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SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C) OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1

Bhutan^{*}

The present report is a summary of six stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

^{*} The present document was not edited before being sent to the United Nations translation services.

I. BACKGROUND AND FRAMEWORK

Constitutional and legislative framework

1. Bhutanese Refugee Support Group (BRSG) stated that according to article 9.24 of the Constitution of the Kingdom of Bhutan, which came into force in 2008, the state undertakes to foster respect for international law and treaty obligations. Article 10.25 states that International Conventions, Covenants, Treaties, Protocols and Agreements entered into by Bhutan shall continue in force subject to section 10 of Article 1. Article 1.10 states that the provisions of any law, whether made before or after the coming into force of this constitution, which are inconsistent with this constitution, shall be null and void. The Constitution of Bhutan takes precedence over Bhutan's commitments under the CRC and other human rights instruments.²

2. European Centre for Law and Justice (ECLJ) noted that Article 7 of the Constitution defines political and civil rights to include, *inter alia*, "the right to freedom of speech, opinion and expression," "the right to information," and "freedom of the press." Article 7 also provides that citizens have freedom of peaceful assembly and association, but not in "associations that are harmful to the peace and unity of the country[.]" Additionally, Section 15 provides that all citizens "shall not be discriminated against on the grounds of ... religion." However, the Constitution also provides that the State may restrict any of these rights to promote several general national aspirations, including, *inter alia*, the "unity and integrity of Bhutan," the "well-being of the nation," or to prevent "incitement to an offence."³

3. GIEACPC noted that a draft Child Care and Protection Act was expected to be adopted by the end of 2008 and that in October 2008 a draft Juvenile Justice Act was under discussion.⁴

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

4. Noting the observations by the Committee on the Rights of the Child in its concluding observations on Bhutan in September 2008 (CRC/C/BTN/CO/2), particularly on the right to a nationality, the right to education and the issue of Bhutanese refugee children, BRSG noted developments which indicate that the Royal Government of Bhutan may be attempting to address some of the concerns raised and recommendations made by the CRC.⁵

B. Implementation of international human rights obligations

1. Equality and non discrimination

5. The Global Human Rights Defence (GHRD) indicated that the participation of women in education is reduced, thus impeding their independence and representation in governance. The marriage age set at 15 years of age increases the dependent position. Although there is some improvement in school enrolment and property rights of women in Bhutan, the main breaches of human rights against women in Bhutan come from sexual abuse and trafficking, domestic and labour exploitation and violence, with limited access to, *inter alia*, work. According to GHRD, the great majority of women in Bhutan are illiterate, and remains mostly engaged in agricultural activities. Women suffer high mortality rates, health problems and restrictions to education, employment and decision-making, especially in rural areas. Nevertheless, the general context does not allow reliable statistics.⁶

6. According to BRSB, Lhotshampas in Bhutan were divided into seven categories as follows: F1: genuine Bhutanese; F2: returned migrants; F3: people not available during the census; F4: a non-national woman married to a Bhutanese man; F5: a non-national man married to a Bhutanese woman; F6: children legally adopted; F7: non nationals – migrants and illegal settlers. Since then, categorisation has been used as a tool to evict Lhotshampas or to declare them non-national. Placement in the seven categories has often been arbitrary. In some cases members of the same family have been placed in different categories. The Ministry of Home and Cultural Affairs began issuing new Citizenship ID cards with biometric data in 2004. Following a nationwide census carried out in Bhutan in 2005, the total population of Bhutan was declared to be 634,972. Of these, 552,996 were said to be Bhutanese citizens, and 81,976 non-national residents. BRSB stated that it was likely that most or all of those classified as “non-national residents” are Lhotshampas whose citizenship status was eroded by various measures taken since the end of the 1980s, their children and children’s children.⁷

7. Society for Threatened Peoples (STP) noted that persons applying for citizenship, must fulfil seven conditions that are nearly impossible to prove, among others, they must prove that they lawfully resided in Bhutan for at least 15 years and that they have not spoken or acted against the King and they are able to speak and write the “Dzongkha” language.⁸

8. BRSB noted that under Bhutan’s existing citizenship laws, there is not adequate provision for a child to acquire a nationality at birth in accordance with article 7 of the CRC. For those people who through the F1-F7 categorisation process have been marginalised and rendered *de facto* stateless in their own country, the provisions of the 1985 Citizenship Act make it difficult to regularise their status.⁹

9. BRSB stated that it has emerged recently that the status of people categorised as F5 (a non national man married to a Bhutanese woman) were being reviewed by the Department of Immigration and Census on a case by case basis.¹⁰ BRSB further alleged that those classified as F7 (non nationals – migrants and illegal settlers) who have managed to remain in the country have consistently been denied access to services including education and health, the right to work, and to own property, to marry, and to travel freely.¹¹ According to BRSB, the citizenship status of these people is said to be “under review”.¹²

10. BRSB also noted that the “no objection certificate” (NOC) or “security clearance certificate” (SCC) is still in operation and must be sought each time a person applies for training, a job, or promotion.¹³ According to BRSB, the origin of the SCC can be traced to a Home Ministerial circular, which instituted the policy of guilt by association. BRSB also stated that the practice of discrimination on the basis of relationship to or association with people termed anti-nationals (known in Dzongkha as *ngolops*), including people associated with anyone living in the refugee camps in a neighbouring country or said to have been involved in widespread demonstrations which took place in 1990, continued to this day. Young people (not only Lhotshampas but people from eastern Bhutan whose family members were involved in pro-democracy demonstrations in 1997) have been denied access to primary, secondary and third level education through the withholding of SCCs.¹⁴

2. Right to life, liberty and security of the person

11. GHRD noted that, in the context of threats by the opposing parties and before the past elections, the Government tightened the security measures and deployment of police. Instead of increasing the sense of security among the population, this brought fears to locals, particularly in the South, arbitrary arrests and charges on the grounds of anti-national activities. GHRD

received reports of 30 cases of persons allegedly detained, for involvement with opposing parties, by police and military forces in the south of Bhutan in 2007.¹⁵

12. According to STP, at least 200 political prisoners still linger in Bhutanese prisons.¹⁶

13. STP stated that independent and critical journalists are facing intimidation, arrest and torture.¹⁷

14. According to GHRD, those detained during the 1990s were not brought before courts for trial, nor were family members allowed to visit or to know of their location, while children were left to take care of themselves after their parents were arrested.¹⁸ GHRD reported that these prisoners are detained in Samtse State Jail and, while access to prisons was severely restricted, the suspicion remained of their being submitted to torture and inhumane treatment there.¹⁹ GHRD stated that in other prisons such as in Thimpu, Gylephug and Samdrup Jongkhar State jails, there are multiple cases of convicts whose mental and physical health has deteriorated, as a result of torture and degrading treatment. Furthermore, several convicts were released on the condition that they leave the country under threat of re-arrest.²⁰

15. Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment is lawful in the home. Children have a limited protection from violence under the Civil and Criminal Procedures Codes and the Penal Code. GIEACPC also noted that the Government made a commitment to prohibition in all settings, including the home, at a meeting of the South Asia Forum in July 2006, following on from the regional consultation in the 2005 of the UN Secretary General's study on Violence against Children. GIEACPC further noted that the Teacher and Student's code of conduct (1997) and ministerial directives prohibit use of corporal punishment in schools, albeit there is no explicit prohibition in law; and in the penal system, corporal punishment is unlawful as a sentence for a crime but it is not prohibited as a disciplinary measure in penal institutions. There is no explicit prohibition of corporal punishment in alternative care settings.²¹ GIEACPC recommended that the Government introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including the home.²²

3. Administration of justice and the rule of law

16. According to STP, there is still no independent judiciary.²³

4. Right to privacy

17. The Joint Submission (JS) noted that the Kingdom of Bhutan maintains criminal sanctions against sexual activity between consenting adults, and referred to provisions in Sections 213, 214 and 3 of the Bhutan Penal Code. JS recommended that the Human Rights Council, in its upcoming review, urge the Kingdom of Bhutan to bring its legislation into conformity with its international human rights obligations by repealing all provisions which criminalise sodomy or other sexual activity between consenting adults.²⁴

5. Freedom of movement

18. According to BRSG there are some slight signs of hope for people classified in the F7 category (non nationals – migrants and illegal settlers). Some have been able to appeal to the King. On a case by case basis and on his order some have been granted temporary travel permits, renewable every six months, allowing them to travel freely through checkpoints in the country.²⁵

6. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

19. STP noted that according to Article 3 of the Constitution, Buddhism is perceived as a state religion and all religious institutions have the responsibility to promote Buddhism. Any other religious activity inside Bhutan may be prosecuted in the name of an interdiction of religious conversion.²⁶ Similar information was provided by ECLJ.²⁷ STP also alleged that the Marriage Act of Bhutan prohibits a non-Bhutanese married to a Bhutanese citizen from promoting any other religion than Buddhism.²⁸

20. According to GHRD, convicts of all faiths are obliged to attend Buddhist prayers when food is served. In addition, some Hindu prisoners were forced to eat meat.²⁹

21. According to ECLJ Bhutan has recently made efforts to demonstrate a lack of hostility towards Christians, specifically missionaries. ECLJ also reported that improvements in religious tolerance in the last year are credited in part to the new Constitution.³⁰

22. GHRD indicated that the right to information is far from being achieved. GHRD noted that, while foreign journalists have some access in Bhutan, Bhutan has nevertheless applied and intends to extend serious restrictions on the freedom of and access to information. The majority of people do not have access to media, which, along with high illiteracy rates, restricts public access to information. GHRD further observed that, while Bhutan has made some efforts including Governmental training sessions to Government-owned and private media, the Media Act and Constitution have few provisions that guarantee media freedom and the right to information, speech and expression.³¹ GHRD recommended that Bhutan reaffirm positive steps towards press freedom by ensuring and protecting information inspired by the principles of democracy and human rights through legality and practice, as a useful social educational instrument.³²

23. STP stated that independent human rights organizations were not allowed to register.³³

24. GHRD voiced concern that only two political parties with broadly similar policies were allowed by the Government to register and stand for election. No political parties, such as the National Front for Democracy in Bhutan in exile were invited to take part in the elections. According to GHRD, democracy defendants have been largely excluded, and many continue to languish both in exile and in Bhutan's prisons. It also alleged that more than 100,000 Bhutanese were excluded from the elections. Bhutanese refugees in exile and/or political prisoners, and allegedly 80,000 citizens were deprived of their adult franchise on the pretext of not having "security clearance", while the Kingdom of Bhutan has refused initiatives of international democratic monitoring.³⁴

7. Right to education

25. Noting that the Committee on the Rights of the Child considered as positive the re-opening of schools in southern Bhutan and the abolition of the "no objection certificate" announced by Bhutan, BRSBG stated that it is reportedly now easier for Lhotshampa children to get enrolment in schools. However, parents are required to produce their marriage certificate, biometric ID card numbers, and the child's birth certificate. This clearly excludes children whose parents are not recognised as Bhutanese citizens, and children whose birth has not been registered (a problem highlighted by Lhotshampas, and by the Committee on the Rights of the Child in paragraphs 31 and 32 of its concluding remarks).³⁵

26. BRSB noted that the Royal Government announced in January 2009 that about nine schools in southern Bhutan, closed for more than a decade for security-related issues, are to re-open this year. Since the early 1990s, Lhotshampa children have been systematically excluded from schools in southern Bhutan which served northern Bhutanese settled in the south (many on land owned and previously occupied by Lhotshampas in exile), and children of members of the security forces.³⁶

8. Minorities and indigenous peoples

27. STP noted that Bhutan is a multi-ethnic country with at least three major ethnic groups and several minorities. The main ethnic communities are the Sharchops in the eastern part of the country, the Ngalongs in western Bhutan and the Lhotshampa, who settled in southern Bhutan. Besides these main ethnic groups, Layaps are living in the north-west, Doyas in the south, Monpas in central Bhutan and the nomads of Merak Sakten in the eastern areas.³⁷

28. STP expressed concern about the non recognition of religious and ethnic minorities noting that Bhutan does not recognize any minority group on the basis of religion, race, ethnicity or language. While Bhutan is presented by the authorities as a homogenous society with one culture and one religion, it is a multi-religious, multi-cultural and multi-lingual country.³⁸

29. According to STP, linguistic minorities are suffering from state discrimination. Despite the fact that nineteen languages are spoken in Bhutan according to national statistics, “Dzongkha” has been declared the national language in the Constitution. The existence of other languages spoken in Bhutan such as Ngalopkha, Sharchopkh, Nepali and Groma was ignored. The Constitution failed to recognize them as official or regional languages. Every citizen must be able to speak and write “Dzongkha” according to the Constitution. Until today the government of Bhutan has refused to withdraw an edict by His Majesty the King in 1993 that all conferences and public meetings must be held in the national language “Dzongkha”.³⁹

30. GHRD expressed concern over minority rights in Bhutan for the Hindu and Nepalese and indicated that these minorities suffered extensive abuses and that they are mainly situated in the south of Bhutan.⁴⁰

9. Migrants, refugees and asylum-seekers

31. According to BRSB, it would be impossible for Bhutanese refugees seeking repatriation to their own country to fulfil the conditions set out in the 1985 Citizenship Act. The option of repatriation for those refugees who wish to and have the right to return to their country depends on a proper resolution of the nationality status of those people in Bhutan who are currently denied citizenship.⁴¹

32. According to BRSB, since the first expulsion of Lhotshampas in 1991, not a single Bhutanese refugee has been able to return to Bhutan. BRSB stated that the Bhutanese Government has not only succeeded in the mass expulsion and de-nationalization of a large proportion of its Lhotshampasa population, but also in systematically denying the rights of the refugees to return to their own country.⁴² STP further noted that in 2003, Bhutan agreed to accept the return of a limited number of refugees who were verified as genuine citizens of Bhutan. However, according to STP, the Government failed to implement this policy and no refugees were allowed to return.⁴³

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

33. GHRD welcomed the official termination of absolute monarchy in Bhutan, however it regretted that the democratic processes initiated failed to uphold major democratic principles. According to GHRD, the continuous repression of the opposition is a major obstacle for the emergence of democracy and human rights in Bhutan.⁴⁴

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

34. According to GHRD, Bhutan must aspire to reconcile with all communities inside and outside its borders, and assume international responsibility and assistance to ensure transition to a system of protection and promotion of human rights and democracy.⁴⁵ In order to enable a human rights protective system and a democratic civil society to emerge in Bhutan, GHRD called for an end to all arbitrary arrests and forms of torture, and recommended that the Government ensure the right to a fair trial for all Bhutanese prisoners, while accepting responsibility of the Bhutanese citizens residing in a neighbouring country, and thus removing all discriminatory policies affecting both minorities and relatives of refugees.⁴⁶

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

N/A.

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.)

Civil society

BRSG	Bhutanese Refugee Support Group (UK and Ireland)
ECLJ	European Centre for Law and Justice, Strasbourg, (France)*
GHRD	Global Human Rights Defence, The Hague (Netherlands)
GIEACPC	Global Initiative to End All Corporal Punishment of Children*
JS	Joint Submission by International Lesbian, Bisexual, Trans and Intersex Association, International Lesbian, Bisexual, Trans and Intersex Association – Europe, International Lesbian, Bisexual, Trans and Intersex Association- Asia, International Gay and Lesbian Human Rights Commission, ARC International
STP	Society for Threatened Peoples, Göttingen, Germany.

² BRSG, para. 17.

³ ECLJ, p. 2.

⁴ GIEACPC, p. 2.

⁵ BRSG, para. 2.

⁶ GHRD, p. 7.

⁷ BRSG, para. 4.

⁸ STP, p. 2.

⁹ BRSG, para. 18.

¹⁰ BRSG, para. 5.

¹¹ BRSG, para. 6.

¹² BRSG, para. 7.

¹³ BRSG, para. 11.

¹⁴ BRSG, para. 12.

¹⁵ GHRD, p. 4.

¹⁶ STP, p. 3.

¹⁷ STP, p. 3.

¹⁸ GHRD, p. 4.

¹⁹ GHRD, pp. 4-5.

²⁰ GHRD, p. 5.

²¹ GIEACPC, p. 2.

²² GIEACPC, p. 1.

²³ STP, p. 3.

²⁴ JS, pp. 1-2.

²⁵ BRSG, para. 7.

²⁶ STP, p. 1.

²⁷ ECLJ, p. 1.

²⁸ STP, p. 1.

²⁹ GHRD, p. 5.

³⁰ ECLJ, p. 4.

³¹ GHRD, p. 6.

³² GHRD, p. 7.

³³ STP, p. 3.

³⁴ GHRD, p. 5. See also STP, p. 3.

³⁵ BRSG, paras. 8-9.

³⁶ BRSG, para. 10.

³⁷ STP, p. 1.

³⁸ STP, p. 1.

³⁹ STP, p. 1.

⁴⁰ GHRD, p. 5.

⁴¹ BRSG, para. 18.

⁴² BRSG, para. 16.

⁴³ STP, p. 2.

⁴⁴ GHRD, p. 7.

⁴⁵ GHRD, pp. 7-8.

⁴⁶ GHRD, p. 7.
