CONCLUDING OBSERVATIONS BY HUMAN RIGHTS TREATY BODIES ON CITIZENSHIP TO NEPAL

BACKGROUND

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

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

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

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

After having ratified these treaties, Nepal is obligated to implement them and additionally submit periodic reports to the respective Committees of the Treaties. International Conventions create certain obligation to any country once it becomes a state party to the Convention. In addition to the obligation to implement obligations under the Convention, the Committees of the Conventions require for the submission of the report to the respective Committees to observe the effectiveness of the implementation of the obligations under the Convention. The Committee, through reporting, reviews whether state party has fulfilled its obligation or not, review of national laws, administrative

SN	Treaty	Ratification Date
1	International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	January 30, 1971
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
4	International Covenant on Civil and Political Rights (ICCPR)	May 14, 1991
5	International Covenant on Economic, Social and Cultural Rights (ICESCR)	May 14, 1991

1. Preamble of the UN Charter.
2. Ibid., Article 55.

rules, procedures and policies according to the standard set by the Convention and receive information relating to actual status of implementation of each Article of the Convention.

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

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

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

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), 1948

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

Article 15(1) of the Declaration recognizes that
"[e]veryone as the right to a nationality". No one shall be arbitrarily denied the right to change this.[3]

1. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), 1979

CEDAW obligates state parties like Nepal to make laws that grant equal rights to women with independent 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[4]

3. UDHR, Article 15(2).
4. Article 2(a), CEDAW.

» Adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women[5]

» Take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices, which constitute discrimination against women[6]

» Repeal all national penal provisions, which constitute discrimination against women[7]

Article 9

The CEDAW Convention 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) prohibits 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."

Concluding Observations on the Fourth and Fifth Periodic Report

Date: July 29, 2011

While noting the State party's explanation that women are not subjected to discrimination in access to citizenship, the Committee remains deeply concerned about obstacles for women to transfer citizenship to their children and foreign husband, for married women to obtain citizenship certificates, and about the persistence of the underlying conditions obstructing access to citizenship including poverty, geographic isolation and onerous administrative requirements.

The Committee strongly urges the State party to:

(a) Ensure that the new Constitution provides for equal and full citizenship rights for women, including by exerting their right to transfer citizenship to their children and foreign husband;

(b) Implement training programmes to Government officials at all levels on legal provisions related to transfer of citizenship;

(c) Carry out a second comprehensive national campaign to issue citizenship certificates, taking into consideration the hardships faced by women in securing proof of nationality;

(d) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; and

(e) Ensure that children born on the territory of Nepal who would otherwise be stateless be granted Nepali citizenship.

Additionally, the Committee requested Nepal to provide, within two years, written information on the steps undertaken to implement the recommendation on Citizenship.

"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."

5. Article 2(b), CEDAW.
6. Article 2(f), CEDAW.
7. Article 2(g), CEDAW.

2. 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.[8] 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.[9] The relevant provisions in ICCPR that are related to citizenship are mentioned below:-

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.

> "The State party should amend the Birth, Death and Other Personal Incidents Registration Act to ensure the birth registration of all children born on its territory, and establish an efficient birth registration system that is free of charge at all stages."

Concluding Observations on the Second Periodic Report

Date: March 26, 2014

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

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

8. ICCPR, Article 16.
9. ICCPR, Articles 3 and 26.

3. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

Though ICESCR is more concerned about the economic, social and cultural rights, it contains the provision on Equality between men and women.

> "The Committee also recommends that the State party promote awareness-raising measures in order to ensure that local administration authorities involved in granting transmission of nationality are fully informed about the legal provisions in place and effectively implement them."

Concluding Observations on the Third Periodic Report

Date: November 28, 2014

The Committee is also concerned that, notwithstanding citizenship provisions in the Interim Constitution, the transmission of nationality by a Nepalese woman to her child is not always granted.

Equality between Men and Women

The Committee also recommends that the State party promote awareness-raising measures in order to ensure that local administration authorities involved in granting transmission of nationality are fully informed about the legal provisions in place and effectively implement them.

4. 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.[10]

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.

10. CRC, Article 2(1).

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.

Concluding Observation on the Third to Fifth Periodic Report

Date: June 9, 2016

Birth registration

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

   The Committee further recommends the State party amend, as a matter of priority, the relevant legislation, most notably the Birth, Death and other Personal Event (Vital Registration) Act of 1976, the Citizenship Act of 1964 and articles 9 (1), (2) and (5) of the Constitution to ensure full compliance with articles 7 and 8 of the Convention.

Nationality

2. The Committee is concerned about the hindrances experienced by many children in access to Nepali nationality. It is especially concerned that:

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

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

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

3. The Committee recommends that the State party amend, as a matter of priority, the relevant legislation, particularly the Birth, Death and other Personal Event (Vital Registration) Act of 1976, the Citizenship Act of 1964 and articles 9 (1), (2) and (5) of the Constitution to ensure full compliance with articles 7 and 8 of the Convention. The Committee also recommends that the State Party amend its legislation on transmission of nationality by:

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

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

   (c) Make the acquisition of Nepali nationality by descent accessible to children at birth.

5. UNIVERSAL PERIODIC REVIEW (UPR) - NOVEMBER 4, 2015

The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council. It is a cooperative process which, by October 2011, has reviewed the human rights records of all 193 UN Member States. The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. It involves a review of the human rights records of all UN Member States.

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

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

The remark by the Hon'ble Commissioner of the National Human Rights Commission (NHRC) of Nepal during the 31st Session of the Human Rights Council in regard to the 2nd cycle of the UPR process of Nepal on March 16, 2016 conceded that the current constitution is viewed as a document that may curtail women's rights to pass on citizenship to their children.