Home Office
Immigration and Nationality Directorate

OPERATIONAL GUIDANCE NOTE

NEPAL

CONTENTS

1. Introduction

1.1 This document evaluates the general, political and human rights situation in Nepal and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.

1.2 This guidance must also be read in conjunction with any COI Service Nepal Country of Origin Information at:

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

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

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, 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 (Maoists) conducted a decade long insurgency (the People's War) against the Government. Initially this insurgency was limited to the remote Mid-West regions of the country, but it spread quickly to most parts of Nepal. It is estimated that over 13,000 people, including Maoists, security forces and civilians, have been killed during the conflict.[4]

2.3 With widespread political discontent among the political forces and the population, the Seven Party Alliance (SPA) and the Maoists announced a programme of nationwide strikes and mass street protests in April 2006. The Maoists organised nationwide blockades and announced an indefinite ceasefire in Kathmandu Valley. Despite bans and curfews, mass protests took place in which at least 21 people were killed and over 4000 people were injured after violent clashes between protestors and security forces. Following weeks of nationwide civil unrest, King Gyanendra handed power to the political parties and reinstated parliament. The new Prime Minister, GP Koirala (who had been chosen by the leaders of the SPA to be their leader), was sworn into office on 30 April 2006 and proposals to hold elections to a Constitutional Assembly and hold peace talks with the Maoists were passed.[5]

2.4 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. Parliament also declared a ceasefire in the 10-year conflict with Maoist insurgents and a peace agreement between the Government and the Maoists was signed on 21 November 2006. Both sides agreed a permanent ceasefire and an arms management arrangement, which will be monitored by the United Nations. The agreement also provides for elections to a Constituent Assembly by June 2007 and for the Maoists to become part of the political mainstream as a legitimate political party. In January 2007, an interim constitution was signed by the governing SPA and the former rebels and Maoist MPs took their seats in the interim parliament.[6]

2.5 Members of the security forces and the Maoist insurgents committed numerous human rights abuses during 2006. Arbitrary and unlawful use of lethal force, including torture, as well as disappearances, occurred frequently during the year. In addition, arbitrary arrest and lengthy pre-trial detention, restrictions on the right to assemble, obstruction of citizens' right to change the government, and impunity for security forces remained serious problems in 2006. Maoist acts of violence, extortion and intimidation continued throughout the year. There was some improvement in the human rights situation after the transition of power in April 2006 as government abuses decreased substantially. However, Maoist abuses, such as abduction, extortion, and violence, continued relatively unabated.[7]

2.6 The law prohibits torture, beating, and mutilation, however during 2006, security forces regularly engaged in such activities to punish suspects or to extract confessions, especially before the popular uprising in April 2006. The Centre for Victims of Torture (CVICT) and Advocacy Forum-Nepal, local NGOs, reported that blindfolding and beating the soles of feet

[1] U.S. Department of State report on Human Rights Practices (USSD) - 2006 (Introduction) & USSD 2005 (Introduction)
[2] Amnesty International (AI) Annual Report 2006: Nepal
[3] USSD 2005 (Introduction)
[4] Foreign and Commonwealth Office (FCO) Country Profile 2007: Nepal
[5] FCO Country Profile 2007: Nepal, British Broadcasting Corporation (BBC) News Timeline: Nepal, BBC News Country Profile: Nepal
[6] FCO Country Profile 2007: Nepal, BBC News Timeline: Nepal, BBC News Country Profile: Nepal, BBC News 'Nepalese Maoists enter parliament' dated 15 January 2007 & BBC News 'Nepal's day of reconciliation' dated 16 January 2007
[7] USSD 2006 (Introduction & Section 1)

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.[8]

2.7 Nepal's parliament altered the constitution in March 2007 to change the country from a unitary state into a federal one. The move came as a response to protests from the Madheshi people in the Terai, Southern Nepal who claim they are underrepresented and discriminated against by the hill-based elite. Between January 2007 and March 2007, the recently formed Medheshi People's Rights Forum held a number of strikes and protests which led to violent clashes between the protesters and the police, and more than 25 deaths. The constitutional amendment will also increase the number of constituencies in the southern plains so that the region, with half the country's population, will have half its parliamentary seats.[9]

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/documents/asylumpolicyinstructions/

3.6 Members of the CPN (Maoists)

[8] USSD 2006 (Section 1)
[9] BBC News 'Nepal changes into federal state' dated 9 March 2007, BBC News 'Nepal's minorities raise the stakes' dated 12 February 2007, BBC News 'Calm returns to plains of Nepal' dated 9 February 2007, BBC News 'Violence spreads in South Nepal' dated 25 January 2007 & BBC News 'Nepal's new source of unrest' dated 23 January 2007

3.6.1 Some claimants may apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the 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 and the early months of 2006, both members of the security forces and the Maoist insurgents committed numerous grave human rights abuses.[10] The security forces often operating with impunity unlawfully arrested tortured and killed civilians and suspected Maoists, 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.[11]

3.6.3 In April 2006, however, after weeks of strikes and protests against his direct rule, King Gyanendra recalled parliament and appointed GP Koirala as prime minister. Following the reinstatement of parliament on 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'.[12]

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. Parliament also declared a ceasefire in the 10-year conflict with Maoist insurgents and a peace agreement between the Government and the Maoists was signed on 21 November 2006. Both sides agreed a permanent ceasefire and an arms management arrangement, which will be monitored by the United Nations. The agreement also provides for elections to a Constituent Assembly by June 2007 and for the Maoists to become part of the political mainstream as a legitimate political party. In January 2007, an interim constitution was signed by the governing SPA and the former rebels which enabled 83 Maoist MPs to take their seats in the interim parliament.[13]

3.6.5 The Government and the Maoists agreed a 25-point Code of Conduct to govern the ceasefire and there has been a reported decline in human rights abuses committed by the security forces such as extrajudicial execution, arbitrary detention and torture. As part of the peace process the Government also released Maoist rebels detained under the controversial anti-terror law. The move followed 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. By 16 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.[14]

3.6.6 ***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.

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[10] USSD 2006 (Introduction & Section 1)) & USSD 2005 (introduction)
[11] AI Annual Report 2006: Nepal
[12] FCO Country Profile 2007: Nepal, British Broadcasting Corporation (BBC) News Timeline: Nepal, BBC News Country Profile: Nepal & Guardian Unlimited 'Maoists declare ceasefire after success of protests' dated 28 April 2006
[13] FCO Country Profile 2007: Nepal, BBC News Timeline: Nepal, BBC News Country Profile: Nepal, BBC News 'Nepalese Maoists enter parliament' dated 15 January 2007 & BBC News 'Nepal's day of reconciliation' dated 16 January 2007
[14] FCO Country Profile 2007: Nepal, USSD 2006 (Introduction & Section 1) Human Rights Watch (HRW) World Report 2007: Nepal, BBC News Timeline: Nepal, BBC News 'Nepalese rebels freed from jail' dated 13 June 2006 & BBC News 'Nepal – the challenges ahead' dated 16 June 2006

3.6.7 ***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.

3.6.8 ***Caselaw.***

> **KG (Review of current situation) Nepal CG [2006] UKAIT 00076.** The AIT found that generally speaking and given recent developments, it would only be in the exceptional case that an appellant could show a continuing risk of persecution or serious harm or treatment contrary to Article 3 by virtue of being perceived by the authorities in Nepal as a Maoist. The AIT also concluded that it would only be in very limited cases that a person would be able to show he or she faces a risk in his or her home area at the hands of the Maoists. However, even those able to show a risk (from Maoists) on return to their home area (such as businessmen, industrialists and entrepreneurs), will generally have a viable internal relocation alternative in Kathmandu. Only in an exceptional case would this not be so.

3.6.9 ***Conclusion.*** During 2005 and the early months of 2006, the authorities committed serious human rights abuses including arbitrary arrest, torture and extra-judicial executions of suspected Maoists. However, since the end of the King's direct rule in April 2006 the new Government and the Maoists have signed a peace agreement and an interim constitution which has enabled 83 Maoist MPs to take their seats in the interim parliament. The Government has also announced that all terrorism charges against the rebels are to be dropped and the majority of Maoist rebels held in prison have been released. In the light of the present political situation in Nepal and the recent AIT findings highlighted above, it is unlikely that a Maoist or Maoist supporter would qualify for a grant of asylum or Humanitarian Protection.

3.6.10 Caseworkers should note that members of Communist Party of Nepal - CPN (Maoists) 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, 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 Some claimants may raise the general instability in Nepal and the authorities' inability to keep law and order in the context of the Maoists' armed campaign. They may 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 (Maoists) conducted a decade long insurgency (the People's War) against the Government. Initially this insurgency was limited to the remote Mid-West regions of the country, but it spread quickly 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 13,000 people, including Maoists, security forces and civilians, have been killed during the conflict.[15]

3.7.3 In April 2006, after weeks of strikes and protests against his direct rule, King Gyanendra recalled parliament and appointed GP Koirala as prime minister. Following the reinstatement of parliament on the 27 April 2006 Nepal's Maoist rebels declared a three-

[15] FCO Country Profile 2007: Nepal

month ceasefire. The rebel leader, Prachanda, said the ceasefire was intended 'to express deep commitment to people's desire for peace'.[16]

3.7.4 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. Parliament also declared a ceasefire in the 10-year conflict with Maoist insurgents and a peace agreement between the Government and the Maoists was signed on 21 November 2006. Both sides agreed a permanent ceasefire and an arms management arrangement, which will be monitored by the United Nations. The agreement also provides for elections to a Constituent Assembly by June 2007 and for the Maoists to become part of the political mainstream as a legitimate political party. In January 2007, an interim constitution was signed by the governing SPA and the former rebels which enabled 83 Maoist MPs to take their seats in the interim parliament.[17]

3.7.5 During the 10-year conflict 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.[18] Despite the signing of the ceasefire agreement and repeated pleas from the United Nations, there were reports in 2006 that the Maoist rebels continued to commit human rights abuses including killings, abductions, torture, and extortion. There were also reports that Maoist forces did not release the thousands of children under the age of eighteen believed to be serving in their ranks. In some instances, the rebels reportedly even continued to forcibly recruit child soldiers.[19]

3.7.6 ***Sufficiency of protection.*** Before the popular uprising of April 2006, the Nepalese Army (NA) 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). After the uprising, the home ministry did not give orders to any of the security forces regarding maintenance of law and order, and the unified command was dissolved in July 2006. During peace negotiations from April to November 2006 between the Maoists and the seven-party alliance, the Government instructed police not to intervene in the case of Maoist acts of violence for fear of compromising the peace process. The November 21 peace agreement called on the Nepal Police and the APF to enforce law and order across the country, but by year's end the Government had again ordered police not to take any actions against Maoists for fear of endangering the peace process. In 2006, the chief district officer (CDO), the highest-ranking civil servant in each of the country's 75 districts, had limited discretion in maintaining law and order under this government mandate.[20]

3.7.7 Both the police and the Nepalese Army have human rights cells to promote human rights and to investigate cases of abuse, however, corruption and impunity remained problems during 2006, even after the April ceasefire. Before the 27 April cease-fire, 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. After April 27, the NA was confined to its barracks.[21] The security forces operated effectively in government controlled regions before April 2006. In the light of developments since the ceasefire, however, it is unlikely that they would be able to provide adequate protection to individuals within areas

[16] FCO Country Profile 2007: Nepal, British Broadcasting Corporation (BBC) News Timeline: Nepal, BBC News Country Profile: Nepal & Guardian Unlimited 'Maoists declare ceasefire after success of protests' dated 28 April 2006
[17] FCO Country Profile 2007: Nepal, BBC News Timeline: Nepal, BBC News Country Profile: Nepal, BBC News 'Nepalese Maoists enter parliament' dated 15 January 2007 & BBC News 'Nepal's day of reconciliation' dated 16 January 2007
[18] AI Annual Report 2006: Nepal
[19] HRW World Report 2007: Nepal, USSD 2006 (Introduction & Section 1), BBC News 'Rebels still abuse human rights' dated 26 September 2006 & BBC News 'Maoists still recruit children' dated 17 November 2006
[20] USSD 2006 (Section 1)
[21] USSD 2006 (Section 1)

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.

3.7.8 ***Internal relocation.*** The law provides for the right of freedom of movement, however, the Government suspended freedom of movement within the country before and during the popular uprising of April 2006. The Government prevented many prominent human rights activists and politicians from travelling within, or in some cases leaving, the country before and during the popular uprising. After the restoration of parliament, the Government did not restrict freedom of movement and lifted previous restrictions on travelling to Kathmandu.[22] In the light of these changes, 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 ***Caselaw.***

> **KG (Review of current situation) Nepal CG [2006] UKAIT 00076.** The AIT found that generally speaking and given recent developments, it would only be in the exceptional case that an appellant could show a continuing risk of persecution or serious harm or treatment contrary to Article 3 by virtue of being perceived by the authorities in Nepal as a Maoist. The AIT also concluded that it would only be in very limited cases that a person would be able to show he or she faces a risk in his or her home area at the hands of the Maoists. However, even those able to show a risk (from Maoists) on return to their home area (such as businessmen, industrialists and entrepreneurs), will generally have a viable internal relocation alternative in Kathmandu. Only in an exceptional case would this not be so.

3.7.10 ***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 King's direct rule in April 2006 the Government and the Maoist rebels have agreed a ceasefire, signed a peace agreement and an interim constitution, and Maoist MPs have entered the interim parliament. 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. In the light of this and the recent AIT findings highlighted above, 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 (Maoists) conducted a decade long insurgency (the People's War) against the Government. Initially this insurgency was limited to the remote Mid-West regions of the country, but it spread quickly 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 13,000 people, including Maoists, security forces and civilians, have been killed during the conflict.[23]

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[22] USSD 2006 (Section 2)
[23] FCO Country Profile 2007: Nepal

month ceasefire. The rebel leader, Prachanda, said the ceasefire was intended 'to express deep commitment to people's desire for peace'.[24]

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3.8.5 During the 10-year conflict 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.[26] Despite the signing of the ceasefire agreement and repeated pleas from the United Nations, there were reports in 2006 that the Maoist rebels continued to commit human rights abuses including killings, abductions, torture, and extortion. There were also reports that Maoist forces did not release the thousands of children under the age of eighteen believed to be serving in their ranks. In some instances, the rebels reportedly even continued to forcibly recruit child soldiers.[27]

3.8.6 ***Sufficiency of protection.*** Before the popular uprising of April 2006, the Nepalese Army (NA) 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). After the uprising, the home ministry did not give orders to any of the security forces regarding maintenance of law and order, and the unified command was dissolved in July 2006. During peace negotiations from April to November 2006 between the Maoists and the seven-party alliance, the Government instructed police not to intervene in the case of Maoist acts of violence for fear of compromising the peace process. The November 21 peace agreement called on the Nepal Police and the APF to enforce law and order across the country, but by year's end the Government had again ordered police not to take any actions against Maoists for fear of endangering the peace process. In 2006, the chief district officer (CDO), the highest-ranking civil servant in each of the country's 75 districts, had limited discretion in maintaining law and order under this government mandate.[28]

3.8.7 Both the police and the Nepalese Army have human rights cells to promote human rights and to investigate cases of abuse, however, corruption and impunity remained problems during 2006, even after the April ceasefire. Before the 27 April cease-fire, 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. After April 27, the NA was confined to its barracks.[29] The security forces operated effectively in government controlled regions before April 2006. In the light of developments since the ceasefire, however, it is unlikely that they would be able to provide adequate protection to individuals within areas

[24] FCO Country Profile 2007: Nepal, British Broadcasting Corporation (BBC) News Timeline: Nepal, BBC News Country Profile: Nepal & Guardian Unlimited 'Maoists declare ceasefire after success of protests' dated 28 April 2006
[25] FCO Country Profile 2007: Nepal, BBC News Timeline: Nepal, BBC News Country Profile: Nepal, BBC News 'Nepalese Maoists enter parliament' dated 15 January 2007 & BBC News 'Nepal's day of reconciliation' dated 16 January 2007
[26] AI Annual Report 2006: Nepal
[27] HRW World Report 2007: Nepal, USSD 2006 (Introduction & Section 1), BBC News 'Rebels still abuse human rights' dated 26 September 2006 & BBC News 'Maoists still recruit children' dated 17 November 2006
[28] USSD 2006 (Section 1)
[29] USSD 2006 (Section 1)

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, the Government suspended freedom of movement within the country before and during the popular uprising of April 2006. The Government prevented many prominent human rights activists and politicians from travelling within, or in some cases leaving, the country before and during the popular uprising. After the restoration of parliament, the Government did not restrict freedom of movement and lifted previous restrictions on travelling to Kathmandu.[30] In the light of these changes, 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.

3.8.9 ***Caselaw.***

> **KG (Review of current situation) Nepal CG [2006] UKAIT 00076.** The AIT found that generally speaking and given recent developments, it would only be in the exceptional case that an appellant could show a continuing risk of persecution or serious harm or treatment contrary to Article 3 by virtue of being perceived by the authorities in Nepal as a Maoist. The AIT also concluded that it would only be in very limited cases that a person would be able to show he or she faces a risk in his or her home area at the hands of the Maoists. However, even those able to show a risk (from Maoists) on return to their home area (such as businessmen, industrialists and entrepreneurs), will generally have a viable internal relocation alternative in Kathmandu. Only in an exceptional case would this not be so.

3.8.10 ***Conclusion.*** Since 1996 there has been an increasingly violent conflict between the Nepalese authorities and Maoist insurgents. The CPN (Maoists) has been responsible for serious human rights abuses against civilians and those associated with or thought to be informers for the security forces. However, since the end of the King's direct rule in April 2006, the new Government and the Maoist rebels have agreed a ceasefire, signed a peace agreement and an interim constitution, and Maoist MPs have entered the interim parliament. 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. In the light of this and the recent AIT findings highlighted above, It is unlikely, therefore, that those who fear the Maoists or the general instability in the country will qualify for a grant of asylum or Humanitarian Protection.

3.8.11 Since 25 October 2004, the Immigration Rules have made provision for ex-British Army Ghurkhas to apply for settlement in the United Kingdom on discharge from HM Forces. The Ghurkha 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 2006, 2,405 Tibetan arrivals registered with the UNHCR for transit to India, and 2,946 reportedly departed.[31]

[30] USSD 2006 (Section 2)
[31] USSD 2006 (Section 2)

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 the 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.[32]

3.9.4 In 2005, the Government closed the Tibetan Welfare Office, which had provided assistance to refugees and served as the political representative of the Dalai Lama. 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. In May 2006, however, the Government reversed the policy implemented in October 2005 and resumed issuing exit permits to Tibetan refugees transiting to India. The Government also continued to allow Tibetans to enter the country, and to apply for and receive UNHCR protection.[33]

3.9.5 Throughout 2006, local authorities in Kathmandu prevented the Tibetan community from holding public celebrations, including those to venerate the Dalai Lama, although private celebrations were allowed in schools or monasteries.[34]

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, the Government suspended freedom of movement within the country before and during the popular uprising of April 2006. The Government prevented many prominent human rights activists and politicians from travelling within, or in some cases leaving, the country before and during the popular uprising. After the restoration of parliament, the Government did not restrict freedom of movement and lifted previous restrictions on travelling to Kathmandu.[35] 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.

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[32] USSD 2006 (Section 2)
[33] HRW World Report 2007: Nepal, USSD 2006 (Section 2) & USSD 2005 (Section 2)
[34] USSD 2006 (Section 2)
[35] USSD 2006 (Section 2)

3.10.2 ***Treatment.*** Since 1991 the Government has provided asylum to approximately 107,000 persons who claim Bhutanese citizenship. The great majority of these refugees live in UNHCR-administered camps in the south-eastern part of the country. In 2006, approximately 15,000 additional Bhutanese refugees resided in Nepal or in India outside of these camps.[36]

3.10.3 The UNHCR monitored the condition of Bhutanese refugees and provided for their basic needs during 2006, and the Government agreed to allow UNHCR to conduct a census in the Bhutanese refugee camps. The Government accepted the temporary refugee presence on humanitarian grounds. In 2005, the World Food Program (WFP) provided sustenance in the UNHCR administered camps and the Nepalese Government made a contribution to the WFP earmarked for the refugees.[37]

3.10.4 In 2006, 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.[38] 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. In September 2006, the Government agreed to allow 16 extremely vulnerable Bhutanese refugees to leave the country for resettlement abroad. At year's end, the Government had only allowed three of these refugees to leave.[39]

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.[40] 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

[36] HRW World Report 2007: Nepal & USSD 2005 (Section 2)
[37] USSD 2006 (Section 2)
[38] USSD 2006 (Section 2)
[39] USSD 2006 (Section 2)
[40] USSD 2004 (Sections 2 & 5)

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 In 2006, 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. Before and during the uprising of April 2006, 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 against human rights NGOs and workers by both the Government and the Maoists. After the uprising, there were no reports of the Government arresting human rights workers, although the Maoists continued to intimidate them.[41]

3.11.3 In 2006, 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.[42]

3.11.4 The Maoist insurgency has caused many NGOs to reduce substantially their activities. In 2006, 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. Even after the cease-fire and peace agreement, Maoists did not allow NGOs to function freely in most districts without their permission.[43]

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.[44]

3.11.6 The law provides for freedom of speech and of the press, however, the Government imposed restrictions on these rights before and during the popular uprising of April 2006. Most of these restrictions, including those enacted in October 2005, were removed after the restoration of parliament. Before the popular movement, the law prohibited speech and writing that would threaten the sovereignty and integrity of the kingdom; disturb the harmonious relations among persons of different castes or communities; promote sedition, defamation, contempt of court, or crime; or, contradict decent public behaviour or morality. After the popular uprising, the Government generally allowed free speech and press.[45]

3.11.7 On 9 May 2006, the new Government abolished 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 media.[46] On 18 May 2006, 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.[47]

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[41] FCO Country Profile 2007: Nepal & USSD 2006 (Section 4)
[42] USSD 2006 (Section 4)
[43] USSD 2006 (Section 4)
[44] AI Annual Report 2006: Nepal
[45] USSD 2006 (Sections 1 & 4)
[46] Reporters Without Borders (RSF): Nepal **'**Welcome end for particularly harsh edict on the media' dated 10 May 2006
[47] RSF: Nepal 'Supreme court quashes articles that allowed government to crack down on media' dated 23 May 2006

3.11.8 ***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.

3.11.9 ***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.

3.11.10 ***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, most journalists who were detained were released the next day. The state of emergency was lifted in April 2005, the King has been stripped of all of his powers since May 2006 and the new Government has started to reverse the King's 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 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.12.3 ***Consideration.*** Prison conditions in Nepal were poor and did not meet international standards in 2006. According to the Department of Prisons, 5,580 prisoners remained in jail at years end.[48]

3.12.4 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.[49]

3.12.5 Due to a lack of adequate juvenile detention facilities in 2006, 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.[50]

3.12.6 In 2006, 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.[51]

3.12.7 ***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. However, the

[48] USSD 2006 (Section 1)
[49] USSD 2005 (Section 1)
[50] USSD 2006 (Section 1)
[51] USSD 2006 (Section 1) & USSD 2005 (Section 1)

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.

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) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.

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 related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave and the API on Article 8 ECHR.

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, or 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.

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). There is also minimal mental health care available in Nepal.[52]

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.[53]

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.[54]

[52] U.S. Department of State Bureau of Consular Affairs. Consular Information Sheet: Nepal
[53] FCO Country Profile 2007: Nepal
[54] FCO Country Profile 2007: Nepal

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. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

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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