

Nepal Civil Society Network of Citizenship Rights, the Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion

Joint Submission to the Human Rights Council at the
23rd Session of the Universal Periodic Review

Nepal



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Global Campaign for Equal Nationality Rights and the Institute
on Statelessness and Inclusion make this submission to the
Universal Periodic Review (UPR) in relation to Nepal.

This joint submission draws on the multiple years of research,
advocacy, awareness raising, litigation and direct support related
experience both in Nepal and internationally, of the respective
member organisations of the Network and Global Campaign, and
of the Institute. It focuses on the issue of gender discrimination
in Nepal's citizenship law that has a detrimental impact on Nepali
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1. The Nepal Civil Society Network on Citizenship Rights, the Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion make this submission to the Universal Periodic Review (UPR) in relation to Nepal.
2. The Nepal Civil Society Network on Citizenship Rights (the Network) is a loose network of civil society organizations working in various sectors of human rights in Nepal. The Network was formed during the tenure of the First Constituent Assembly of Nepal with the aim to lobby equal citizenship rights in the upcoming constitution, and has continued to function during the term of the second Constituent Assembly. There are more than 50 organisations currently associated with the Network. The Network formulates strategies to enhance equal citizenship rights in Nepal and also organizes various programmes related to citizenship. The **Forum for Women, Law and Development (FWLD)** acts as the Secretariat of the Network and coordinates all of its meetings and programmes. FWLD, established in 1995, has been working in the sector of citizenship rights from its inception, and provides legal services to victims of discriminatory citizenship laws, provides training for government servants, lawyers and Constituent Assembly Members and carries out research and advocacy on the issue. FWLD has successfully challenged discriminatory citizenship law in the Nepal Supreme Court on multiple occasions. It also has many publications analysing and critiquing the citizenship law of Nepal.
3. The **Global Campaign for Equal Nationality Rights** (the Global Campaign) is a coalition of international and national organizations that promotes gender equality in nationality laws, so that women and men can confer, acquire, change and retain their nationality on an equal basis. The Campaign includes a Steering Committee of Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, UNHCR, UN Women and Women's Refugee Commission. The Campaign was launched in June 2014 at a side event of the 26th Session of the Human Rights Council in Geneva, and has conducted international advocacy activities to encourage states which still maintain gender discriminatory nationality laws, to reform their laws and bring them into compliance with international human rights standards.
4. The **Institute on Statelessness and Inclusion** (the Institute) is an independent non-profit organisation dedicated to promoting an integrated, human rights based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only *global* centre committed to promoting the human rights of stateless persons and ending statelessness. Its work combines research, education, and advocacy, and it provides expertise to civil society, academia, the UN and governments.

5. This joint submission draws on the multiple years of research, advocacy, awareness raising, litigation and direct support related experience both in Nepal and internationally, of the respective member organisations of the Network and Global Campaign, and of the Institute. It focuses on the issue of gender discrimination in Nepal’s citizenship law that has a detrimental impact on Nepali women and their families – both men and women.

UNIVERSAL PERIODIC REVIEW OF NEPAL UNDER THE FIRST CYCLE

6. Nepal was first subject to the Universal Periodic Review at Session 10 of the First Cycle, in January 2011. At this review, Slovakia, recommended that Nepal "Address cases of statelessness in the new Constitution's drafting process".¹ Nepal did not accept this recommendation. As this submission confirms, the failure of Nepal to accept that it has a statelessness problem, and to act accordingly, has resulted in the human rights of those victimised by gender discriminatory nationality laws further deteriorating.

7. Multiple recommendations were made to Nepal in relation to women’s rights and gender equality. Of these, the following recommendations which were all accepted by Nepal, are the most relevant to this submission:

Recommendation	Recommending Country
Make further efforts to overcome the difficult issue of discrimination on the grounds of religion, gender, race or otherwise. ²	Japan
Continue its efforts to end discrimination on the grounds of religion, race or gender in law and practice. ³	Pakistan
Continue its efforts to overcome discrimination and social exclusion on the basis of gender, caste, class, ethnic group, disability or geographic situation, in order to ensure the respect of civil, political, economic, social and cultural rights. ⁴	Argentina
Continue its efforts to ensure gender equality. ⁵	Singapore

8. As this submission evidences, despite accepting several such recommendations related to enhancing gender equality, Nepal’s failure to amend gender discriminatory citizenship law has had significant negative impact on a large portion of the Nepali population.

NEPAL’S INTERNATIONAL LEGAL OBLIGATIONS

9. Nepal has ratified the majority of the international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination (CERD),

1. UN General Assembly, *Report of the Working Group on the Universal Periodic Review: Nepal*, A/HRC/17/5, 8 March 2011, Para 109.12.
 2. *Ibid.*, Para 106.21.
 3. *Ibid.*
 4. *Ibid.*
 5. *Ibid.*, Para 106.22.

the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of Persons with Disabilities (CRPD). Nepal has not ratified the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. However, it is notable that Nepal has made no reservations to CEDAW or the CRC, which contain important protections against gender discrimination in nationality law (CEDAW Art. 9) and the prevention of childhood statelessness (CRC Art. 7 and 8).

10. Significantly, the Treaty Act of Nepal stipulates that:

“In case of the provisions of a treaty, to which Nepal or the 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.”⁶

11. Furthermore, the Interim Constitution, in force since 2007, also requires the State “to implement effectively international treaties and agreements to which [it] is a party.”⁷ Thus, the international law obligations of Nepal have added force as they supersede national laws which contradict them.

GENDER DISCRIMINATORY LAWS VIOLATE NEPAL’S INTERNATIONAL OBLIGATIONS

12. Despite the strong international obligations of Nepal which are bolstered by national laws that maintain the supremacy of international treaty obligations, Nepal is one of 27 countries around the world that continues to discriminate against women in their ability to confer their nationality on their children on an equal basis with men.⁸ Gender discrimination in nationality laws contravenes Article 9(2) of the CEDAW and can lead to statelessness when fathers are stateless or also unable to confer their nationality on their children.

13. Nepal is also one of over 60 countries that denies women equal rights with men to acquire, change or retain their nationality, and to confer nationality on their non-national spouses, in contravention of Article 9(1) of CEDAW.

14. Furthermore, gender discrimination in Nepal’s citizenship law often results in statelessness of children whose mothers have faced discrimination, despite Nepal’s obligations under Article’s 7 and 8 CRC. Article 7 CRC obligates the state to register the child immediately after birth and bestows on the child the right, from birth, to a name and nationality. States are obligated to implement these rights, “in particular where the child would otherwise be stateless.” Article 8 CRC obligates states to respect the child’s right to an identity “including nationality, name and family relations”.

6. Treaty Act, 2047 (1990), Section 9(1). This translation of the law appears on the Nepal Law Commission Website and can be accessed here: <http://www.lawcommission.gov.np/site/sites/default/files/Documents/nepal-treaty-act.pdf>.

7. Interim Constitution of Nepal, 2063 (2007), Section 33(m).

8. UN High Commissioner for Refugees (UNHCR), *Background Note on Gender Equality, Nationality Laws and Statelessness 2015*, 6 March 2015, available at: <http://www.refworld.org/docid/54f8369b4.html>.

HOW THE CITIZENSHIP LAW IN NEPAL IS GENDER DISCRIMINATORY

15. In Nepal, provisions relating to transfer of citizenship continue to discriminate against women. Women are yet to enjoy the right to confer, acquire, change and retain citizenship fully and independently.
16. Article 8(2)(b) of the Interim Constitution of 2007 states that anyone “whose father or mother is a citizen of Nepal at the birth of such person” is eligible for Nepali citizenship. This provision on its own implies that there is no gender discrimination in Nepal’s citizenship law. Furthermore, Article 8(3) of the Interim Constitution guarantees Nepali citizenship to foundlings. Similarly, a number of positive precedents have been laid down by the Supreme Court of Nepal (SC) in recognizing equal rights of women in acquiring and transferring citizenship to children in line with the provisions of the Interim Constitution.⁹ Recently in a case where the father of a child was unidentified, the SC quoting the Interim Constitution and the Citizenship Act issued an order of Mandamus to the District Administration Office requiring them to grant Nepali citizenship by descent to the plaintiff as her mother holds a Nepali citizenship.¹⁰ Moreover, the condition requiring a woman below the age of 35 to obtain the consent of her father, husband or guardian in order to obtain a passport was repealed by the Court.¹¹
17. However, other constitutional provisions, the Citizenship Act and Rules of Nepal, and the discriminatory manner in which the law is implemented by authorities, all contribute to a reality which is discriminatory of women, with significant negative impacts on their offspring. Following is an exposition of the key issues in this regard:¹²
18. **Women restricted in their right to convey citizenship to their children:** Despite Article 8(2) of the Interim Constitution and Section 3 of the Citizenship Act stating that a person can acquire citizenship by descent if their mother or father is a Nepali citizen, other discriminatory legal provisions and practices curtail the right of women to pass on their citizenship to their children. For example, according to Article 8(7) of the Interim Constitution, the children of Nepali women and foreign men can only access citizenship through naturalization, and not by right, through descent. There is no similar restriction on men. One of the consequences of Article 8(7), is that state authorities in practice refuse to accept citizenship applications submitted only by mothers, as they require proof of the father’s identity to establish that he is not a foreigner. Though the Supreme Court has set precedents recognizing equal rights of women, including through establishing the rights of married women and single women to transfer citizenship to children,¹³ women continue to face discrimination.
19. The combined impact of Article 8(2) and 8(7) (and similar provisions in the Citizenship Act) is that while only the father or the father and mother together face no barriers securing citizenship for their children, it is extremely difficult for only the mother to do so. This has led to cases in which children of single mothers are left stateless.

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9. In *Forum for Protection of Public Interests v. HMG Nepal* (2005), the discriminatory birth registration and denial of citizenship for the children of *Badi* women in the Birth, Death and Other Personal Events (Registration) Act, 1977, was challenged. The Supreme Court of Nepal declared the words “male member” of the family appearing in section 4(1) of the Act *ultra vires*. In this case the order of *mandamus* was issued in the name of the government not to deny registration of the birth of the *Badi* children and to make necessary arrangements for conferring them with the citizenship certificate pursuant to Article 9(2) of the 1990 Constitution and Section 3(4) of the Citizenship Act, 1963. In *Ranjeet Thapa v. Government of Nepal*, unpublished, Writ no. 0035, decided on June 26, 2009, the Supreme Court issued a mandamus for issuing citizenship from the mother’s name. In *Nakkile Maharjan v. Government of Nepal*, decision 2064/1/4 Writ no. 0089 of 2063 BS, it was held that a married woman can obtain citizenship from her mother’s name (2011).
 10. *Sabina Damai and FWLD v. Government of Nepal*, Writ no. 06/0703 of 27 January 2011, decided on February 27, 2011 and 2011 and *Shanti Nagarkoti and Bhola Nagarkoti v Government of Nepal*, Writ No. 0880, March 24, 2014.
 11. *Lily Thapa v. Government of Nepal*, Writ no. 34 of 2061 B.S, decided on 2062-8-30 B.S. (December 15, 2005), N.K.P. 2062, vol. 9, p. 1054, decision no.7588.
 12. For a more detailed analysis see, FWLD and National Women Commission, *Analysis of Nepalese Citizenship Laws from a Gender Perspective*, 2014.
 13. See above, notes 9 and 10.

20. **Discriminatory impact on children of Nepalese mothers and foreign fathers:** As stated above, Article 8(7) of the Interim Constitution, complemented by Section 5(2) of the Citizenship Act and Section 7 of the Citizenship Rules, deny Nepali women the right to confer their citizenship to their children by descent. Instead, such children have only the option to seek naturalization. However, the discretion wielded by state authorities in relation to naturalization is extremely wide, and the overwhelming majority of naturalization applications do not result in the conferral of nationality. Research conducted by FWLD reveals that in the first six years of the implementation of these provisions, not a single naturalization application was successful.
21. **Discrimination against women who have not obtained citizenship certificates prior to marriage:** While there is no legal barrier to women obtaining citizenship certificates through their parents after marriage, in practice, married women are required to submit citizenship documents of their spouse and his family in order to obtain citizenship. This places women in a vulnerable position. Additionally, Nepali women who marry foreigners before having obtained their own citizenship certificate, are barred from subsequently doing so.¹⁴ This is a direct violation of Article 8(2) of the Nepal Constitution and amounts to an arbitrary deprivation of nationality.
22. **Gender discrimination in conveying citizenship to foreign husbands:** While Nepalese men can convey their nationality to foreign spouses and their children, Nepalese women are barred from doing so. The only path to Nepalese citizenship for foreign male spouses, is through the residence based naturalization process.
23. **Discriminatory attitudes of public servants:** In addition to the above examples of discriminatory law and policy, the attitudes of public servants and first instance decision makers in Nepal remain largely discriminatory towards women and patriarchal. As a result, despite the ongoing advocacy of civil society organisations and the positive jurisprudence of the Nepal Supreme Court, unfair and impractical administrative burdens and barriers continue to be imposed against women attempting to confer their citizenship to their children.

THE FAILURE OF THE CONSTITUENT ASSEMBLY TO REFORM DISCRIMINATORY CITIZENSHIP LAW

24. The above text provided an overview of the discriminatory nature of the Interim Constitution and 2006 Citizenship Act and Rules of Nepal. In this context, the ongoing constitution drafting process is a perfect opportunity for positive legal reform. However, the Constituent Assembly (CA) has to-date failed to deliver satisfactory reform on this extremely important issue.
25. The present Constituent Assembly of Nepal (it's second) first met in January 2014, and one of the many issues it has been required to deliberate and draft constitutional language on, is the citizenship issue. As previous Constituent Assembly could not reach consensus on the issue of citizenship, this should have been one of the 'contentious issues' of discussion for the second CA. However, the Constitutional Record Study and Determination Committee (CRSD Committee) of the second CA categorized the proposed citizenship provision as a 'settled issue', thereby minimising opportunities for discussion in the CA. However, the current state of the text on citizenship is not an improvement – in fact, in many ways, it makes the situation even worse. Following are key areas of concern in this regard:
26. **The father AND mother provision:** The CA's response to the discriminatory manner in which the "father OR mother" provision of the Interim Constitution has been implemented, is to amend it as follows: "for the child to be a citizen of descent both the father and mother need to be citizens of Nepal during the time of birth".

14. Section 8(1)(a) of the Citizenship Act 2006.

This proposed 'levelling down' instead of 'levelling up' approach, will not eradicate discrimination and its negative consequences on children. Instead, it threatens to impose the same unrealistic barriers that single female parents face in conferring nationality to their children on single male parents as well. Furthermore, this provision will undermine the positives of Article 8(2) of the Interim Constitution and of the progressive jurisprudence of the Supreme Court that has upheld the right of single women to confer their nationality to their children. As it requires both parents to be citizens of Nepal (and implicitly both to play a role in the application process), the likelihood of more children being rendered stateless as a result is extremely high. The general patriarchal and discriminatory attitudes towards women are likely to mean that single women and their children will be particularly disadvantaged.

27. **Children of a Nepali mother and unidentified father, who is subsequently identified as a foreigner:** In relation to cases where the a child is born to a Nepali mother whose father is not identified, the proposed provision of the CA states that such children may be given citizenship by descent in cases where the child is born and residing in Nepal. However, the citizenship would be changed automatically to naturalized citizenship in cases where the father of such child is identified as a foreigner. This discriminatory provision not only fails to recognize the independent identity of the mother but also may result in stigmatizing both mother and child in genuine cases of unknown paternity involving incidents of rape, sex-work, trafficking, migrant women workers, extra-marital relationship and similar cases.¹⁵
28. **Women unable to transfer citizenship to spouse of foreign nationality:** The proposed provisions with regard to transferring citizenship to foreign spouses, allows Nepali men to confer citizenship to their foreign wives after they initiate proceedings to renounce their previous nationality. However, in cases of Nepali women married to foreigner, the husband can only apply for naturalized citizenship after 15 years of residence in Nepal, and the state retains significant discretion to accept or deny such applications. Moreover, no special privileges in relation to visa, employment or business opportunities are available to a foreigner husbands.¹⁶
29. **Nepali women unable to transfer citizenship to children if the father is a foreign national:** In relation to children born to one Nepali and one foreign parent, the provisions proposed by the CA requires both parents to have obtained Nepali citizenship for the children to obtain Nepali citizenship (or apply for citizenship).¹⁷ However, reading this provision with the proposed provision relating to acquiring citizenship by marriage,¹⁸ children born to Nepali mothers are not guaranteed right to citizenship even through naturalization. A foreigner father not only requires 15 years of residential requirement but the conferral of such citizenship is a matter of discretion of the government. In contrast, where the foreigner mother starts the process of renunciation of her previous nationality, the child can obtain citizenship without any residential requirement/pre-requisite. This draft provision also fails to take into consideration the issues of children of Nepali women who separate from their foreigner husbands including in cases of domestic violence.
30. **Discrimination in relation to naturalized citizens holding public posts:** As decided by the CA, naturalized citizens except for foreigners married to Nepali women who subsequently naturalized, are eligible to hold most public posts either by election or nomination.¹⁹

15. UNHCR, *On Citizenship*, unpublished manuscript on file with FWLD, at page 6.

16. Except in cases of Indian nationals, for whom Section 7 of the Peace and Friendship Treaty of 1950 between Nepal and India is applicable, and allows to grant, on reciprocal basis, to the nationals of one country in the territory of the other, the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and privileges of a similar nature.

17. Article 3(1b) of the proposed provision.

18. As approved by the CRSD Committee.

19. The posts that naturalised citizens cannot hold are those of President, Vice-President, Prime Minister, Head of the Federal Legislature and Head of the Federal Judiciary, Head of Security Forces, Head or Deputy Head of Federal State.

THE IMPACT AND PREVALENCE OF THE PROBLEM, AND BARRIERS TO REFORM

31. According to a study by FWLD, in August 2013, 4.3 million Nepalese people aged 16 and above did not have citizenship certificates, representing 23.65 per cent of the total population of Nepal.²⁰ Another study by FWLD found out that in the same household, 87% of men have citizenship certificates, compared to only 74% of women.²¹ These statistics provide some insight into the scope of the problem and its discriminatory nature. However, in order to assess the real impact of gender discriminatory nationality laws, it is important to look at the detrimental consequences on the lives of those who are barred from accessing Nepali citizenship as a result. Significantly, both men and women have been deprived of Nepali citizenship because their mothers have not been allowed to pass their nationality to them. Thus, it is evident that the victims of gender discriminatory law are as likely to be men as they are women.
32. Those who are not recognized as citizens face significant problems in their lives. These include, but are not limited to:
 - The consequent lack of a legal status and statelessness of those who are denied citizenship.
 - Lack of access to key socio-economic rights including access to education, healthcare and a livelihood.
 - Restrictions on freedom of movement, particularly the inability to obtain travel documents for foreign travel.
 - Barriers to accessing services and products such as bank accounts and mobile phone accounts.
 - The inability to own or inherit property.
 - The significant emotional and psychological impact on affected persons and their families.
33. An analysis of the situation in Nepal leads to the conclusion that the following stand as key barriers to reform, that Nepal must effectively address:
34. **Non recognition of women's equal right to transfer citizenship:** The geo-political situation, the open border with India, the size of Nepal and its population in relation to India are used as justifications for continuing discrimination against women by creating disincentives against their marrying foreigners. However, there is a lack of recognition of women's equal right to acquire, transfer and retain citizenship. Such discrimination continues to violate women's rights including to right equality and non-discrimination, right to choice of residence, right to transfer immovable property, right to family life, right to movement, right to choose or continue a profession or business.²² Three main impacts of discriminatory citizenship laws are: the creation of second-class citizens, the statelessness of women and their children, and psychological and other day to day hardships people face when citizenship is denied.²³
35. **Socio-cultural bias:** A deeply rooted patriarchal mind set of the political leaders and the prevalent socio-cultural bias towards woman is also responsible for the continuing discrimination of women in the area of citizenship. The understanding that women once married go away to the husband's house and take up the family name and nationality of their husband still prevails in Nepal which fails to recognize the independent identity of women and the equal rights guaranteed to women.

20. FWLD, *Acquisition of Citizenship Certificate in Nepal: Estimating Prevalence*, April 2013.

21. FWLD, *Acquisition of Citizenship Certificate in Nepal: Understanding Trends, Barriers and Impacts*, February 2014.

22. FWLD, *Discriminatory Laws and Their Impact on Women: A Review of the Current Situation and Proposal for Change* Kathmandu, 2006; pp. 43-48 (updated).

23. *Ibid.*, p. 43. See also, UNIFEM/FWLD, *Impact of existing Discriminatory Citizenship laws on women and children in Nepal*, 2007.

36. **Poor access to birth registration:** Though birth registration is a universal right, the implementation of birth registration remains low in Nepal. In addition to practical issues around access, the children of single mothers, or mothers married to foreigners, refugees or stateless persons may not be registered due to discriminatory attitudes.

RECOMMENDATIONS

37. Based on our collective and continuous research, advocacy and engagement on the issue of gender discriminatory citizenship laws in Nepal since 1995 (in the earliest instance), and in particular, in relation to the points made in this submission, the following recommendations are made.
38. While the Human Rights Council has stated that “[t]he second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review”,²⁴ in light of the fact that Nepal did not accept the only recommendation in relation to statelessness and accepted but failed to satisfactorily act on various recommendations related to gender equality, these recommendations build on the previous recommendations but also introduce new recommendations in response to the deteriorating situation:
- I. Fully promote, respect, protect and fulfil its obligations under international human rights law. In particular, ensure that its national laws, policies and practices fully comply with Article 9 CEDAW and Articles 7 and 8 CRC, and with general principles of equality and non-discrimination enshrined in international treaties.
 - II. Constitutionally recognize the fundamental human right of all human beings to a nationality, without discrimination. Recognise also that right to a nationality is not subject to the unfettered discretion of administrative authorities, but instead should be protected by the state, which has an obligation to implement court decisions in this regard.
 - III. Take immediate steps to amend/repeal all discriminatory provisions that prevent women from acquiring, retaining and transferring citizenship on an equal basis with men in the Constitution, Citizenship Act and Rules, and ensure the effective implementation of the law.
 - IV. Recognise the independent right of each parent to provide citizenship based on lineal descent to their children, and the right of both women and men to confer citizenship to their foreign spouse on equal terms.
 - V. Promote universal birth registration of each child, including children of refugees, foreigners, stateless persons and single mothers.
 - VI. Address patriarchal and discriminatory societal attitudes that prejudice public decision making and undermine the equality and dignity of Nepali women.
 - VII. End statelessness in Nepal by conferring citizenship to all persons who have been denied citizenship due to the prevalence of gender discriminatory nationality laws, and prevent statelessness from occurring in the future.
 - VIII. Ratify the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

24. Human Rights Council, *Resolution 16/21: Review of the work and functioning of the Human Rights Council*, UN Doc. A/HRC/RES/16/21, April 2011, Annex 1, Para 6.

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