

## Addressing Bhutan's Refugee Crisis Through the Courts

Bhutan's own impressively progressive Constitution could resolve the plight of the Lhotshampas.

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A **recent op-ed** in the *New York Times* by a Nepali-Bhutanese refugee named Vidhyapati Mishra has renewed interest in the often-overlooked refugee crisis of Bhutan, the “**happiest nation in the world**.” About a quarter-century ago, tens of thousands of Bhutanese of Nepali extraction (often referred to as “Lhotshampas”) lost their citizenship due to a **1985 law** and either fled to refugee camps in neighboring countries or remained in Bhutan but without citizenship, due to the country's continued policies of strict ethnic nationalism.

On the other hand, many rightly admire Bhutan for peacefully abandoning its absolute monarchy for a constitutional one and writing a 2008 Constitution that embraces many liberal, universalist positions, without any domestic or foreign pressure to do so. One writer **remarked** that the internally driven transformation “might be one of the most astonishing and unique transitions to democracy witnessed by scholars so far.” For instance, Bhutan's Constitution allows the parliament to force the abdication of the king, creates an independent judiciary headed by a Supreme Court, establishes a powerful and independent anti-corruption commission, and specifies equality and sustainable development as principles of state policy.

A resolution to the so-called “**enigma of Bhutan**” – in which a progressive country has yet to address a major ethnic rights concern – may lie in the principles and text of Bhutan's enlightened supreme law itself, and the constitutional litigation for which it allows.

The Constitution explicitly grants universal standing to all people, not just citizens, to bring court claims “for the enforcement of the rights conferred” by the Constitution. A Lhotshampa currently in Bhutan who lost his citizenship could rely upon this universal standing provision and the Constitution's universalist principles to advance a claim for a vindication of his rights to nationality – either full citizenship or at least a kind of de facto permanent residency status for non-ethnically Bhutanese.

Three provisions in the Constitution particularly support such a claim. First, it establishes Buddhism as the state's “spiritual heritage” which it describes as promoting “the principles and values of peace, nonviolence, compassion and tolerance.” If this is so, then a policy that cares for

the dispossessed would find support in Bhutan's overarching self-conception as a Buddhist kingdom.

Second, like the United States, Bhutan's Constitution includes an **equal protection clause**: "All persons are equal before the law and are entitled to equal and effective protection of the law and shall not be discriminated against on the grounds of race, sex, language, religion, politics or other status." The citizenship laws of which Mr. Mishra wrote, which stripped Lhotshampas of their status and forced their exile, had both **discriminatory intent and effect**, and they could be challenged under this provision.

Third and finally, Bhutan's Constitution establishes a "principle of state policy" that it "shall endeavour to promote goodwill and co-operation with nations, [and] foster respect for international law and treaty obligations . . . ." The citizenship policies that drove the Lhotshampas from Bhutan probably contravene Bhutan's international law obligations, including general international **norms against racial discrimination** and the arbitrary deprivation of nationality, and, specifically, the Convention on the Rights of the Child (CRC), which Bhutan signed without reservation in 1990. The CRC **commands** state parties to "undertake to respect the right of the child to preserve his or her identity, including nationality . . . without unlawful interference." Bhutan likely violated the CRC when it stripped Lhotshampa children (like Mr. Mishra) of their citizenship in the late-1980s. One could argue Bhutan does a disservice to its own principle of state policy when it violates the very law it is supposed to foster.

As these provisions show, the Bhutanese Constitution contains the seeds of the country's own renewal. This legal argument, if given the opportunity to be developed before the Bhutanese courts, could help lead to the establishment of either full citizenship or a category of de facto permanent residency for non-ethnically Bhutanese persons. Such a status would guarantee them basic civil rights, ameliorate the Constitution's greatest weakness, and provide a political status to an otherwise stateless people. Even more, Bhutan – by resolving a difficult issue of ethnic rights openly and through its courts – would show the world that it has truly embraced the rule of law and prove that, here on earth, even "Shangri-La" can be bettered for the benefit of all of its people.

*Beginning in August 2013, Matthew F. Ferraro will serve as a law clerk on the United States Court of Appeals for the Ninth Circuit. This piece is adapted from his **article**, Stateless in Shangri-La: Minority Rights, Citizenship, and Belonging in Bhutan published in the **Stanford Journal of International Law**.*