

ANALYSIS OF NEPALESE CITIZENSHIP LAWS FROM A GENDER PERSPECTIVE



NATIONAL WOMEN COMMISSION



FORUM FOR WOMEN, LAW AND
DEVELOPMENT (FWLD)

Analysis of Nepalese Citizenship Laws from a Gender Perspective



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Forum for Women, Law
and Development

February 2014

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FOREWORD

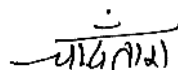
Various changes in Nepal have allowed for a remarkable increase in the awareness of women's rights. Though political changes have created a conducive environment for raising issues of class, ethnicity and gender, it has been challenging to guarantee these rights in the constitution.

National Women Commission is an autonomous body with perpetual succession operating under the National Women Commission Act (2006) and the National Women Commission Rules (2008). The Commission formulates national policy and programs concerning the rights and interests of women and presents it before the Government of Nepal for implementation. The Commission also monitors the implementation of provisions from international treaties to which Nepal is a party as well as domestic laws. The Commission reviews, monitors and evaluates policies and programmes aimed to bring women into the mainstream and makes recommendations to the Government of Nepal for effective implementation.

The Commission is dedicated to work toward the elimination of gender discrimination. In this regard, National Women Commission has conducted an analysis of prevailing Nepalese citizenship laws from the gender perspective. The Interim Constitution of Nepal (2007), the Nepal Citizenship Act (2006), the Nepal Citizenship Rules (2006), as well as two directives are in place to deal with citizenship issues in Nepal.

Nepalese women and their children still encounter many complications when applying for citizenship certificates. It is one of the major concerns of National Women Commission. This document has analysed the problems relating to citizenship, the problems existing in the prevailing Nepalese law, and the problems faced by Nepalese women and their children in obtaining citizenship. The analysis has recommended measures to address the problems in the current citizenship laws of Nepal.

I would like to express my sincere gratitude to Honorable Member of National Women Commission Ms. Mohna Ansari and Advocate Luma Singh Bishowkarma for their valuable contribution and unceasing efforts in the preparation of this comprehensive analysis. Finally, I would also like to thank all the personnel of National Women Commission who are involved in this work.



Sheikh Chandtara

Chairperson
National Women
Commission

○ **Introduction**

The Interim Constitution of Nepal (2007), the Nepal Citizenship Act (2006) and the Nepal Citizenship Rules (2006) are the main legal documents governing citizenship issues in Nepal. The Government of Nepal also issued two sets of directives on citizenship: the Citizenship Certificate Distribution Procedures Directives which were issued in 2007 and the Directives for Citizenship Certificate Distribution Team which were issued in 2013. Current citizenship laws are considered discriminatory on the basis of gender. In particular, the laws curtail women's right to convey citizenship to their children independently.

This document analyzes gender related problems relating to citizenship in the current citizenship laws of Nepal, highlights difficulties experienced by Nepalese women, their children and foreign men married to Nepali women while accessing citizenship documents and makes a number of suggestions to solve the identified problems.

○ **Nepal's Obligation under International Human Rights Treaties**

Nepal has committed to fulfill its obligations under the human rights treaties it has ratified, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Civil and Political Rights (ICCPR) among others.

The CEDAW requires that States grant women equal rights as enjoyed by men with respect to citizenship, including their right to conveying nationality to children (Article 9). In 2004, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), which monitors state compliance with the CEDAW, expressed particular concern that Nepalese laws preclude Nepalese women from passing their nationality on to their children.¹

The CEDAW Committee, considering the report of Nepal in July 2011, recommended that women be granted full and equal rights in terms of transmitting citizenship to their children, training programmes be implemented for Government officials at all levels on legal provisions related to the transfer of citizenship and widespread citizenship distribution campaign to issue citizenship certificates be carried out.² The CEDAW Committee also recommended that the provisions of CEDAW be taken into consideration while drafting the new Constitution.

The right of children to acquire a nationality is also guaranteed by the CRC. Article 7(2) requires state parties to ensure the implementation of this right in accordance with their national law and their obligations under the relevant international instruments, particularly where children would otherwise be stateless.

Article 1(2) and 5 of the CERD establishes that the right to nationality (citizenship) should be free from discrimination on the basis of race, colour, or national origin. In 2004, the CERD Committee, which monitors compliance with the CERD, called on all of the state parties to reduce statelessness among children, specifically by ensuring that they are permitted to access citizenship from either their mother or father.³

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1. Concluding Observation of the CEDAW Committee to Nepal, para.198, A/59/38 (2004).
 2. Recommendation of the CEDAW Committee to Nepal in 2011, para. 25, 26 & 49 (CEDAW/C/NPL/CO/4-5)
 3. General Recommendation No. 30, "Discrimination Against Non-citizens, 2004".

Article 24 of the ICCPR guarantees that every child has the right to acquire a nationality. The Human Rights Committee, which monitors compliance with the ICCPR, established that state parties are required to adopt every appropriate measure, both internally and in cooperation with other states, to ensure that every child has a nationality when he or she is born. Apart from that, the Human Rights Committee also established that the right of children to acquire a nationality should not be impeded by practices which discriminate on the basis of children born to stateless parents, out of wedlock, or based on the nationality of one or both parents.⁴ In addition to recognizing children's right to a nationality (Article 24), the ICCPR establishes an affirmative obligation on the part of state parties to take measures to give full effect to this right, including the passage of appropriate laws (Article 2).

In short, Nepal has obligations under international human rights treaties it has ratified to ensure equal and non-discriminatory citizenship rights to women as well as to prevent and reduce cases of statelessness and ensure that eligible Nepalis are issued citizenship certificates.

○ **Problems in the Current Citizenship Laws and in its Implementation**

There has been criticism of current Nepalese citizenship laws, as they are discriminatory on a gender basis. Current citizenship provisions curtail the rights of women to convey citizenship to their children. These provisions also do not permit Nepalese women to pass on citizenship to their foreign husbands. This section describes the problems in current citizenship laws and in their implementation.

4. General Recommendation No. 17.

A) Restriction on women's right to convey citizenship to their children

Article 8 (2) of the Interim Constitution of Nepal 2007⁵ and Section 3 of the Nepal Citizenship Act 2006⁶ have guaranteed that Nepalese women can pass on citizenship to their children by descent independently. Despite this provision, local officials often refuse to issue citizenship documents to children on the basis of their mother's citizenship certificate alone, even though the father of the child is Nepalese. There are many cases where Nepalese women have been denied their right to transfer citizenship to their children by descent independently across Nepal. Some of these cases were brought to the Supreme Court of Nepal. In these cases, the Supreme Court also issued decisions to grant citizenship to children in the name of their mother.⁷

However, the right of women to convey citizenship to their children has been significantly curtailed by the provision in Article 8(7) of the Interim Constitution of Nepal 2007, which stipulates that Nepalese women may not do so in cases where the father is a foreigner.⁸ There is no similar restriction for Nepalese men married to foreign women. By virtue of this provision, a Nepalese mother has to prove that the child's

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5. Article 8 (2) - At the commencement of this Constitution, the following persons who have their domicile in Nepal shall be deemed to be citizens of Nepal by descent
 - (a) a person who has acquired citizenship by descent before the commencement of this Constitution, and
 - (b) any person whose father or mother was a citizen of Nepal at the birth of such person.
 6. Section 3 (1) - A person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent.
 7. Ranjit Thapa vs. Prime Minister and the Office of the Council of Ministers *et al.* Writ no. 2065-WO-0035 decided on 2066/3/12 (26 June 2009). Sabina Damai vs. District Administration Office, Dolakha *et al.* Writ no. 067-WO-0703 of 2067 BS decided on 2067 Falgun 15 (27 Feb 2011).
 8. Article 8(7) of the Interim Constitution of Nepal 2007 states “Notwithstanding anything contained elsewhere in this Article, in the case of a person born to a woman citizen of Nepal married to a foreigner, if such a person is born in Nepal and has been residing permanently in Nepal and has not acquired citizenship of the foreign country by virtue of the citizenship of his or her father, he or she may acquire naturalized citizenship of Nepal according to the existing law”.

father is a Nepalese citizen to confer the citizenship to her children by descent. It is nearly impossible for a Nepalese woman to convey citizenship to her child without the support of the child's father (her husband). As a result, such children are deprived from exercising and enjoying their basic rights.

BELOW ARE SOME EXAMPLES

- ▲ A woman⁹ from Baitadi district has not obtained her citizenship certificate yet. “my husband is missing and I do not have my husband's family's support. I have affidavit witnessed by 8 citizens of my village. I have been denied citizenship certificate because I do not have a marriage registration certificate and I am unable to bring a person from my husband's side to vouch for citizenship certificate (sanakhat).”
- ▲ A girl from Kapan VDC of Kathmandu district submitted her application to obtain citizenship certificate in her mother's name as her parents were divorced and her father was missing. “I submitted document establishing relationship between me and my mother from the Kapan VDC, a recommendation from the Kapan VDC, document of verification of record of my mother's citizenship issuing authority and affidavit from Hanuman Dhoka Police Office, Kathmandu. However, I was denied a citizenship certificate by the District Administration Office, Kathmandu stating I failed to bring a person from my father's side to vouch for my citizenship certificate.”
- ▲ My father died and there are no family members available from my father's side. My mother obtained a citizenship certificate in 1981 in which my mother's marital status has been indicated

9. Identity of the individuals has not been revealed respecting confidentiality.

SUICIDE BECAUSE OF DENIAL TO TRANSFER CITIZENSHIP

A thirty five year old woman, resident of Bhaktapur District Bhaktapur Municipality Ward no. 4 who working as a cook in Mount Valley English School had one son, who had attained 18 years of age. Her husband went to Japan quite earlier and did not return to Nepal. Despite her efforts, she was unable to provide Citizenship Certificate to her son as her husband's family members denied recognizing him as they feared they would claim property. At last, she committed suicide by hanging herself on 3rd August 2013.

as unmarried. We have submitted applications together with citizenship certificate of our mother, death registration certificate of father, birth registration certificate issued by the Hospital and academic (SLC) certificates. However the District Administration Office of Lalitpur denied to issue citizenship certificates for us stating that our mother obtained a citizenship certificate mentioning unmarried in 1981 and an unmarried mother cannot transfer citizenship to her children.”

- ▲ A woman from Ayodhyapuri VDC, Chitwan district “I approached Ayodhyapuri VDC office to transfer citizenship to my child but the VDC office told me that I will only be issued recommendation for citizenship certificate for my son if I come with my first husband who was a Nepal army personnel and abandoned me.”
- ▲ A woman from Solukhumbu district does not have her citizenship certificate. “My husband is not in contact with me since 1996 and his whereabouts are not known. I have my son’s birth registration certificate and recommendation from VDC office to enroll my son to school. I was denied to issue recommendation for citizenship

ATTEMPTED SUICIDE

A woman resident of Kathmandu Metropolitan City Ward no. 11 Babarmahal married a man who as an orphan and did not know any of his family members. He did not possess citizenship certificate. They have one son and one daughter. The woman has a Nepalese citizenship certificate which she obtained prior to her marriage through her parents' name. She tried very hard to transfer her citizenship to her children through her name and approached the Ward Office of Kathmandu Metropolitan City several times to get recommendation for citizenship certificate but the Ward secretary refused to issue recommendation for citizenship. Despite her tireless efforts, she was unable to transfer citizenship to her children through her name. She swallowed some poison and attempted to commit suicide on 06 September 2013 however her husband was able to rush her to the hospital and saved her life.

certificate stating I failed to produce a marriage registration certificate and citizenship certificate of my husband.”

- ▲ A child from Kathmandu district submitted an application for citizenship certificate together with his birth registration certificate. “My father is missing. The District Administration Office of Kathmandu denied to issue me a citizenship certificate stating that I failed to bring a person from my father’s side to vouch for my citizenship certificate.”
- ▲ A boy and a girl from Lalitpur district stated “our father is not in contact with us for long time. We submitted applications for citizenship certificates together with our mother’s citizenship certificate, copy of our birth registration certificates, migration certificate, academic certificates (mark sheets) and receipts of land tax from Lalitpur District Development Committee. However, the

MURDERED WHEN ASKED FOR CITIZENSHIP

Kantipur Daily

• **Kantipur Reporter**

Nijgadh [Bara district] 10th September - Police investigation had revealed that Mofidun Nesa, 22, of Prostoka was murdered last Wednesday night. When she pressurized her husband and mother-in-law to make her citizenship [certificate], she was murdered tied with a rope, said the police. According to the police there were simple bruises in her body and her bangles were broken down in the defense of the murder.

Police has arrested the accused Nesa's mother-in-law Nurbani Khatun, 45 and taken her into police custody with the court's remand for the further investigation. Nesa's father Saifullah Ansari had filed the FIR against his son-in-law and his [son-in-law's] mother and on that accord police had arrested Khatun and started the investigation. According to the police investigation Nesa was murdered on Wednesday night (4th September). 'After her marriage, Nesa had pressurized [her in-laws] by complaining to the Administration [District Administration Office] demanding to make her citizenship. Lacking to accept the pressure and as per the compromise concluded in the police, her citizenship certificate was made but her mother-in-law and husband murdered her within a month of obtaining the citizenship certificate', said investigation officer Ramnath Ghimire. He further added, 'though four years had passed after marriage Nesa was deprived of being mother due to family conflicts.' According to police she was ignored by her mother-in-law and husband since before.

Nesa's father said that his son-in-law and his mother never behaved well towards his daughter and they always beat her along with physical and mental torture. 'Though four years had passed after her marriage, she could not remain happy even for four months,' said Nesa's father Saifullah. He further added, 'she was murdered within a month after issuance of citizenship as per the compromise concluded when she [Nesa] complained time and again to the Women and Children Service Centre of police and District Administration Office about torture to her and not supporting for making citizenship.

Published date: 10 September 2013 (2070 Bhadra 25)

District Administration Office, Lalitpur denied to issue citizenship certificates to us stating we failed to bring a person from our father's side to vouch for our citizenship certificates.”

- ▲ A woman, resident of Ayodhyapuri VDC-9, Chitwan said “I have a son from my first husband, an army personnel. I was abandoned by my first husband and I re-married. When I approached the authorities for my son's citizenship certificate, I was asked to come with my first husband to obtain my son's Nepalese citizenship certificate.”
- ▲ A woman, a resident of Biratnagar, Bargachhi, Morang said “my son was denied the issuance of a recommendation for citizenship certificate by the Biratnagar Municipality Secretary as my son's father (my husband) is missing”.
- ▲ A woman, from Godavari VDC Ward no. 4, has two sons with her first husband. She said “It was an inter-caste marriage. My first husband committed suicide 32 years ago. I have my first husband's death registration certificate which states that he was my husband. Godavari VDC has also issued a letter stating that both my sons were born in Godavari VDC. I obtained my citizenship certificate 35 years ago through my father's name after giving birth to my sons. When I approached the local authorities for citizenship documents for my sons, I was denied. I also approached the Lalitpur District Administration Office for my sons' citizenship certificates. There, I was humiliated and asked why I didn't remain a widow if I wanted to obtain my sons' citizenship certificates and why it was mentioned unmarried in my citizenship certificate after giving birth to my sons. The Lalitpur District Administration Office informally instructed the Godavari VDC Secretary not to issue a recommendation for my sons' citizenship certificates.”

RECOMMENDATIONS

- Nepalese women should be given full rights to convey citizenship by descent to their children independently. Presenting one's mother's citizenship certificate should be sufficient to obtain a citizenship certificate of a child.
- The mandatory requirement of receiving support of father and/or father's family members in order to obtain a citizenship certificate of children should be repealed.
- Reasons should be provided by Nepalese officials, VDC secretaries, municipal officials, DAO in writing in all cases where issuance of citizenship documents including citizenship certificates is denied.

B) Problems faced by children born to Nepalese mother and foreign father

Despite the principles of gender equality and the right of Nepalese men and women to independently convey citizenship by descent to their own children enshrined in the Interim Constitution of Nepal and the Nepal Citizenship Act, this right is significantly curtailed by other provisions that stipulate that Nepalese women may not independently convey citizenship by descent in cases where the father is a foreigner. According to Article 8(7) of the Interim Constitution of Nepal 2007, Section 5 (2) of the Nepal Citizenship Act 2006, and Section 7 of the Nepal Citizenship Rules 2006, children born to a Nepalese mother and foreign father can be naturalized in principle if they are born in Nepal, reside permanently in Nepal, and have not acquired the citizenship of another country on the basis of their father's citizenship.

Children of Nepalese women migrant workers born abroad and outside of wedlock (including survivors of rape and human trafficking) are denied issuance of documents related to citizenship, including the citizenship certificate. It is not possible for such children to obtain

citizenship through the process of naturalization. It is very difficult for such children to satisfy the legal requirements even though they meet all the criteria stipulated in the law. As the decision about whether or not to grant citizenship through naturalization by the government is discretionary, the Government retains the right to deny such applications even though all of the statutory requirements are met.

To date, there has not been a single known case of a child born of a Nepalese mother and a foreign father successfully acquiring Nepalese citizenship through naturalization even though the relevant legal provisions have existed for more than six years. Moreover, there is no provision stipulating a specific timeframe for Government of Nepal to reach a decision.

SOME EXAMPLES OF DENIAL OF NATURALIZED CITIZENSHIP

▲ ***The story of a man from Nuwakot District:***¹⁰

“My mother is a Nepalese citizen. She married an Indian man. I don't know from which part of India he was from. He died. I was born and grew up here in Nepal. My mother has a Nepalese citizenship certificate. I married a Nepalese woman. When there was provision in the law to grant citizenship by birth, all the required documents were issued by the concerned authorities but the CDO Office told me right away that they cannot issue citizenship certificate for me. My wife, who is a daughter of Nepalese parents, has also been denied a citizenship certificate because she married me and I am a child of an Indian father. Without a citizenship certificate I am having problems exercising my rights, including obtaining a driving license.”

10. Focus group discussion (FGD) with women who were denied to obtain citizenship certificates (Kathmandu, 20 September 2010).

▲ ***The story of a woman who lives in Maiti-Nepal's shelter in Kathmandu:***¹¹

"I'm a married woman. My husband and his family live in Jhapa. Our economic situation was very poor. As per my family's decision, I went to the United Arab Emirates (UAE). I have a long and painful story. I was raped, brutally tortured, and became pregnant in the UAE. Finally, I was able to return to Nepal and have been living in a shelter in Kathmandu. I cannot go to either my husband's home or my parents' home with my baby. I have not informed them yet that I am in Kathmandu. I do not know how long I can stay here in the shelter. How can my daughter be protected in this country without any identity documents?"

- ▲ A woman from Jumla district married a man from Darjeeling, India. She stated "my husband has been living in Jumla for more than 28 years. He has been teaching in Jumla. We have two daughters and one son. Our son is 23 years old and studies for bachelor's degree. My husband renounced his Indian citizenship for the purpose of obtaining Nepalese citizenship, but it has not been approved by the Ministry of Home Affairs yet. Our children have also applied for naturalized citizenship following the current procedures but no decision has been taken yet."

RECOMMENDATION

- Laws should allow the conveying of citizenship by descent in the name of mother independently by repealing Article 8(7) of the Interim Constitution of Nepal, as it curtails the rights provided by the Article 8(2)(B). The Nepal Citizenship Act, Rules and Directives should be amended accordingly.

11. Focus group discussion (FGD) with women who were denied to obtain citizenship certificates (Kathmandu, 20 September 2010).

C) Problems faced by women who had not obtained a citizenship certificate prior to marriage

The Interim Constitution of Nepal, the Nepal Citizenship Act, and the Citizenship Rules do not contain clauses stipulating that women who married prior to obtaining citizenship certificates have to obtain support of their husbands to obtain citizenship certificates. According to the Article 8 of the Interim Constitution of Nepal 2007, Section 3 of Nepal Citizenship Act 2006, and Rule 3 of the Citizenship Rules, any person born to Nepalese father or mother is a Nepalese citizen by descent. However, in practice, married women often face significant obstacles in receiving citizenship documents, especially in cases where there is no support from their husbands or in-laws.¹² In such situations, a copy of the husband's citizenship certificate must be submitted to the concerned Village Development Committee (VDC) or to the Municipality and the District Administration Office (DAO), and the Nepalese woman must be accompanied by her husband or any member of his family. This creates problems for women, as their husband and husband's family may not want to provide them the required support in obtaining a citizenship certificate on the assumption that they may later claim property rights.

According to the Section 4(5) of the Citizenship Certificate Distribution Procedure Directives 2006, married women have to submit additional documents such as a marriage registration certificate, a copy of the citizenship certificate of their husband or father-in-law, support from (sanakhat) either their husband, mother-in-law, father-in-law, or brother-in-law, and a copy of the citizenship certificate of their father, mother, or brother from the maternal side.

12. Nakkali Maharjan vs. Kirtipur Municipality *et al.* Writ no. 0089 of 2063 BS decided on 2065/1/4 BS (16 April 2008). Ranjit Thapa vs. Prime Minister and the Office of the Council of Ministers *et al.* Writ No. 2065-WO-0035, decided on 2066/03/12 BS (26 June 2009).

EXAMPLE

- ▲ A woman, 35 years old, lives at Bhairikalikathum - 9, Dailekh. She said “my Nepalese husband was killed while returning to Nepal from India. Before, I was unaware of the importance of citizenship certificate, but now, I have realized that citizenship certificate is very important and I tried to obtain it. However, I was denied citizenship documents by the VDC secretary as none of my family members supported my application.”
- ▲ A woman, 45 years, from Dalit community lives at Rawatkot - 5, Dailekh. She said “my husband used to go to India seasonally to earn money to feed our family. He married another woman and doesn't take care of us. I live at my mother's home with my two sons. I visited the VDC office to obtain a government allowance provided to Dalit students (for my sons) enrolled in the government school. The VDC secretary asked me to present my sons' birth registration certificates. When I tried to obtain these documents from the VDC, the VDC secretary asked for my and my husband's citizenship certificates. I tried to obtain my own citizenship certificate but I was denied a recommendation for citizenship certificate because I do not have my husband's support.”
- ▲ A woman resident of Ayodhyapuri VDC-9, Chitwan, said “I have been deprived of a citizenship certificate as my husband abandoned me and I do not have my husband's support for my citizenship application. My husband is an army personnel.”
- ▲ ***The story of a 32 year- old woman from Baitadi District:***
“Prior to getting married, my father told me to obtain citizenship certificate later on. I had an inter-caste marriage and now I am separated. My husband does not care for me. My parents neglect me because I had an inter-caste marriage. I need either the support of my husband or my father in order to obtain a citizenship certificate

but I have neither. I do have a marriage certificate but was unable to obtain citizenship certificate.”¹³

RECOMMENDATIONS

- ↪ The mandatory requirement for married women of receiving support of husband and/or in-laws in order to obtain a citizenship certificate should be repealed.
- ↪ Section 4(5) of the Citizenship Certificate Distribution Procedure Directives 2006 should be repealed as it poses onerous administrative requirements on married women and curtails their right to citizenship. This section also contradicts the citizenship provisions of the Nepal Citizenship Act and Rules, including the provision guaranteeing the right to equality in the Interim Constitution of Nepal.

D) Problems of single women

Due to onerous administrative procedures, it is practically impossible for single Nepalese women to secure citizenship certificates by descent for their children in all instances—including some cases where the father is Nepalese, but does not support the child’s application. This is due to the fact that local authorities often refuse to issue citizenship certificates to the children of single Nepalese women (e.g., widows, victims of rape, human trafficking, or sexual exploitation) without the father’s present to support the child’s application. Children of Nepalese mothers and foreign fathers can apply for naturalized citizenship, but remain ineligible for citizenship by descent under Nepalese law.

13. Focus group discussion (FGD) with women who were denied to obtain citizenship certificates (Kathmandu, 20 September 2010).

Single women also face problems when attempting to convey citizenship to their children when the father is unidentified. Single mothers are reluctant to register their children because of the stigma attached to having a child out of wedlock. The registration process requires the mother to publicly disclose the fact that the child's father is unidentified, which implies deviance on her part.

Local officials refuse to issue citizenship certificates to the children of single women if they do not agree to write that father "unidentified" on the citizenship certificate of their children. In addition, it is very difficult to secure all the required documents to apply for citizenship certificates for their children.¹⁴

RECOMMENDATIONS

- Nepalese women should be given full rights to convey citizenship by descent to their children independently. Presenting one's mother's citizenship certificate should be sufficient to obtain a citizenship certificate of a child.
- The practice of writing that the father is "unidentified" in the "father" column of citizenship certificate applications should be discontinued. In cases where the father is unknown or refuses to acknowledge his parental responsibilities, the column should remain empty, and citizenship certificates should still be granted.

E) Nepalese women married to foreign nationals are barred from obtaining Nepalese citizenship certificate after marriage

Proviso of Section 8(1)(a) of the Nepal Citizenship Act 2006 prevents Nepalese women married to foreigners from obtaining citizenship of

14. Sabina Damai's case is one of among such cases brought to the Supreme Court of Nepal. *Sabina Damai vs. District Administration Office, Dolakha et al.* Writ no. 067-WO-0703 of 2067 BS decided on 2067 Falgun 15 (27 February 2011).

Nepal if they had not acquired it before getting married, even if their parents are Nepalese and are permanently living in Nepal. This provision is contrary to the Article 8(2)(b) of the Interim Constitution of Nepal 2007, which states that any person whose father or mother was a citizen of Nepal at his or her birth is a Nepalese citizen by descent.¹⁵

EXAMPLES

- ▲ A women resident of Basamadi, Makwanpur District stated “my parents are both Nepalese. I joined a circus in India when I was very young. I married an Indian national while in India and have children. I returned to Nepal with my children. I do not have my Nepalese citizenship certificate. I applied for one in the Hetauda Municipality, Basamadi VDC and Makawanpur District Administration Office, but I was denied the issuance of citizenship documents and citizenship certificate. I have filed a case in the Supreme Court claiming my citizenship certificate.”

RECOMMENDATIONS

- Proviso of Section 8(1)(a) of the Nepal Citizenship Act, 2006 should be repealed, as it contradicts Article 8(2)(b) of the Interim Constitution of Nepal 2007 and Article 9 of the CEDAW.
- Nepalese women married to foreign nationals who had not acquired a Nepalese citizenship certificate prior to their marriage and have not obtained citizenship of their husband’s country should be granted Nepalese citizenship on the basis of their Nepalese mother or father’s citizenship.

15. Suku Maya Lama has filed a PIL case in the Supreme Court of Nepal where proviso of Section 8(1)(a) of Nepal Citizenship Act, 2006 has been challenged as it contradicts a provision of the Interim Constitution of Nepal, 2007. *Suku Maya Lama et.al vs. Ministry of Home Affairs et al*. Writ no. 069-WS-0013.

F) *Gender discrimination in conveying citizenship to foreign husbands*

Under Nepalese law, Nepalese women are not allowed to convey Nepalese citizenship to foreign husbands, whereas, according to Article 8(6) of the Interim Constitution of Nepal 2007 and Section 5 of Nepal Citizenship Act 2006, Nepalese men are entitled to convey citizenship immediately to their foreign wives and children.

RECOMMENDATION

- ↪ Foreign husbands of Nepalese women who wish to live permanently in Nepal should be equally allowed to apply for citizenship by naturalization.

G) *Women who obtained citizenship by birth are not allowed to convey citizenship to their children*

Based on the Article 8(5) of the Interim Constitution of Nepal 2007 and Section 4 of Nepal Citizenship Act, 2006, in 2007, Nepal granted citizenship by birth to 241,720 persons who were born in Nepal prior to mid-April 1990.¹⁶ Children who were born prior to obtaining citizenship by birth by their parent(s) were not allowed to obtain citizenship by descent as citizenship laws require child's father or mother is Nepalese citizen at the time of child's birth.

Pursuant to paragraph 21 of the Presidential Decree 2013¹⁷ and the "Ordinance to Amend the Nepal Citizenship Act 2007" which gives it legal effect, the children of parents who obtained citizenship by birth are eligible for citizenship by descent whether or not their parents were

16. The figures are as at 16 July 2011. Source: Ministry of Home Affairs.

17. Notice of the Office of the President, Nepal Gazette, Issue 62 Extraordinary Issue 24 dated 14 March 2013.

in possession of a citizenship certificate at the time of their birth. This effectively removes the barrier to obtaining citizenship created by article 8(2)(b) of the Interim Constitution, which stipulates that citizenship by descent is available to “any person whose father or mother is a citizen of Nepal *at the birth* of such person.”

Still, the implementation of paragraph 21 denies women the right to convey citizenship independently to their children. As per Chapter 6, Article 17(1)(b) of the Work Operating Directives for Citizenship Certificate Distribution Team 2013, a child whose parent obtained citizenship by birth must provide a copy of the father’s citizenship certificate in order to obtain one of his or her own. The only circumstance in which a mother’s citizenship certificate is required is when an applicant’s father has passed away; even then, this “accompanies” a copy of the father’s certificate. This raises several problems, as the fate of children’s citizenship application rests almost exclusively in the hands of their fathers. Situations in which a father is unwilling to present his certificate (perhaps due to implications for inheritance), is outside the country working, denies being the applicant’s father, or in which a woman either does not know who the father of the child is or knows but cannot locate him, are not accounted for, leaving the children of such circumstances stateless. These situations highlight the need for women to be able to use their citizenship certificates (obtained by birth) to convey citizenship to their children by descent independently of their husbands.

Further evidence of women’s unequal citizenship status is reflected in Article 17(1)(f) of the Work Operating Directives for Citizenship Certificate Distribution Team 2013. This provision lays out a procedural framework for cases in which “the father of the applicant has obtained [a] citizenship certificate by birth and both the father and mother have already died.” It is telling that the directives only cover situations in which the father has obtained citizenship by birth; the mother’s citizenship

status is of so little consequence that it is not even mentioned in the provisions dealing with situations in which both parents have passed away. A crucial gap must be filled in these directives, outlining what happens in a situation where a mother has obtained citizenship by birth (and a father has not) and both parents have passed away.

In addition, there is no provision in law regarding parents and siblings of persons who have obtained citizenship by birth and have been living permanently in Nepal. They are at legal limbo.

RECOMMENDATIONS

- The Article 17(1)(f) of the Work Operating Directives for Citizenship Certificate Distribution Team 2013 should be reformed to allow women who obtained citizenship by birth to independently convey citizenship by descent to their children.
- As a way of resolving potential statelessness among parents and siblings of persons who have obtained citizenship by birth, simplified naturalization procedures should be adopted for such persons.

H) Existing procedures of granting citizenship for foundlings are limited to the foundlings cared for by an individual or by an institution

Article 8(3) of the Interim Constitution of Nepal 2007 and Section 3(3) of the Nepal Citizenship Act 2006 have guaranteed that any child who is found within the territory of Nepal and whose parents are not known shall, until the father or mother of the child is identified, be deemed a citizen of Nepal by descent. According to Section 3(3) of the Nepal Citizenship Rules 2006, this provision only applies to the foundlings who are taken care of by any institution or individual in accordance

with the law. No procedure has been established for foundlings other than those mentioned in Section 3(3) of the Nepal Citizenship Rules, which prevents foundlings who were not taken care of by institutions or individuals in accordance with the law from applying for a citizenship certificate.¹⁸

RECOMMENDATION

- Procedures should be established to allow all foundlings to apply for the citizenship certificates even in circumstances where they are not cared for by an institution or individual as specified by Section 3(3) of Nepal Citizenship Rules 2006.

I) Compulsion for the Dalit Community people to include their caste on citizenship certificates

As an extension of a discriminatory social structure, members of the Dalit community are compelled to include their caste instead of their surnames on their citizenship certificates. They are only allowed to include the caste mentioned on their fathers' citizenship certificates. No provisions have been included in the Constitution and other citizenship-related laws which require applicants to write their caste on citizenship certificates, but there is a provision mentioning the need to include one's name and surname. Persons from the Dalit community are compelled to write their caste, which is against such provisions. The order of the Supreme Court to the Ministry of Home Affairs, Ministry of Local Development and all of the 75 District Administration Offices

18. Reference case in the Supreme Court of Nepal filed by Kumar Joshi and FWLD demanding order to frame procedures to obtain citizenship certificate for those children. *Kumar Joshi et al. vs. Ministry of Home Affairs et al.* Writ no. 069-WO-0037 registered on 2069 B.S. (13 December 2012)

to grant citizenship certificates on the basis of one's surname has not yet been implemented in practice.¹⁹

Though there is a clear-cut and widely circulated provision in law to write person's surname in the citizenship certificate, local officials compel Dalit applicants to write person's caste. The Interim Constitution and Nepalese citizenship laws have guaranteed the equal protection of all castes and ethnicities, but the act of mentioning one's caste in place of one's surname without any reason is against the spirit of the Constitution. Citizenship applications by members of the Dalit community (as well as applications to correct certificates) should be subject to the same laws governing other applicants. These individuals should also be allowed to include their surnames instead of their castes.

RECOMMENDATIONS

- Persons from Dalit community should be allowed to write their surname on their citizenship certificates rather than their caste group.
- The Ministry of Home Affairs should ensure the implementation of existing directives and Supreme Court order to put an end to this discriminatory practice.

19. Dalit NGO Federation (DNF) vs. Prime Minister and Office of the Council of Ministers *et al.*, Writ No. 3021 of 2061 BS, Decided on 2063 Jestha 1 (15 May 2006).

J) *Other general problems related with Citizenship*

In addition to discriminatory legal provisions, there is also a massive problem of access to citizenship certificates in Nepal due to onerous administrative procedures and requirements, poverty, geographic isolation, discrimination etc. Many Nepalese lacking citizenship certificates are prevented from enjoying their basic rights as citizens. Women and members from marginalized communities, such as Dalits and Janajatis (indigenous groups), are particularly affected and many lack citizenship certificates. Members of marginalized communities and Dalits, in particular, report that local authorities sometimes refuse to certify their eligibility for citizenship or to issue the associated documentation, even when all the requirements are met.

ANNEX

Proposed amendments in the current Nepalese citizenship laws to ensure gender equality

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
1.	Interim Constitution of Nepal, 2007	8(7)	Notwithstanding anything contained elsewhere in this Article, in the case of a person born to a female citizen of Nepal married to a foreigner, if such a person is born in Nepal and has been residing permanently in Nepal and has not acquired citizenship of the foreign country by virtue of the citizenship of his or her father, he or she may acquire naturalized citizenship of Nepal according to the existing law.	This provision should be repealed.	
2.	Interim Constitution of Nepal, 2007	8(5)	Any person born and living permanently in Nepal before the end of Chaitra, 2046 (mid-April, 1990) shall acquire the citizenship of Nepal by birth in accordance with the existing law, Provided that application shall be submitted once in accordance with	Following provision should be added: Parents and siblings of such persons who are permanently living in Nepal shall be granted naturalized citizenship	If such provision is not introduced and they do not

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
			existing laws within the prescribed timeframe.	with simplified procedures.	have link with other country, they may become stateless.
3.	Interim Constitution of Nepal, 2007	8(6)	A woman of foreign nationality who is married to a Nepalese citizen may acquire naturalized citizenship, if she desires to do so, as provided for by the existing law.	The existing provisions should be replaced with the following: Foreign spouse of Nepalese citizen may acquire naturalized citizenship, if they desire to do so, as provided for by the existing law.	Equal provisions need to be adopted for foreign spouses.
4.	Nepal Citizenship Act, 2006	4	4. Acquisition of Nepalese Citizenship by Birth : (1) Any person born before 2046 Chaitra 31, Bikram Sambat (i.e. 13, April,	Add the following: "Parents and siblings of such persons who are permanently living	If such provision is not introduced

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
			<p>1990 A.D.) within the territory of Nepal and having domiciled permanently in Nepal shall be deemed a citizen of Nepal by birth.</p> <p>(2) A person desiring to obtain citizenship certificate pursuant to Subsection (1) shall have to apply before holding of the election for Constituent Assembly and the procedure for granting of the Citizenship Certificate shall be as prescribed.</p> <p>(3) In case a person, due to certain reasons, could not submit his application within the period specified in Sub-section (1) may apply as prescribed within two years from the commencement of this Act.</p>	<p>in Nepal and have not obtained the citizenship of another country shall be granted naturalized citizenship with simplified procedures.</p>	<p>and they do not have link with other country, they may become stateless.</p>

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
5.	Nepal Citizenship Act, 2006	5(2)	(2) A child born to a Nepalese female citizen from a marriage to a foreign citizen in Nepal and having permanent domicile in Nepal may be granted naturalized citizenship as prescribed, provided the child has not acquired the citizenship of the foreign country on the basis of the citizenship of his/her father.	This provision has to be repealed to maintain compliance with Article 8(2)(b) of the Interim Constitution.	
6.	Nepal Citizenship Act, 2006	5(3) (b and C)	(b) Recommendation by concerned Municipality or Village Development Committee certifying the birth and permanent residency in Nepal, (c) Evidence to show that foreign citizenship has not been acquired based on father's citizenship.	The provision of Section 5(3)(b) should be repealed.	Section 5(3)(c) is essential to maintain the policy of not allowing dual nationality. But there

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
					<p>should be additional provisions dealing with persons for whom it is difficult to submit the proof of non-acquisition of citizenship from their father's country.</p>

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
7.	Nepal Citizenship Act, 2006	8(1) (a)	(a) Nepalese Citizenship Certificate of his/her father or mother or of a relative within three tiers of ancestors, This provision shall not be applicable to Nepalese female citizen married to a foreign national.	Proviso ("this provision shall not be applicable to Nepalese female citizen married to a foreigner") should be repealed.	
8.	Nepal Citizenship Rules, 2006	3(3) (a, b and c)		Add sub-section "d" to 3(3) – need to be added for procedures to obtain citizenship certificate by foundlings other than taken care by an individual or institution.	No procedures exist for those foundlings who are not fostered or cared by a person or institution.

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
9.	Nepal Citizenship Rules, 2006	7(1) (b and C)	<p>(b) A recommendation made by the concerned Local Body setting out that he or she was born in Nepal and has been permanently residing in Nepal,</p> <p>(c) A proof that he or she has not obtained the citizenship of a foreign country on the basis of his or her father's citizenship.</p>	<p>Rules 7(1)(b) should be repealed.</p> <p>The Following should be added to Rule 7(1)(c):</p> <p>Person's written statement on non-acquisition of foreign citizenship on the basis of father's country shall be sufficient in cases where it is impossible to prove that the person has not obtained citizenship of father's country.</p>	<p>Provisions should be made as per the suggestion provided on Section 5 of the Nepal Citizenship Act.</p>
10.	Nepal Citizenship Rules, 2006	7(4)	<p>(4) Upon making examination of the application received pursuant to Sub-rule (3), the Ministry may provide the certificate of naturalized citizenship of Nepal in the format referred to in Schedule-8.</p>	<p>This provision should be repealed.</p>	<p>This provision has no use, as there is a provision granting</p>

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
11.	Nepal Citizenship Rules, 2006	8(1)	<p>8. Authority to issue certificate of citizenship: (1) The Chief District Officer shall have the power to issue the certificate of citizenship of Nepal by descent, by birth, by the reason of matrimonial naturalized and certificate of naturalized citizenship of Nepal to those offspring of a person having obtained naturalized citizenship of Nepal who were born prior to the obtaining of such citizenship by that person.</p>	<p>Add the following provision: 8. Authority to issue certificate of citizenship: (1) The Chief District Officer shall have the power to issue the certificate of citizenship of Nepal by descent, by birth, parents and siblings of a person who has acquired citizenship by birth and by the reason of matrimonial</p>	<p>citizenship through mother by descent.</p>

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
12.	Citizenship Certificate Distribution Procedure Directives, 2006	4(5)	<p>(5) A Nepalese women married before acquiring the citizenship certificate are required to submit the following additional documents for acquiring citizenship certificate in addition to above mentioned documents:</p> <p>(a) Proof of Marriage Registration, (b) Citizenship Certificate of husband or father in law,</p>	<p>naturalized and certificate of naturalized citizenship of Nepal to those offspring of a person having obtained naturalized citizenship of Nepal who were born prior to the obtaining of such citizenship by that person.</p> <p>Section 4 (5) should be repealed.</p>	

No.	NAME OF THE LAW	RELEVANT SECTION	CURRENT PROVISION	PROPOSED PROVISION FOR AMENDMENT	REMARKS
13.	Work Operating Directives for Citizenship Certificate Distribution Team 2013	17 (1) (a-1) and (2)	<p>(c) Verification of any among husband, mother in law or father in law or elder brother in law or younger brother in law,</p> <p>(d) Copy of citizenship of father or mother or elder brother or younger brother of the maternal side.</p> <p>Procedure of providing citizenship certificate by descent to the children of the persons who have obtained the citizenship certificate by birth: (1) (b) The applicant has to submit the format referred as to Schedule-1 accompanying the copy of citizenship of father, copy of birth registration certificate and the copy of the certificate of academic qualification so far.</p>	<p>The term “father” should be substituted with “father or mother” .</p>	

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