nations High Commissioner for Refugees (UNHCR) to facilitate its mandate to protect refugees, asylum seekers, and stateless persons. Establish and maintain a strong and effective working relationship with UNHCR, including by having UNHCR train relevant officials and allowing UNHCR to resume systematic border monitoring visits.
- Implement Nepal’s obligations under the Convention on the Rights of the Child to provide children with the means to acquire a nationality.

¹² Human Rights Watch interview with the head of a Tibetan women’s group, Kathmandu, June 2013.

Impact of *Bandhs* (Strikes) on Right to Education

Article 28

Human Rights Watch continues to receive reports of children being denied access to education because of large-scale *bandhs* (strikes). Often initiated by political parties, *bandhs* are a common tool of protest in Nepal. These district and country-wide demonstrations and strikes have the ability to paralyze numerous government institutions, including schools or transportation needed to access schools. The possible use or closure of schools during *bandhs* and similar demonstrations may result in the loss of an effective access to education.

Questions to the Government of Nepal

- In each of the past five years, how many schools have been closed due to *bandhs*?
- How many days of schooling have been lost due to *bandhs*?
- What steps are in place to ensure that *bandhs* do not affect a child's access to education?

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