

# The Resettlement of ethnic Nepali Bhutanese Refugees from Nepal: International Refugee Law and the Protection of exiled Minorities

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## Abstract Deutsch

Dieser Beitrag befasst sich mit der Neuansiedlung von mehr als 100.000 ethnischen nepalesisch-bhutanischen Flüchtlingen aus Nepal. Eine Umsiedlungsaktion, die ein Beispiel für die strukturelle Gleichgültigkeit des internationalen Flüchtlingsrechts gegenüber dem Schutz von (dauerhaft) im Exil lebenden Gemeinschaften als solches ist. Die Neuansiedlung dieser Flüchtlinge bedeutete ein Leben in der Diaspora und wahrscheinlich das Ende dieser ethnischen Minderheit, da die Sekundärmigration diese Diaspora nur teilweise ausgleichen kann. Ein Schicksal, das in Betracht gezogen werden sollte, bevor eine Neuansiedlung anstelle einer lokalen Integration oder einer freiwilligen Rückführung angestrebt wird.

## Abstract English

This contribution focuses on the resettlement of more than 100,000 ethnic Nepali Bhutanese refugees from Nepal. A resettlement operation that is demonstrative of a structural indifference of international refugee law to protect (permanently) exiled communities *as such*. The resettlement of those refugees meant living in diaspora and probably the end of this ethnic minority since secondary migration will only be capable of partially offsetting this diaspora. A fate that should be taken into consideration before pursuing resettlement rather than local integration or voluntary repatriation.

## 1. Introduction

This chapter focuses on the fate of ethnic Nepali refugees from Bhutan, also known as Lhotshampas.<sup>1</sup> Those refugees, that is, almost all of them, were eventually resettled in third states, which is remarkable considering the structural shortage of resettlement places (less than 1% of the world's refugees – currently over 26 million – can be resettled annually),<sup>2</sup> but particularly so because it is quite rare that an entire refugee population is resettled. There are only a few other such cases in the 70 years UNHCR is pursuing resettlement as one of the durable solutions to the problem of refugees:<sup>3</sup> the Hungarian refugees in 1956 and 1957 from Austria

- 1 Throughout the reference will be to ethnic Nepali or Lhotshampas rather than Bhutanese refugees since the latter designation obliterates the distinctiveness of the refugees concerned; the designation 'Lhotshampas' is used when required to elucidate a point made and is not meant as pejorative. See also n 49 *infra*.
- 2 And a fraction of those identified by UNHCR as in need of resettlement, cf *UNHCR's Global Projected Resettlement Needs for 2022*: 1.47 million places are needed.
- 3 In accordance with its Statute, Annex to UN doc A/Res/428(V) (1950). The other two solutions are local integration and voluntary repatriation.

and Yugoslavia,<sup>4</sup> and the well over a million Indo-Chinese refugees from various South-East Asian states between 1975 and 1997.<sup>5</sup> Occasionally, and in addition, specific refugee camps are emptied by means of resettlement such as Rafha camp in Saudi Arabia that housed thousands of Iraqi refugees in the 1990s.<sup>6</sup>

The resettlement of the ethnic Nepali Bhutanese refugees from Nepal is, however, noteworthy for other reasons as well: it was a test case for the newly coined strategic resettlement policy of UNHCR applied to a protracted refugee situation,<sup>7</sup> and, more relevant in the present context – *i.e.*, the *Liber Amicorum* –, is the fact that the refugees concerned constituted a minority in Bhutan. Even though they were eventually provided with a durable solution to their plight, this solution arguably also signified the end of this minority. The case of the resettlement of the ethnic Nepali Bhutanese refugees, it is contended, is demonstrative of a structural indifference of international refugee law to protect exiled collectives (beyond nuclear families) as such as opposed to individual refugees; the protection provided by international refugee law is predicated on individual refugees. This indifference may, however, in case of resettlement be offset, albeit to a certain extent, by international human rights law, in particular freedom of movement and the right to choose one's place of residence, which enables secondary migration in the resettlement state, and thus the possibility to join other members of the resettled minority.

This chapter will address, first, the question as to why the ethnic Nepali left, or rather were compelled to leave Bhutan. Secondly, why the other traditional solutions to the problem of refugees – voluntary repatriation to the country of origin, and local integration in the country of refuge – were not available – even though the refugees themselves wanted to return to Bhutan more than anything else – and what resettlement meant for the refugees as a minority: where did they go? The concluding observations, lastly, will return to the suggested indifference of international refugee law with respect to the protection of exiled collectives.

4 On which see Marjoleine Zieck, 'The 1956 Hungarian Refugee Emergency, an Early and Instructive Case of Resettlement' (2013) 5 *Amsterdam Law Forum* 45.

5 On which see W Courtland Robinson, *Terms of Refuge. The Indochinese Exodus and the International Response* (Bloomsbury Academic 1998).

6 Cf UNHCR Report on 1997 Resettlement Activities, Resettlement and Special Cases Section Division of International Protection, January 1998, para 16. It was discontinued in 1997 due to a lack of interest from the international community, Human Rights Watch, 'Iraqi Refugees, Asylum Seekers, and Displaced Persons: Current Conditions and Concerns in the Event of War', A Human Rights Watch Briefing Paper, February 2003, 16.

7 A protracted refugee situation is defined by UNHCR as 'one in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance', to which it added a number – refugee populations of 25,000 persons or more – a period and location: refugees who have been in exile for five or more years in developing countries, UN doc EC/54/SC/CRP.14 (10 June 2004) (Protracted Refugee Situations), paras 3, 5.

## 2. The root cause of flight

The Lhotsampas or people from the south or southern border are ethnic Nepali: even though of varying descent – in terms of caste and ethnicity – they form both an ethnic minority in Bhutan with their common language and descent, and a religious minority: most are Hindu whilst the majority of the population of Bhutan is Buddhist.<sup>8</sup> The Lhotshampas had migrated to Bhutan in the early 19<sup>th</sup> century – encouraged to settle in southern Bhutan to convert malaria-infested forests into fertile agricultural farmlands<sup>9</sup> – eventually constituting a third of the Bhutanese population.<sup>10</sup>

From the 1980s onwards, the Bhutanese government tried to forge a national identity – illustrative for which is the ‘one country, one people’ policy that was part of its sixth 5-year plan (1987–1992) – that signified erasing the distinctiveness of the Lhotshampas, in essence a process of ethnic cleansing:<sup>11</sup> excluding them from citizenship, forcibly evicting them from their lands, harassing, imprisoning, and torturing those identified as anti-nationals (*i.e.* those who had dared to protest against the Bhutanization measures),<sup>12</sup> confiscation of citizenship cards, land tax receipts and other documents,<sup>13</sup> and imposing the majority culture on them (dress code, religion, and language).<sup>14</sup> By 1993, more than 100,000 Lhotshampas – a 6<sup>th</sup> of the Bhutanese population – had fled or had been forced out of Bhutan often compelled to sign voluntary migration forms,<sup>15</sup> seeking asylum in neighbouring India. India refused to grant them asylum and transported most of the refugees to Nepal.<sup>16</sup>

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- 8 Minority Rights Group, Lhotshampas < <https://minorityrights.org/minorities/lhotshampas/> >. Cf A C Sinha, ‘Evicted from home, nowhere to go: the case of the Lhotshampas from Bhutan’, in Tanka Subba, A C Sinha (eds), *Nepali Diaspora in a Globalized Era* (Routledge 2016) 230, 242: ‘Their social structure, cultural practices, shared memory, religious performances, literary output, worldview and a vision of the future make them a distinct community’.
- 9 D N S Dakhal, Gopal Subedi, ‘Lhotshampa refugees and Nepali diaspora’, Tanka Subba, A C Sinha (eds), *Nepali Diaspora in a Globalized Era*, 2016, 246, 246.
- 10 Minority Rights Group (n 8).
- 11 Human Rights Watch (Bill Frelick), ‘Bhutan’s ethnic cleansing’, 1 February 2008; Norwegian Refugee Council, ‘Bhutan: Land of Happiness for the Selected’, 2008 at 3.
- 12 Michael Hutt, ‘Ethnic Nationalism, Refugees and Bhutan’ (1996) 9 *JRS* 397, 406.
- 13 Tang Lay Lee, ‘Refugees from Bhutan: Nationality, Statelessness and the Right to Return’ (1998) 10 *IJRL* 118, 125.
- 14 Amnesty International, ‘Bhutan: Human Rights Violations Against the Nepali-Speaking Population in the South’, 1 December 1992 (ASA 14/004/1992). See also Ben Saul, ‘Cultural Nationalism, Self-Determination and Human Rights in Bhutan’, (2000) 12 *IJRL* 321, 326–338.
- 15 Minority Rights Group (n 8).
- 16 Human Rights House Foundation, ‘Plight of the Lhotshampas’, 11 July 2007 < <https://humanrightshouse.org/articles/plight-of-the-lhotshampas/> >; Mathew Jacob, ‘Ethnic Cleansing, Displacement and Resettlement – The Case of Bhutanese Refugees in Nepal’, *Wordpress*, 9 March 2014.

### 3. Asylum in Nepal

Nepal is not a party to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol, and that meant a precarious legal status and a lack of entitlements for the refugees in Nepal.<sup>17</sup> The refugees were housed in closed camps,<sup>18</sup> and denied the right to work both inside and outside of the camps. As a result, the refugees were wholly dependent on – dwindling – (international) assistance; budgetary constraints necessitated cuts in the provision of essential services, including food, fuel, and medical care.<sup>19</sup> In addition, there was no prospect to a solution to their (protracted) plight.

### 4. Durable Solutions

It is not clear whether local integration in Nepal was an option,<sup>20</sup> and the refugees themselves wanted to return to Bhutan. Bilateral talks between Nepal and Bhutan began in 1993,<sup>21</sup> and led in 2001 to a joint verification process in one of the refugee camps in Nepal. The outcome of the verification was that only 2.5% of the refugees were considered to be genuine Bhutanese (and hence eligible for repatriation) by Bhutan.<sup>22</sup>

17 Even though Nepal is a party to several human rights treaties: since 1990 it is a party to the 1989 Convention on the Rights of the Child, and since 1991 to the 1966 Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

18 Human Rights Watch, 'Last Hope, The Need for Durable Solutions for Bhutanese Refugees in Nepal and India', 16 May 2007, section IV.

19 Norwegian Refugee Council, 'Bhutan: Land of Happiness for the Selected', 2008 at 11; Human Rights Watch (n 18).

20 It was according to a statement by the then High Commissioner for Refugees: 'First, since the Nepalese Government has offered to settle those willing to remain and to grant them citizenship, my Office will promote self-reliance projects to facilitate their integration and will phase out its direct involvement in the camps', UNHCR Press Release, 'Lubbers opens annual UNHCR Executive Committee Meeting', 29 September 2003. However, in view of the persistent wish of Nepal that the refugees return to Bhutan (see *infra*), this is not likely, and their being locked up in close camps – in contradistinction to Tibetan refugees in Nepal (cf Susan Banki, 'Refugee Integration in the intermediate term: a study of Nepal, Pakistan, and Kenya', UNHCR New Issues in Refugee Research, Working Paper No 108, October 2004) – was not conducive to their eventual integration (in any sense of the word) in Nepal either.

21 Apparently UNHCR was completely sidelined by Bhutan, Norwegian Refugee Council (n 19), 12. UNHCR was not given access to Bhutan either, UNHCR Press Release, 'Lubbers opens annual UNHCR Executive Committee Meeting', 29 September 2003.

22 Human Rights Watch, 'Nepal: Bhutanese Refugees Rendered Stateless. Leading Global NGOs Criticize Screening Process', 18 June 2003; Michael Hutt, 'The Bhutanese Refugees: Between Verification, Repatriation and Royal Realpolitik', (2005) 1 *Peace and Democracy in South Asia* 44, 49–50 (as to the eligibility for repatriation, that turned out to be quite a theoretical one, see *ibid.*, 51). UNHCR was not allowed to participate

Despite many rounds of talks,<sup>23</sup> Bhutan persisted in its refusal to accept the return of (all) the Lhotshampas,<sup>24</sup> and since Bhutan denied access to UNHCR, UNHCR decided – somewhat redundantly in view of Bhutan’s clear refusal – not to promote return to Bhutan since its lack of access meant it could not monitor the return process.<sup>25</sup> Nepal nonetheless kept insisting on the return of the refugees to Bhutan.<sup>26</sup> The stalemate continued and it was not broken by the aborted march home of 15,000 refugees in 2007.<sup>27</sup>

Nepal’s insistence on return also meant it was reluctant to let the refugees resettle in third countries since that would undermine the prospects of their voluntary repatriation to Bhutan.<sup>28</sup> It accordingly withheld exit permits from those who had been accepted for resettlement.<sup>29</sup>

Meanwhile, in November 2005, a Core Group on Bhutanese Refugees in Nepal had been formed (consisting of Australia, Canada, Denmark, the Netherlands,

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in the verification process, Opening Statement by Mr. Ruud Lubbers, United Nations High Commissioner for Refugees, at the Fifty-fourth Session of the Executive Committee of the High Commissioner’s Programme (ExCom), Geneva, 29 September 2003. One of the reasons this percentage was so low was the refugees’ lack of documents: many of which had been confiscated at the time of the deportation, Dakhal, Subedi (n 9), 249.

- 23 Bhuwan Gautam, T P Mishra, ‘Who stands with Bhutanese refugees in Nepal’, *Nepali Times* (19 June 2019); see also Human Rights Watch (n 18).
- 24 Cf Maximillian Mørch, ‘Bhutan’s Dark Secret: The Lhotshampa Expulsion. The mass deportation of Bhutanese Nepalis in the 1990s remains unresolved 20 years later’, *The Diplomat* (21 September 2016); Vidhyapati Mishra, ‘Bhutan is No Shangri-La’, *New York Times* (28 June 2013). A refusal that completed Bhutan’s ethnic cleansing, Human Rights Watch (n 11). Bhutan meanwhile encouraged people to settle on the land of the Lhotshampas, police and military officers and their families occupying the more valuable Lhotshampa properties, making return of the refugees harder, Norwegian Refugee Council (n 19) 11; Dakhal, Subedi (n 9), 250: land and property belonging to over 100,000 refugees were distributed to eastern and northern Bhutanese families under a resettlement scheme of the Bhutanese government which also renamed villages and districts in south Bhutan, thus eliminating all evidence of Nepali culture.
- 25 Opening Statement by Mr. Ruud Lubbers, United Nations High Commissioner for Refugees, at the Fifty-fourth Session of the Executive Committee of the High Commissioner’s Programme (ExCom), Geneva, 29 September 2003.
- 26 Manny Maung, ‘No way home: time runs out for Bhutanese refugees in Nepal’, *The New Humanitarian*, 7 October 2016.
- 27 The New Humanitarian, ‘“Huge tragedy” looms as Bhutanese refugees stage “long march home”’, 30 May 2007; see also Long March Home – Bhutan, 15 October 2007 < <https://www.youtube.com/watch?v=4pWxHrvuaNo> >. Not the first march, another one – a peace march – took place in 1996; a march that Bhutan considered a threat to its national security, Ben Saul, ‘Cultural Nationalism, Self-Determination and Human Rights in Bhutan’, (2000) 12 *IJRL* 321, 338.
- 28 UNHCR, *The State of the World’s Refugees. In Search of Solidarity* (Oxford University Press 2012) 76: a view also held by an anti-resettlement group within the refugee community, *ibid*.
- 29 The Core Group on Bhutanese Refugees in Nepal: A model towards resolving protracted refugee situations? October 2007, presented to the ATCR Working Group on Resettlement on 16 October 2007, 3.

Norway, the United States, and UNHCR, and the European Commission as observer) with a view to finding comprehensive durable solutions for the Bhutanese refugees in Nepal by using resettlement strategically.<sup>30</sup>

The strategic use of resettlement was defined by UNHCR as:

‘the planned use of resettlement in a manner that maximizes the benefits, directly or indirectly, benefits other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting state, other states or the international protection regime in general’.<sup>31</sup>

The benefits that were identified then and the following years include strengthening access to asylum, unblocking a stalemate in the dialogue with a host country regarding the creation of a more favourable protection environment, opening up unhindered access to refugees, providing alternatives to long term detention and mitigating the risk of *refoulement*, and in the long run, strengthening protection systems, assisting with the decongestion of camps, unlocking other durable solutions, impact behaviour in host states, expanding the range and quality of services available to refugees, reduce xenophobia, help balance the burden and responsibilities of hosting refugees, and generating interest in strengthening refugee protection.<sup>32</sup>

The envisaged benefits of the strategic use of resettlement can be achieved by a single resettlement state but a collective resettlement enterprise of more than one resettlement state may maximise those benefits.<sup>33</sup> It at any rate requires a focus on groups of refugees rather than individual refugees, and on the needs of groups rather than those of individual refugees (membership of the selected group – barring exclusion or inadmissibility for other reasons – would suffice).<sup>34</sup>

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30 UN doc EC/57/SC/CRP.15 (6 June 2006) (Progress Report on Resettlement), para 8. See also, The Core Group on Bhutanese Refugees in Nepal: A model towards resolving protracted refugee situations? October 2007, presented to the ATRC Working Group on Resettlement on 16 October 2007.

31 UN doc EC/53/SC/CRP.10/Add.1 (3 June 2003) (The Strategic Use of Resettlement), para 6.

32 UNHCR, Working Group on Resettlement, Discussion Paper, The Strategic Use of Resettlement, 12 October 2009; and again, in UNHCR’s Position Paper on the Strategic Use of Resettlement, Annual Tripartite Consultations on Resettlement, Geneva, 6–8 July 2010.

33 UN doc EC/53/SC/CRP.10/Add.1 (3 June 2003) (The Strategic Use of Resettlement), para 36; see also the Multilateral Framework of Understandings on Resettlement drafted by the Convention Plus Core Group on The Strategic Use of Resettlement, 21 June 2004, and UNHCR’s Discussion Paper for the Annual Tripartite Consultations on Resettlement (22–23 June 2006), Challenges in Addressing Global Refugee Resettlement Needs, 8.

34 UN doc EC/53/SC/CRP.10/Add.1 (3 June 2003) (The Strategic Use of Resettlement), para 36. However, see FORUM/CG/RES/05 Informal record meeting of the Convention Plus Core Group on the strategic use of resettlement (12 December 2003) where one delegation observed that individual screening would always be required, and another one pointed to the need for individual screening for issues such as identity and exclusion under Art 1 F, 1951 Convention (para 14).

The Core group reportedly focused exclusively on resettlement rather than asking the two states involved to contribute alternative solutions for the refugees,<sup>35</sup> and that means the originally envisaged comprehensiveness faltered in so far that implies more than just one solution. It also meant a focus that left the refugees involved with little choice.<sup>36</sup> Those who wanted to resettle were intimidated through beatings, burning huts, and death threats by fellow refugees who believed the United States – that offered most of the resettlement places – conspired with Bhutan to prevent the return of the refugees to Bhutan.<sup>37</sup>

## 5. Resettlement

The resettlement of the Bhutanese refugees in Nepal started in November 2007.<sup>38</sup> It was scheduled to end in December 2015 but was extended into 2016, and apparently even into 2020.<sup>39</sup> In April 2019, more than 113,000 of the refugees had been resettled: over 96,000 in the United States,<sup>40</sup> 6,773 in Canada, 6,204 in Australia, 1,075 in New Zealand, 875 in Denmark, 570 in Norway, 358 in the United Kingdom, and 329 in the Netherlands.<sup>41</sup> In July 2021, there were still 6,365 Bhutanese refugees in Nepal.<sup>42</sup>

The Lhotshampas consequently ended up in diaspora:<sup>43</sup> not only scattered in a variety of states but also within those states. By way of illustration, the Bhutanese

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35 UNHCR (Joanne van Selm), *Great Expectations. A Review of the Strategic Use of Resettlement*, PDES/2013/13, August 2013, para 161.

36 *Ibid.*, para 163.

37 Human Rights Watch (n 11).

38 It was apparently based on a multilateral framework of understanding, UN doc EC/59/SC/CRP.11 (2 June 2008) (Progress Report on Resettlement), para 15.

39 Anil Giri, 'No solution yet for 8,500 Bhutanese refugees in Nepal', *The Kathmandu Post* (9 July 2020).

40 Relief Web, Press Statement: US Ambassador Randy Berry visits Bhutanese Refugee Settlements, 26 April 2019. For an impression, see IOM, *Resettlement of Bhutanese Refugees in Nepal*, 2011, <https://www.iom.int/video/resettlement-bhutanese-refugees-nepal>; UNHCR mentions the figure of 113,500 in its Fact Sheet Nepal July 2021.

41 Figures from UNHCR Nepal, quoted in Keshav Koirala, 'Where in US, elsewhere Bhutanese refugees from Nepal resettled to', *The Himalayan Times* (6 February 2017). On those who resettled in the Netherlands, see Global Human Rights Defence, *VluchtelingenWerk Nederland, 'From the Himalayas to the Lowlands – In Search of Peace and Happiness. Experiences of Bhutanese refugees in the Netherlands'*, 2010.

42 UNHCR Fact Sheet Nepal July 2021. On concerns regarding those who did not resettle, see Bhuwan Gautam, T.P. Mishra, 'Who stands with Bhutanese refugees in Nepal', *Nepali Times* (19 June 2019); Uttham Maharjan, 'Status of Bhutanese Refugees', *The Rising Nepal* (9 December 2019). UNHCR closed its Bhutanese refugee office in Nepal in January 2021, *Spotlight*, 'UNHCR Shut Down Its Bhutanese Refugee Office in Nepal' (16 January 2021).

43 Refugees do not have a choice as to the country to which they will be resettled: '*Refugees do not have a choice as to the country to which they are submitted. This is UNHCR's worldwide policy for the resettlement of refugees*', UNHCR, Third Country

refugees who were resettled in the United States live in 39 different states including Georgia, Indiana, Kentucky, Nevada, New Mexico, New York, North Carolina, Ohio, Texas, and Utah.<sup>44</sup> In Canada, the Bhutanese refugees were resettled in more than 21 communities across Canada,<sup>45</sup> and in Australia from the southernmost island of Tasmania to the western desert of Perth.<sup>46</sup> In the United Kingdom, most of the resettled refugees live in Manchester and surroundings, but dispersed across the country in Norway, Denmark, and the Netherlands ‘not out of their own choice, but according to the plans of the respective governments’.<sup>47</sup>

Thus living in diaspora probably signifies the end of this particular minority.<sup>48</sup> However, it may partly be offset in states that host a substantial number of members of the minority concerned by means of secondary migration within the resettlement state by virtue of the human right to freedom of movement and the right to choose one’s residence;<sup>49</sup> partly since it will not always be feasible to move to other places on account of work, family, and other constraints.

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Refugee Resettlement Information. Refugees from Bhutan Living in Nepal, 2007 (emphasis in original).

44 ‘Bhutanese Refugees Find Home in America’, 11 March 2016 < <https://obamawhitehouse.archives.gov/blog/2016/03/11/bhutanese-refugees-find-home-america> >, (note the emphasis on integration as American citizens by means of the Stand Stronger Citizen Awareness Campaign); Dakhal, Subedi (n 9), 253. Apparently, spreading refugees out across the country has been a main aim of US refugee policy for decades, Kathryn Stam, ‘Refugee Perspectives on Social Networks and the Resettlement Information Landscape in the United States’, in Andrew Nelson, Alexander Rödlach, Roos Willems (eds.), *The Crux of Refugee Resettlement. Rebuilding Social Networks*, 2019, 64.

45 Shauna Labman, *Crossing Law’s Border: Canada’s Refugee Resettlement Program* 2019, 142.

46 Dakhal, Subedi (n 9), 252.

47 Ram Karki, ‘Statelessness among resettled Bhutanese refugees in Europe: An unresolved problem’, *European Network on Statelessness*, 10 June 2021.

48 ‘Their religious beliefs, cultural practices and value systems are facing the threat of extinction’, Dakhal, Subedi (n 9), 252.

49 In Europe, the refugees formed community organisations in each resettlement country – the Bhutanese Community in the Netherlands, the Association of Bhutanese Communities in Denmark, the Bhutanese Welfare Association in the UK, and the Association of Bhutanese in Norway – which aim, *inter alia*, to unite all former Bhutanese citizens who are living in the same country, to preserve and promote their mother tongue, their culture and traditions, and preserve their common history, documents, etc., Karki (n 47). It seems that the refugees who were resettled in the United States formed predominantly organizations at city level rather than at state or national level, eg the Bhutanese American Organization of Philadelphia, PA; Bhutanese Community of Scranton, PA; Bhutanese Community Association of Pittsburgh, PA; Bhutanese Community in Harrisburg, PA; Bhutanese Nepali Community of Columbus, OH; Bhutanese Community of Greater Rochester, NY; Bhutanese Community Organization of Minnesota. It is remarkable that all the communities refer to themselves in terms of Bhutanese. The Harrisburg community explains this as follows: ‘We kept our organization’s name Bhutanese Community in Harrisburg not because we like Bhutan government, but to let our generation know what their parents’ story was and how were their parents treated by the government of Bhutan. (...) We would like to introduce ourselves as Bhutanese

As to the benefits beyond the resettlement of the ethnic Nepali Bhutanese – their resettlement was, after all, the pilot of the strategic use of resettlement policy – UNHCR questioned the assumption that it brought about wider solutions benefits now that resettlement had turned into the only solution while the prospects of voluntary repatriation and local integration remained bleak.<sup>50</sup>

## 6. Refugee law and the protection of collectives in exile

The main instrument, the 1951 Convention Relating to the Status of Refugees (including its 1967 Protocol) (hereinafter, 1951 Convention), clearly focuses on the individual refugee: a refugee is defined as an individual who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.<sup>51</sup> His protection is cast in terms of individual rights too.<sup>52</sup>

The 1951 Convention, and refugee law at large, do not go beyond the individual refugee: even the protection of the family or family reunification is not part of it. The 1951 Convention only refers to the importance of family unity in one of the recommendations that were adopted by the Conference of Plenipotentiaries. Recommendation B emphasizes that the unity of family is an essential right of the refugee, and recommends states to ensure that the unity of the refugee's family unit is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.<sup>53</sup> Be that as it may, a recommendation is not legally binding, and the protection of the refugee's family unit has therefore to be secured by means of the human right to family life.<sup>54</sup>

Larger collectives than the (nuclear) family unit are not part of international refugee law either, except in terms of the persecution of members of collectives such as social groups, tribes, and minorities, and when accommodating massive

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people because we would like to let the Bhutan government know we are everywhere. We would like to let the world know that we spent our miserable life in the refugee camps with no reason. Bhutan government still cheating the international community saying that we are not Bhutanese, for that reason we would like to keep saying we are Bhutanese' < <https://www.bcharrisburg-org.webs.com/aboutus.htm> > (typos corrected by the author).

50 UNHCR (n 28), 76; see also UNHCR (n 35), 169.

51 A minority may constitute a particular social group in the sense of the refugee definition, cf UNHCR, Guidelines on International Protection No 2, "Membership of a particular social group" within the context of art 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees', HCR/GIP/02/02, 7 May 2002.

52 'His' should be taken as gender neutral.

53 Beyond admission, in the context of voluntary repatriation and resettlement, UNHCR strives to ensure the unity of family. By way of illustration from the information leaflet that was drafted for the ethnic Nepali Bhutanese refugees: 'Resettlement is the relocation of a refugee and their [sic] family from Nepal to a third country', UNHCR, Third Country Refugee Resettlement Information. Refugees from Bhutan Living in Nepal, 2007.

54 Cf art 23 1966 Covenant on Civil and Political Rights; art 8, 1950 European Convention on Human Rights and Fundamental Freedoms.

influxes and recognizing refugees on a collective (*prima facie*) basis.<sup>55</sup> Asylum is not, however, about protecting large groups of refugees as such, it is about protecting individuals who may, of course, be part of groups, minorities or peoples. However, in the context of the war in the former Yugoslavia, the fact that granting asylum to individual refugees may *de facto* signify sanctioning the ethnic cleansing of minorities in the country of origin of the refugees was addressed and met by preventive protection to defeat the policy of ethnic cleansing, and granting the refugees concerned temporary protection rather than asylum.<sup>56</sup>

When it comes to solutions to the problem of refugees, the 1951 Convention is silent,<sup>57</sup> but UNHCR has been charged by the General Assembly to pursue them. Voluntary repatriation, the generally preferred durable solution is, of course, capable of reversing ethnic cleansing policies to the extent that persecuted minorities will want to, or can return.<sup>58</sup> If they do not, or if they cannot, it may mean their character as a minority or people – with a distinct identity, language and culture – may disappear in exile, which more often than not will be in the form of diaspora.<sup>59</sup> The alternative solution of local integration signifies a permanent stay in the country of asylum, but no longer as refugees.<sup>60</sup> This is the extension of asylum granted earlier, and once more, it is a solution for individual refugees, rather than collectives. Of course, a particular state may host many refugees, and may even grant all those of a particular nationality its citizenship.<sup>61</sup> Citizenship ultimately is

55 Cf UNHCR Guidelines on International Protection No 11, ‘Prima Facie Recognition of Refugee Status’, HCR/GIP/15/11, 24 June 2015. Worth adding are UNHCR’s formal declarations of general cessation of refugee status for groups in exile, cf. UNHCR Guidelines on International Protection: ‘Cessation of Refugee Status under Article 1C (5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)’, HCR/GIP/03/03, 10 February 2003.

56 Sadako Ogata, *The Turbulent Decade. Confronting the Refugee Crises of the 1990s* (WW Norton & Company 2005) 66–68.

57 The only reference to one of the durable solutions is art 30 on the transfer of assets: states parties shall permit refugees to transfer assets they brought into the country to another country where they have been admitted for the purposes of resettlement.

58 Cf the return of refugees to Bosnia and Herzegovina following the conclusion of the Dayton Accords in 1995 was to majority areas, Ogata (n 56), 123. Adelman and Barkan argue that most minority displaced never return, unless supported by the use of force, Howard Adelman, Elazar Barkan, *No Return, No Refuge. Rites and Rights in Minority Repatriation* (Columbia University Press 2011) 20 *et seq.*

59 Afghan refugees, for instance, are located in many different states, see Katharina Buchholtz, ‘Where Afghan Refugees Are Located’, CITI I/O, 19 August 2021 < <https://citi.io/2021/08/19/where-afghan-refugees-are-located/> >. The same applies to Palestinian refugees, see Francesca Albanese, Lex Takkenberg, *Palestinian Refugees in International Law* (Oxford University Press 2<sup>nd</sup> edn 2020) ch V ‘Palestinian “Diaspora” in Europe, the Americas, Asia-Pacific, and Africa’.

60 Local integration as a durable solution – in contradistinction to local integration of refugees in the asylum state by virtue of the rights granted in the 1951 Convention which are geared to enabling economic self-sufficiency – requires naturalization.

61 An example is Tanzania that granted its citizenship to 162,000 Burundian refugees, UNHCR, ‘Tanzania grants citizenship to 162,000 Burundian refugees in historic decision’ (17 October 2014).

about integration in the new national community but may include minority protection.<sup>62</sup> The third solution is resettlement of refugees. As indicated earlier, a solution that is plagued by a structural lack of resettlement places, and therefore usually only available to individual refugees who have protection problems in the country of asylum (and then, resettlement functions as a tool of international protection rather than as a durable solution).<sup>63</sup>

Although those who encounter such protection problems are usually individual refugees – for instance, a refugee who is threatened with *refoulement*, a refugee who has urgent medical needs<sup>64</sup> – UNHCR occasionally focuses on groups who need resettlement. As indicated earlier, it may focus on all the inhabitants of a particular refugee camp, and it may resettle an entire refugee population such as the ethnic Nepali Bhutanese refugees from Nepal.

As far as could be ascertained, the question whether resettlement should be pursued for this minority rather than voluntary repatriation or local integration, that is apart from the legitimate desire to end a protracted refugee situation, was not addressed by the Core Group on Bhutanese refugees in Nepal even though resettlement would in all likelihood signify an end to the existence of this minority (its distinct identity, language, and culture). Of course, most of the refugees were resettled in the United States (over 96,000)<sup>65</sup> but not as a collective. The collective dimension only played a role in processing the group for resettlement.

Resettling collectives as such – and this is not a reference to compulsive population transfers – has a history of failures. Many attempts have been made in the past to find a place – often if not wholly induced by the wish of states to keep their own borders closed – for Jewish refugees preceding and during the Second World War,<sup>66</sup> but also after that war by so-called ‘territorialists’ (*i.e.*, those who sought a home for Jewish refugees outside Palestine). Most of those attempts, with the (not all too convincing) exception of ‘tropical Zion’ in the Dominican Republic,<sup>67</sup> came to naught.

Admittedly, there are no easy or obvious solutions, and individual refugees should not be sacrificed for the benefit of preserving the collective of which they

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62 cf Stephanie Berry, ‘Integrating Refugees: The Case for a Minority Rights Based Approach’ (2012) 24 *IJRL* 1.

63 A third function of resettlement is redistribution, ie relieving host states by means of the physical relocation of refugees; ‘a tangible expression of international solidarity and a responsibility sharing mechanism’, UNHCR *Resettlement Handbook*, rev ed July 2011, 45.

64 See UNHCR *Resettlement Handbook*, rev ed July 2011, ch 6 on the resettlement submission categories.

65 Relief Web, Press Statement: US Ambassador Randy Berry visits Bhutanese Refugee Settlements (26 April 2019).

66 Such as Madagascar, see *eg*, Hans Jansen, *Het Madagascar Plan. De voorgenomen deportatie van Europese joden naar Madagascar* (Sdu 1996) Part II, ch XIV on the British Madagascar plan during the Second World War.

67 Allen Wells, *Tropical Zion. General Trujillo, FDR, and the Jews of Sosúa* (Duke University Press 2009).

form part, but the perceived indifference with respect to collectives in the sense indicated could at the least be acknowledged, and when feasible, acted upon.<sup>68</sup>

In the case of the ethnic Nepali refugees from Bhutan, the Core Group could perhaps have put more pressure on Bhutan with a view to securing their voluntary repatriation to Bhutan instead of an exclusive focus on their resettlement that was bound to result in their dispersal in diaspora, and eventually, tragically, an end to their minority culture.

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