CONSTITUTIONALISING DISCRIMINATION IN BHUTAN:

THE EMASCULATION OF HUMAN RIGHTS IN THE LAND OF THE DRAGON

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1. Introduction

After a long consultation process, the Kingdom of Bhutan finally adopted its very first constitution on 18 July 2008.1 Heralded with great fanfare in the country itself as a modern, forward looking accomplishment set to help propel Bhutan towards a democratic society,2 the Constitution of the Kingdom of Bhutan is – from the point of view of international human rights law – a deeply disturbing document.

While at first glance the Constitution may appear to be in harmony with international human rights treaties since many of its provisions seem to guarantee fundamental rights associated with these treaties, a closer examination reveals that on the contrary, it is intended to exclude vast segments of the population of Bhutan from being able to enjoy even the most basic of human rights in an attempt to ensure the dominance of certain ethnic groups – and the exclusion of others based solely on their ethnicity. All in all, this unfortunate constitutional aberration – seemingly welcomed in the West – makes the Land of the Dragon anything but a Shangri La.

2. The Land of the Dragon

High up in the Himalayas, Bhutan is a relatively small yet important meeting point for two of the world’s great spheres of civilisation: the Indo-

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2 An English version of the constitutional document is available at http://www.constitution.bt/TsaThrim%20Eng%20(A5).pdf
Aryan linguistic group with its mainly Hindu or Muslim peoples, and the Tibeto-Burman languages where Buddhism is more prevalent. The origins, history and heritage for most of the Kingdom’s population are anchored in the Tibeto-Burman cultural sphere of influence. Before the seventeenth century, it would seem Bhutan was ruled by numerous clans and noble families closely connected with Tibet until 1616. That year saw the arrival of Ngawang Namgyal, a Buddhist monk from Tibet who established himself as the religious ruler of Bhutan with the title Shabdrung Rinpoche. It is through his efforts that the southern valleys were to be merged into a unified country called Druk Yul (Land of the Dragon) in the national language of Dzongkha.

With its cultural and religious contacts with Lhasa hampered after the Chinese invaded Tibet in 1720 and its isolation by geography from Indian influence, Bhutan was able to remain aloof from most of the world until about the mid-eighteenth century: in 1864 the British occupied a small part of southern Bhutan which was formally annexed after a war in 1865, and it is from this time that British authorities were to exert control over Bhutan’s foreign affairs, as well as occupying nearby territory in Sikkim. These events are significant, because it may also have been the gateway for the influx of the country’s largest minority group, the Nepali-speaking and mainly Hindu Lhotshampas (this word is actually a Dzongkha word for ‘Southern Bhutanese’).

After India won independence, the 1949 Treaty between India and Bhutan returned the part of Bhutan annexed by the British. The following year’s occupation of Tibet by Chinese Communist forces in 1950 has been seen as leaving the Kingdom as the last standing bastion of an ancient cultural history:

Thus of the whole enormous area which was once the spirited domain of Tibetan culture and religion, stretching from Ladakh in the west to the borders of the Chinese provinces of Szechuan and Yunnan in the east, from the Himalayas in the south to the Mongolian steppes and the vast wastes of northern Tibet, now only

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3 Article 4: Further to mark the friendship existing and continuing between the said Governments, the Government of India shall, within one year from the date of signature of this treaty, return to the Royal Government of Bhutan about thirty-two square miles of territory in the area known as Dewangiri. The Government of India shall appoint a competent officer or officers to mark out the area so returned to the Royal Government of Bhutan.
Bhutan seems to survive as the one resolute and self-contained representative of a fast-disappearing civilisation.\(^4\)

It is this fragile survival of a ‘fast-disappearing civilisation’ which may help explain the Bhutanese government’s policies, programmes and especially the adoption of a new constitution which seem to exclude any acknowledgment of the Kingdom’s diversity and any concession to many of its minorities.

Yet the ‘fragility’ of Bhutan as a political entity, the ‘threats’ to its survival, and the reasons why the Royal Government of Bhutan has apparently gone to extremes to exclude – or at the very least discriminate against – many of its own only make sense in the context of a cultural, linguistic or religious threat, and it is here that the issue of minorities and the makeup of the country’s population become matters of controversy.

In terms of the linguistic makeup of Bhutan, it would seem that until relatively recent times, the vast majority of the population of the kingdom spoke Tibeto-Burman languages. There are a number of Tibeto-Burman languages and dialects in use in the country, most of which are related to Tibetan. The most widely spoken of these are the Ngalong and Tshangla. The country’s only national language, Dzongkha, could be described as a “polished” form of the Ngalong language and has some 130,000 speakers according to figures available for 2003.\(^5\) The central parts of the country tend to have strong links and affinities with the Ngalong. The other main Tibeto-Burman language, Tshangla, is mainly spoken in eastern districts by some 138,000 people. The people in the east are known more generically as Sharchops.\(^6\) Most of the other ethnic groups in the central and eastern parts of the country speak one of the smaller Tibeto-Burman languages, such as Bumthangkha (perhaps 30,000 speakers), Chocangacakha (20,000), Dzalakha (15,000), Khengkha (40,000), Kurtokha (10,000), Lepcha (35,000), and Nyenkha (10,000), among others.

The two main Tibeto-Burman population groups are thus the Ngalong, a people of Tibetan origin which migrated to Bhutan perhaps as early as the ninth century. They are concentrated in the western and northern districts


of the country and mainly practice a Tibetan style of Mahayana Buddhism. The Sharchops reside predominantly in eastern Bhutan and are among its earliest inhabitants with origins traced back to tribes of northern Burma and northeast India. While they also practice a Tibetan style of Mahayana Buddhism, they tend to belong to the Nyingma school, whereas most Ngalongs are of the Drukpa Kargyü school. The Buddhist population of the Kingdom altogether constitutes perhaps two-thirds. There are also some remnants of an animist and shamanistic faith called Bon which predates the arrival of Buddhism. The number of adherents of Bon beliefs is however thought to be quite small.

The vast diversity from a cultural, religious and linguistic point of view – just within the broad Tibeto-Burman family - is somewhat misleading. Despite not constituting a majority in terms of the overall population, the Ngalongs and central populations have in practical terms imposed their modified language as the state’s only national language and it is similarly their culture which is deemed – almost exclusively – to be “Bhutanese”. The Ngalongs are clearly dominant politically and predominate in Government and the civil service, and their cultural norms and dress have been declared by the Royal Government of Bhutan to be the standard for all citizens.

To this mixture must be added a much more recent arrival, perhaps some 156,000 Nepali-speaking people, the Lhotshampas, concentrated in the foothills of the entire length of Bhutan, especially its south central part. Mainly Hindus in terms of religious beliefs, they clearly belong to the Indo-Aryan languages and cultural group, though of course there are some individuals who do not necessarily fit completely in these broad religion/language/culture categories. There are some Hindus in the southern part of the country, for example, who speak other languages, such as Assamese, but generally it is safe to say that the majority of the population in parts of southern Bhutan speak Nepali and are Hindus.

3. Controversy over Minority Population, Citizenship, and Refugees

When the Lhotshampas actually started to settle in Bhutan is the subject of much controversy and conjecture. The debate is however more than just symbolic because it is central to claims of ‘ownership’ of the country. It

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7 For ease of reference these are all described as speaking Nepali, though in fact there are a number of variants and dialects within this broad category. The 1993 estimate of their numbers is from the Ethnologue Report for Bhutan, available at http://www.ethnologue.com/show_country.asp?name=BT.
has also become the political and legal basis for exclusion from citizenship of a substantial percentage of the population and even for a form of ‘ethnic cleansing’.

The Royal Government of Bhutan has in the past treated the exact population of Bhutan as something of a secret. Before 1969, there were estimates of the entire population ranging between 300,000 and 900,000. A national census in 1969 arrived at a figure of just over one million. In the eighties the government put the figure in some documents at 1,165,800 and even 1.4 million. That number was subsequently ‘revised’ and was described in 1991 as being about 600,000. In 1999, the figure became 657,548 according to the Planning Commission of the Royal Government of Bhutan.

This apparently does not include some 125,000 Bhutanese – mainly Lhotshampas – refugees living in Nepal and India. Without entering the controversial debate as to the reasons for such a huge discrepancy in numbers, and whether there has been an attempt at manipulating the numbers in order to exclude more recent arrivals in the country from these population figures, one needs to keep in mind that this huge drop in the official population of Bhutan should at the very least be treated with some reserve. There is however a significant discrepancy between the population totals reported by the United Nations and those provided by the Royal Government of Bhutan, since the former placed Bhutan’s population at 1.9 million in 1997.

The case of these refugees remains extremely controversial. Most of them fled, were evicted or pressured to leave southern Bhutan from the early 1990s, or were born in exile to refugee parents. As pointed out by Amnesty International:

The refugees claim they are victims of human rights violations and discrimination by the Bhutan government’s ‘one nation, one people’ policy based on the traditions of the northern Bhutanese. The Bhutanese government maintains that the people in the refugee camps are illegal immigrants from Nepal who had overstayed their contracts in Bhutan or Bhutanese who left the country voluntarily and thus are deemed to have renounced their nationality under Bhutan’s citizenship law.8

What does appear clear is that there were serious allegations of violence and intimidation against some of the Nepali-speaking Lhotshampas, that in some cases individuals were forcibly made to leave the country, and that government authorities do not want most of them back:

As arbitrary arrests of southern Bhutanese, accompanied by torture and rape, escalated in 1991, southern Bhutanese began to flee from Bhutan, fearing that they would become victims of such violations. From about mid-1992, however, there were significantly fewer reports of these kinds of gross human rights violations being committed, and the nature of the action taken by the authorities to make people leave the country seemed to have changed. Many of the people interviewed who arrived in the camps in this later period described primarily administrative measures taken to force them to leave, including being required to sign so-called "voluntary migration forms", often accompanied by threats of large fines or imprisonment if they failed to comply. Signing these forms is taken to mean that the person concerned will not return to Bhutan, and there is some provision - which is not always fulfilled - for compensation to be paid for their lands. Some people had left Bhutan for another reason: this was that their village communities were required to leave en masse as a collective punishment inflicted by the local authorities following a murder or robbery in the locality attributed to ‘anti-nationals’.9

Negotiations for the return of refugees to Bhutan after their ‘verification’ as citizens of Bhutan led on 17 July 1993 to the formation of the Nepal-Bhutan Joint Ministerial Level Committee (JMLC), though in 1993 both Nepal and Bhutan agreed to divide the refugees into four categories: 1) bona fide Bhutanese if they have been evicted forcefully; 2) Bhutanese who have emigrated; 3) non-Bhutanese people; and 4) Bhutanese who have committed criminal acts. Bilateral negotiations lasted until December 2001 with the two parties agreeing to form a Joint Verification Team (JVT). Expectations were at that point rather high, despite some misgivings by the international community and various human rights groups who decried this categorisation and the refusal to include the UNHCR in this process.

Those critical of the process seem to have been vindicated. Very few of these refugees will in fact return to Bhutan under this process. Only 2.5 per cent (293 people) out of the 12,183 refugees in Khundunabari camp in

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Nepal were determined to belong to category one, while 70 percent were category two, nor is there likely to be a large influx of refugees from category two because of the conditions linked to their return:

People in category 2 or those forced to sign “voluntary migration forms” under duress and thus deemed to have left the country voluntarily, will be taken back to Bhutan and held in closed camps for a probationary period of two years. During this period one member of each family will be employed as a labourer in road construction. They will not be able to move freely in Bhutan. Their eligibility for citizenship after the probationary period will depend on their knowledge of Dzongkha, the official language, of Bhutanese history and culture, and their proven loyalty to the Bhutanese crown. If any family member leaves the camps, or Bhutan, during the probationary period the entire family’s application for citizenship will be disallowed.\textsuperscript{10}

It would appear that current government policies are aimed at excluding the return of refugees who are not Buddhists and ethnically and culturally Drukpa. Even the sudden population ‘correction’ from 1999 seems to suggest an attempt to downgrade population figures which might have supported the claims of some that the Nepali-speaking Lhotshampas might have been approaching 40% or even more of the entire population of the country.

When the Lhotshampas settled in Bhutan is sensitive as it buttresses many of the current policies and attitudes of the Royal Government of Bhutan, particularly those that in effect result in the denial of many basic human rights for minorities in Bhutan because they are not recognized as citizens. While most would agree that the presence of Nepali-speaking people in the south of the country flowed from migration for the hills of eastern Nepal, there are historical documents which mention the presence of Nepali-speaking groups in nearby Sikkim before the nineteenth century.\textsuperscript{11} Reliable historical data is difficult to come by, but the claims that the Nepali-speaking population has roots going back hundreds of years in Bhutan appear difficult to sustain in terms of conclusive evidentiary support. There are nevertheless British colonial documents which do exist, some dating from the nineteenth century, that show an already well-established Lhotshampas population. In all likelihood, their migration did take place


\textsuperscript{11} See Michael Hutt (2003), \textit{Unbecoming Citizens: Culture, nationhood and the Flight of Refugees from Bhutan}, Oxford University Press, pp. 6-12, 22-24, and 58-84.
since at least the late nineteenth century, beginning ‘some time after the Anglo-Bhutanese wars of 1864-6 and probably subsided after the 1930s.’

4. Bhutan: The Legal Human Rights’ Context

Bhutan has not only been geographically and historically speaking an isolated state, it has to some degree isolated itself also from the global human rights regime since it is at the extreme bottom list of states in terms of the international human rights treaties ratified: only two. Its historical and legal isolation has probably meant that, while many of the officials and leaders in Bhutan may favour some movement towards greater democracy and changes in society to modernize it, there must necessarily be a great deal of ignorance or at least misunderstanding as to what entails a truly democratic and open society, committed to global ideals of justice and tolerance and for a rights based approach in development planning.

Especially when dealing with minorities, there may have been the mistaken belief that there are no standards applicable to Bhutan since it has not ratified the International Covenant on Civil and Political Rights (ICCPR) which is main international treaty that contains a specific minority provision, Article 27.13 To put this in very simple terms: no Article 27, therefore no minority rights.

Most of what people would recognize today as “minority rights” is undoubtedly part of the corpus of human rights in international law. In matters of religious and linguistic preferences and restrictions, for example, minorities are protected by freedom of religion, freedom of expression, and especially non-discrimination. These are fundamental human rights, pillars in the global human rights regime. Whether dealing with situations involving the use of a minority language by public authorities (Diergaardt v. Namibia14), stopping the government from banning the private use of a language (Ballantyne v. Canada15), removing restrictions on religious activities, teaching in a public school in a minority language (Cyprus v. Turkey16), or obtaining financial support for private

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13 Article 27 states: ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.’
schools for a religious minority (*Waldman v. Canada*), it is not Article 27 that has been used successfully, but usually one of the other fundamental rights such as non-discrimination, freedom of religion or freedom of expression.

The reason this is important is that Bhutan having (only) ratified both the *Convention on the Rights of the Child* (CRC) and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) cannot discriminate against these two groups and generally must ensure that the basic human rights of women and children are applied. This would apply to women and children who also happen to be members of a minority, and especially to Nepali-speaking individuals. Additionally, because fundamental rights and freedoms such as freedom of religion and the prohibition of racial discrimination are also part of customary law, Bhutan must comply with these regardless of the status of its ratification of a particular treaty.

Moreover, the CRC contains a minority provision as well, similar to that contained in the ICCPR, thus establishing a legally binding obligation on the Royal Government of Bhutan to comply with the human rights of children belonging to minority groups. Given that a high proportion of the Bhutanese population is below the age of 15 (42%), there is real scope for reaching many people through this provision.

Among some of the most serious human rights issues to be considered here are:

- Non-discrimination and prohibition of racial discrimination (which directly or indirectly may include religion, language, or ethnicity)

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18 Article 30 states: ‘In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.’

19 The refusal to recognise and respect the languages and cultures of minorities, especially in the area of education, has been treated as involving issues of racial discrimination in a number of concluding recommendations by the UN Committee on the Elimination of Racial Discriminations. See for example *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Botswana*, 23/08/2002. CERD/C/61/CO/2002. The Committee also concluded that the Constitution and legislation which only recognises Tswana-speaking tribes is inconsistent with the Convention, especially in having the effect of denying land rights and other rights and privileges to members of non-Tswana-speaking minorities.
Freedom of religion
Freedom of expression
Right to education, including minority rights in education

In practical terms, what does consideration of these standards actually mean in the case and rather unusual circumstances of Bhutan? Because human rights in international law are so general – and indeed need to be in order to be applicable in vastly different social and developmental contexts – and because of the paucity of international cases dealing precisely with their application to minority situations, this is not always an easy question to answer.

There is however some guidance available. The work of the UN Working Group on Minorities can for example be a good resource. This Working Group reviews annually the implementation of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This Declaration is considered as an elaboration of Article 27 of the ICCPR and although not legally binding on states, it is an important political statement of minimum standards. The Working Group also holds regional meetings and produces recommendations. There are also guidance in documents such as the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, the The Hague Recommendations Regarding the Education Rights of National Minorities, and the Lund Recommendations on the Effective participation of National Minorities in Public Life. They often contain clear and brief statements on the application of human rights to the situation of linguistic minorities, in the field of education, and in various aspects of participation in public life. Prepared by some of the world’s leading experts in the areas for the OSCE High Commissioner on National Minorities, and only dealing with national minorities, they are still exportable and very useful because of their approach which is inherently one focused on the global human rights regime.

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21 For access to the UN Working Group on Minorities see http://www.ohchr.org/english/issues/minorities/group/main.htm
23 http://www.osce.org/item/2931.html
24 http://www.osce.org/item/2929.html
25 Another good source to try to answer in practical terms what would be the practical effect of the incorporation of these standards in language matters is Fernand de Varennes (2001), A Guide to the Rights of Minorities and Language, available at http://www.osi.hu/colpi/files/COLPI4.pdf
Applying the principals which can be extrapolated from these, there are a number of preliminary indications as to what would constitute the human rights of minorities in Bhutan that appear particularly vulnerable:

- In the field of public education, quality and non-discriminatory education must reflect the linguistic and cultural reality and diversity of the population. Where a minority is substantial and concentrated, teaching should be in their language roughly in proportion to their importance, though this is not to be done at the expense of learning the official/national language. Cultural and linguistic diversity should in fact be promoted and encouraged visibly in schools.

- In access to services and information from government department and officials, these should be available to a degree roughly proportionate to the corresponding to the numerical importance of the language used by a minority.

- In matters of private language use (and private religious practices), Bhutanese authorities are not to prevent their free usage or enjoyment by individuals acting in their private capacity, even when these may be occurring in public.

- In matters of participation in public life, minorities and traditional communities need to be effectively part of decision-making processes, especially those that most directly affect their way of life and culture.

In addition to public participation, education and language, compliance with international human rights would also impact minorities in the following fields:

- Development activities cannot be discriminatory, in the sense of being aimed at or have the result of being enjoyed mainly or exclusively some racial/ethnic groups within Bhutan.

- Land ownership rights cannot be discriminatory (also affects returning refugees).

- Naturalisation criteria for citizenship cannot be discriminatory, nor lead to statelessness, particularly in the case of children and women. Addressing this issue also impacts directly on refugees.
and their access to resources, employment opportunities, government services, etc.

- Right to vote or to hold office cannot be discriminatory
- Access to health care, housing and other social programmes open to minorities on a non-discriminatory basis, and especially women and children

A closer consideration of these issues in Bhutan, and how the supposedly ‘democratic’ Constitution of the Kingdom of Bhutan appears to enshrine the denial of the international human rights of very large segments of the population of Bhutan, follows.

5. Minorities: Diversity and Denial

Accommodating people’s growing demands for their inclusion in society, for respect of their ethnicity, religion, and language, takes more than democracy and equitable growth. Also needed are multicultural policies that recognize differences, champion diversity and promote cultural freedoms, so that all people can choose to speak their language, practice their religion, and participate in shaping their culture—so that all people can choose to be who they are.26

Bhutan’s efforts in many areas of development and poverty reduction, among others, emphasise the importance of ‘respect for human rights such that rights to education, health and livelihoods complement abstract rights of equality before law’; ‘drawing into the mainstream marginalized and vulnerable groups with all efforts to strengthen grass roots organization such that people make well-informed decisions on their roles in development’; and ‘human rights, transparency, accountability, participatory development’.27

What is missing from those official pronouncements and in the laws and Constitution of Bhutan, however, is any significant reference to the particular situation of minority groups. Non-Buddhist minorities are nearly invisible in the detail of any government policies or programmes.28 At

28 A few exceptions include the following reference: ‘Religion remains part of every aspect of Bhutanese life. Buddhism is still practiced by a majority; of other religions, Hinduism is
most there may be a passing reference to the presence of a Hindu or of other religious minorities, but these are subsequently often neglected in any substantive regard. No noticeable consideration is evident of any attempt in government policy or the newly-adopted ‘democratic’ Constitution to take into account the ethnic, religious and linguistic diversity of Bhutan outside of the Buddhist/Drukpa spheres. There is an almost complete disregard for any possible correlation between this diversity and minority issues and poverty. Some effort is made to account for ‘vulnerable groups’ but official documents suggest that this is understood to encompass at most only women, children and persons with disabilities. Other groups, such as minorities or refugees, are not mentioned. This extends to the analysis of poverty and to policy prescriptions: for example, the Royal Government of Bhutan does not acknowledge that discrimination is a factor in poverty nor does it list any special provision for education for linguistic minorities.

To put it bluntly, official documentation is largely bereft of any type of recognition of non-Tibeto-Burman minorities in Bhutan. It is arguably not a situation of benign neglect, but one of intentional policy and discriminatory rules to maintain the dominance of the Buddhist and Dzonkha-speaking population. In this sense diversity in Bhutan is simply not admitted – indeed it is perhaps not even tolerated – outside of the officially sanctioned Mahayan Buddhist character of the state apparatus as will be shown later. The portrayal of Bhutan is therefore sanitised of almost all references to non-Buddhist minorities, even though they represent perhaps a third of the population or more. While on the one hand Bhutan is sometimes presented as innovative with its development being guided by the philosophy of Gross National Happiness which emphasises ‘a balance between material well-being and the spiritual, emotional and

most prevalent’ in National Human Development Report 2000: Gross National Happiness and Human Development – Searching for Common Ground, Planning Commission, Royal Government of Bhutan, Thimpu, 2000, at p. 11; Household Income and Expenditure Survey 2000 (Pilot), Report on Income and Expenditure, Poverty management, and Socioeconomic Profile of Households, Central Statistical Organization, Planning Commission, Royal Government of Bhutan, Thimpu, October 2001, p. 30 which gives the distribution of households by religion (and a total of 21.09% Hindu for the country.); and at p. 2 of the Ninth Plan Main Document (2002-2007), Planning Commission, Royal Government of Bhutan, Thimpu, 2002, ‘While there are several language groups and communities, the country is essentially composed of two broad ethnic groups, the Drukpas who are mongoloid and are of Buddhist faith making up 80 percent of the population, and people of ethnic Nepalese origin who are mainly indo-aryan and of Hindu faith.’
cultural well-being of an individual and the society', this is in the end nullified by government policies, legislation and constitution which deny any consideration of the needs that are not those of traditional Buddhist, majority ethnic Bhutanese.

Four major areas have been identified as pillars of this concept of Gross National Happiness, two of which – preservation and promotion of cultural heritage and good governance – could be thought to have important consequences for minorities and could serve as entry points into government policies affecting minorities. In reality, any discussion of minority issues is practically taboo and therefore excluded or at the very least hidden away in all Royal Government of Bhutan documents dealing with rights, poverty and development.

Official documentation and government policies all present Bhutan as a Mahayana Buddhist kingdom to the almost complete exclusion of all others. While emphasising the importance of preserving and promoting the state’s historical and cultural traditions, these are seen and presented from a Buddhist perspective with the official Dzongkha language playing a central unifying role. There is at most a passing reference to ‘others’, such as in the Ninth Main Document (2002-2007) of the Royal Government of Bhutan’s Planning Commission, which enumerates various measures for the protection and restoration of ancient Buddhist temples, monasteries and stupas, then adds that in addition to supporting Dzongkha, adequate provisions will be made for ‘other traditional regional languages and dialects’. Arguably, even this is not much as a concession, as these ‘traditional’ languages and dialect could be interpreted to exclude the Nepali language, since it might be relegated as a non-traditional importation.

Many other examples can be given, but suffice to mention just a few:

The emergence of Bhutan as a nation state has been dependent upon the articulation of a distinct Bhutanese identity, founded upon our Buddhist beliefs and values, and the promotion of a common language. These have been defining elements in our history and they have made it possible to unify the country and to achieve national homogeneity and cohesion among various linguistic and ethnic groups. This identity, manifest in the concept

of ‘one nation, one people’, has engendered in us the will to survive as a nation state as well as the strength to defend it in the face of threats and dangers. It is a unity that binds us all together and enables us to share a common sense of destiny.\(^{30}\)

Access to monks and lamas for performing religious activities and enriching the spiritual aspects of a person’s life, is essential for a Bhutanese. Further, the monastic institutions of the country also play an important role in supporting the poor.\(^{31}\)

While some documents do refer to diversity and cultural heritage, this actually means a singular culture, religious and linguistic background without consideration of any ‘others’:

Our independence, sovereignty and security will continue to be dependent upon the assertion of our distinctive Bhutanese identity. This has provided the key to our survival as a nation state and it will continue to be so in the future. This requires us to continue to articulate an unambiguous cultural imperative in all that we do and to actively promote an awareness and appreciation of the continued relevance of our cultural heritage. It also requires is to continue to stress the importance of Dzongkha as a national and unifying language. We must also recognize the importance of our system of beliefs and values in a world of change, increased aspirations and rising expectations.\(^{32}\)

The ‘Main Development Objectives of the Kingdom’ as expressed in Part II of the Bhutan 2020 document refers to a number of main thematic headings such as human development, culture and heritage, balanced and equitable development, governance, and environmental conservation. Within many of these headings, minority issues and diversity could have been easily integrated. Unfortunately, they are largely ignored, as are any mention of development respectful of basic human rights.

In relation to the development objective dealing with ‘Culture and Heritage’, for example, there is in fact a very strong emphasis on the


maintenance of a distinctive Bhutanese identity as a central “cultural imperative” of the Kingdom. Though this and other objectives are couched in very general terms, subsequent descriptions seem to suggest that this is mainly linked to traditional, Buddhist and Tibeto-Burman traditions and culture.\textsuperscript{33} The promotion of the national Dzongkha language as a lingua franca is also presented as part of one of the country’s main development objective, but there is no consideration of the position of linguistic minorities or linguistic diversity.\textsuperscript{34} Buddhist monastic bodies and other religious institutions, though not apparently Hindu institutions, are finally specifically targeted for special treatment within the development objectives as part of Bhutan’s heritage.\textsuperscript{35}

The Constitution of the Kingdom of Bhutan reinforces the pre-eminence of the Buddhism and certain entitlements to Buddhist religious institutions, merely mentioning that the Druk Gyalpo is ‘the protector of all religions’ (Article 3(2)), and the country’s national anthem acknowledges the Lord Buddha. Only the Dzongkha language is given any status (Article 1 (8)), and nowhere is there any mention of other linguistic, religious or ethnic minorities, nor of minorities having any rights in the Kingdom. The constitutional provisions that refer to culture (for example, Article 4) are worded in such a way as to not acknowledge any diversity. At most it seems to suggest culture is seen as mainly those from Buddhist and Tibeto-Burman traditions (paragraph 1 for example refers to traditional Buddhist sites of interest, such as the Goendey which is a type of monastic community).

5.1 The link between the denial of human rights such as discrimination and poverty for minorities

A large number of international organisations, including the Asian Development Bank (ADB), have recognized the vulnerability of certain socially or culturally distinct groups such as minorities to being disadvantaged in comparison with mainstream society,\textsuperscript{36} and the need to

\textsuperscript{33} See Planning Commission, Royal Government of Bhutan, \textit{Bhutan 2020: A Vision for Peace, Prosperity and Happiness, 1999, Part II}, pp. 37 and 38, where for example the heritage artefacts described for conservation and protection seem to be exclusively Buddhist, as well as the traditional arts and crafts described.


\textsuperscript{35} Ibid.

\textsuperscript{36} The Asian Development Bank defines ‘indigenous peoples’ as a generic concept that includes cultural minorities, ethnic minorities, indigenous cultural communities, tribal
focus on their participation in development. The recognition and right to own property is often deemed a central aspect for development purposes:

43. Key issues that should be considered as the Bank addresses indigenous peoples matters, and the continuity and development of indigenous peoples communities, include (i) legal recognition of ancestral domain and the traditional rights of indigenous peoples over land and resources, (ii) recognized legitimacy of the indigenous social and legal institutions of indigenous peoples, and (iii) recognition of the right of indigenous peoples to direct the course of their own development and change.

Minority Rights Group International has also made the linkage between discriminatory practices in the field of development, and the negative impact this may have for minorities:

71. In the implementation of the MDGs [Millennium Development Goals], governments will need to pay particular attention to indirect discrimination, which occurs where policies employed by the government to achieve the MDGs unintentionally causes disproportionate and/or unjustifiable harm in the form of human rights violations against minority groups. For example, an HIV/AIDS public education campaign may only be presented in the majority language or according to majority cultural practices, thus inhibiting the ability of minorities to benefit from such campaigns. Impact assessments for all proposed MDGs strategies may help to overcome some of this indirect discrimination. Of equal importance are opportunities for minorities themselves to participate in the development of proposed projects and to continually monitor the impact of such projects through the project cycle. The collection of disaggregated data can help reveal possible indirect discrimination effects.37

Here also, land ownership security is deemed important in relation to poverty as it is linked to other human development issues such as income generation and food security:

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For many minorities and all indigenous peoples, land is also integral to their cultural lives. Displacement or loss of land threatens the very identity of the communities... While many poor people will prioritise land issues, minorities and indigenous peoples have much more critical issues at stake (in terms of cultural rights) and much less chance that the state will protect their interests. Therefore, giving particular attention to resolving the land rights disputes involving minorities and indigenous peoples can yield a high return in terms of achieving the MDGs.38

In a more general sense, it is absolutely clear that systematic discrimination against minorities is one of the main contributing factors in poverty:

One way to improve poverty reduction strategies is to identify minority and indigenous communities and to understand the circumstances of their poverty. Minorities and indigenous peoples may be poorer because they have been denied citizenship and thus lack access to social services. Many Afro-descendants in Latin America, for example, lack birth registration and identity documents, which limits their access to social assistance and to formal sector employment. Minorities and indigenous peoples may live in regions that have been under-developed. The impact of discrimination is key. Systematic discrimination reduces individuals' ability to benefit from and to contribute to human and economic development. Discrimination can lessen individuals' prospects for decent health, housing, education, financial credit, or political participation. Even with pro-poor growth strategies, discrimination will continue to be a barrier for minorities and indigenous peoples unless it is tackled directly through anti-discrimination legislation, enforcement mechanisms and special measures in development programmes to overcome the impact of discrimination.39

Various and indeed numerous reports and studies have confirmed the links between many of the world’s violent conflicts and inequalities in access to services, resources, opportunities or political power, which in turn are

38 Ibid, paragraph 73.
central to poverty issues for minorities. There is however the need to be extremely cautious here. ‘Successful’ development strategies may be destabilising if minorities are in fact disadvantaged and excluded:

Development projects that harm minorities, for example, due to displacement, and benefit other groups can generate anger from minorities particularly when compensation is not forthcoming and consent is not sought. Development policies that have a differential impact on minorities, such as trade liberalization that harms a traditional livelihood pursued by a minority group, may inadvertently worsen the situation of minorities. Even when overall GDP is increasing, the inequalities experienced by minorities may persist or increase, fuelling resentment and dissatisfaction with the inadequate response from government and international actors… [Minorities] are displaced across borders only to find themselves further impoverished and excluded as refugees; this displacement can lead to further conflict.

The main poverty risks for a number of minorities may be the denial of land rights to non-citizens, which in Bhutan essentially means members of the Nepali-speaking Hindu minority who are refugees or may not be able to prove that there are ‘full-blooded’ citizens. The most direct way to redress this poverty risk is to attempt, as outlined in some of this report’s recommendations, to modify the current wording of the draft constitution (and existing legislation) so that it is not discriminatory in the requirements for naturalisation. Failure to do so, and adoption of a constitution which limits the right to land ownership to citizens with minorities such as the Lhotshampas finding it extremely difficult if not impossible to be naturalised, would mean that they will be effectively and probably permanently excluded from many of the benefits which may flow from development activities linked to land rights.

In terms of land ownership and its ensuing potential effects on poverty and development activities, the Royal Government of Bhutan has been resettling Drukpa Bhutanese in the southern part of the country on lands formerly owned by ethnic Nepalese who are now living in refugee camps. Contrary to some official statements, not all the land is being given to

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landless northern Bhutanese citizens. Reports by Habitat International, for example, point out that some soldiers and police officers have been receiving some land holdings, especially those closer to roads. Because no land can be owned by a non-Bhutanese citizen and legislation in place also provides for the recovery of abandoned agricultural land by authorities, tens of thousands of Lhotshampas who left the country are likely to have lost all of their property, though some have received some compensation at the time of their departure. Potentially, even if many of these were to return (though this appears unlikely since almost all of these would have to re-apply for citizenship and cannot comply with the very strict naturalisation requirements), they would be destined to severe hardship and threatening poverty because of their lost of land rights. This is once again a policy which is potentially discriminatory, as it has a clear-cut ethnic and religious dimension.

Other minority groups may have particular land use patterns based on traditional livelihoods (e.g. pastoralist yak herders). Protection of their land is therefore linked to protection of their cultural identity, a key feature of minority rights. The Ninth Plan foresees the review of land-use policies and related legislation. It is important that accommodation is made for the traditional practices of minority groups in land-use, so that they are able to pursue a sustainable pattern of land-use that meets their stated development needs, rather than displacing or resettling such groups against their wishes.

5.2 The emasculation of the human rights of minorities in the new constitution

While the cultural, linguistic and religious tableau of Bhutan is one of great diversity, this is not recognised to any significant extent in the country’s legal regime, including the constitution. The vision of Bhutan as a society is, despite its diversity, currently defensive: in order to ensure its ‘cultural imperative’, a monolingual, mono-religious view of the Kingdom is enforced, sometimes against the will of many of its large minority populations and in breach of a number of fundamental human rights.

After the expulsion of many ethnic Nepalese in the early 1990s, discriminatory measures with regard to ethnic minority
The human rights record of the Royal Government of Bhutan is poor, and human rights are not protected to any significant degree in the country. While the 2008 *Constitution* contains a number of human rights provisions, the document itself – and even its human rights provisions – is highly discriminatory and reflects extreme forms of ethnic and racial preferences. Some of the most basic of individual human rights unanimously recognised as universal in international law – including freedom of expression, freedom of religion, freedom of movement, right to work, and the right to own property are only available to ‘citizens’. This is a rather startling breach of the most basic of human rights standards since it is absolutely clear that in international law these rights must be made available to ‘any person’ within a state’s jurisdiction and cannot be limited to a ‘citizen’.

The *Constitution of the Kingdom of Bhutan* systemically enshrines the violation of some of the most fundamental of human rights, many of which are also part of international customary law. A number of provisions of the two treaties which Bhutan has ratified are also violated: in the case of the *Convention on the Rights of the Child*, the *Constitution* is clearly inconsistent with, for example, Article 7(2) (freedom of expression), Article 7(4) (freedom of religion), Article 7(12) (freedom of association), etc. as these are under the treaty available to any child, not only to children who are already citizens as restricts the country’s *Constitution*. These are the most severe obstacles for many thousands of individuals.

Furthermore, the concept of citizenship in Bhutan is not race or ethnically neutral as might be assumed from first impressions: the Constitution’s Article 6 indeed recognises two broad categories of citizens: natural and by naturalisation. Unless a person is able to show that both parents hold Bhutanese citizenship – and this would affect many ethnic Nepalese in all likelihood – they are not considered ‘natural’ citizens of the country. Almost all of the Nepalese refugees outside of Bhutan (only 239 were deemed to be citizens) need to be naturalized. Very few of them, contrary to the impression Royal Government of Bhutan authorities may have

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given, are able to satisfy the stringent and ethno-centric requirements such as the ability to speak and write Dzongkha (which a majority of Bhutanese probably cannot write in any event); ‘have a good knowledge of the [presumably Buddhist] culture, customs, traditions and history of Bhutan’, and ‘no record of having spoken or acted against the Tsawa-Sum’ (a rather fluid concept that could it seems encompass the King, the country and the people of Bhutan).

In other words, a huge range of rights are effectively denied to a large percentage of the country’s minority population which may find it next to impossible to establish or obtain citizenship because of these religious, linguistic and cultural aspects in the citizenship and fundamental rights provisions that are highly suspect and discriminatory. This will automatically, almost irreversibly, have serious flow-on consequences in terms of land rights, access to services, as well as to employment and even educational opportunities. In essence, there is only a refugee problem because Bhutan has created one by a definition of citizenship that is discriminatory. In practice, mainly Hindu Nepali-speaking individuals are ‘rejected’ under legislation and the new, supposedly ‘democratic’ Constitution of the Kingdom of Bhutan.

It should be made clear at this point that there is in international law no general and automatic right to citizenship of a particular State. However, as with any other State activity, once a government decides to ‘act’ or provide an ‘advantage’ or ‘privilege’, it must do so in a non-discriminatory way. In other words, once a government decides to grant citizenship to individuals through a naturalisation process or any other procedure, it must respect fundamental international human rights law and especially non-discrimination. On the one hand, it is true that States are free to impose language and other requirements as part of their naturalisation processes, since the decision on whether or not to grant citizenship is clearly a prerogative of the State. On the other hand, since non-discrimination is a basic human right in international law, it applies also to language, religious and cultural requirements for citizenship or naturalisation purposes. If these requirements are unreasonable or unjustified given the situation existing in a particular State, then it would be discriminatory if it can be shown that these unreasonable or unjustified requirements were intended or had the effect of denying citizenship to individuals on the basis of their

45 Though see the slightly different view in Amnesty International, Bhutan: Nationality, expulsion, statelessness and the right to return, ASA 14/001/2000, 1 September 2000.
language, religion or race. As indicated earlier, the issue of citizenship is particularly important for minorities and their rights since by denying citizenship to a large number of individuals, some States have been able to deny to large segments of their inhabitants a variety of rights and privileges. This of course is especially true in the case of Bhutan and members of the Lhotshampas.

The Constitution is also in all likelihood discriminatory in its naturalisation requirements. As confirmed in international decisions, it is of course possible perhaps even natural to have linguistic naturalisation requirements. However, these can be from a legal point of view ‘unreasonable’ and therefore discriminatory if they are unconnected to ‘the specific conditions of the society in which the people live’. A naturalisation policy which shows a marked preference for the official language would generally not be in breach of non-discrimination. However, if a substantial percentage of the State’s own inhabitants who belong to a minority cannot become citizens, some aspects of the naturalisation laws could arguably be said to ‘operate in a vacuum’ and therefore be unreasonable if they do not take into account the social, historical and demographic realities of the State. The requirements of having to be able to speak and write Dzongkha (which a majority of Bhutanese probably cannot write in any event); to ‘have a good knowledge of the [presumably Buddhist] culture, customs, traditions and history of Bhutan’, and to have ‘no record of having spoken or acted against the Tsawa-sum’ are, to say the least, extreme and would have the effect to excluding a large number of individuals from specific minority groups – namely, non-Buddhist non-Drukpa groups – from being able to be naturalised. In the circumstances, the terms would almost certainly be deemed unreasonable and unjustified, and therefore prohibited from the point of view of discrimination in international law.

There are other breaches of the standards one would normally not expect in a state under the rule of law consistent with basic human rights and democratic principles. Despite the multicultural composition of the population of the country, the Government of Bhutan has essentially adopted an ethnic philosophy for the Kingdom which takes the form of an

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official policy from 1989 of Driglam Namzha (‘the way of conscious harmony’). Covered both inner attitudes and outward behaviour, it requires all citizens, including minorities, to wear the traditional dress of highland Bhutan (‘gho’ for men; ‘kira’ for women) in all public places, and strictly enforced this law for visits to Buddhist religious buildings, monasteries, government offices, in schools, and when attending official functions and public ceremonies. As part of a ‘Bhutanization’ process but also linked with one of the nine policy objectives in Bhutan’s Five-Year Plans - the promotion of national identity - it imposes one set of cultural norms on individuals even if these are from an ethnic minority, preventing them from enjoying their own culture with other members of their community in a manner which would appear discriminatory.

Even the Marriage Act, 1980 (amended in 1996) has a discriminatory impact on minorities. Individuals married to a non-Bhutanese could not obtain certain promotions in the civil service, could not work in the defence department or in the Ministry of Foreign Affairs, were not entitled to a range of services such as ‘distribution of land’, ‘cash loans’, ‘seeds for cultivation’, ‘treatment abroad’, etc. The children from these ‘mixed’ marriages were not automatically entitled to citizenship and would not automatically be admitted to schools. The impact of this legislation was most noticeably visible among members of the Nepali-speaking minority.

No human rights groups established by ethnic Nepalese exiles are permitted to operate in Bhutan, contrary to freedom of association, as the Royal Government of Bhutan considers them to be political organisations. Indeed, NGOs are officially registered in Bhutan.

While there is no law barring ethnic Nepalese children from attending school, it should be noted that many primary schools in southern areas where the Nepalese are mainly concentrated were closed in 1990, and most still remain so till this day. Teaching in the Nepali language was also banned in schools after 1990. A system of security clearance forms severely limits a number of opportunities available to ethnic Nepalese children and youth, since the children of parents who have been deemed ‘anti-nationals’ will be denied security clearance. The security clearance forms in their effect and implementation are highly discriminatory, impacting as they do disproportionately against the Nepalese minority and are creating for them quite severe obstacles in terms of access to some jobs and services.

Access to employment opportunities in the civil service is also arguably discriminatory against many minorities as aspirants to the civil service
must demonstrate some written fluency in Dzongkha, a language preference which in the context of Bhutan is probably disproportionate and unreasonable.

Freedom of movement is also still restricted, and it too has an ethnic dimension in practice which could be deemed discriminatory. Members of the Lhotshampas minority in particular may have difficulty obtaining a security clearance certificate because of their or their relatives’ past ‘anti-national’ behaviour, and therefore have difficulty getting a driving licence. This also means they may have problems travelling in or out of the country.

While some of the major Hindu religious days are public holidays, this is almost the extent of the acceptance of religious diversity. There are continued reports on limits to the freedom of religion of non-Buddhists, mainly Hindus and Christians, as well as discriminatory practices against members of these religious minorities:

Religious communities must secure government licenses before constructing new places of worship. Reports by ethnic Nepalese citizens suggested that this process was biased toward Buddhist temples. The Government provided financial assistance for the construction of Drukpa Kagyupa and Ningmapa Buddhist temples and shrines. Monks and monasteries of the Ningmapa school also received some state funding. NGOs reported that the Government rarely granted permission to build a Hindu temple; however, the Government provided some scholarships for Sanskrit studies at Hindu-language universities in India. Followers of religions other than Buddhism and Hinduism generally were free to worship in private homes, but they could not erect religious buildings or congregate in large groups in public. There were no Hindu temples in Thimphu, despite the migration of many ethnic Nepalese to the capital city. However, the King has declared major Hindu festivals to be national holidays, and the royal family participates in them. NGO representatives living outside of the country reported that Drukpa Kagyupa and Ningmapa Buddhist religious teaching is permitted in schools, but that other religious teaching is not.48

This is unlikely to change despite the supposed movement towards more direct democracy under the new Constitution. No political party which might support specific minority, region, language or religion would be

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permissible under Article 15(4). Ironically, this does not apply to the clear dominance of the Dzongkha language, Buddhism and other cultural attributes of the Tibeto-Burman majority which are elevated throughout the Constitution – to the exclusion of all others.

Arguably, the policy objective of ‘one nation, one people’ which some of the Bhutanese policies espouse is one which at first glance would seem to disregard the diversity of the country’s cultures in favour of imprinting, as part of the Kingdom’s cultural imperative, a Drukpa national identity which is essentially Buddhist, linked by one language (Dzongkha) and culture. In linguistic terms, the (apparent) exclusive use of Dzongkha as the language of government is quite unreasonable and unjustified in the context of Bhutan, where a very large segment of the population, perhaps even a majority, cannot speak or write it fluently. In effect, using exclusively one language to the exclusion of all others may be considered discriminatory in international law if it has the effect of excluding or disadvantaging individuals in terms of access to services or benefits, unless justified in the circumstances. 49 While linguistic and cultural diversity are values that ought to be reflected in the policies and programmes of the Royal Government of Bhutan, it is additionally clear that linguistic, religious and cultural preferences cannot be discriminatory. Given that large number of speakers of non-Dzongkha languages are disadvantaged and completely excluded, only mandating the official use of Dzongkha in the name of cultural integrity and safeguarding the national language is contrary to non-discrimination.

The effects of this discriminatory language policy for the exclusive use of Dzongkha cannot be minimized. In terms of education, it means that children from non-Dzongkha backgrounds would tend to be disadvantaged. Studies in the area of education show clearly that overall, and especially in primary years of education, students benefit most when they are taught in their maternal language. A non-discriminatory language policy is one where a minority language is taught roughly in school in proportion to its numerical importance and concentration, and as acknowledged by some of the world’s leading experts in the The Hague Recommendations referred to earlier.


In social and economic terms, having one’s language used by state officials is a benefit: it creates on one hand employment opportunities for
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those who are fluent in it, as well as shows that the government is responsive to the needs of that segment of the population and acknowledges their presence and importance. On the reverse side, not using at all a minority language despite its large population within a state means less employment opportunities for those who are not fluent in the official and exclusive state language, less social mobility in the higher echelons of the public service where official language skills are at a premium, and possibly difficulty if not exclusion from being able to access and enjoy a wide-range of public, social and even health services which may be premised to some degree on official language ability. In other words, the language regime in Bhutan risks pushing a large number of non-Dzongkha speakers into a vulnerable and disadvantaged position within Bhutanese society, with accompanying risks of marginalisation and exclusion. This is not only contrary to the right of non-discrimination, but also inconsistent with the Oslo Recommendations and its principle of proportionality of use of a minority language by public officials which enshrine this and other basic human rights.

Broadly speaking, many laws and policies of Bhutan have a huge discriminatory impact, tend to exclude any recognition of cultural diversity, impose an ethnic concept of the state that marginalizes or excludes many minorities, especially those of a non-Buddhist background, and may result in limited access to land, services or employment for these minorities and ensue in continuing tensions and perhaps a resurgence of violent conflict.

As for the Constitution, in addition to the major concerns outlined previously where it clearly breaches fundamental human rights standards, there are a number of other sections that seemed inconsistent with what is expected under international human rights law. Article 3 on the country’s spiritual heritage clearly states that this is meant as Buddhism to the exclusion of all other religious beliefs. This is in effect declaring Buddhism as the state’s official religion, which in itself is not automatically contrary to the global human rights regime and international law. However, Article 3 goes on to state that ‘It shall be the responsibility of religious institutions and personalities to promote the spiritual heritage of the country while also ensuring that religion remains separate from politics in Bhutan. Religious institutions and personalities shall remain above politics.’ While it remains to be seen how exactly this provision is going to be interpreted and applied in practice, it would at first glance seem to impose a duty on even non-Buddhist religious leaders and institutions to promote Buddhism since only Buddhism is identified as
being part of the country’s spiritual heritage – something which in all likelihood would not only be resisted but also inherently appear suspect in light of freedom of religion and non-discrimination. The prohibition against anything ‘political’ is also dangerous and would also appear to breach freedom of opinion and expression if it prevents individuals and religious institutions from voicing legitimate concerns only because they are deemed ‘political’.

Article 4 of the Constitution would also be discriminatory in that it seems to portray only Buddhist/Drukpa culture as warranting protection and promotion. While it is not absolutely clear what this provision entails, and there may be scope to include other cultures within its purview, its wording appears to indicate that Bhutanese authorities might protect and financially support only Buddhist/Drukpa manifestations of culture. This would in effect be discriminatory.

As indicated earlier, Article 6 of the Constitution on naturalisation is extraordinarily harsh and exclusionist, with requirements that could permit rejecting the naturalisation of almost anyone who has even criticised the King or government or ‘people’ of Bhutan. From a human rights basis, these and the unusual language requirement – given its actual usage in the country by so few people overall – make this provision clearly discriminatory in effect, as it will serve to exclude large number of people on what is in truth an ethnic or racial basis.

All of the fundamental rights in Article 7 of the Constitution that are limited to citizens are in breach of international law except the right to vote and to hold elected office may be legitimately limited to citizens from an international human rights point of view. Indeed, it appears beyond any reasonable doubt that the Constitution is perpetuating a form of ‘disguised’ racial discrimination: since mainly non-Buddhist/Drukpa cannot be naturalised, the limitation of the exercise of these rights to citizens in the Constitution perpetuates “formalised” racial (as well as religious, cultural and linguistic) preferences that would be deemed unreasonable and unjustified, and thus discriminatory.

The Constitution is particularly troubling in Article 7(9) where it limits the right to own property to citizens, but also restricts the sale or transfer of land to non-citizens. Given the racial preferences in the naturalisation provisions of Bhutan, this once again has a racial and exclusionist effect against minorities in particular. Mainly members of minorities, especially Nepali-speaking Hindus, will lose or not be able to own property, which in
some cases they may have been holding for generations. Loss of property rights is one of the prime factors in poverty affecting minorities in many countries, and this discriminatory provision will thus have hugely negative impact and risk creating a poor sub-class of society among some of the country’s minorities.

The strict restrictions on the formation of political parties in Bhutan in the Constitution’s Article 15 are also inconsistent with international law and the global human rights regime. It not only limits the political scene in Bhutan to a maximum of two parties: one forming the government, and one in opposition essentially, it prevents any of these political parties from taking up the cause of particular minorities since its membership cannot be based on region, sex, language, religion or social origin, it must be broad-based ‘with cross-national membership and support and is committed to national cohesion and stability’, and it cannot ‘receive money or any assistance from foreign sources, be it governmental, non-governmental, private organizations or from private parties or individuals’. This imposes a significant restriction on the freedom of association which would not be permissible in international law. In practice, it also may mean minorities are unable to effectively participate in the political affairs of the state, since their voices and concerns run the risk that they will simply always be outvoted and therefore marginalised by the majority.

Finally, the Constitution’s Article 23 on elections has a restriction which is in effect probably discriminatory: the requirement ‘not be married to a person who is not a citizen of Bhutan’ would mainly affect minorities, especially Nepali-speaking Hindus, who for a number of reasons have historically often had spouses from outside Bhutan. Combining this with the discriminatory citizenship provisions means that a significant segment of this minority population is disenfranchised and unable to run for office and be elected under the Constitution.

6. Conclusion

Bhutan has moved in 2008 towards a defensive ethno-religious, even racial, concept of the state. The new Constitution of the Kingdom of

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50 Freedom of association is a universal right guaranteed in all major international human rights documents: Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant for Civil and Political Rights, and Article 11 of the European Convention on Human Rights. Freedom of association for minorities is enshrined in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities at Article 2.4 and 2.5.
Bhutan and the country’s legislation unambiguously serve to reinforce what in many respects can be considered a rejection of minorities and diversity and enshrine measures that continue the systematic violation of many of the basic human rights of the country’s minorities – especially the Lhotshampas. The concern in maintaining the political ascendance of the Drukpa at all costs and of preserving Bhutan as a Buddhist enclave in the Himalayas has unfortunately led to this small kingdom’s having in place some of the most racially discriminatory laws and practices in the modern world.