



OPERATIONAL GUIDANCE NOTE

NEPAL

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1. Introduction

- 1.1 This document summarises the general, political and human rights situation in Nepal and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with any COI Service Country of Origin Information at.

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights

- 1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

Source documents

- 1.4 A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** On 1 February 2005, the Nepalese King Gyanendra dismissed the cabinet, declared a state of emergency, and assumed direct control of the government under the emergency powers article of the Constitution, citing the need to fight a Maoist insurgency.¹ Amnesty International reported that the human rights situation deteriorated sharply after King Gyanendra seized direct power. Civil liberties were undermined, with thousands of politically motivated arrests, strict media censorship and harassment of human rights defenders.² The state of emergency was lifted on 29 April 2005.³
- 2.2** Since February 1996 the Communist Party of Nepal (CPN) (Maoist) have been conducting an increasingly high profile insurgency (the People's War) against the government. Initially this insurgency was limited to the remote Mid-West regions of the country, but it has since spread to most parts of Nepal. In local elections held in May and July 1997, the Maoists disrupted the election process in some areas by intimidating non-Communist candidates and party workers. In May 1998 the government launched a major police offensive against the Maoists. It is estimated that over 12,000 people, including Maoists, police and civilians, have been killed since the troubles began.⁴
- 2.3** During 2005 the government's poor human rights record worsened and both members of the security forces and the Maoist insurgents committed numerous grave human rights abuses.⁵ The security forces often operating with impunity unlawfully arrested tortured and killed civilians and suspected Maoist, while Maoist forces abducted civilians and committed unlawful killings and torture. Thousands of people were displaced by the conflict, while strikes, insecurity and displacement prevented many people from enjoying their economic and social rights.⁶
- 2.4** The law prohibits torture, beating, and mutilation, however, during 2005 the security forces regularly engaged in such activities to punish suspects or to extract confessions. The Centre for Victims of Torture (CVICT), a local NGO, reported that blindfolding and beating the soles of feet were commonly used methods. The government failed to conduct thorough and independent investigations of reports of security force brutality and generally did not take significant disciplinary action against those involved. Citizens were afraid to bring cases against the police or the army for fear of reprisals.⁷
- 2.5** In April 2006 after weeks of strikes and protests against his direct rule King Gyanendra recalled parliament and appointed GP Koirala (who had been chosen by the leaders of a seven-party alliance to be their leader) as prime minister.⁸ Following the reinstatement of parliament on the 27 April 2006 Nepal's Maoist rebels declared a three-month ceasefire. The rebel leader, Prachanda, said the ceasefire was intended 'to express deep commitment to people's desire for peace'.⁹
- 2.6** In May 2006 parliament voted unanimously to curtail the monarch's political powers including his control of the military and effectively rendered him a ceremonial figure.¹⁰ They also declared a ceasefire in the 10-year conflict with Maoist insurgents. Announcing the move, the Deputy Prime Minister Khadga Prasad Oli said all terrorism charges against the rebels would be dropped. Politicians have promised to work with the Maoists as a prelude to bringing them into government. The government also announced that it was annulling controversial municipal elections held by the King in

¹ USSD 2005 (Introduction)

² AI 2006

³ USSD 2005 (Introduction)

⁴ FCO March 2006

⁵ USSD 2005 (introduction)

⁶ AI 2006

⁷ USSD 2005 (Section 1)

⁸ BBC Timeline May 2006

⁹ Guardian Unlimited article 28 April 2006

¹⁰ BBC Timeline May 2006

February 2006 and sacking local officials he appointed. In addition, it said it was awarding compensation of about \$14,000 to families of those killed by security forces during the recent demonstrations, and was appointing a judicial commission to inquire into the deaths.¹¹

2.7 In recent talks (June 2006) Nepal's new government has struck a deal with Maoist rebels, agreeing to dissolve parliament and set up an interim administration that would include the rebels, raising hopes for an end to a decade-long violence. The interim government will oversee elections for a special assembly meant to draft a new constitution and review the monarchy's role. The Maoist leader Prachanda has said elections are likely to be in March or April 2007. However, there are still a number of difficult issues that require further discussion such as disarmament of the Maoist rebels and the future of the Monarchy, for example the political parties are undecided about whether to declare Nepal a republic.¹²

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Nepal. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 Members of the CPN (Maoists)

¹¹ BBC Article Nepal calls ceasefire with rebels 3 May 2006

¹² Alert-news article Nepal's landmark peace deal 19 June 2006

- 3.6.1** Most claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the state authorities due to their membership of, involvement in or perceived involvement in the Communist Party of Nepal – CPN (more commonly known as the Maoists).
- 3.6.2** *Treatment.* During 2005 the government's poor human rights record worsened and both members of the security forces and the Maoist insurgents committed numerous grave human rights abuses.¹³ The security forces often operating with impunity unlawfully arrested tortured and killed civilians and suspected Maoist, while Maoist forces abducted civilians and committed unlawful killings and torture. Thousands of people were displaced by the conflict, while strikes, insecurity and displacement prevented many people from enjoying their economic and social rights.¹⁴
- 3.6.3** However, in April 2006 after weeks of strikes and protests against his direct rule King Gyanendra recalled parliament and appointed GP Koirala (who had been chosen by the leaders of a seven-party alliance to be their leader) as prime minister.¹⁵ Following the reinstatement of parliament on the 27 April 2006 Nepal's Maoist rebels declared a three-month ceasefire. The rebel leader, Prachanda, said the ceasefire was intended 'to express deep commitment to people's desire for peace'.¹⁶
- 3.6.4** In May 2006 parliament voted unanimously to curtail the monarch's political powers including his control of the military and effectively rendered him a ceremonial figure.¹⁷ They also declared a ceasefire in the 10-year conflict with Maoist insurgents. Announcing the move, the Deputy Prime Minister Khadga Prasad Oli said all terrorism charges against the rebels would be dropped. Politicians have promised to work with the Maoists as a prelude to bringing them into government. The government also announced that it was annulling controversial municipal elections held by the King in February 2006 and sacking local officials he appointed. In addition, it said it was awarding compensation of about \$14,000 to families of those killed by security forces during the recent demonstrations, and was appointing a judicial commission to inquire into the deaths.¹⁸
- 3.6.5** On the 2 June 2006 at least 200,000 people took part in a Maoist rally in the Nepalese capital, Kathmandu – (the first there by the rebels for three years). Streets were hung with banners bearing communist slogans and posters of the Maoist leader, Prachanda.¹⁹
- 3.6.6** As part of the peace process Nepal's government has released Maoist rebels detained under the controversial anti-terror law. The move follows an earlier decision to withdraw charges against them under terrorism legislation and not to renew the legislation. The Home Ministry spokesman Banan Prasad Naupani stated that the prisoners - most of them lower-ranking members of the Maoist movement - were being freed from jails across the country.²⁰ By the 19 June 2006 the government had already released most of the 1,500-odd Maoist prisoners, removed their leaders' terrorist tag, and stated that it will scrap an anti-terrorism ordinance.²¹
- 3.6.7** In recent talks (June 2006) Nepal's new government has struck a deal with Maoist rebels, agreeing to dissolve parliament and set up an interim administration that would include the rebels, raising hopes for an end to a decade-long violence. The interim

¹³ USSD 2005 (introduction)

¹⁴ AI 2005

¹⁵ BBC Timeline May 2006

¹⁶ Guardian Unlimited article 28 April 2006

¹⁷ BBC Timeline May 2006

¹⁸ BBC Article Nepal calls ceasefire with rebels 3 May 2006

¹⁹ BBC article Maoist hold massive Nepal rally (2 June 2006)

²⁰ BBC Article [Nepalese rebels freed from jail 13 June 2006](#)

²¹ BBC Article Nepal challenges ahead 16 June 2006

government will oversee elections for a special assembly meant to draft a new constitution and review the monarchy's role. The Maoist leader Prachanda has said elections are likely to be in March or April 2007. However, there are still a number of difficult issues that require further discussion such as disarmament and the future of the monarchy, for example the political parties are undecided about whether to declare Nepal a republic.²²

- 3.6.8** In another development the CPN (Maoist) opened its contact office in Kopundole, Lalitpur, Katmandu in June 2006. The contact office was inaugurated by Maoist central leader and a member of the Maoist negotiations team, Dev Gurung. The three-storied building, where the Maoist contact office has been opened, earlier housed the office of the CPN (M-L). This is the first contact office opened by the Maoists in the capital after the start of peace process nearly two months ago.²³
- 3.6.9** **Sufficiency of protection.** As this category of applicants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.6.10** **Internal relocation.** As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.6.11** **Conclusion.** During 2005 the authorities committed serious human rights abuses including arbitrary arrest, torture and extra-judicial executions of suspected Maoists. However, since the end of the Kings direct rule in April 2006 the new government and the Maoists have agreed a ceasefire and are engaged in talks aimed at bringing the Maoists into the government. The new government also announced that all terrorism charges against the rebels are to be dropped and the majority of Maoist rebels held in prison had been released. In addition for the first time in three years over 200,000 Maoist and Maoist supporters staged a peaceful demonstration in the capital Katmandu. Considering the present situation in Nepal with the ceasefire, prisoners releases and ongoing talks it is unlikely that any Maoist or Maoist supporter would qualify for a grant of asylum or Humanitarian Protection.
- 3.6.12** Caseworkers should note that members of Communist Party of Nepal – CPN (Maoist) have been responsible for numerous and serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the Communist Party of Nepal – CPN (Maoists) and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.7 Persons in fear of Maoists/ Maoist extortion

- 3.7.1** Many claimants will raise the general instability in the country and the authorities' inability to keep law and order in the context of the Maoist's armed campaign. They will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Maoists.
- 3.7.2** **Treatment.** Since February 1996 the Communist Party of Nepal (CPN) (Maoist) has been conducting an increasingly high profile insurgency (the People's War) against the government. Initially this insurgency was limited to the remote Mid-West regions of the country, but it has since spread to most parts of Nepal. In local elections held in May and July 1997, the Maoists disrupted the election process in some areas by intimidating non-

²² Alert-news article Nepal's landmark peace deal 19 June 2006

²³ Nepal news CPN (Maoist) open its contact office in Lalitpur 13 June 2006

Communist candidates and party workers. In May 1998 the government launched a major police offensive against the Maoists. It is estimated that over 12,000 people, including Maoists, police and civilians, have been killed since the troubles began.²⁴

- 3.7.3** CPN (Maoist) forces have abducted civilians and committed unlawful killings and torture. Thousands of people have been displaced by the conflict, while strikes, insecurity and displacement prevented many people from enjoying their economic and social rights.²⁵
- 3.7.4** However, in April 2006 after weeks of strikes and protests against his direct rule King Gyanendra recalled parliament and appointed GP Koirala (who had been chosen by the leaders of a seven-party alliance to be their leader) as prime minister.²⁶ Following the reinstatement of parliament on the 27 April 2006 Nepal's Maoist rebels declared a three-month ceasefire. The rebel leader, Prachanda, said the ceasefire was intended 'to express deep commitment to people's desire for peace'.²⁷
- 3.7.5** In May 2006 parliament voted unanimously to curtail the monarch's political powers including his control of the military and effectively rendered him a ceremonial figure.²⁸ They also declared a ceasefire in the 10-year conflict with Maoist insurgents. Announcing the move, the Deputy Prime Minister Khadga Prasad Oli said all terrorism charges against the rebels would be dropped. Politicians have promised to work with the Maoists as a prelude to bringing them into government. The government also announced that it was annulling controversial municipal elections held by the King in February 2006 and sacking local officials he appointed. In addition, it said it was awarding compensation of about \$14,000 to families of those killed by security forces during the recent demonstrations, and was appointing a judicial commission to inquire into the deaths.²⁹
- 3.7.6** In recent talks (June 2006) Nepal's new government has struck a deal with Maoist rebels, agreeing to dissolve parliament and set up an interim administration that would include the rebels, raising hopes for an end to a decade-long violence. The interim government will oversee elections for a special assembly meant to draft a new constitution and review the monarchy's role. The Maoist leader Prachanda has said elections are likely to be in March or April 2007. However, there are still a number of difficult issues that require further discussion such as disarmament and the future of the monarchy, for example the political parties are undecided about whether to declare Nepal a republic.³⁰
- 3.7.7** **Sufficiency of protection.** The Nepalese Army (NA) (previously known as the Royal Nepalese Army (RNA)) exercised responsibility for security in the country during 2005 under an operational structure referred to as the 'unified command,' which included elements of the police and the Armed Police Force (APF). Both the police and NA have human rights cells to promote human rights and to investigate cases of abuse; however, corruption and impunity remained problems. Police were generally unarmed and had the role of preventing and investigating non-terrorist related criminal behaviour, while the APF were armed and deployed as riot control at checkpoints or with NA units directly engaged against Maoist insurgents.³¹ While the security forces operated effectively in government controlled regions, it is unlikely that they would be able to provide adequate protection to individuals within areas under Maoist control or under significant Maoist

²⁴ FCO March 2006

²⁵ AI 2005

²⁶ BBC Timeline May 2006

²⁷ Guardian Unlimited article 28 April 2006

²⁸ BBC Timeline May 2006

²⁹ BBC Article Nepal calls ceasefire with rebels 3 May 2006

³⁰ Alert-news article Nepal's landmark peace deal 19 June 2006

³¹ USSD 2005 (Section 1)

influence. It is not therefore likely that claimants in this category would be able seek and receive adequate protection from the state authorities.

3.7.8 *Internal relocation.* The law provides for the right of freedom of movement, however in February 2005 the government suspended freedom of movement within the country under the state of emergency. The government cancelled all local and international flights on 1 and 2 February 2005 and prevented many prominent human rights activists and politicians from travelling within, or in some cases leaving, the country. In some cases these restrictions continued even after the lifting of the state of emergency in April 2005.³² However, these limits on freedom of movement applied mainly to high profile activists and politicians wishing to leave government controlled areas and majority of the population were not affected by this. Any applicant who fears Maoists insurgents should be able to internally relocate to a government controlled area of Nepal in particular the capital Kathmandu. Considering this and the recent changes since April 2006 it would not be unduly harsh for a claimant who fears persecution from Maoists to internally relocate to an area where Maoist forces are not in control and where they will not face problems.

3.7.9 *Conclusion.* Since 1996 there has been an increasingly violent conflict between the Nepalese authorities and Maoist insurgents. Both the Maoists and the Nepalese authorities have been responsible for serious human rights abuses some of which have been directed against civilians. However, since the end of the Kings direct rule in April 2006 the new government and the Maoists have agreed a ceasefire and are engaged in talks aimed at bringing the Maoists into the government. In addition it is not unduly harsh for a claimant who fears persecution from Maoists to internally relocate to an area where Maoist forces are not in control and where they will not face problems. Therefore it is unlikely that those who fear the Maoists or the general instability in the country will qualify for a grant of asylum or Humanitarian Protection.

3.8 Former Ghurkhas or policemen

3.8.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of Maoists due to them refusing to join the CPN's armed campaign having been targeted for their military or security expertise.

3.8.2 *Treatment.* Since February 1996 the Communist Party of Nepal (CPN) (Maoist) has been conducting an increasingly high profile insurgency (the People's War) against the government. Initially this insurgency was limited to the remote Mid-West regions of the country, but it has since spread to most parts of Nepal. In local elections held in May and July 1997, the Maoists disrupted the election process in some areas by intimidating non-Communist candidates and party workers. In May 1998 the government launched a major police offensive against the Maoists. It is estimated that over 12,000 people, including Maoists, police and civilians, have been killed since the troubles began.³³

3.7.3 CPN (Maoist) forces abducted civilians and committed unlawful killings and torture. Thousands of people were displaced by the conflict, while strikes, insecurity and displacement prevented many people from enjoying their economic and social rights.³⁴

3.8.4 However, in April 2006 after weeks of strikes and protests against his direct rule King Gyanendra recalled parliament and appointed GP Koirala (who had been chosen by the leaders of a seven-party alliance to be their leader) as prime minister.³⁵ Following the reinstatement of parliament on the 27 April 2006 Nepal's Maoist rebels declared a three-

³² USSD 2005 (Section 2)

³³ FCO March 2006

³⁴ AI 2006

³⁵ BBC Timeline May 2006

month ceasefire. The rebel leader, Prachanda, said the ceasefire was intended 'to express deep commitment to people's desire for peace'.³⁶

- 3.8.5** In May 2006 parliament voted unanimously to curtail the monarch's political powers including his control of the military and effectively rendered him a ceremonial figure.³⁷ They also declared a ceasefire in the 10-year conflict with Maoist insurgents. Announcing the move, the Deputy Prime Minister Khadga Prasad Oli said all terrorism charges against the rebels would be dropped. Politicians have promised to work with the Maoists as a prelude to bringing them into government. The government also announced that it was annulling controversial municipal elections held by the King in February 2006 and sacking local officials he appointed. In addition, it said it was awarding compensation of about \$14,000 to families of those killed by security forces during the recent demonstrations, and was appointing a judicial commission to inquire into the deaths.³⁸
- 3.8.6** In recent talks (June 2006) Nepal's new government has struck a deal with Maoist rebels, agreeing to dissolve parliament and set up an interim administration that would include the rebels, raising hopes for an end to a decade-long violence. The interim government will oversee elections for a special assembly meant to draft a new constitution and review the monarchy's role. The Maoist leader Prachanda has said elections are likely to be in March or April 2007. However, there are still a number of difficult issues that require further discussion such as disarmament and the future of the monarchy, for example the political parties are undecided about whether to declare Nepal a republic.³⁹
- 3.8.7** *Sufficiency of protection.* The Nepalese Army (NA) (previously known as the Royal Nepalese Army (RNA)) exercised responsibility for security in the country under an operational structure referred to as the 'unified command,' which included elements of the police and the Armed Police Force (APF). Both the police and NA have human rights cells to promote human rights and to investigate cases of abuse; however, corruption and impunity remained problems. Police were generally unarmed and had the role of preventing and investigating non-terrorist related criminal behaviour, while the APF were armed and deployed as riot control at checkpoints or with RNA units directly engaged against Maoist insurgents.⁴⁰ While the security forces operated effectively in government controlled regions, it is unlikely that they would be able to provide adequate protection to individuals within areas under Maoist control or under significant Maoist influence. It is not therefore likely that claimants in this category would be able seek and receive adequate protection from the state authorities.
- 3.8.8** *Internal relocation.* The law provides for the right of freedom of movement, however in February 2005 the government suspended freedom of movement within the country under the state of emergency. The government cancelled all local and international flights on 1 and 2 February 2005 and prevented many prominent human rights activists and politicians from travelling within, or in some cases leaving, the country. In some cases these restrictions continued even after the lifting of the state of emergency in April 2005.⁴¹ However, these limits on freedom of movement applied mainly to high profile activists and politicians wishing to leave government controlled areas and majority of the population were not affected by this. Any applicant who fears Maoists insurgents should be able to internally relocate to a government controlled area of Nepal in particular the capital Kathmandu. Considering this and the recent changes since April 2006 it would not be unduly harsh for a claimant who fears persecution from Maoists to internally

³⁶ Guardian unlimited article 28 April 2006

³⁷ BBC Timeline May 2006

³⁸ BBC Article Nepal calls ceasefire with rebels 3 May 2006

³⁹ Alert-news article Nepal's landmark peace deal 19 June 2006

⁴⁰ USSD 2005 (Section 1)

⁴¹ USSD 2005 (Section 2)

relocate to an area where Maoist forces are not in control and where they will not face problems.

3.8.9 Conclusion. Since 1996 there has been an increasingly violent conflict between the Nepalese authorities and Maoist insurgents. The CPN (Maoists) have been responsible for serious human rights abuses against civilians and those associated with the regime of King Gyanendra including those associated with or thought to be informers for the security forces. However, since the end of the Kings direct rule in April 2006 the new government and the Maoists have agreed a ceasefire and are engaged in talks aimed at bringing the Maoists into the government. In addition it is not unduly harsh for a claimant who fears persecution from Maoists to internally relocate to an area where Maoist forces are not in control and where they will not face problems. Therefore it is unlikely that those who fear the Maoists or the general instability in the country will qualify for a grant of asylum or Humanitarian Protection.

3.8.10 Since 25 October 2004 the Immigration Rules have made provision for ex British Army Gurkhas to apply for settlement in the UK on discharge from HM Forces. The Gurkha must have completed at least four years service with the British Army, been discharged in Nepal on completion of service on or after 1 July 1997, and to have made their settlement application within two years of their date of discharge. They can apply for settlement from Nepal, or from within the UK. Caseworkers should refer any such claims to the Senior Caseworker in the first instance for onward referral to the Initial Consideration Casework Team (ICC1).

3.9 Ethnic Tibetans

3.9.1 Many claimants will apply for asylum or make a human rights claim based on societal discrimination amounting to persecution due to their Tibetan ethnicity.

3.9.2 Treatment. Between 1959 and 1989 the government accepted as residents approximately 20,000 Tibetan refugees, most of whom still reside in the country. Since 1989 the government has allowed Tibetan refugees to transit the country. During 2005 3,395 Tibetan arrivals registered with UNHCR for transit to India, and 3,352 reportedly departed. This was the second highest number of arrivals (largest was 3,697 in 1993) since UNHCR began assisting transiting Tibetans in 1990.⁴²

3.9.3 The People's Republic of China and the Nepalese government tightened control of movement across the border in 1986, but neither side consistently enforced these restrictions. Police and customs officials occasionally harassed Tibetan asylum seekers who fled China. According to UNHCR, police conduct has improved since 1999, although border police sometimes extorted money from Tibetans in exchange for passage. There were unconfirmed reports that Tibetan asylum seekers were sometimes handed back to Chinese authorities after crossing the border. There were also reports that Maoists regularly robbed Tibetan refugees travelling from border areas to Kathmandu.⁴³

3.9.4 In October 2005 the government stopped issuing travel documents necessary for resident Tibetan refugees to leave the country, saying it had to study the issue. In November 2005 the government also stopped issuing exit permits to Tibetan refugees transiting to India, also saying it had to study the issue. However, the government allowed Tibetans to enter Nepal, and apply for and receive UNHCR protection.⁴⁴

⁴² USSD 2005 (Section 2)

⁴³ USSD 2005 (Section 2)

⁴⁴ USSD 2005 (Section 2)

- 3.9.5** On 2 September 2005, police in Kathmandu prohibited Tibetans celebrating Tibetan Democracy Day from carrying pictures of the Dalai Lama in public, a restriction that has been imposed since 2002. The government restricted to private places (school grounds or inside monasteries) all local Tibetan celebrations.⁴⁵
- 3.9.6** **Sufficiency of protection.** Though ethnic Tibetans in Nepal are vulnerable to occasional incidents of extortion, there is no evidence that they are not able to access the same level of protection from the state authorities as ordinary Nepalese citizens. It is therefore likely that a claimant in this category can seek and receive adequate protection from the state authorities.
- 3.9.7** **Internal relocation.** The law provides for the right of freedom of movement, however in February 2005 the government suspended freedom of movement within the country under the state of emergency. The government cancelled all local and international flights on 1 and 2 February 2005 and prevented many prominent human rights activists and politicians from travelling within, or in some cases leaving, the country. In some cases these restrictions continued even after the lifting of the state of emergency in April 2005.⁴⁶ However, these limits on freedom of movement applied mainly to high profile activists and politicians wishing to leave government controlled areas and majority of the population were not affected by this. There is no evidence that Tibetans are unable to move freely around the country or that they have been adversely affected by the situation in Nepal. Considering this and the recent changes since April 2006 it would not be unduly harsh for a claimant who fears persecution in one area to internally relocate to an area where they will not face problems
- 3.9.8** **Conclusion.** Ethnic Tibetans are sometimes vulnerable to isolated and sporadic incidents of societal discrimination and extortion by corrupt local officials. Such incidents do not amount to any systematic discrimination on the basis of ethnicity and therefore claimants are unlikely to encounter ill-treatment amounting to persecution. Moreover, the availability of adequate state protection and a viable internal relocation alternative means that such claims are unlikely to engage the UK's obligations under the 1951 Convention. Therefore claimants in this category of claim are unlikely to qualify for asylum or Humanitarian Protection.

3.10 Refugees from Bhutan

- 3.10.1** Some claimants will apply for asylum or make a human rights claim based on societal discrimination amounting to persecution due to them being refugees from Bhutan in Nepal.
- 3.10.2** **Treatment.** Since 1991 the government has provided asylum to approximately 105,000 persons who claim Bhutanese citizenship. The great majority of these refugees lived in UNHCR-administered camps in the south-eastern part of the country. Approximately 15,000 additional Bhutanese refugees resided in Nepal or in India outside of these camps.⁴⁷
- 3.10.3** The UNHCR monitored the condition of Bhutanese refugees and provided for their basic needs during 2005, however, the government refused to allow UNHCR to profile and verify those in the Bhutanese refugee camps. The government accepted the temporary refugee presence on humanitarian grounds. The UNHCR administered the camps, the World Food Program (WFP) provided sustenance and the Nepalese government made a contribution to the WFP earmarked for the refugees.⁴⁸

⁴⁵ USSD 2005 (Section 2)

⁴⁶ USSD 2005 (Section 2)

⁴⁷ USSD 2005 (Section 2)

⁴⁸ USSD 2005 (Section 2)

- 3.10.4** The government officially restricted Bhutanese refugees' freedom of movement and work, but it did not strictly enforce its policies. Although Bhutanese refugees were not allowed to leave the camps without permission, it was consistently granted. Local authorities attempted to restrict some of the limited economic activity in the camps permitted by the central government. Violence sometimes broke out between camp residents and the local population.⁴⁹
- 3.10.5** In October 2005 the government stopped issuing travel documents necessary for resident Bhutanese refugees to leave the country, saying it had to study the issue.⁵⁰
- 3.10.5 Sufficiency of protection.** There is some societal discrimination on the part of some local ethnic Nepalese against Bhutanese refugees living in the camps, however, there is no information to suggest that the Nepalese authorities condone or encourage this discrimination. Some local authorities attempted to restrict some of the limited economic activity in the camps permitted by the central government and there have been instances of violence between camp residents and the local population. In September 2003, following Maoists attacks the Government withdrew its permanent police presence from all seven refugee camps.⁵¹ Therefore although the Nepalese authorities do not discriminate or persecute ethnic Bhutanese there is no information to suggest that the authorities are able to offer sufficiency of protection to Bhutanese refugees who fear the local population.
- 3.10.6 Internal relocation.** Though refugees from Bhutan are generally not allowed to leave the camps without official permission, this rule is rarely enforced and the Nepalese authorities usually allow individuals to leave the camps as and when they wish. Considering this and the recent changes since April 2006 it would not be unduly harsh for a claimant who fears persecution in one area to internally relocate to an area where they will not face problems
- 3.10.7 Conclusion.** Refugees from Bhutan based in camps in the country are sometimes vulnerable to isolated and sporadic incidents of societal discrimination and extortion by corrupt local officials or violence from the local population. However, such incidents are not condoned by the authorities and do not amount to any systematic discrimination or persecution on the basis of ethnicity. Therefore claimants are unlikely to encounter ill-treatment amounting to persecution and are unlikely to qualify for a grant of asylum or Humanitarian Protection.
- 3.11 Journalists / Human rights activists**
- 3.11.1** Some claimants may apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the authorities due to them being journalists or human rights activists.
- 3.11.2 Treatment.** A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were sometimes co-operative and responsive to their views. After the state of emergency was declared on 1 February 2005, the government detained a number of civil society members and prevented others from leaving the country or travelling outside the capital. In addition there were complaints of intimidation being used against human rights NGOs and workers by both the government and the Maoists.⁵²

⁴⁹ USSD 2005 (Section 2)

⁵⁰ USSD 2005 (Section 2)

⁵¹ USSD 2004 (Sections 2 & 5)

⁵² USSD 2005 (Section 4)

- 3.11.3** In 2005 there were approximately 10 independent, domestic human rights NGOs, including the Human Rights Organization of Nepal, the International Institute for Human Rights, Environment, and Development; and the Human Rights and Peace Society. The Nepal Law Society also monitored human rights abuses, and a number of other NGOs focused on specific areas such as torture, child labour, women's rights, or ethnic minorities.⁵³
- 3.11.4** The ongoing Maoist insurgency has caused many NGOs to reduce substantially their activities. There were frequent credible claims that Maoists refused to allow human rights NGOs and journalists to enter certain western districts. In addition Maoists killed and abducted some NGO workers.⁵⁴
- 3.11.5** The human rights community was directly targeted by government forces during 2005 in the crackdown that accompanied the state of emergency. Scores of human rights activists were arrested, and many faced harassment by the security forces and the civil authorities. In an apparent effort to limit human rights monitoring, a number of human rights defenders were prevented from leaving Kathmandu in February and March 2005. Even after the lifting of the state of emergency, human rights defenders continued to face harassment and obstruction.⁵⁵
- 3.11.6** The law provides for freedom of speech and of the press, however, the government imposed restrictions on these rights during 2005, and these restrictions increased during the state of emergency and afterward. On 21 October 2005, the government promulgated a new media ordinance containing restrictions on the media.⁵⁶
- 3.11.7** However, despite these restrictions, during 2005 the independent media remained active and expressed a wide variety of views, although opinions against the royal proclamation were not printed for several weeks after the imposition of the state of emergency. Hundreds of independent vernacular and English-language newspapers were available, representing various political points of view. The government-owned *Gorkhapatra*, a Nepali-language daily, and *The Rising Nepal*, the third-largest English-language daily, reflected government policy.⁵⁷
- 3.11.8** Police arrested numerous journalists, many for protesting in favour of press freedom in restricted areas during 2005, however, most journalists were released within 24 hours of their arrest. On 8 June 2005, police detained more than 50 journalists conducting a peaceful rally demanding press freedom. They were charged with violating a prohibition against unlawful assembly in the capital. The government released them a day later on 9 June 2005. In August 2005 government-owned media fired approximately 70 journalists, allegedly for their political views.⁵⁸
- 3.11.9** However, in April 2006 after weeks of strikes and protests against his direct rule King Gyanendra recalled parliament and appointed GP Koirala (who had been chosen by the leaders of a seven-party alliance to be their leader) as prime minister.⁵⁹ Following the reinstatement of parliament on the 27 April 2006 Nepal's Maoist rebels declared a three-month ceasefire. The rebel leader, Prachanda, said the ceasefire was intended 'to express deep commitment to people's desire for peace'.⁶⁰

⁵³ USSD 2005 (Section 4)

⁵⁴ USSD 2005 (Section 4)

⁵⁵ AI 2006

⁵⁶ USSD 2005 (Section 4)

⁵⁷ USSD 2005 (Section 4)

⁵⁸ USSD 2005 (Section 4)

⁵⁹ BBC Timeline May 2006

⁶⁰ Guardian Unlimited article 28 April 2006

- 3.11.10** In May 2006 parliament voted unanimously to curtail the monarch's political powers including his control of the military and effectively rendered him a ceremonial figure.⁶¹ They also declared a ceasefire in the 10-year conflict with Maoist insurgents.⁶²
- 3.11.11** On the 9 May 2005 the new government's decided to abolish a particularly harsh edict on the media, introduced by the regime of King Gyanendra, which it said had posed a very serious threat to the independent media⁶³ and on the 18 May 2005 a supreme court ruling suppressed article 8 of the 1992 Radio and Television Broadcasting Act and article 15 (1) of the 1991 Publications and Newspapers Act as incompatible with a constitutional provision guaranteeing press freedom.⁶⁴
- 3.11.12** The Centre for Human Rights and Democratic Studies (CEHURDES) a Kathmandu-based freedom of expression monitoring group welcomed the high-level Media Commission formed by the new government of Nepal on the 12 June 2006. The council of ministers constituted the commission, under the chairmanship of Senior Advocate and member of the National Assembly, Radheshyam Adhikari who had been in the forefront of the fight for free media in Nepal from the legal field. The mandate given to the Adhikari commission includes recommending the government make timely amendments to all media-related laws, reforming the dissemination of information by the government and restructuring the entire media sector. Major media-related organisations, including the Federation of Nepalese Journalists (FNJ), have been included as members in the commission.⁶⁵
- 3.11.13 Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.11.14 Internal relocation.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.11.15 Conclusion.** When the King assumed direct control of Nepal in February 2005, the activities of the media and human rights groups were severely restricted with stiff penalties imposed for any criticism of the royal family. However, despite this most journalists who were detained were released the next day. The state of emergency was lifted in April 2005 and since May 2006 the King has been stripped all of his powers and the new government has started to reverse the Kings media restrictions and legislation. Considering the above claimants are unlikely to encounter ill-treatment amounting to persecution by the authorities simply for being a journalist or a human rights activist and therefore are unlikely to qualify for a grant of asylum or Humanitarian Protection.

3.12 Prison conditions

- 3.12.1** Claimants may claim that they cannot return to Nepal due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Nepal are so poor as to amount to torture or inhuman treatment or punishment.
- 3.12.2 Consideration** Prison conditions in Nepal were poor and did not meet international standards in 2005. According to the Department of Prisons, of the 7,135 persons in jail, 3,189 had been convicted of a crime and 3,946 were awaiting trial.⁶⁶

⁶¹ BBC Timeline May 2006

⁶² BBC Article Nepal calls ceasefire with rebels 3 May 2006

⁶³ RSF 10 May 2006

⁶⁴ RSF 28 May 2006

⁶⁵ International Freedom of information Exchange website 13 June 2006

⁶⁶ USSD 2005

- 3.12.3** On 16 September 2005, the UN Special Rapporteur on Torture highlighted overcrowding and poor sanitation of prisons and detention centres. He described the conditions in Hanumandhoka police office, Kathmandu, as inhuman. Cells were filthy, poorly ventilated, and overcrowded, with 12 persons in a three-metre by four-metre cell; there was no provision for leisure activities.⁶⁷
- 3.12.4** Due to a lack of adequate juvenile detention facilities, children sometimes were incarcerated with adults as criminal offenders or were allowed to remain in jails with their incarcerated parents due to lack of other available options.⁶⁸
- 3.12.5** The government generally permitted the NHRC and OHCHR to make unannounced visits to prisons and detainees in army and police custody. The UN Special Rapporteur on Torture reported unhindered access to places of detention during his visit; however, the International Committee of the Red Cross (ICRC) suspended visits in April 2005 citing access problems.⁶⁹
- 3.12.6 *Conclusion.*** Whilst prison conditions in Nepal are poor with overcrowding and poor sanitation being particular problems conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Nepal a grant of Humanitarian Protection will not generally be appropriate. Similarly where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will not be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)
- 4.2** With particular reference to Nepal the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.
- 4.3 **Minors claiming in their own right****
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, and where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

⁶⁷ USSD 2005

⁶⁸ USSD 2005

⁶⁹ USSD 2005

4.4 Medical treatment

- 4.4.1** Claimants may claim they cannot return to Nepal due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** Medical care in Nepal is limited and is generally not up to Western standards. Serious illnesses often require evacuation to the nearest adequate medical facility (in Singapore, Bangkok or New Delhi).⁷⁰

HIV/AIDS

- 4.4.3** Nepal is a country with a concentrated HIV epidemic, with HIV infection occurring primarily in certain subgroups: i.e. 16% among female sex workers, 68% among injecting drug users, and between 4-10% among labour migrants returning from India. Limited data indicates that HIV prevalence is currently around 0.5% in the general population.⁷¹
- 4.4.4** According to recent reports there are approximately 61,000 people living with HIV in Nepal. Furthermore, the National Centre for AIDS and STD Control (NCASC) stated in July 2004 that there were a total of 4,049 AIDS cases reported, of which the male to female ration was approx. 3:1. Most people living with HIV/AIDS do not know they are infected - stigma and discrimination are barriers to people seeking testing and disclosure.⁷²
- 4.4.5** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** Nepalese nationals may return voluntarily to any region of Nepal at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Nepal. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Nepalese nationals wishing to avail themselves of this opportunity for assisted return to Nepal should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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