

NIAS-IPRI Brief

One China Policy and Absence of the Rule of Law: A brief look into the mistreatment of Tibetan refugees in Nepal

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The mistreatment of the Tibetan community in Nepal needs to be viewed within the framework of the Nepalese government prioritising developmental benefits from China over rule of law and an effective human rights regime in Nepal. This has implications for potential domestic civil unrest and deterioration of diplomatic relations, which could destabilise Nepal's fragile political institutions and economy.

The contentious nature of the relationship between the government of the People's Republic of China and the Tibetan Autonomous Region cannot be overstated. Legally, the Tibetan Autonomous Region falls under the sovereign territory of China while maintaining autonomy at various levels of governance within the region.¹ However, in reality, China's increased influence in Tibetan affairs, the detention of religious leaders, the demolition of monasteries, the suppression of social organisation, and the systematic destruction of Tibetan culture² have led to a large population of Tibetans attempting to flee to the neighbouring states of Nepal, India, and Bhutan.

Nepal, situated at the southern border of Tibet, has historically seen large numbers of Tibetans entering the country, seeking either asylum or safe passage to India, with an estimated 20,000 Tibetans residing in Nepal in 2020.³ The Nepalese government, in dealing with this minority group, has fallen short of a significant portion of its international human rights commitments such as Article 3 (nonrefoulement) of the Convention Against Torture (CAT), and Articles 9 (pre-emptive arbitrary detentions), 12 (freedom of movement), 18 (freedom of religion), 19 (freedom of expression), and 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights (ICCPR), despite being party to both conventions since 14 May 1991.⁴ Despite numerous human rights violations and the absence

¹ "Tibet Profile," *BBC News*, 16 April 2019, <https://www.bbc.com/news/world-asia-pacific-16689779>

² Human Rights Watch, "Illegal Organizations" | China's Crackdown On Tibetan Social Groups," *Human Rights Watch*, 30 July 2018, <https://www.hrw.org/report/2018/07/30/illegal-organizations/chinas-crackdown-tibetan-social-groups>

³ FIDH & ICT, "United Nations Human Rights Committee (CCPR) - 131st session Joint submission for the adoption of the List of Issues NEPAL," *FIDH & ICT*, 04 January 2021, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/INT_CCPR_ICS_NPL_43963_E.pdf

⁴ United Nations Treaty Collection, "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," *Treaties.un.org*, 05 August 2022, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en ; United Nations Treaty Collection, "International Covenant on Civil and Political Rights," *Treaties.un.org*, 05 August 2022, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-

of concrete pull factors such as economic opportunities, social security, equality or justice, the Tibetan community has remained in Nepal over the past decades, presumably due to cultural similarities and their integration with the local population. Taking this as indicative of their desire as a community to remain in Nepal over the foreseeable future, it is important to revisit their sustained hardships within, especially those in violation of the rule of law in Nepal.

This paper seeks to assess the treatment of Tibetans in Nepal by outlining the historical developments of Tibetans' status in Nepal and human rights violations faced at the hands of local law enforcement. The justifications provided by the Nepalese government for its actions are explored, especially within the context of growing Chinese influence in Nepal's governance. This paper does not seek to comment on the Chinese-Tibetan relationship but is limited to highlighting the impact of this relationship on the rule of law and the human rights regime in Nepal. Similarly, any analysis of current geopolitical tensions between China and other states (including India and the US) concerning Tibet is beyond the scope of this paper.

I Historical developments

The current Tibetan population in Nepal is mostly composed of relatives or descendants of the initial wave of refugees from 1959 when the Dalai Lama fled Tibet following China's "Peaceful Liberation of Tibet."⁵ These cross-border migrants were provided Refugee Certificates, which enabled their access to residency, limited civil rights, and restricted movement within Nepal. However, following the Nepalese government's rapprochement with China in 1989,⁶ Nepal stopped recognising Tibetans as refugees and only allowed safe passage to India as per an informal agreement with the UNHCR. This tenacious situation worsened with the 2008 uprising in Tibet and subsequent protests within Nepal, after which China sought to increase its influence in Nepal aimed at protecting its national interests and suppressing anti-China activities.⁷ This manifested itself in increased crackdowns on the Tibetan community by Nepalese law enforcement. Tibetans were subjected to greater surveillance, pre-emptive detentions before Chinese officials' visits and/or Tibetan events, and restrictions on peaceful gatherings for any occasion.⁸ They were also victims of routine arbitrary detentions, excessive use of force, assault and threats of unlawful deportation.⁹ Furthermore, border security was tightened to control the further influx of Tibetans, decreasing the cross-border movement from a yearly average of 2,200 before 2008,¹⁰ to roughly 719 between 2008-2020.¹¹ Those caught at the border were forced back into Chinese territory, in violation of Nepal's non-refoulement obligations.

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⁵ Human Rights Watch, "Under China's Shadow | Mistreatment Of Tibetans In Nepal," *Human Rights Watch*, 01 April 2014, <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>

⁶ Ibid.

⁷ Samar Sjb Rana, "Considering the Nepal-China border," *The Record*, 03 November 2020, <https://www.recordnepal.com/considering-the-nepal-china-border>

⁸ Human Rights Watch, "Under China's Shadow | Mistreatment Of Tibetans In Nepal," *Human Rights Watch*, 01 April 2014, <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>

⁹ Ibid.

¹⁰ Ibid.

¹¹ Richard Finney, "Nepal Border Agreement With China Sparks Fears Among Tibetans," *Radio Free Asia*, 14 February 2020, <https://www.rfa.org/english/news/tibet/border-02142020150551.html>

II Current situation

According to the latest estimates, over 20,000 Tibetans reside in Nepal.¹² The Nepalese government does not legally recognise most of these Tibetans on the basis that they lack either a citizenship or a refugee certificate. Without such legal documents, these Tibetans are deprived of access to opportunities made available to other residents, such as pursuing higher education or economic activities required for self-sustenance. This is problematic as the current legal framework makes it difficult, if not impossible, for them to acquire these documents. Nepali citizenship is currently only provided to Tibetans through descent if at least one parent already holds Nepali citizenship or through marriage when a Tibetan woman marries a male Nepali citizen. This same privilege is not extended to Tibetan men marrying Nepali women. The legal status of Tibetan residents in Nepal has been deferred further, as while the Nepalese government recently proposed issuing identification cards for refugees, Tibetans will not be covered by this initiative.¹³ The restrictions in granting them the required legal documents reflect the sentiments held within the Tibetan community that Kathmandu refuses to issue legal documents to Tibetans due to Beijing's insistence that the Tibetans be recognized as Chinese citizens¹⁴.

Additionally, Nepal and China have also sought to significantly tighten border controls between the two states. During Chinese President Xi Jinping's visit to Nepal in 2019, the two states signed an agreement on a border management system with increased obligations for both sides. The agreement commits the two governments to repatriate persons found crossing the border illegally within seven days of them being detained.¹⁵ This extradition agreement, while being a legitimate legal instrument between the two states, can be used to send Tibetans back to the Tibetan Autonomous Region where they remain at risk of serious human rights abuses. This agreement poses serious concerns even for Tibetans already residing in Nepal prior to its application, as their lack of identifying documents provides a potential situation whereby they may be subject to repatriation or threats of the same.

III A differentiated treatment

To better analyse the impact of this mistreatment of the Tibetan population within Nepal, it is imperative to determine whether the same approach is adopted by the Nepalese government towards other refugee populations. For this, the legal framework on refugees - or lack thereof - and the treatment of another refugee community in Nepal is examined in this study.

Nepal lacks a concrete framework for addressing refugee issues. Like its South Asian neighbours - all except Afghanistan - it is not a party to the 1951 Convention on Refugees nor its 1967 Protocol. Adding to this lack of international obligations, Nepal does not have any regional commitments to provide refugee protection as South Asia currently lacks any regional instrument governing refugee matters. This is reflected in its domestic legal framework as well. The Constitution of Nepal does not provide explicit protection for the

¹² FIDH & ICT, "United Nations Human Rights Committee (CCPR) - 131st session Joint submission for the adoption of the List of Issues NEPAL," *FIDH & ICT*, 04 January 2021,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/INT_CCPR_ICJ_NPL_43963_E.pdf

¹³ Phayul Newsdesk, "Tibetans excluded from Nepal government's plan to issue ID cards for refugees," *Phayul*, 08 December 2021, <https://www.phayul.com/2021/12/08/46507/>

¹⁴ Richard Finney, "Nepal Border Agreement With China Sparks Fears Among Tibetans," *Radio Free Asia*, 14 February 2020, <https://www.rfa.org/english/news/tibet/border-02142020150551.html>

¹⁵ *Ibid.*

rights of refugees or those seeking asylum. While the Supreme Court of Nepal issued a ruling in 2007 directing the Government to enact legislation on refugees, such a law is yet to be adopted 15 years after the ruling. Given this lack of legislative framework, refugees entering Nepal remain at risk of detention, deportation, or refoulement.¹⁶ Furthermore, they remain at legal risk of financial penalties for irregular entry or presence in the country under Nepal's Immigration Regulation of 1994, as serial numbers 2(a) and (c) of Schedule 9 impose charges of USD 2 and USD 3 respectively per day for overstaying visas without extension, regardless of whether they are granted refugee status by the UNHCR or not.¹⁷

Without a legislative framework for protecting people seeking asylum, Nepal, like its South Asian neighbours, has resorted to ad hoc administrative arrangements, with the refugee status determined by the UNHCR for individual asylum seekers¹⁸. Administrative authorities thus have discretionary powers in determining applicable policies for refugee populations, leading to an inconsistency in the Government of Nepal's ad hoc approaches and practices towards refugee populations.

The best example of this is found in the case of the Bhutanese (Lhotshampa) refugees, the other mass refugee community in Nepal. In 1990, thousands of Nepali Hindus fled Bhutan after the violence, discrimination and persecution they faced in Bhutan after the Bhutanese government initiated the One Nation, One People policy.¹⁹ In line with Nepal's stated foreign policy of believing in the right of refugees to voluntarily return to their home country in a safe and dignified manner, negotiations began between Nepal and Bhutan for the repatriation of this population. However, after talks between the two states failed to resolve the issue, efforts were undertaken to resettle the Bhutanese refugees in eight different countries globally, leading to over 113,500 resettlements between 2007 and 2016.²⁰ An estimated 6,000 Bhutanese refugees still reside in Nepal²¹ and are provided with other forms of support including health insurance, access to public schooling, and provision of energy to their settlements.²² Furthermore, unlike the Tibetan population in Nepal, they possess refugee identification cards issued by the government.

Nepal's lack of legislative framework and the adoption of an ad hoc approach towards refugees has thus left Tibetans in Nepal vulnerable to discriminatory application of policies and gross violations of their human rights.

¹⁶ United Nations High Commissioner for Refugees, "Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' - Universal Periodic Review: 2nd Cycle, 23rd Session," *UNHCR*, 2015

¹⁷ "The Immigration Regulation, 1994," *Nepal Gazette*, 06 June 1994, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=87470

¹⁸ United Nations High Commissioner for Refugees, "Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' - Universal Periodic Review: 2nd Cycle, 23rd Session," *UNHCR*, 2015

¹⁹ IRIN News, "Nepal's successful refugee resettlement operation," *The New Humanitarian*, 30 December 2013, <https://www.thenewhumanitarian.org/analysis/2013/12/30/nepal-s-successful-refugee-resettlement-operation>

²⁰ "Nepal," *UNHCR*, n.d., <https://www.unhcr.org/nepal.html>.

²¹ Nikhil Khanal, "Nepal's Refugee Resettlement Program," *The Borgen Project*, 01 May 2021, <https://borgenproject.org/nepals-refugee-resettlement-program/>

²² UNHCR "FACT SHEET-NEPAL JANUARY 2022," *UNHCR*, 2022, <https://reporting.unhcr.org/document/1353>

IV

Nepal government's justification

The Nepalese government has sought to justify these discriminatory violations based on a) geopolitical sensitivities,²³ b) adherence to the One-China Policy and supporting Chinese sovereignty and territorial integrity, and c) the lack of refugee status of the Tibetans. As indicated earlier, this paper will not delve into the matter of geopolitical sensitivities but will focus on the latter two justifications provided.

One China Policy

The "One China" policy is a diplomatic acknowledgement of the People's Republic of China's assertion that only one singular Chinese government exists. It is an important cornerstone in the foreign relations of any state wishing to hold diplomatic relations with China, and as such, it is the stance taken by the Nepalese government as well. In doing so, the Nepalese government does not recognize Taiwan as an independent country and also supports the Hong Kong national security law.²⁴ In line with this "One-China" policy, Nepal has, in bilateral talks with China, expressed its commitment to preventing the occurrence of anti-China activities on Nepalese soil.²⁵ As the Chinese government considers its fleeing population of Tibetans to be capable of separatist or anti-China activities abroad, constituting a threat to Chinese sovereignty, Nepal has sought to justify its mistreatment of Tibetans on this ground. The Nepalese government has thus claimed that while it is willing to abide by international law, it cannot do so when it conflicts with the "One-China" policy.²⁶

Lack of refugee status

The other justification provided by the Nepalese government is the lack of refugee status of most Tibetans. Nepal does not find itself obligated to either recognize the undocumented Tibetan population as refugees due to a lack of international and regional legally binding commitments, or guarantee them basic civil, political, economic, social, and cultural rights.

The Constitution of Nepal only provides for the explicit protection of certain fundamental freedoms under article 17(2) to citizens,²⁷ without extending it to noncitizens. This could potentially provide a domestic legal basis for depriving Tibetans in Nepal of the freedom of expression, peaceful assembly, or engagement in economic activities. The same logic however cannot be extended to the right to equality before the law and against preventive detentions, protected by articles 18 and 23 respectively for all persons. Neither can it be applied to Article 26 (right to religious freedom) and Article 32 (right to language and culture), which also extends protection to all persons.

The mistreatment of Tibetans within Nepal as such cannot legally be justified based on the One-China policy and Tibetans' lack of refugee status, even within the Nepalese constitutional framework. Thus, it becomes important to analyse why the Nepalese government has

²³ Human Rights Watch, "Under China's Shadow | Mistreatment Of Tibetans In Nepal," *Human Rights Watch*, 01 April 2014, <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>

²⁴ Bindesh Dahal, Arun Budhathoki, "Nepal's Cautious Approach to the Tibetan Question," *The Diplomat.com*, 28 July 2021, <https://thediplomat.com/2021/07/nepals-cautious-approach-to-the-tibetan-question/>

²⁵ "Joint Statement Between The People's Republic Of China And Nepal," *En.Pkulaw.Cn*, 14/01/2012, <http://en.pkulaw.cn/display.aspx?cgid=100670420&lib=tax>

²⁶ Kalpit Parajuli, "Kathmandu ignores European Union, denies rights to Tibetans living in exile," *Asianews.it*, 04 November 2011 <https://www.asianews.it/news-en/Kathmandu-ignores-European-Union,-denies-rights-to-Tibetans-living-in-exile-21280.html>

²⁷ "Nepal: Constitution [Nepal], 2015 (2072.6.3)", *Nepal Gazette*, 20 September 2015, <https://www.refworld.org/docid/561625364.html>

remained determined in maintaining the status quo concerning the Tibetan community. A potential reason is Nepal's need to remain in China's good books, given its immense economic and military influence on the state.

V

China's influence in Nepal

Over the past decade and a half, China has increased its involvement and influence in Nepal by way of economic assistance, disaster relief, military cooperation and infrastructural development in the country.

China has provided large amounts of aid in various forms to the Nepalese government including a \$113 million aid package in 2012 for economic and technical cooperation.²⁸ During his visit to Nepal in 2019, President Xi Jinping announced a support of \$493 million spread over two years to enhance developmental programs in Nepal.²⁹ China has also provided disaster relief to the landlocked country, including for the 2015 earthquakes, and the COVID-19 pandemic. During the pandemic, Nepal received more than 13 million Chinese vaccines along with large quantities of medical equipment from China³⁰. In October 2021, China further announced that it would be providing Nepal additional medical assistance worth \$775,590 towards preventive measures within the healthcare system.³¹

On the military side, in 2019, China committed to providing the Nepalese army with roughly \$21 million in unspecified disaster relief materials.³² Its interaction with the Nepalese army is not limited to such aid as it also engages in military cooperation. China has conducted various capacity-building drills and training with the Nepalese Armed Forces and has provided military aid packages including one worth \$20 million in 2011.³³ Further, it has also signed various bilateral agreements to facilitate increased information and intelligence sharing on security matters concerning both states,³⁴ including the aforementioned extradition treaty between the two.

In addition to aid and cooperation, Nepal also receives a significant flow of foreign direct investment (FDI) and support for infrastructure development from China. While China currently holds the second largest source of FDI stock (including reserve assets) in Nepal,³⁵ it accounts for the majority of FDI commitments received by Nepal in the past six consecutive years. In the 2020-21 fiscal year, Chinese investors pledged \$184.8 million (comprising nearly

²⁸ Human Rights Watch, "Under China's Shadow | Mistreatment Of Tibetans In Nepal," *Human Rights Watch*, 01 April 2014, <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>

²⁹ "China pledges Rs 9.75b grant," *Republica*, 15 January 2012,

http://archives.myrepublica.com/2012/portal/?action=news_details&news_id=40812

³⁰ "Yearender: Nepal-China cooperation moves ahead amid COVID-19 pandemic," *Xinhuanet.com*, 23 December 2021, <http://www.xinhuanet.com/english/20211223/500bd41750c0488f8775439ff85fde69/c.html>

³¹ "China to provide medical assistance, 1 million vaccines to Nepal to tackle possible third COVID-19 wave: Minister," *The New Indian Express*, 06 October 2021,

<https://www.newindianexpress.com/world/2021/oct/06/china-to-provide-medical-assistance-1-million-vaccines-to-nepal-to-tackle-possible-third-covid-19-w-2368452.html>

³² Gopal Sharma, "China to give \$21 million to Nepal army to help future disaster relief," *Reuters*, 21 October 2019 <https://www.reuters.com/article/us-nepal-china-army-idUSKBN1X01FU>

³³ Human Rights Watch, "Under China's Shadow | Mistreatment Of Tibetans In Nepal," *Human Rights Watch*, 01 April 2014, <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>

³⁴ *Ibid.*

³⁵ Economic Research Department NRB, "A Survey Report on Foreign Direct Investment in Nepal (2018/19)," *Nepal Rastra Bank*, 2021, https://www.nrb.org.np/contents/uploads/2021/04/FDI-2018-19_April-2021.pdf#:~:text=Nepal%20has%20received%20foreign%20investment,Ireland%2C%20and%20Singapore%20with%20Rs

70% of all FDI commitments to Nepal) and in the first five months of the 2021-22 fiscal year, it had already crossed \$190.16 million.³⁶ The investment commitments from investors are also coupled with Chinese involvement in infrastructure development meant to ameliorate the developing nation's economic circumstances. This is especially visible in the construction of hydropower and transport infrastructures. The Chinese firm China Gezhouba Group Corporation holds a contract worth \$2.5 billion for the construction of the Budhi Gandaki Hydro Plant with an approximated capacity of 1200 MW,³⁷ while a China-Nepal joint venture worth \$1.2 billion has been established for the construction of three separate projects on the Marsyangdi river (joint proposed capacity of 601.2 MW).³⁸ With regard to transport infrastructure, significant Chinese involvement is noticed in the improvement of the Pasang Lhamu Highway (105km)³⁹ and the construction of the Kerung-Kathmandu tunnel road. Furthermore, China has committed to a cross-border railway project between the two countries to enhance the Trans-Himalayan Multi-Dimensional Connectivity Network. This is in line with China's policy of viewing Nepal as a partner in its Belt and Road Initiative and significantly contributing to Nepal's efforts of graduating from the status of a Least Developed Country to a Developing Country (which happened in 2021) and reaching the status of a middle-income country by 2030.⁴⁰

With significant Chinese involvement in the above-mentioned sectors, China has placed Nepal in a situation whereby it must appease its northern neighbour to ensure sustained improvements within its economic circumstances. Without such measures, Nepal could be left vulnerable to further economic and social shocks, which it may not be capable of withstanding on its own. However, this is not an ideal situation for the country as it portends significantly disruptive implications for rule of law within its territory.

VI

Rule of law in Nepal

The increasing mistreatment of Tibetans as a result of Nepal's adherence to the One China Policy poses a significant concern to Nepal's sociopolitical and judicial institutions that have not yet matured to provide a stable governing foundation. The politically-motivated policing of the Tibetan community fuels the perception that laws need not be applied equally to those within the legal jurisdiction of Nepal. While the Constitution of Nepal may only extend fundamental rights such as equality before the law, freedom of expression, and freedom of assembly to citizens, this goes in direct contradiction to both principles of international law and Nepal's commitments under the ICCPR. Under Article 2.1 ICCPR, state parties are required to ensure the protection of the rights of "all individuals within its territory and subject to its jurisdiction," and Article 26 ICCPR further entitles all persons to the equal protection of laws without discrimination of any form.⁴¹ This unequal protection of rights in

³⁶ "Yearender: Nepal-China cooperation moves ahead amid COVID-19 pandemic," *Xinhuanet.com*, 23 December 2021, <http://www.xinhuanet.com/english/20211223/500bd41750c0488f8775439ff85fde69/c.html>

³⁷ Gopal Sharma, "Nepal restores \$2.5 billion hydropower plant contract to Chinese firm," *Reuters*, 23 September 2018 <https://www.reuters.com/article/us-china-nepal-hydropower-idUSKCN1M30CZ>

³⁸ "China-Nepal joint venture gets nod to develop hydropower projects in Nepal," *Xinhuanet.com*, 24 June 2021, http://www.xinhuanet.com/english/asiapacific/2021-06/24/c_1310024203.htm

³⁹ Hari Bansh Jha, "Nepal's Border Relations With India And China," *Hokkaido University Collection Of Scholarly And Academic Papers*, 2013, https://eprints.lib.hokudai.ac.jp/dspace/bitstream/2115/53301/1/EBR4-1_004.pdf

⁴⁰ Press Trust of India, "Any Attempt To Split China Will Be "Crushed", Xi Jinping Warns During Maiden Visit To Nepal," *NDTV.com*, 14 October 2019 <https://www.ndtv.com/world-news/any-attempt-to-split-china-will-be-crushed-xi-jinping-warns-during-maiden-visit-to-nepal-2116210>

⁴¹ UN General Assembly, "International Covenant on Civil and Political Rights", *United Nations*, 16 December 1966, <https://www.refworld.org/docid/3ae6b3aa0.html>

Nepal is indicative of serious rule of law concerns in the legal system which need to be duly addressed to provide not just domestic stability but also international legitimacy to the Himalayan nation, and open doors for stronger diplomatic and economic relations with states beyond its immediate geography.

Despite Nepal's legal obligations under international law and its principles, the guarantee of rights for Tibetans in practice remains a rather difficult issue. The hierarchy between international laws and domestic laws in the context of Nepal remains a contentious issue due to conflicting developments, thus leading to an unclear application of international law. The Constitution of Nepal does not explicitly recognise any hierarchy between the two and the only respite is found in the Treaty Act of Nepal 1990, where, according to Article 9, any prevailing law provision incompatible with a treaty "shall be void for the purpose of that treaty" and that the treaty provision "shall be enforceable as good as Nepalese Laws."⁴² Based on this article, the Supreme Court of Nepal in *Rina Bajracharya v Cabinet Secretariat and Others* declared treaties ratified by Parliament as superior to Nepalese law in case of inconsistencies.⁴³ However, a conflicting ruling was issued the same year in *Gyan Raj Rai v. Cabinet Secretariat and Others* whereby the Supreme Court held that "good as law" and "law" are different concepts and as such treaties could not be invoked directly without being transformed to domestic law.⁴⁴ These conflicting rulings thus undermine the position of international treaties in Nepali law and the legal certainty associated with their application. As such, in practice, it does not seem possible to safeguard the rights of the Tibetan community through the framework of international law.

As such, Nepal's treatment of Tibetan refugees is contrary to the protection of fundamental rights, erodes legal certainty, demonstrates the arbitrary exercise of executive powers, and highlights unequal protection under national laws. These gross violations of rule of law principles thus feed the perception that where Chinese interests may be at stake in the country, Nepal is likely to comply with Chinese policies as opposed to upholding the rule of law and its international legal obligations.

Additionally, while the mistreatment of Tibetans in Nepal has been brought up in international forums and dialogues, it has largely taken the form of declarations and recommendations to the Nepalese government without any binding force. The Nepalese government has thus found it easy to take note of without accepting such recommendations,⁴⁵ resulting in no improvement in the status of Tibetan communities in Nepal. Furthermore, given the reluctance of other South Asian countries to enact regional or domestic legislation on refugees, it does not seem likely that Nepal will face any regional pressure on the issue. As such, there is seemingly a lack of motivation for a change in the Nepali political environment and human rights regime, especially concerning Tibetan refugees.

While it might currently be tempting for Nepal to strengthen its relations with China for development, this may simply serve as a debt trap, in the long run, reducing Nepalese sovereignty over its own territory, a concern frequently cited in the region post-Sri Lanka's

⁴² "Nepal Treaty Act, 1990," *Nepal Gazette*, 09 November 1990, <https://www.refworld.org/docid/3ae6b51724.html>

⁴³ "Rina Bajracharya v Cabinet Secretariat and others, NKP 373 (2057)," *Supreme Court of Nepal*, 2000

⁴⁴ "Gyan Raj Rai v Cabinet Secretariat and others, Writ no 2651 of 2056 (decision 2058/12/8)," *Supreme Court of Nepal*, 2000

⁴⁵ Human Rights Council, "Government denies rights of Tibetan refugees in UN review," *FIDH*, 07 July 2021, <https://www.fidh.org/en/region/asia/nepal/government-denies-rights-of-tibetan-refugees-in-un-review>

relinquishment of the Hambantota Port. Nepal may want to be wary of this dynamic, for as the second US president John Adams once said, “There are two ways to conquer and enslave a nation. One is by the sword. The other is by debt.” Nepal thus needs to prioritise the development of its socio-political and judicial institutions through a commitment to upholding the rule of law and a human rights regime as opposed to strengthening relations with China, to ensure the long-term stability and legitimacy of the country.

Conclusion

The mistreatment of the Tibetan community in Nepal needs to be viewed within the framework of the Nepalese government prioritising developmental benefits from China over rule of law and an effective human rights regime in Nepal. China’s immense influence over Nepal has caused the latter to turn a blind eye to its international obligations and humanitarian concerns. In appeasing the Chinese government through the One China Policy and by committing to adopt policies aimed at protecting Chinese territorial integrity (as defined by China), Nepal has essentially ceded parts of its internal sovereignty to China. This situation does not reflect well on Nepal domestically and internationally as its legitimacy is significantly undermined regarding the rule of law and human rights regime. This has implications for potential domestic civil unrest and deterioration of diplomatic relations internationally, which could destabilise Nepal’s fragile political institutions and economy.

In committing to improving the rule of law in the country, Nepal must accede to the 1951 Convention on Refugees and adopt domestic legislation protecting the rights of refugees. The adoption of a legal framework compliant with international standards would not only protect the rights of refugees but would also equip Nepal with the legal basis to safeguard its national interest and effectively address refugee issues in a manner consistent with the rule of law, enhancing its international credibility. While the Government of Nepal may potentially justify not acceding to the Convention or adopting refugee legislation by pointing to its South Asian neighbours who haven't done so, it must seek to break from the mould and be a regional model for upholding human rights and the rule of law.

About the author

Devansh Agrawal is a student at IE University in Madrid, currently pursuing a dual degree bachelors in Law and Politics Law Economics (LLB+PLE). His areas of interest lie in the intersection between international relations and legal issues, with a keen fascination on international law. As part of his research, he looks into issues relating to refugees, human rights, and trade.





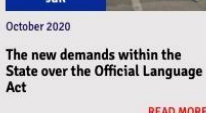




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