CONCLUDING OBSERVATIONS

to NEPAL by UN Human Rights Treaty Bodies on CITIZENSHIP and BIRTH REGISTRATION

Forum for Women, Law and Development (FWLD)

Working for non-discrimination and equality
**BACKGROUND**

Nepal having ratified a series of human rights treaties and a member state of the United Nations, is obligated to abide by the principles of the conventions and uphold the values of fundamental human rights, and ensure equal rights of men and women.\(^1\) The Charter of the UN further imposes a duty on member states to promote “universal respect for and observance of, human rights and fundamental freedoms of all without distinction as to race, sex, language or religion.”\(^2\)

Article 51(b)(3) of the Constitution of Nepal, 2015 obligates the state to pursue policies related to “implementing international treaties and agreements to which Nepal is a state party”. Similarly, Section 9(1) of the Nepal Treaty Act, 1990 states:

> In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.

These two provisions impose the laws of Nepal to abide by the norms of international law to which Nepal is a party. Nepal has ratified a number of human rights treaties which can be studied in the table below.

After having ratified these treaties, Nepal is obligated to implement them and additionally submit periodic reports to the respective Committees of the Treaties. International Conventions create certain obligation to any country once it becomes a state party to the Convention. In addition to the obligation to implement obligations under the Convention, the Committees of the Conventions request for the submission of the report to the respective Committees to observe the effectiveness of the implementation of the obligations under the Convention. The Committee, through reporting, reviews whether state party has fulfilled its obligation or not, review of national laws, administrative rules, procedures and policies according to the standard set by the Convention and receive information relating to actual status of implementation of each Article of the Convention.

Concluding Observations are remarks made by the Committee after evaluating the Initial and Periodic Report submitted under Convention. Concluding Observations are of state specific nature. In Concluding Observations, the Committee indicates weaknesses and gaps of the implementation of obligations and also provides necessary recommendations for its implementation under the Convention. As Concluding Observations are provided on the basis of Convention and the process is also determined by the Convention, the state parties are obliged to abide by the Concluding Observations.

Nepal has submitted the periodic reports to each of those Convention Committees along that have been complemented by the Shadow Reports submitted by the Civil Society. The Concluding Observations based on those reports by the respective Committees have urged Nepal to comply by the provisions that have not been followed. Among the different issues, citizenship has always been an issue of discussion. Nepal has been repeatedly requested by the Committees to amend the discriminatory citizenship law to allow women to confer citizenship in an equal capacity as men.

This document lists the international obligations of Nepal on citizenship based on the provisions of Concluding Observations of the Treaty Committees.

<table>
<thead>
<tr>
<th>SN</th>
<th>Treaty</th>
<th>Ratification Date</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</td>
<td>January 30, 1971</td>
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<tr>
<td>2</td>
<td>Convention on the Rights of Child (CRC)</td>
<td>September 14, 1990</td>
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</tbody>
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1. Preamble of the UN Charter.
2. Ibid., Article 55.
UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), 1948

The Universal Declaration of Human Rights (UDHR), a declaration adopted by the United Nations General Assembly, as a cornerstone of international human rights, has no legally binding effect but since the two major Human Rights Covenants stem from UDHR, the Declaration has a strong persuasive value.

Article 15(1) of the Declaration recognizes that “[e]veryone as the right to a nationality”. No one shall be arbitrarily denied the right to change this.¹

REPORTING REQUIREMENTS OBLIGATED BY THE HUMAN RIGHTS TREATY BODIES

CEDAW [Committee on the Elimination of Discrimination against Women]
- 1 Year
- 4 Years

ICERD [Committee on the Elimination of Racial Discrimination]
- 1 Year
- 2 Years

CRC [Committee on the Rights of the Child]
- 2 Years
- 5 Years

ICCPR [Human Rights Committee]
- 1 Year
- Upon Committee request*

ICECSR [Committee on Economic, Social and Cultural Rights]
- 2 Years
- 5 Years

UPR [Human Rights Council]
- As per the UPR reporting cycle

Initial report due (following ratification) within
Periodic reports due thereafter (every)

* The committee may ask State Parties to submit their periodic reports at intervals of no more than 7 years.

3. UDHR, Article 15(2).
NATIONALITY

30. The Committee takes note of the information provided by the State party, indicating that constitutional provisions on the acquisition of citizenship are based on the principle of equality and non-discrimination, and of the submission of a bill to amend the Citizenship Act to the Federal Assembly. It remains concerned, however, about the following:

(a) The discriminatory provisions in articles 11 (3), 11 (5) and 11 (7) of the Constitution limiting women’s autonomy with regard to nationality and the ability to transmit citizenship through marriage and to their children;

(b) That women, in particular single mothers, are being denied citizenship certificates and registration of their children, which prevents those women and their children from opening bank accounts, obtaining driver’s licences, voting, managing their property, gaining access to education, acquiring travel documents, applying for employment in the public sector and benefitting from social services;

(c) The high number of persons at risk of becoming stateless in the State party and the lack of a specific timeline for acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

31. The Committee, in line with its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women and its previous recommendations (CEDAW/C/NPL/CO/4-5, para. 26), recommends that the State party:

(a) Amend or repeal all discriminatory provisions in its Constitution that are contradictory to article 9 (2) of the Convention in order to guarantee that Nepali women may transmit their nationality to their children, as well as to their foreign spouses, under the same conditions as Nepali men, whether they are in the country or abroad, in accordance with commitments made in the context of the universal periodic review (A/HRC/31/9, paras. 122.2, 122.67–70 and 123.23);

(b) Bring the bill to amend the Citizenship Act and the related rules, as well as the draft birth, death and other personal event registration act, into line with the Convention, including by removing requirements regarding consent and assistance of the husband or the husband’s family and documentation of the whereabouts and identity of the husband;

(c) Provide training to district administration offices on the circular promulgated in 2013 to provide citizenship certificates to children on the basis of the Nepali citizenship of their mother and establish a complaint mechanism for reporting cases of denial of receiving citizenship applications;

(d) Periodically conduct citizenship certificate distribution campaigns, with teams to issue citizenship certificates, taking into account the difficulties faced by women in securing proof of nationality;


4. CEDAW/C/NPL/CO/6
 Convention on Rights of Child (CRC)  

BIRTH REGISTRATION

25. The Committee reiterates its previous recommendation (see CRC/C/15/Add.261, para. 43) and urges the State party to increase its efforts, including awareness-raising campaigns, to ensure the registration of all children at birth. In this regard, the Committee recommends that the State party ensure that local government authorities, who are entrusted with the task of birth registration, actively engage with the local communities to ensure that births are registered in a timely and effective manner. In this regard, the Committee urges the State party to seek assistance from, inter alia, UNICEF, non-governmental organizations and other members of civil society.

NATIONALITY

26. The Committee is concerned about the hindrances experienced by many children to obtaining Nepalese nationality. It is especially concerned that:

(a) Acquisition of Nepalese citizenship by descent is conditional on evidence that both the father and mother of the child are Nepalese citizens; furthermore, it excludes children of unwed mothers, children of a Nepalese mother and a foreign or unknown father, children of refugees or of parents who are unable to prove citizenship, and children of same-sex parents;

(b) Children of Nepalese mothers and non-national fathers are not granted Nepalese citizenship until they attain majority, which exposes them to the risk of statelessness until adulthood;

(c) The criteria for transmission of citizenship from Nepalese mothers to their children remain discriminatory, as they require the mother to be a resident of Nepal, exclude children born to women who are not permanent residents, and make citizenship subject to revocation for children whose previously unidentified father is later proven to be a foreigner.

27. The Committee recommends that the State party amend, as a matter of priority, relevant legislation, particularly the Birth, Death and Other Personal Event (Vital Registration) Act of 1976, the Citizenship Act of 2006 and articles 11 (3), 11 (5) and 11 (7) of the Constitution to ensure full compliance with articles 7 and 8 of the Convention. The Committee also recommends that the State party amend its legislation on transmission of nationality by:

(a) Removing the requirement for both parents to prove citizenship;

(b) Making citizenship by descent accessible through proof of citizenship of one of the parents, regardless of the parent’s sex;

(c) Making the acquisition of Nepalese nationality by descent accessible to children at birth.

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5. CRC/C/NPL/CO/3-5
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

CITIZENSHIP

33. The Committee is concerned by reports that some government officials are seeking to discourage Dalits from applying for citizenship. The Committee is also concerned by reports that many adult Madheshi of the Terai region whose parents received citizenship by birth before the promulgation of the Constitution of 2015 have been denied citizenship by descent, in violation of article 11 (3) of the Constitution (arts. 2 and 5).

34. The Committee recommends that the State party ensure: that its laws, regulations and practices contain clear procedures for issuing citizenship certificates without distinction as to caste; that applications for citizenship are registered in a timely manner; that written, reasoned decisions for rejection of such applications are provided within a reasonable time frame; and the availability and accessibility of a complaint mechanism to contest the rejection of applications for citizenship.

MIGRANTS, REFUGEES AND ASYLUM SEEKERS

37. The Committee remains concerned that the State party does not have a formal asylum recognition system to ensure the respect of the principle of non-refoulement, and that, while it has provided temporary shelter on humanitarian grounds to thousands of refugees from Tibet Autonomous Region and Bhutan, it states that it is not in a position to accept any other refugees due to practical considerations. The Committee is also concerned by reports of large numbers of stateless persons in Nepal, and by reports that Tibetan refugees and their children, including those born in Nepal and who have been living in Nepal for decades, are not provided with identity documents and are consequently exposed to fines, detention and deportation for irregular stay, and are unable to obtain an education, open a bank account, obtain a driver’s license and travel (arts. 2 and 5–6).

38. The Committee again urges the State party (see CERD/C/64/CO/5, para. 19) to ratify international instruments relating to the protection of refugees and adopt national legislation conforming to the standards in those instruments. The Committee further recommends that the State party provide identity documents to refugees in its territory. The State party is also encouraged to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
International Covenant on Civil and Political Rights (ICCPR)

15 April 2014

BIRTH REGISTRATION AND NATIONALITY

20. The Committee, while appreciating efforts made thus far, expresses concern at the low number of birth registrations, particularly in rural areas, and at difficulties faced by women in the registration process. It also regrets that the current legislation does not provide for the granting of nationality to children born in the territory who would otherwise be stateless. Moreover, while welcoming the launch of national distribution campaigns, the Committee is concerned that more than 4 million persons still lack citizenship certificates, which is essential for the enjoyment of rights guaranteed in the Covenant, including the right to vote. It is also concerned that women are denied equal rights as men with respect to acquiring and conferring nationality (arts. 3, 16, 24, 25 and 26).

The State party should amend the Birth, Death and Other Personal Incidents Registration Act to ensure the birth registration of all children born on its territory, and establish an efficient birth registration system that is free of charge at all stages. It should also continue to strengthen efforts to remove barriers, particularly for women and those living in rural areas, to access citizenship certificates and birth registrations. The State party should ensure that citizenship provisions of the new Constitution guarantee the equal right of women to acquire, transfer and retain citizenship.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

12th December, 2014

EQUALITY BETWEEN MEN AND WOMEN

12. The Committee is concerned at the persistent inequality between men and women with regard to the rights of inheritance, land ownership and assets. The Committee is also concerned that, notwithstanding citizenship provisions in the interim constitution, the transmission of nationality by a Nepalese woman to her child is not always granted.

The Committee recommends that the State party take adequate measures to implement effectively its non-discrimination legislation, in order to allow women to exercise their rights to inherit and to own land and assets in their name. The Committee also recommends that the State party promote awareness-raising measures in order to ensure that the local administration authorities involved in granting the transmission of nationality are fully informed about the legal provisions in place and effectively implement them.
The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council. It is a cooperative process which, by October 2011, has reviewed the human rights records of all 193 UN Member States. The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. It involves a review of the human rights records of all UN Member States.

Nepal was subject to Universal Periodic Review for the second time at the 23rd Session of the UPR in November 4, 2015. The following recommendations that Nepal received are relevant to this submission:

<table>
<thead>
<tr>
<th>SN</th>
<th>Recommendation</th>
<th>Recommending State</th>
<th>Status</th>
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<tbody>
<tr>
<td>1</td>
<td>Take necessary measures to ensure the guarantee in the Nepal's Constitution of full equality between men and women with respect to the nationality of their children and in accordance with article 9 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, which Nepal has ratified</td>
<td>Canada</td>
<td>Accepted</td>
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<tr>
<td>2</td>
<td>Amend the citizenship laws to allow citizenship through either parent</td>
<td>Hungary</td>
<td>Accepted</td>
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<tr>
<td>3</td>
<td>Ensure that provisions in the revised Constitution guarantee the equal rights of women as well as their right to acquire, retain and transfer citizenship</td>
<td>Sierra Leone</td>
<td>Accepted</td>
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<tr>
<td>4</td>
<td>Amend legislation on nationality in order to be able to grant Nepali nationality through either parent</td>
<td>Spain</td>
<td>Accepted</td>
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<tr>
<td>5</td>
<td>Implement measures to ensure that the rights to acquire, transfer and retain citizenship are extended equally to all women and their children</td>
<td>New Zealand</td>
<td>Accepted</td>
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<tr>
<td>6</td>
<td>Consider amending the Constitution to allow women to convey their citizenship to their children and foreign spouses on an equal basis with men</td>
<td>United States of America</td>
<td>Noted</td>
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<tr>
<td>7</td>
<td>Ratify the conventions on refugees and stateless persons</td>
<td>Portugal</td>
<td>Noted</td>
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