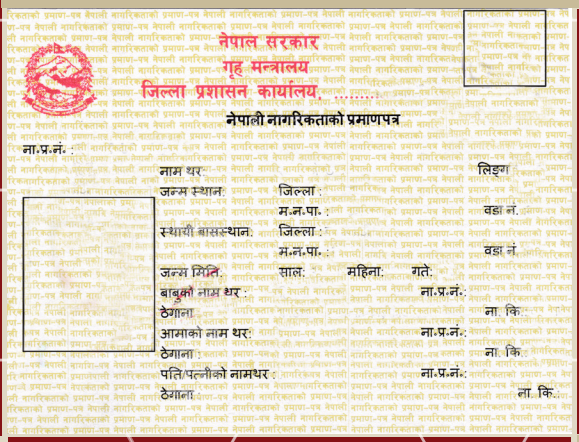

LEGAL ANALYSIS OF CITIZENSHIP LAW OF NEPAL

A Comparative Study of the Nepal Citizenship Act, 2006 with the Constitution, Precedents, International Human Rights Obligation and Best Practices

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November 2016

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EXECUTIVE SUMMARY

The new Constitution of Nepal, though considered more progressive than the Interim Constitution of Nepal 2007 in terms of women's rights, is still discriminatory on citizenship provisions that contradict with each other and restricts mother's right to confer citizenship to their children independently. Continuous efforts must be made in order to amend the discriminatory constitutional provisions and in parallel the positive aspects of the constitution must be incorporated in the current citizenship Act so that such contradictory provisions do not jeopardize its progressive attempt. Thus, it is imperative to ensure that the language in the corresponding Nepal Citizenship Act, 2006 will be drafted in a manner that minimizes the effects of the inconsistency in the new Constitution. Amending the Nepal Citizenship Act, 2006 in order to conform it to the new constitution, also provides with an excellent opportunity to analyze the abovementioned inconsistencies, and also to remind about the international human rights obligations of Nepal, along with the decisions of the Supreme Court. It is also the correct time to learn from the best practices of other countries on this very issue.

An in-depth analysis of the constitution shows that Articles 11(5) contradict with Article 11(2)(b). They are also in contradiction with Article 18 which guarantees the fundamental right to equality and non-discrimination by the state based on gender and Article 38(1) which establishes equal lineage rights for women. However, the citizenship Act needs to be in line with the new constitution. Namely, provisions corresponding to Articles 10, 11(1), 11(2)(a), 11(3), 11(5), 11(7), 12, 14 and 15 of the constitution need to be added in the Act. Accordingly, procedures as to how to acquire the citizenship, pursuant to those provisions, need to be well clarified in the citizenshipAct.

Furthermore, it is essential to remove provisions that are no longer part of the constitution. Provided that the new constitution no longer foresees the possibility for citizenship by birth in Nepal,paragraph 4 needs to be removed from the Nepal Citizenship Act, 2006. Similarly, the discriminatory provision in the proviso of Section 8(1)(a) must also be repealed as it is in contradiction to Article 11(2)(b) of the Constitution.

In addition, there is a need of some minor changes in the citizenship Actregarding the naturalized citizenship of the child, thus Sections 5(2) and 5(3) must be amended pursuant to Article 11(7) of the Constitution. Similarly, the scope of Section 5(4) must be expanded as to cover cases of foreign men married to Nepali women, based on the application of Article 11(8) of the Constitution. The criteria to acquire such citizenship must also be added.

BACKGROUND

The first citizenship Act was enacted on May 8, 1952, laying down formally for the first time the qualifications of becoming a Nepali citizen. The Act specified that the following persons born in Nepal; persons whose father or mother was born in Nepal; and persons with permanent residence in Nepal living with their families could acquire the citizenship of Nepal.

The Nepal Citizenship Act, 1952 remained effective even after the promulgation of the Constitution of 1959. With the dissolution of the multi-party system and the introduction of the Panchayat regime in 1963, another constitution was promulgated in the same year. Under the constitution, the law on citizenship came in the form of the Nepal Citizenship Ordinance, 1963 which was enacted on December 15, 1963 repealing the previous Act of 1952. The same Ordinance was adopted in February 28, 1964 as the Nepal Citizenship Act, 1964.

This Act made some drastic changes in the citizenship law of Nepal. Citizenship by descent could only be acquired by persons whose fathers were Nepali citizens at the time of the child's birth. With regard to naturalized citizenship, the residency requirement was increased from five to fifteen years and the mandatory requirement of being able to speak the national language was also added. Foreign women married to Nepali men could acquire Nepali citizenship if they provided evidence that they had initiated the process of rescinding citizenship of the foreign country.

Despite the restoration of multi-party democracy in 1990, after 30 years of authoritarian monarchical rule under the Panchayat system, the citizenship Act of 1964 was retained. The second people's movement of 2006 led to the adoption of an interim constitution in 2007. This constitution had the same provisions regarding naturalized citizenship, but regarding citizenship by descent, it allowed citizenship to persons born to a father or mother who were Nepali citizens at the time of the child's birth. However, a prohibitory clause superseded this provision stating that persons born to Nepali mothers and foreign fathers could only acquire a naturalized citizenship certificate. This provision resulted in preventing children of single mothers and those whose fathers refused to acknowledge their relation from obtaining citizenship certificates.

Almost nine years after the second people's movement, the Constituent Assembly (CA) promulgated a new Constitution on September 20, 2015. This period witnessed the dissolution of the first CA on May 28, 2012 and the election of a second CA on November 19, 2013 as a result of the top political parties failing to reach consensus on some contentious issues, including citizenship. The new Constitution has some new provisions which were not in the Interim Constitution of Nepal 2007. Some provisions in the current Nepal Citizenship Act, 2006 are in contradiction with the new constitution and it needs to incorporate the new provisions in the new constitution of Nepal, 2015.

In addition, the Supreme Court of Nepal has made a number of landmark decisions on citizenship directing to the Government of Nepal especially the Ministry of Home Affairs and District Administration Offices to comply with the provisions on citizenship. Citizenship laws are yet to be revised to comply with the decisions of the Supreme Court.

Furthermore, Nepal is a party to a number of international human rights treaties including International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Treaty bodies of the abovementioned instruments consistently call on Nepal to ensure men and women have equal rights to citizenship including right to transfer citizenship to children through mother.[1] Deriving from these treaties there are a number of obligations that Nepal has the duty to take into account while drafting new laws including on citizenship.

With each passing year, countries around the world with discriminatory citizenship provisions are gradually amending their citizenship laws to ensure gender equality and to prevent putting persons at the risk of statelessness. With Nepal also listed as one of the countries that has discriminatory provision on citizenship[2], the change needs to take place in Nepal as well. Nepal's citizenship law needs to be amended pursuant to the constitutional provisions, Nepal's international human rights obligations and the decisions of the Supreme Court. Best practices of other countries with regard to citizenship may also provide guidance. This document highlights the provisions in the citizenship law that need to be amended because they contradict constitutional provisions, international laws, Supreme Court decisions and the best practices of other countries. The document suggests changes in the current Nepal Citizenship Act, 2006 in line with the citizenship provisions in the new Constitution of Nepal 2015.

Objectives

The analysis has two primary objectives that are as follows:-

1. Identify the provisions in the Nepal Citizenship Act, 2006 that are contradictory to the provisions in the new Constitution of Nepal including on citizenship, international human rights obligations of Nepal on nationality(citizenship), the decisions of the Supreme Court on citizenship; and the best practices of other countries in reforming laws on citizenship;
2. Recommend specific changes or reform in the Nepal Citizenship Act, 2006 to make it in line with the constitutional provisions on citizenship, international human rights obligations of Nepal on nationality(citizenship), the decisions of the Supreme Court on citizenship; and the best practices of other countries in reforming laws on citizenship.

Limitations of the Analysis

The document analyses provisions related to citizenship included in the current Nepal Citizenship Act, 2006 and in Part 2 of the Constitution of Nepal.

1. *See* Committee on the Rights of the Child, Concluding observations on the third to fifth periodic reports of Nepal, 3 June 2016, para. 27, CRC/C/NPL/CO/3-5 ("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; and, (c) Make the acquisition of Nepali nationality by descent accessible to children at birth."); CESCR, Concluding observations on the third periodic report of Nepal, 12 December 2014, para. 12, E/C.12/NPL/CO/3; Human Rights Committee, Concluding observations on the second periodic report of Nepal, 15 April 2014, CCPR/C/NPL/CO/2 ("[Nepal] 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."); and CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women, 29 July 2011, CEDAW/C/NPL/CO/4-5 ("The Committee strongly urges the State party to [inter alia] [e]nsure that the new Constitution provides for equal and full citizenship rights for women, including the right to transfer citizenship to their children and foreign husband[.]").
2. Background Note on Gender Equality, Nationality Laws and Statelessness 2016, UNHCR, Available at http://www.refworld.org/docid/56de83ca4.html (Accessed on July 25, 2016).

Suggested Amendments in the Nepal Citizenship Act, 2006 according to the Constitution of Nepal (2015)

Given the substantial changes on the citizenship provisions in the new Constitution of Nepal (2015), it is imperative that the Nepal Citizenship Act, 2006 be amended to accommodate them, or alternatively that an entirely new Act be drafted. The suggested additions and/or amendments in the Act have been listed in the table below:

SN	Issue	Constitutional Provision in the Constitution of Nepal	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
1	**Citizenship as a (human/ fundamental) right**	*Article 10:* Not to deprive of citizenship: (1) No citizen of Nepal may be deprived of the right to obtain citizenship.	No provisions.	A new provision needs to be added as follows: An application for citizenship shall be immediately registered and a decision must be given on it within a time of one month along with a written justification in case of denial of the application. Citizens whose applications are denied by the designated authority, may file a petition in the District Court within three months of the denial of the application. *Clarification:* 'Designated authority' includes the Village Executive, Metropolitan City, Sub Metropolitan City and Municipality. In case of denial of the application of citizenship by the District Administration Office, an appeal can be filed in the District Court.
	Comment: *The Interim Constitution of Nepal, 2007 did not recognize citizenship as a right of every citizen. As the Constitution of Nepal, specifically recognizes this, a similar provision needs to be added in the citizenship Act of Nepal. Additionally, the process of remedy in case of violation of the citizenship right should also be mentioned in the Act.*			
2. Citizenship by descent				
i.	**To be citizens of Nepal**	*Article 11(2):* The following person who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizen of Nepal by descent: (a) a person who has obtained the citizenship of Nepal by descent prior to the commencement of this Constitution.	No provisions	A new provision needs to be added as follows: To be citizens of Nepal: (a) a person who has obtained the citizenship of Nepal by descent prior to the commencement of the Constitution of Nepal 2015 is Nepali citizen by descent.
	Comment: *The citizens by descent who acquired the citizenship before the commencement of this constitution are also citizens by descent. This has not been mentioned in the Act and thus needs to be added in order to comply with the constitutional provision.*			

SN	Issue	Constitutional Provision in the Constitution of Nepal	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
ii.	**Citizenship through father or mother**	*Article 11(2):* The following person who has his or her permanent domicile in Nepal at the time of commencement of this Constitution shall be the citizen of Nepal by descent: (a) […] (b) a person whose father or mother was a citizen of Nepal at his or her birth.	*Section 3.* Acquisition of Nepali Citizenship by descent: (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. *Section 8.* Filing of Application to obtain Citizenship Certificate: (1) A person attaining the age of 16 years desiring to acquire citizenship of Nepal by descent pursuant to Section 3, shall have to file an application in the prescribed form along with copies of the following documents to the designated authority: (a) Nepalese Citizenship Certificate of descendants of relatives within three generations from paternal or maternal or self side. Provided that, this provision shall not be applicable to Nepalese female citizen married to a foreigner. (b) Recommendation from the concerned Village Development or Municipality certifying the place of birth and relationship.	*Section 3* should be left unchanged. The proviso of Section 8(1)(a) that reads "Provided that, this provision shall not be applicable to Nepalese female citizen married to a foreigner." must be removed.
	Comment: *Section 3 of the Nepal Citizenship Act, 2006 incorporates the provision of Article 11(2) of the Constitution. But the proviso of section 8(1)(a) of the Act is contradictory to the constitutional provision, as the new constitution imposes no such restriction on Nepali women married to foreign nationals. Accordingly, this proviso must be removed from the Act.*			

SN	Issue	Constitutional Provision in the Constitution of Nepal	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
iii.	**Citizenship for children of citizens who acquired citizenship of Nepal by birth**	*Article 11(3):* A child of a citizen having obtained the citizenship of Nepal by birth prior to the commencement of this Constitution shall, upon attaining majority, acquire the citizenship of Nepal by descent if the child's father and mother both are citizens of Nepal.	*Section 4.* Acquisition of Nepali Citizenship by Birth : (1) Any person born before 2046 Chaitra 31, Bikram Sambat (i.e. 13, April, 1990 A.D.) within the territory of Nepal and having domiciled permanently in Nepal shall be deemed a citizen of Nepal by birth. (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. (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.	*Section 4* shall be removed. The provision below under Section 4 should be added to the Act: A child of a citizen who has acquired citizenship of Nepal by birth before the commencement of this Act shall, if his/her father and mother both are citizens of Nepal, be entitled to Nepali citizenship by descent upon his/her attaining the age of majority. (1) A person attaining the age of 16 years desiring to acquire citizenship of Nepal by descent pursuant to this Section, shall have to file an application in the prescribed form along with copies of the following documents to the designated authority: (a) Nepalese Citizenship Certificate by birth of father and mother. (b) Recommendation from the concerned Village Executive or Municipality.
	Comment: *This is completely a new provision in the Constitution which has been made for the children of citizens of Nepal who acquired citizenship by birth. This states that children born to Nepali citizens by birth before the commencement of this Constitution require both of their parents to be Nepali citizens in order to acquire citizenship by descent. A similar provision needs to be added in the citizenship Act along with the procedure on obtaining the citizenship certificate. Similarly, as the Constitution does not mention anything about citizenship by birth, Section 4 of the citizenship Act must be removed and need to add provision in accordance with the Constitution of Nepal.*			

SN	Issue	Constitutional Provision in the Constitution of Nepal	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
iv.	**Citizenship for foundlings**	*Article 11(4):* Every minor who is found within Nepal and the whereabouts of whose father and mother are not known shall, until the father or the mother of the child is traced, be a citizen of Nepal by descent.	*Section 3(3):* Every child found in the territory of Nepal, whose paternal and maternal addresses are undetermined, shall be considered a citizen of Nepal by descent until his/her father or mother are found.	Another provision should be inserted in addition to Section 3(3) of Nepal Citizenship Act, 2006 to read as: Filing of Application to obtain Citizenship Certificate: (1) A person attaining the age of 16 years desiring to acquire citizenship of Nepal by descent pursuant to Section 3(3), shall have to file an application in the prescribed form along with copies of the following documents to the designated authority: (a) For persons who were raised in Bal Mandir or orphanages or institutions that provide care to Orphans that are approved by the Government of Nepal, recommendation of such institution. (b) For persons who were raised by a citizen of Nepal as the guardian, a copy of the citizenship certificate of the guardian (c) For persons other than referred to in Sub-sections (a) and (b), recommendation of the District Child Welfare Committee or Women and Children Office or institutions working on Child Welfare approved by the Government of Nepal.
	Comment: *The provisions of Article 11(4) of the constitution should be added in the Section 3(3) of the Nepal Citizenship Act, 2006 to make it in line with the Constitution along with a provision that specifies the procedures of obtaining such citizenship certificates. Since Nepal Citizenship Rules, 2006 provides in Rule. 3 that in order to file an application for citizenship certificate, the orphan children need to submit recommendations from Bal Mandir or Orphan Child Care Centers or other orphanage homes, if they were raised in such organizations and, in case they were raised by a legal guardian, the citizenship certificate of the legal guardian needs to be submitted, such provisions have prevented street children, and children without legal guardians, to even file an application for citizenship. This provision is not in line with the new Constitution and with the Act, and thus needs to be expanded as to include other foundlings who have not been raised in either of the two listed conditions. The Supreme Court decided upon this issue already in the case of Amrit Sharma v. Government of Nepal (2015)[3] to allow foundlings other than those two categories to apply for the citizenship certificate of Nepal. Consequently, another provision has been added to ensure citizenship certificate to foundlings other than those referred to in Rule 3, on the basis of the recommendation of the District Child Welfare Committee, or Women and Children Office or institutions working on Child Welfare approved by the Government of Nepal.*			

3. *Nepal Kanoon Patrika* 2072 Poush, Part 57, Volume 9, Decision No. 1459, p 1539.

SN	Issue	Constitutional Provision in the Constitution of Nepal	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
v.	**Citizenship for children born to Nepali mother in Nepal and father is not identified**	*Article 11(5):* A person who is born in Nepal from a Nepali woman who is a citizen of Nepal and has resided in Nepal and whose father is not traced shall be provided with the citizenship of Nepal by descent.	No provisions	A new provision needs to be added as follows: A person born in Nepal to a Nepali citizen mother but whose father is not identified, shall be conferred the Nepali citizenship by descent. Filing of an application to obtain Citizenship Certificate: (1) A person attaining the age of 16 years desiring to acquire citizenship of Nepal by descent pursuant to this Section, shall have to file an application in the prescribed form along with copies of the following documents to the designated authority: (a) Nepalese Citizenship Certificate of mother. (b) Recommendation from the concerned Village Executive or Municipality certifying the place of birth (c) Written information from the mother or the applicant stating that the father cannot be traced or is unidentified. Provided that in case his/her father is found to be a foreigner, the citizenship of such a person shall be converted to naturalized citizenship.
	Comment: *This is entirely a new constitutional provision which cannot be found in the Act. This provision should guarantee that the dignity of the mother and the child is ensured. Consequently, the evidence of a written statement of the mother or the applicant testifying that the father is not traced or unidentified should be enough to prove that the father is untraceable or unidentified.*			
vi.	**Children born to Nepali mother and foreign father**	*Article 11(7):* Notwithstanding anything contained elsewhere in this Article, in the case of a person born from a woman who is a citizen of Nepal and married to a foreign citizen, the person may acquire the naturalized citizenship of Nepal in accordance with the Federal law if he or she has permanently resided in Nepal and has not acquired the citizenship of a foreign country.	*Section 5(2):* A child born to a Nepali female citizen from marriage with 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. (3) A person desiring to acquire naturalized citizenship pursuant to Subsection (2) shall have to submit an application with the following documents to the designated authority:	*Section 5(2)* needs to be amended as follows: "In the case of a person born to a woman who is a citizen of Nepal and father is a foreign citizen, the person may acquire the naturalized citizenship of Nepal if he or she is residing permanently in Nepal and has not acquired the citizenship of a foreign country based on father's citizenship. Provided that if his/her father and mother both are citizens of Nepal at the time of acquisition of the citizenship, he/she, if born in Nepal, shall acquire citizenship by descent."

SN	Issue	Constitutional Provision in the Constitution of Nepal	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
		Provided that if his/her father and mother both are the citizen of Nepal at the time of acquisition of the citizenship, he/she, if born in Nepal, may acquire citizenship by descent.	(a) Duplicate copy of the citizenship certificate of the mother, (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 the citizenship of the father.	*Section 5(3)* A person desiring to acquire naturalized citizenship pursuant to Sub-section(2) shall have to submit an application with the following documents to the designated authority: (a) Copy of the citizenship certificate of the mother, (b) Recommendation by concerned Municipality or Village Executive certifying the permanent residency in Nepal, (c) Written statement by the applicant to certify that foreign citizenship has not been acquired based on the citizenship of the father. Section 5(3) shall be extended as to include this provision: A person born in Nepal, whose father and mother both are the citizens of Nepal at the time of submission of an application for acquiring the citizenship of Nepal, shall acquire citizenship by descent. A person desiring to acquire citizenship of Nepal by descent pursuant to proviso of Section 5(2) shall have to submit an application with the following documents to the designated authority: (a) Copy of the citizenship certificate of the mother and the father (b) Recommendation by concerned Metropolitan City/ Sub-Metropolitan City/Municipality or Village Executive certifying the birth and permanent residency in Nepal. The 'designated authority' to issue the both kinds of citizenship certificate is the District Administration Office.
	Comment: *There are 2 fundamental differences on the Article 11(7) and provisions in the Nepal Citizenship Act, 2006 (i) Article 11(7) does not require child to be born in Nepal who is born to Nepali mother and foreign father to acquire naturalized Nepali citizenship (ii) it allows such child who was born in Nepal to acquire citizenship of Nepal by descent if the child's father later on acquires citizenship of Nepal and both the parents are Nepali citizens at the time of applying for citizenship of Nepal.* *These provisions are not reflected in the Act and thus needs to be added. Furthermore, applicants pursuant to Section 5(2) have not been issued the naturalized citizenship certificate by the Ministry of Home Affairs on a timely basis as a result of which many are stateless right now as they are not eligible to acquire the citizenship from their fathers' country as well. Thus, the designated authority to issue such kind of citizenship certificates should be the District Administration Office instead of the Ministry of Home Affairs, and this should be mentioned in the Act. Also, the evidence pursuant to Section 5(3)(c) of the current Act is not issued by many countries preventing such persons from even applying for the naturalized citizenship. Hence, this evidence must be replaced by the statement of the concerned person testifying that he/she has not acquired the citizenship certificate from the country of the father.*			

SN	Issue	Constitutional Provision in the Constitution of Nepal	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
3. Citizenship by Naturalization				
i.	**Naturalized Citizenship by marriage**	*Article 11 (6):* A foreign woman who has a matrimonial relationship with a citizen of Nepal may, if she so wishes, acquire the naturalized citizenship of Nepal as provided for in the Federal law. *Article 11(8):* In the cases other than those mentioned in this Article, the Government of Nepal may, in accordance with the Federal law, grant the naturalized citizenship of Nepal.	*Section 5(1):* A foreign woman married to a citizen of Nepal desiring to obtain citizenship of Nepal shall have to submit an application in the prescribed form to the designated officer. On submitting such application she has to produce the marriage relationship document with the citizen of Nepal and also evidence to show the initiation of procedure for renunciation of own's foreign citizenship.	*Section 5(1)* needs to be amended and another provision should be added to read as follows: *Section 5(1):* A foreign woman married to a citizen of Nepal desiring to obtain citizenship of Nepal shall have to submit an application in the prescribed form to the designated officer. On submitting such application she has to produce the marriage registration certificate with the citizen of Nepal. (2) After acquiring the naturalized citizenship certificate of Nepal, the person must present evidence to show the initiation of procedure for renunciation of previous foreign citizenship within three months of acquisition of the citizenship of Nepal.
	Comment: *The submission of evidence to show the initiation of procedure for renunciation of previous citizenship puts the person at risk of statelessness if the renouncement process is completed before the decision on the naturalized citizenship of Nepal or if the designated authorities in Nepal deny to grant citizenship of Nepal based on marriage due to any reason. Therefore, a better provision would require the submission of the initiation of procedure to renounce the previous foreign citizenship within a period of three months of acquiring the naturalized citizenship of Nepal.*			
ii.	**Other kinds of Naturalized Citizenship**	*Article 11(8):* In the cases other than those mentioned in this Article, the Government of Nepal may, in accordance with the Federal law, grant the naturalized citizenship of Nepal.	*Section 5 (4):* The Government of Nepal may grant naturalized citizenship as prescribed to those foreign citizens, who have contributed specially for the upliftment of science, philosophy, art, literature, world peace, human welfare or Nepalese industry, finance or social development and have fulfilled the following conditions or status: (a) who is able to read and write Nepali or any other language in practice in Nepal. (b) who is engaged in any occupation and domiciled in Nepal. (c) who has renounced or declared such renunciation of the citizenship of the other country. (d) who has resided in Nepal for a minimum period of 15 years. (e) who is a citizen of the country where there is provision of the law or practice to grant naturalized citizenship to Nepalese.	A new provision needs to be added as follows: A foreign man married to a citizen of Nepal desiring to obtain naturalized citizenship of Nepal shall have to submit an application in the prescribed form to the designated officer. On submitting such application he has to produce the marriage registration certificate with the citizen of Nepal. After acquiring the naturalized citizenship certificate of Nepal, the person must present evidence to show the initiation of procedure for renunciation of foreign citizenship within three months of acquisition of the citizenship of Nepal. District Administration Office shall issue this citizenship of Nepal. *Section 5 (4):* The Government of Nepal may grant naturalized citizenship as prescribed to those foreign citizens, who have contributed specially for the upliftment of science, philosophy, art, literature, world peace, human welfare or Nepalese industry, finance or social development and have fulfilled the following conditions or status :

SN	Issue	Constitutional Provision in the Constitution of Nepal	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
			(f) who bears good moral character (g) who is mentally fit and healthy. (5) Whatever may have been written is Sub-section (4), from among the issues of the person, the child born to the person prior to that person having acquired citizenship by naturalization may also acquire Nepalese citizenship by naturalization as prescribed form.	(a) who is able to read and write Nepali or any other language in practice in Nepal. (b) who is engaged in any occupation and domiciled in Nepal. (c) who has renounced or declared such renunciation of the citizenship of the other country. (d) who has resided in Nepal for a minimum period of 15 years. (e) who is a citizen of the country where there is provision of the law or practice to grant naturalized citizenship to Nepalese. (f) who bears good moral character (g) who is mentally fit and healthy. (5) Notwithstanding anything written in Sub-section (4), the child born to the person prior to that person having acquired citizenship by naturalization may also acquire Nepalese citizenship by naturalization as prescribed form. The District Administration Office shall grant the naturalized citizenship of Nepal under Section 5(4). Appeal on the decision of the District Administration Office on naturalized citizenship can be filed in the District Court of Nepal.
	Comment: *Section 5(4) specifies the requirement for acquiring the naturalized citizenship for foreign citizens and this is derived from Article 11(8) of the constitution as it allows other kinds of naturalized citizenships to be conferred based on the federal law. Similarly, Section 5(5) allows naturalized citizenship to children born to the person prior to him/her acquiring the naturalized citizenship of Nepal.* *However, the Act does not include naturalized citizenship for foreign male spouse of Nepali women. Echoing the principle of right to equality in Article 18 of the Constitution and Article 9 of CEDAW, Nepali women have equal rights as men conferring citizenship to their spouse thus, the Act must consist of a provision that allows foreign male spouse of Nepali women to acquire the naturalized citizenship of Nepal on an equal basis. In order to prevent dual citizenship, condition to renounce foreign citizenship within specific time needs to be added.*			
4	**Citizenship through either father or mother with Gender Identity**	*Article 12:* Citizenship with identity of descent and gender: A person who obtains the citizenship of Nepal by descent in accordance with this Constitution may obtain a certificate of citizenship of Nepal with gender identity by the name of his or her mother or father.	No provisions	A new provision needs to be added as follows: The person who is entitled to the citizenship of Nepal by descent may obtain the citizenship certificate recognizing their sexual orientation and/or gender identity. Sexual and gender minorities shall have the right to identify themselves in accordance with their gender in their citizenship certificates as 'Others' in a dignified manner.

SN	Issue	Constitutional Provision in the Constitution of Nepal, 2015	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
				Sexual and gender minorities shall have the right to change their names and gender at any point of time during or after the acquisition of the citizenship certificates. A person shall have the right to acquire citizenship certificate through the name of either parent and shall be allowed to choose among the permanent address of the father or the mother. A person shall have the right to choose their surname (family name) of the father or mother while acquiring the citizenship certificate.
	Comment: *The Supreme Court in the case of Sunil Babu Pant v. Government of Nepal[4], directed the state to recognize every individual with their own gender identity and sexual orientation. As a result of this decision of the Supreme Court of Nepal, a circular[5] was issued to confer citizenship certificates to sexual minorities and with different gender identities mentioning their gender as 'Other' instead of male or female. However, this provision cannot be found in the Act and must thus be specifically included in the Act as a new Section. The rights of such communities to change their names and gender even after acquiring the citizenship certificate must be ensured in a dignified manner that relies on the statement of such applicants rather than any additional medical evidences.* *This provision also accounts for acquiring citizenship through the name of the father or mother. As mentioned earlier, this provision needs to be clarified further about its scope of application. This does not have an equivalent provision in the Act and thus needs to be clarified. This provision relates to the process of acquiring citizenship certificate for those who are eligible under Article 11 of the Constitution. The citizenship Act should explain it further and specifically mention that the citizenship certificate can be obtained through either parent and from either of the location of father or mother.* *As per the decision of the Supreme Court of Nepal on Dil Bahadur Bishwakarma vs. Government of Nepal[6] decided on June 4, 2006, everyone has to be issued citizenship certificate with their surname not the caste or ethnic name.*			
5	Non-residential Citizenship	*Article 14.* Power to grant non-resident Nepalese citizenship: The non-residential citizenship of Nepal may be so granted to a person who has acquired the citizenship of a foreign country, has resided in a country other than a member state of the South Asian Association for Regional Cooperation, and who or whose father or mother, grandfather or grandmother was previously a citizen of Nepal by descent or birth but subsequently that such person may enjoy economic, social and cultural rights in accordance with the Federal law.	No provisions	A new provision needs to be added as follows: Non-residential Citizenship: The person who has acquired citizenship of a foreign country and residing in a country other than the country which is a member of the South Asian Association for Regional Cooperation (SAARC) and who or whose father or mother, grandfather or grandmother was a citizen of Nepal by descent or birth and later on has acquired citizenship of the foreign country, may be conferred with the non-residential citizenship of Nepal. Such citizens are allowed to exercise social, economic and cultural rights only.
	Comment: *This is another new provision and thus is not addressed by the Act. The Act must include a similar provision that is in line with the Constitution.*			

4. Writ No. 917 of the Year 2064 B.S. (2007 A.D.), Decided on December 21, 2007.
5. Circular by the Ministry of Home Affairs, Registration No. 180/2069/70, issued on January 20, 2013.
6. Writ No. 3021 of the Year 2061 B.S. (2004 A.D.), Decided on May 15, 2006.

SN	Issue	Constitutional Provision in the Constitution of Nepal, 2015	Corresponding Provisions in the Nepal Citizenship Act, 2006	Suggested additions/amendments in the Nepal Citizenship Act, 2006
6	Other Provisions			
i	Protection of Good Faith	No provisions	No provisions	A new provision needs to be added as follows: The concerned government officials responsible to issue citizenship documentations including recommendation and citizenship certificate of Nepal shall be protected by the principle of good faith.
	Comment: *This provision needs to be added in order to protect the government officials from being prosecuted in cases of wrongful citizenship certificate distribution where they are not at fault. In many cases, the people present fraudulent evidences in order to acquire citizenship certificate but even in those cases the recommending authorities are held liable for issuing citizenship certificates in a wrongful manner. This has highly discouraged the recommending authorities to issue the recommendation for even those cases where the evidences submitted are genuine. The protection of good faith of the recommending authorities will help to mitigate that problem.*			
ii	Family member(s) accountability	No provisions	No provisions	A new provision needs to be added as follows: The family member(s) who has the responsibility to be present to certify (sanakhat) for citizenship must be present at the Village Executive Municipality and at the District Administration Office with the applicant to certify (Sanakhat) for citizenship certificate. If the responsible family member(s) deny to be present in the Village Executive/Municipality and at the District Administration Office, the District Administration Office shall summon him/her to be present at the District Administration Office within 7 days of filing of application excluding the time of travel. If the responsible family member(s) still refuses to be present in the District Administration Office to certify (Sanakhat) for citizenship Certificate, the concerned person(s) shall be liable for imprisonment of three months or a fine of Rs. 10,000 or both.
	Comment: *In many cases, the family member(s) refuse to acknowledge the relationship with their children or refuse to be present in the concerned office due to certain differences with the applicant. This results in the applicant not being able to acquire the citizenship certificates. Penal provisions for such family members will make it mandatory for them to certify the relationship and enable such persons to exercise their rights.*			

CONSTITUTIONAL PROVISIONS ON CITIZENSHIP

Debates over citizenship marked one of the contentious issues extensively deliberated upon during the constitution making process. The citizenship provisions[7] drew immediate dissenting opinion from many Constituent Assembly (CA) members, particularly the women CA members. Consequently, the CA could not agree on the citizenship provisions and it was categorized as a disputed issue after the dissolution of the first CA.

The second CA was formed on January 21, 2014. Despite being categorized amongst the disputed issue by the first CA, the Constitution Record and Determination Committee identified the citizenship provisions as a settled issue and forwarded it to the Constitution Drafting Committee (CDC) on May 13, 2014, thereby preventing deliberations on the provision. The Sub-Committee of CDC however on August 6, 2014, requested to send the citizenship provisions to the Constitutional and Political Dialogue and Consensus Committee (CPDCC) for further discussion. Similarly, a Sub-Committee of the CPDCC identified citizenship as an issue that required further discussion and thus resulted in substantive discussion in the CPDCC as well.

Parallel to the formal constitution making process, civil society organizations, activists and persons without citizenship certificate staged a series of protest programs in the streets of the capital. Some protest programs were organized in the districts as well. The civil society organizations repeatedly put forth their demands of equal rights of men and women in conferring citizenship to their children and spouse. More specifically, there was the demand of amending the 'Father AND Mother' to 'Father OR Mother' that would enable acquisition of citizenship through mothers in the same capacity as fathers.

A month after the earthquake, the four top political parties adopted the 16 point agreement resulting in the consensus of all the contentious issues.[8] The citizenship provisions still remained unchanged and the restrictive 'Father AND Mother' provision was included in the preliminary draft of the Constitution. The draft was then sent for public consultation which witnessed a massive support for the 'Father OR Mother' provision. Finally, the CA was compelled to amend the citizenship provisions including 'father or mother'.

The provisions related to citizenship are included in Part 2 of the Constitution. The provisions can be better understood after classifying them under the following sub-headings:

Citizenship as a right

Quite remarkably, article 10(1) of the Constitution recognized acquisition of citizenship as a right of all Nepali citizens. Previous Nepal's constitutions never recognized citizenship as a right. Additionally, Article 10(2) states that there will be a single federal citizenship with provincial identity. However, the distinction in the meaning of citizens and persons with citizenship is unclear. Considering there are 5.2 million people in Nepal without citizenship certificate, who are not foreigners[9], the application of this right for these group is ambiguous.

7. Review of the High Level Taskforce Proposal on Citizenship, page 1. The High Level Task Force constituted under the first CA recommended restricting the citizenship by descent provision to require both parents to be Nepali citizens for their child to be eligible to acquire the citizenship of Nepal.
8. Through the 16 Point Agreement, Nepali Congress (NC), Communist Party of Nepal United Marxist Leninist (CPN UML), United Communist Party of Nepal (UCPN) Maoist and Madheshi Janaadhikar Forum Democratic Party formed an alliance.
9. Acquisition of Citizenship Certificate in Nepal: Estimation and Projection, FWLD, December 2015.

Citizenship by descent

Citizenship by descent has been further categorized into six types:-

1. **Citizen of Nepal by descent who have acquired the citizenship before the commencement of the Constitution**

   All the citizens of Nepal who have acquired the citizenship of Nepal by descent before the commencement of the Constitution of Nepal, 2015 have been recognized as citizens of Nepal by descent.[10]

2. **Children to Nepali father or mother**

   Any person whose father or mother was a citizen of Nepal at the time of birth of the person has been deemed to be a citizen of Nepal by descent.[11] Although when taken by itself is a progressive provision, its scope of application has been dramatically curtailed by subsequent provisions in the Constitution.

3. **Children whose either parent acquired citizenship by birth can acquire if both the parents are Nepali citizens**

   Children, whose either father or mother acquired citizenship by birth, can acquire the citizenship

10. Article 11(2)(a), Constitution of Nepal.
11. Article 11(2)(b), Constitution of Nepal.

of Nepal by descent only if both the "father and mother" are citizens of Nepal.[12] This means that a child born to Nepali citizen by birth and a foreigner or without Citizenship certificate cannot acquire the citizenship of Nepal by descent.

4. **Foundlings in the territory of Nepal whose parents are unidentified**

   A child found in the territory of Nepal can acquire citizenship by descent until the time the father or mother of the child is traced.[13]

5. **Children to Nepali mother with unidentified father**

   Children born to Nepali women in Nepal, and having permanent domicile in Nepal, can acquire citizenship by descent but only if the father of such children cannot be traced.[14] The Constitution does not clarify the meaning of the term 'father not traced'. This is directly contradictory to Article 11(2)(b) as well as Article 18[15] and Article 38(1)[16] of the Constitution. Putting a special condition for women creates a discrimination against them and puts their children at the risk of statelessness. Lack of clarification expands the discretionary power of the authorities on issuance of the citizenship, thereby making it difficult to implement this provision, especially in a non-discriminatory way.

6. **Children born to Nepali woman and foreign man (both parents are Nepali citizens while acquiring citizenship)**

   Children born to Nepali woman and foreign man can acquire citizenship of Nepal by descent if the child was born in Nepal and at the time of application both the parents are Nepali citizens.[17]

Citizenship by naturalization

Based on constitutional provisions, citizenship by naturalization can be further classified into three types.

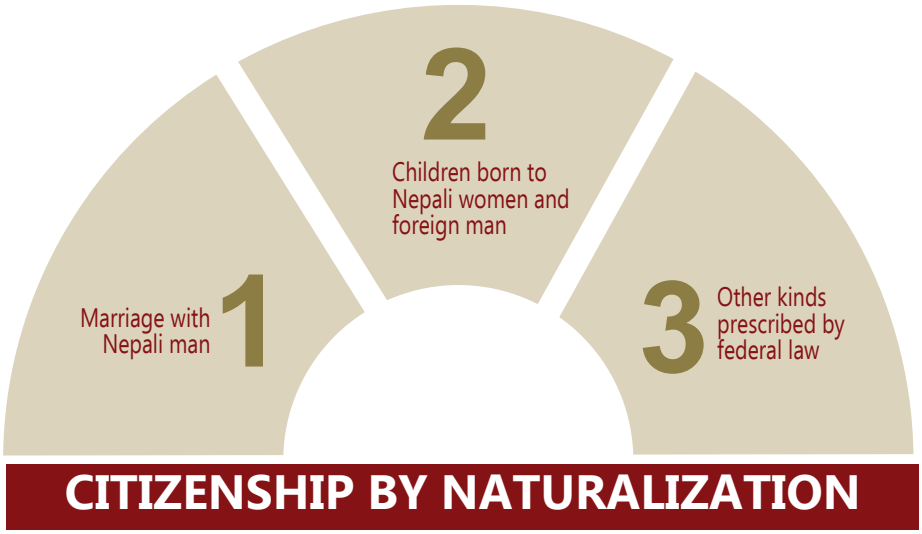
1. **Marriage with Nepali man**

   The foreign female spouse of a Nepali man can acquire citizenship by naturalization.[18] However, the same provision does not apply to the foreign male spouse of a Nepali woman. The provision is also not clear regarding further conditions that need to be fulfilled in order to acquire the Nepali citizenship by naturalization.

2. **Children born to Nepali women and foreign men**

   Children born to Nepali woman and foreign man may acquire naturalized citizenship of Nepal provided that they have permanent domicile in Nepal and have not acquired the citizenship of the foreign country based on father's citizenship.[19] This is again a discriminatory provision that is in contradiction to Article 11(2)(b), Article 18 and Article 38(1) of the Constitution. Furthermore, the similar provision in the Interim Constitution was never put into practice, putting the children of Nepali woman and foreign man at the high risk of statelessness.[20]

12. Article 11(3), Constitution of Nepal.
13. Article 11(4), Constitution of Nepal.
14. Article 11(5), Constitution of Nepal.
15. Right to equality: (1) All citizens shall be equal before law. No person shall be denied the equal protection of law.
    (2) No discrimination shall be made in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds.
    (3) The State shall not discriminate citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology or on similar other grounds.
16. Rights of women: (1) Every woman shall have equal lineage right without gender based discrimination.
17. Proviso of Article 11(7), Constitution of Nepal.
18. Article 11(6), Constitution of Nepal.
19. Article 11(7), Constitution of Nepal.
20. Nepal Civil Society Network of Citizenship Right, Global Campaign for Equal Nationality Rights and Institute on Statelessness and Inclusion, Joint Submission to the Human Rights Council at the 23rd Session of the Universal Periodic Review: Nepal, available at: http://fwld.org/wp-content/uploads/2016/07/Nepal-UPR-page-English.pdf



3. **Other kinds prescriebd by federal law**

   The Constitution states that the Government of Nepal can confer other kinds of naturalized citizenship based on the federal law.[21] These legal provisions need to be determined in the citizenship laws.

Other Provisions

Honorary Citizenship

The Constitution has also made a provision for honorary citizenship which the Government of Nepal can confer based on the federal law.[22]

Citizenship in case of acquisition of territory by merger

In case any territory is acquired to Nepal by way of merger, the persons living in that area will be recognized as citizens of Nepal.[23]

Gender Identity

The Constitution also allows citizenship by descent acknowledging the gender identity of persons.[24] It ımplies that, at request, the persons can mention their desired gender in the citizenship certificates. This is a new provision that could not be found in the previous constitutions.

Citizenship through the name of father or mother

The individuals who are eligible to acquire the citizenship of Nepal by descent may acquire it through the name of the father or the mother.[25] This is a continuation of Article 11(2)(b) thus a proper legal interpretation is necessary in order to provide the actual intent of this provision.

Non-residential Citizenship

This is a new form of citizenship that did not exist in the previous constitutions of Nepal. This states that a foreign citizen residing in a country other than the South Asian Association for Regional Cooperation (SAARC) nations can acquire the Non-residential Citizenship of Nepal if him/her, the father, mother, grandfather or grandmother was a citizen of Nepal by birth or descent. Such citizens can only exercise economic, social and cultural rights.[26]

21. Article 11(8), Constitution of Nepal.
22. Article 11(9), Constitution of Nepal.
23. Article 11(10), Constitution of Nepal.
24. Article 12, Constitution of Nepal.
25. Ibid.
26. Article 14, Constitution of Nepal.

INTERNATIONAL OBLIGATIONS OF NEPAL RELATED TO CITIZENSHIP

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."[27] Nepal having ratified a series of human rights treaties, and being a member state of the United Nations, is obligated to uphold the values of the human rights treaties, and thus to ensure equality between men and women.[28]

Supporting the concept that Nepal, as party to the international human rights treaties, has the obligation to abide by them, it has been included in Article 51(b)(3) of the Constitution of Nepal, 2015. This article obligates the state to pursue policies related to "implementing international treaties and agreements to which Nepal is a state party". Furthermore, support is provided also by section 9(1) of the Nepal Treaty Act, 1990, which 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 the human rights treaties to which Nepal is a party. Nepal has ratified a number of human rights treaties which can be studied in the table below.

Each of these treaties obligated Nepal to guarantee equality between men and women in the enjoyment of the rights enshrined in these treaties. Furthermore, a number of specific provisions also foresee the right to acquire a nationality, without discrimination based on gender. The relevant provisions of the treaties have been highlighted here below. As mentioned before, each of these provisions is relevant to Nepal in its national decisions on citizenship, pursuant Article 51(b)(3) of the Constitution and the 1990 Nepal Treaty Act.

Universal Declaration of Human Rights (UDHR), 1948

Article 15(1) of the Universal Declaration of Human Rights,[29] the cornerstone of international human rights law, enshrines the principles that '[e]veryone has the right to a nationality'.[30]

SN	Treaty	Ratification or Accession (a) Date
1	International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	January 30, 1971 (a)
2	Convention on the Rights of Child (CRC)	September 14, 1990
3	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	April 22, 1991
5	International Covenant on Civil and Political Rights (ICCPR)	May 14, 1991 (a)
6	International Covenant on Economic, Social and Cultural Rights (ICESCR)	May 14, 1991 (a)

27. Preamble of the UN Charter,24 October 1945, 1 UNTS XVI.
28. Ibid.
29. 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 i.e. ICCPR and ICESCR are based on UDHR, the Declaration has a strong persuasive value considering Nepal is a party to these Covenants.
30. UN General Assembly, *Universal Declaration of Human Rights*, Art. 15(1), 10 December 1948, 217 A (III), Article 15(2).

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

CEDAW obligates State parties to make laws that grant equal rights to women as of men in nationality, regardless of the nationality of one's husband, or the marital status, and that grant equal rights regarding conferring nationality to children. It further obligates to adopt same procedures for naturalized citizenship that applies to husbands of the national that apply to the wives.

The relevant provisions in CEDAW that are related to citizenship are mentioned below:-

ARTICLE 2

Article 2 obliges State parties to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women. They are required to:-

- Embody the principle of equality of men and women in their national constitutions or other appropriate legislation, if not incorporated therein, and ensure, through law other appropriate means, the practical realization of these principles[31]
- Adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women[32]
- Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices, which constitute discrimination against women[33]
- Repeal all national penal provisions, which constitute discrimination against women[34]

ARTICLE 9

CEDAW recognizes women's autonomy and equality in the transfer and acquisition of nationality, and permits either spouse to confer nationality on their children. Specifically, Article 9 of the Convention states:-

"1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children."

GENERAL RECOMMENDATION NO. 21

General Recommendation No. 21 (1994) addresses distinctions in law and discrimination based upon marital status. Additionally, paragraph 6 reads:

"Nationality is critical to full participation in society... Without status as nationals or citizens, women are deprived the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality."

International Covenant on Civil and Political Rights (ICCPR), 1966

ICCPR provides that everyone shall have the right to recognition everywhere as a person before the law.[35] State parties are obligated to undertake measures that ensure the equal enjoyment of civil and political rights by men and women set forth in the Covenant.[36]

The relevant provisions in ICCPR that are related to citizenship are mentioned below:-

31. UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, art. 2(a), 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, (Hereinafter CEDAW) Article 2(a).
32. CEDAW, Article 2(b).
33. CEDAW, Article 2(f).
34. CEDAW, Article 2(g).
35. UN General Assembly, *International Covenant on Civil and Political Rights*, Art. 16, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (Hereinafter ICCPR), Article 16.
36. ICCPR, Articles 3 and 26.

ARTICLE 24(3)

Every child has the right to acquire a nationality.

ARTICLE 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Convention on the Rights of the Child (CRC), 1989

CRC obligates State parties to respect and ensure the right of every child within their jurisdiction, without discrimination of any kind, irrespective of sex, nationality, ethnicity or any other status of a child's parents or legal guardians.[37]

The relevant provisions in CRC that are related to citizenship are mentioned below:-

ARTICLE 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

ARTICLE 8

States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965

CERD obligates State parties to ensure there is no racial discrimination in exercising the right to nationality. General Recommendation 29 of CERD has extended this principle to be applicable for caste-based discrimination as well.[38]

ARTICLE 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(d) Other civil rights, in particular:

(iii) The right to nationality.[39]

37. UN General Assembly, *Convention on the Rights of the Child*, Art. 2(a), 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 (Hereinafter CRC), Article 2(1).
38. General Recommendation XXIX, General Recommendation on Descent-based Discrimination, CERD/C/61/Misc.29/rev.1, Sixty-first session, 22 August 2002.
39. UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660 (CERD), p. 195, Article 5.

DECISIONS OF THE SUPREME COURT ON CITIZENSHIP

The Supreme Court is the apex court in Nepal and is also the Court of record which has the final authority to interpret the constitution and laws.[40] Everyone must abide by any interpretation of the Constitution or a law made by or any legal principle laid down by the Supreme Court.[41] Disregard of any decision of the Supreme Court is subject to punishment on its contempt.[42]

Citizenship in Nepal, though not specifically mentioned as a fundamental right in the previous constitutions, has been recognized by the Supreme Court as a right. As a consequence, denial to provide citizenship by the concerned authority creates substantial grounds for the applicant to file a Public Interest Litigation (PIL) in the court, and seek remedy invoking the extraordinary jurisdiction of the Court.[43] Generally, in citizenship cases, a PIL was filed in the Court against the VDC/ Municipality/Ward Office, District Administration Office, Ministry of Home Affairs and/or Office of the Prime Minister.

After the promulgation of the Interim Constitution of 2007, the Supreme Court has provided many landmark judgments with regard to citizenship, where the concerned offices were issued directive orders to provide citizenship to the applicants. Furthermore, the Ministry of Home Affairs also issued circulars in order to implement the decisions of the Supreme Court and laws on citizenship.

However, the implementation of the decisions has benefited the concerned applicants only, despite the Court creating precedents on the issue applicable to other similar cases. The decisions, thus, did not led to a change in the laws, obliging individuals with the same legal shortcomings to file another individual lawsuit. This latter aspect obviously prevent many individuals from easily enforcing their right to have a citizenship.

The leading decisions of the Supreme Court are listed below for reference.

40. Article 128(2), Constitution of Nepal.
41. Article 128(4), Constitution of Nepal.
42. Article 128(4), Constitution of Nepal.
43. Article 144(1), Constitution of Nepal.

SN	Name of Applicant	Date of Decision	Summary of Decision
1.	*Dil Bahadur Bishwakarma et. al. v. Government of Nepal et. al.*[44]	June 4, 2006	The Court held that the law clearly prescribes to mention the surname of the citizens (thus not the caste) in the citizenship certificate. Hence, the people from the Dalit Community have the right to include their surname and not their caste in their citizenship certificates, just like the citizen from other castes.
2.	*Nakkali Maharjan v. Office of the Prime Minister and the Cabinet of Ministers et al.*[45]	April 7, 2007	The Court issued a mandamus order to Kirtipur Municipality to issue citizenship recommendation letter without discrimination on the basis of gender and marital status, stating that also married women have the right to acquire citizenship through the father.
3.	*Sunil Babu Panta et. al. v. Government of Nepal, Office of the Prime Minister and the Cabinet of Ministers*[46] *et. al.*	December 21, 2007	The Court issued a directive order to the defendants to create new, and amend the already existing laws in order to eliminate any discrimination based on sexual orientation and gender identity of an individual.
4.	*Ranjeet Thapa v. Government of Nepal, Office of the Prime Minister and the Cabinet of Ministers et al*[47]	March 2, 2010	The Court held that persons eligible to acquire the citizenship certificate of Nepal have the right to choose whether to acquire the citizenship certificate through the address of the father or the mother.
5.	*Ashok Kumar Shah v. Government of Nepal et. al.*[48]	March 2, 2010	The Court held that, despite not having acquired the citizenship certificate of Nepal, a person with permanent residence in Nepal will not be deemed a foreign national because the citizenship laws of Nepal do not obligate Nepalese to acquire citizenship certificates.
6.	*Sabina Damai v. Government of Nepal, Prime Minister's Office and Cabinet of Ministers et al*[49]	February 27, 2011	The Court held that the Article 8(2) of the Interim Constitution clearly stated that citizenship can be acquired through mother. Consequently, the Court ordered the District Administration Office Dolakha to issue citizenship and also ordered the Ministry of Home Affairs to issue a circular to all the District Administration Offices of Nepal to provide citizenship certificates to persons whose mother is a Nepali citizen and the father is not traced, fulfilling the procedures laid down in Nepal Citizenship Act, 2006 and Nepal Citizenship Rules, 2006.

44. *Nepal Kanoon Patrika*, 2062, Volume 4, Decision No. 7531, p 492.
45. *Nepal Kanoon Patrika*, 2065, Volume 11, Decision No. 8035, p 1340.
46. Writ No. 917 of the Year 2064 B.S. (2007 A.D.).
47. *Nepal Kanoon Patrika* 2066, Volume 6, Decision No. 8165, p 1014.
48. *Nepal Kanoon Patrika* 2067, Volume 4, Decision No. 8349, p 600.
49. *Nepal Kanoon Patrika* 2068, Volume 2, Decision No. 8557, p 247.

SN	Name of Applicant	Date of Decision	Summary of Decision
7.	*Nina Tamang (Gurung) et al v. Government of Nepal, Prime Minister's Office and Cabinet of Ministers et al*	January 11, 2012	The Court ordered the District Administration Office of Nuwakot to follow the due process of law in registering the application of the applicant, pursuant to Article 8(2)(b) of the Constitution and Nepal Citizenship Act, 2006.
8.	*Sita Devi Adhikari et al v. Government of Nepal et. al.*	July 10, 2013	The Court ordered the Ministry of Home Affairs to reach a decision on the application of naturalized citizenship of the Applicant without further delay after having completed the remaining necessary investigations.
9.	*Bhola Nagarkoti et al. v. Government of Nepal et. al.*	March 24, 2014	The Court stated that the Interim Constitution of Nepal in Article 8(2) has mentioned Father OR Mother, rather than Father AND Mother. Consequently this also applies to cases where the mother is a Nepali citizen and the father has, namely, disappeared. The Court thus ordered the District Administration Office of Kathmandu to issue the citizenship certificate to the Applicants.
10.	*Deepti Gurung v. Government of Nepal et. al.*	February 9, 2015	The Court, relying on the principle that registering the birth of a child is the duty of the state, and that this applies not just to nationals but also to foreigners, held that children of Nepali mothers and whose fathers cannot be traced, must not be denied to register their births in the concerned authorities. A mandamus was issued to the Lalitpur Sub-Metropolitan City to issue the birth registration of the daughter of the applicant.
11.	*Amrit Sharma v. Government of Nepal*[50] *et. al.*	April 16, 2015	The Court stated that Article 8(3) of the Interim Constitution 2007 and Section 3(3) of the Nepal Citizenship Act, 2006 allows persons whose both parents are unidentified to acquire the citizenship of Nepal. The Applicant also met this criteria, so the Court ordered the District Administration Office to issue the required recommendation, and also instructed the Ministry of Home Affairs to take necessary departmental action against the District Administration Office for ignoring the order of the Court.

50. *Nepal Kanoon Patrika* 2072 Poush, Part 57, Volume 9, Decision No. 1459, p 1539.

BEST PRACTICES OF OTHER COUNTRIES REGARDING CITIZENSHIP

Nationality laws which do not grant women equality with men in conferring nationality to their children are a major causes of statelessness. UNHCR's Background Note of March 2016[51] on nationality legislations has identified 27 nations that still have discriminatory laws that foresee a different treatment between men and women, affecting especially women's right to confer nationality to their children.[52] 12 of those countries lie in the Middle East and North Africa, 8 in Sub-Saharan Africa, 5 in Asia and the Pacific, and 2 states in the Americas.[53]

In recent years a great number of countries have reformed their nationality laws so as to ensure equal rights between men and women. Namely such reforms have been undertaken by Sri Lanka (2003), Egypt (2004), Algeria (2005), Indonesia (2006), Iraq (partial reform in 2006), Sierra Leone (partial reform in 2006), Morocco (2007), Bangladesh (2009), Zimbabwe (2009), Kenya (2010), Tunisia (2010), Yemen (2010), Monaco (2005, 2011), Senegal (2013) and Suriname (2014).[54]

In order to provide examples of positive reforms, the following section provides an overview of countries that have changed, or are on the verge of changing, their nationality laws, in order to eliminate gender based discriminations.[55]

Countries that have changed their laws to allow women to pass their nationality to their foreign spouse

SN	Country	Remarks
1	Niger	Married women can now pass on their nationality to their foreign spouse on an equal basis with men.[56]
2	Suriname	The National Assembly of Suriname passed the legislation granting Surinamese women equal rights as men to pass their nationality to spouses on 10 July 2014.[57]
3	Vanuatu	On 16 January 2014, the Parliament of Vanuatu granted married women the right to confer their nationality to their foreign spouse on an equal basis as married men.[58]

51. UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness*, 2016, 8 March 2016, available at: http://www.refworld.org/docid/56de83ca4.html
52. Ibid, page 1.
53. Ibid.
54. Ibid, page 2.
55. Equality Now, *The State We're In: Ending Sexism in Nationality Laws*, January 2016. Available at: http://www.equalitynow.org/content/state-were-ending-sexism-nationality-laws.
56. Ibid, page 6.
57. Ibid.
58. Ibid, page 5.

Countries that have changed their laws to allow women to pass their nationality to their children in equal capacity as men

SN	Country	Remarks
1	Suriname	The National Assembly of Suriname passed the legislation granting Surinamese women equal rights as men to pass their nationality to children on 10 July 2014.[59]
2	Sudan	In Sudan, the 1994 Nationality Act provides that all children born in Sudan, whose male ancestors were residing in Sudan since 1956, acquire Sudanese nationality by descent. After 1994, the Act grants citizenship to children born to a father who was a Sudanese national by descent. The law was amended in 2005 to allow a child born to a Sudanese mother to acquire Sudanese nationality by birth by following an application process.[60] After the creation of the independent State of South Sudan, the Republic of Sudan amended its nationality law in 2011[61], but has yet to amend the relevant sections of the 1994 Act.
3	Kenya	The previous Kenyan Constitution of 2001 allowed Kenyan mothers and fathers to confer Kenyan nationality on their children born in Kenya on an equal basis, but only fathers could confer nationality to children born outside of Kenya.[62] The 2010 Constitution of Kenya reformed this stating: 'A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen'.[63]
4	Sri Lanka	Sri Lanka adopted a new Citizenship Act in 2003. Now, not only a child's father can pass nationality to his kid, but both. Through this amendment, all the reference to the father were substituted with "either of his parents".[64]
5	Indonesia	The Citizenship Law of 1958 foresaw that a mother could pass the nationality to the child only when the father was unknown, had no nationality or deceased 300 days before the child's birth.[65] With the adoption of a new law in 2006, both parents are able to pass nationality to the children, even if born from outside the wedlock.[66]

59. Ibid.
60. Sudanese Nationality Act 1994 as amended by Sudanese Nationality Law (Amended) of Year 2005 - http://www.refworld.org/pdfid/502cc1b92.pdf
61. Sudanese Nationality Act (Amendment) 2011 - http://www.refworld.org/pdfid/502cc1b92.pdf
62. UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness*, 2016, 8 March 2016, available at: http://www.refworld.org/docid/56de83ca4.html, page 2.
63. Ibid.
64. Section 5(1) of the Citizenship Act 1948, and 5A of the Citizenship Amendment Act, No.16 of 2003 (Sri Lanka)
65. Art 1(b);(c);(d) of Law 62/1958 (Indonesia)
66. Art. 2; 3; 4; 5 of Law 12/2006 (Indonesia)

SN	Country	Remarks
6	Zimbabwe	The Citizenship of Zimbabwe Act (as amended in 2003) was discriminatory towards women, in that it provided that mothers were only able to pass nationality to their children when the father was deceased or not known.[67] With the new constitution adopted in 2013 this discriminatory provisions have changed as to grant to both mother and father the same capacity to confer the nationality to their children.[68] A new (or amendment of) Citizenship Act to implement the progressive constitution yet has to be adopted.

In the past ten years, 8 countries have changed their citizenship laws to allow women to confer citizenship to their children in equal capacity as men.

Countries that have made progress in their laws to allow women equal rights of citizenship as men

SN	Country	Remarks
1	Jordan	In 2014, the Government of Jordan approved regulations to provide the spouses of Jordanian women and their child to certain privileges such as residence permit, and excess to medical and educational services.[69]
2	Liberia	UNHCR convened the Ministerial Meeting in December 2011 to commemorate the respective 60th and 50th anniversaries of the 1951 Convention Relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness. In this meeting, the Government of Liberia committed to address inequality in nationality matters through law reform.[70] Liberia is currently reviewing the Alien and Nationality Law in order to make it consistent with the Liberian Constitution, which provides for equality between women and men in their ability to confer their nationality to their children.[71]
3	Senegal	Senegal also pledged to address inequality in nationality in the Ministerial Meeting in December 2011 and consequently amended its nationality law in 2013 that sets out in clear terms that: A direct descendant to a Senegalese national is Senegalese.[72]

67. Article 5(1)(d)(i)(ii) and Article 6(1) amd (7(a) of the Citizenship of Zimbabwe Act (amendment 2003)
68. Article 46(a)(b); Art. 36(2) and Art. 37(a) of the 2013 Constitution of Zimbabwe
69. Equality Now, *The State We're In: Ending Sexism in Nationality Laws*, January 2016. Available at: http://www.equalitynow.org/content/state-were-ending-sexism-nationality-laws, page 5.
70. UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness*, 2016, 8 March 2016, available at: http://www.refworld.org/docid/56de83ca4.html, page 2.
71. Ibid.
72. Ibid.

SN	Country	Remarks
4	Madagascar	A broad consensus has formed among Members of Parliament and other governmental and civil society stakeholders in Madagascar to ensure full gender equality in the Madagascar Nationality Act in the future.[73]
5	Sierra Leone	In Sierra Leone, a Constitutional Review Committee which is currently reviewing the Constitution has proposed a gender neutral provision for acquiring nationality by children born to a national.[74]
6	Somalia	Somalia has already drafted a progressive citizenship bill and after getting enacted, it will remove discriminatory provisions and permit Somali women to confer nationality to their children on an equal basis as Somali men.[75]

These six countries have pledged to amend their citizenship laws to allow women to confer citizenship to their children in an equal capacity as of men.

Citizenship laws of South Asian countries

This section will briefly outline the legislations on citizenship of South Asian countries with regard to the same rights of women and men to confer and acquire nationality.

S.N.	COUNTRY	LEGAL FRAMEWORK
1.	Bhutan	The 1958 Citizenship Act foresaw that children could only obtain Bhutanese nationality from his/her father, and that a woman married to a Bhutanese could obtain citizenship as well, but the Bhutanese women married to foreign national was not able to pass it to a foreign husband.[76] In 1977 the Act has been amended, but not in a very progressive way: children could acquire citizenship only from their Bhutanese father; a Bhutanese woman was not able to confer nationality either to her husband or her children, nevertheless a Bhutanese man could pass on his nationality to both, his wife and his children.[77] In 1985 a new Citizenship Act was adopted. The Act is silent as for the right to confer nationality to the spouse, but has intended to eliminate the discrimination towards mothers to grant citizenship to their children, requiring both parents to be Bhutanese citizens. The provisions of the Act have been confirmed in the 2008 Constitution of Bhutan.[78]

73. Ibid.
74. Ibid.
75. Ibid.
76. Bhutan Citizenship Act 1958 Art. 3(a) and Art. 3(b)
77. Bhutan Citizenship Act 1977, CHHA 1and CHHA 2
78. Bhutan Citizenship Act 1985 Art.2 and Constitution of Bhutan 2008, Art. 6(1)

S.N.	COUNTRY	LEGAL FRAMEWORK
2.	Myanmar (formerly Burma)	The Citizenship Law of Burma (1982) states that persons whose both parents have the citizenship of Burma, shall be granted citizenship by birth; when a person marries a foreigner he/she does not lose her citizenship.
3.	India	The Citizenship law of India grants citizenship by birth to children born in India whose both parents are Indians or whose either parent is an Indian citizen and the other is not an illegal migrant at the time of birth. Citizenship by descent is issued to children born to Indian nationals outside India. Such citizenship can be acquired if either of the parents is an Indian citizen at the time of birth and the child was born on or after December 10, 1992. There are other certain conditions on acquiring the citizenship by descent and birth, but none of them are discriminatory. Citizenship of naturalization by marriage can only be acquired if the foreign spouse spends seven years in India. This is applicable for both male and female spouse.
4.	Islamic Republic of Afghanistan (IEA)	Under the 1936 Citizenship Law a child would only obtain the citizenship if both parents were Afghan, and a female citizen that would marry a foreigner would lose her citizenship and her properties; in addition, a foreign woman marrying an Afghan would automatically obtain the Afghan nationality, and would only be able to re-obtain her original citizenship in case of divorce or death of the husband.[79] In 2000 these provisions have changed with a new law on Citizenship which states that a child would obtain nationality by birth if both parents are citizens of IEA and that both husband and wife are able to confer nationality to their spouse.[80]
5.	Maldives	The Maldivian Citizenship Act of 1995 set up the criteria that one had to meet in order to obtain citizenship. It did not establish any distinction based on gender, but on religious belief, demanding the person to be a Muslim.[81] With the new constitutions of 1998 and then 2008, the requirement of being a Muslim has not disappeared, nevertheless it has positively expanded the possibility to obtain nationality to children whose one of the parents is a citizen of Maldives.[82]

79. Citizenship Law of Afghanistan 1936 Art.2; Art.11; Art.12
80. IEA Law on Citizenship (2000) Art. 10(1); Art. 11; Art. 18
81. Maldivian citizenship Act 1995 Art. 2(1)
82. Maldivian Constitution 1998 Art. 5(b) and 5(c); New Constitution of the Republic of Maldives 2008, Art. 9

S.N.	COUNTRY	LEGAL FRAMEWORK
6.	Pakistan	Since 1951 with the adoption of the Pakistan Citizenship Act, Pakistan has always granted to both women and men the same ability to pass nationality to their children. On the other hand, the 1951 Act included in Section 10 a number of provisions dedicated specifically to women married to a citizen of Pakistan, as to how to obtain the nationality from the husband. The Act did not grant the possibility to women to pass their nationality to their husband. In 2008 and 2010 this discrimination was removed through amendments to the Act that change Section 10 as to render it applicable to everyone.[83]
7.	Sri Lanka	Before the 2003 Citizenship Amendment Act only fathers had the right to confer nationality to their children. From 2003, both parents have this right. Furthermore, all the entries "his father is a citizen of Sri Lanka" of the 1948 Act have been replaced with the non-discriminatory terms "either of his parents are citizens of Sri Lanka".[84]

Nepal is the only country in South Asia which is listed among 27 States where equality between men and women relating to conferral of nationality upon children has not yet been attained[85] while some other countries in the region have an even more restrictive requirement to acquire citizenship by descent. With recent changes in citizenship law in countries like Sri Lanka and Bangladesh ensuring equal provisions on citizenship, and with India and Pakistan also having gender equal requirements, Nepal can follow their footsteps and prepare a more gender friendly and equal law on citizenship.

83. Pakistan Citizenship Act 1951, sections 4 and 5 and section 10
84. Sri Lanka Citizenship Act 1948, section 5(1); Citizenship amendment Act No. 16 of 2003, Section 5(1) and 5A.
85. UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness*, 2016, 8 March 2016, available at: http://www.refworld.org/docid/56de83ca4.html, page 3.

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