

Joint Submission to the Human Rights Council

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Nepal

Citizenship Affected People's Network
Community Action Centre Nepal
Dignity Initiative
Nepal Institute of Peace
Statelessness Network Asia Pacific
Global Campaign for Equal Nationality Rights
Institute on Statelessness and Inclusion

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नेपाल



Citizenship Affected People's Network
Nepal



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Global Campaign for
Equal Nationality Rights



Institute on
Statelessness and
Inclusion

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Introduction

1. The Citizenship Affected People's Network (**CAPN**), Community Action Centre Nepal (**CAC Nepal**), Dignity Initiative, Nepal Institute of Peace (**NIP**), Statelessness Network Asia Pacific (**SNAP**), Global Campaign for Equal Nationality Rights (**GCENR**) and Institute on Statelessness and Inclusion (**ISI**) make this submission to the Universal Periodic Review (**UPR**) on the right to a nationality and human rights challenges pertaining to statelessness in Nepal.
2. **CAPN** is a civil society network of over 1800 affected people in Nepal. Formed in 2015 by individuals severely affected by the discriminatory nationality law, the group finds creative and powerful ways to advocate for equal citizenship rights and the eradication of statelessness.
3. **CAC Nepal** is a non-profit, non-governmental and social organisation working to improve living standards of women and girls living in extreme conditions of poverty and marginalisation, in order to enable them to develop and participate in their community. CAC-Nepal also works on women's citizenship rights.
4. **Dignity Initiative**¹ is a Kathmandu-based not-for-profit, non-government organisation, which works on the issues of social exclusion and human rights in Nepal, with a special focus on the Dalit Community. Dignity Initiative focuses on research, knowledge production, academic activism and policy advocacy to advocate for the rights of the Dalit community.
5. **NIP**² is a non-governmental, non-profit, non-partisan organisation managed by a group of human right activists committed to peace, justice and human rights in Nepal. NIP has been working on human rights and internally displaced persons since 2002.
6. **SNAP**³ is a civil society coalition with the goal of promoting collaboration on addressing statelessness in Asia and the Pacific. Launched in November 2016, SNAP seeks to promote collaboration through three focus areas: developing resources for evidence-based action, facilitating capacity strengthening opportunities and providing technical support to SNAP's members.

¹ For more information, see: <https://dignityinitiatives.org/>

² For more information, see: <http://www.idps-nepal.org/>

³ For more information, see: <https://www.statelessnessnetworkasiapacific.org/>

7. **GCENR**⁴ mobilises international action for the removal of gender-discriminatory provisions from all nationality laws, through its coalition of over twenty national, regional and international organisations and activists, including steering committee members Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, Women’s Learning Partnership, and Women’s Refugee Commission.
8. **ISI**⁵ is an independent non-profit organisation committed to an integrated, human rights-based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made almost 70 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 36th UPR Sessions.
9. This submission focusses on:
 - a. Gender discrimination in the nationality law and resulting human rights violations;
 - b. Discriminatory access to documentation;
 - c. Denial of citizenship due to caste-based discrimination; and
 - d. The impact of the COVID-19 pandemic on stateless persons in Nepal.

Previous UPR of Nepal under the First and Second Cycle

10. Nepal was previously reviewed under the 10th session in 2011 (**First Cycle**) and the 23rd session in 2015 (**Second Cycle**).

The First Cycle

11. During the First Cycle, 17 countries made recommendations regarding advancing gender equality and the promotion and protection of women’s rights.⁶ These recommendations are relevant to addressing women’s unequal nationality rights, a primary root cause of statelessness in Nepal.
12. Slovakia recommended that Nepal address cases of statelessness in the drafting process of the new Constitution, which was not supported by Nepal.⁷ Slovakia also more generally recommended Nepal to review its legal framework to provide for better promotion and protection of women’s rights. Cuba, Egypt, Palestine, the Philippines, and Singapore called for measures to protect the rights of women and other groups. These recommendations were accepted by Nepal.⁸
13. The Netherlands recommended that Nepal take necessary legal and policy measures to end

⁴ For more information, see: <https://equalnationalityrights.org/>

⁵ For more information, see: <https://www.institutesi.org/>

⁶ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review Nepal*, 10th sess, UN Doc A/HRC/17/5 (8 March 2011).

⁷ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review Nepal*, 10th sess, UN Doc A/HRC/17/5 (8 March 2011), p 23.

⁸ *Ibid.* p 14-17.

discrimination against women and other groups. Germany recommended that Nepal criminalise discrimination against women and other historically vulnerable groups. Chile recommended that Nepal ensure, without discrimination, the rights of women, persons with disabilities, and other vulnerable groups. These recommendations were also accepted by Nepal.

14. Relatedly, Nepal received recommendations on citizenship, namely, to enact legislation to ensure citizenship rights to lesbian, gay bisexual, transgender and intersex people.⁹ Additionally, OHCHR raised concerns over the failure of Nepal to implement a Supreme Court ruling that upholds equal rights in the granting of citizenship and identity documents to members of sexual minorities.¹⁰

15. In its response, Nepal stated that it is:

*“Committed to the promotion of the rights of minorities, including gender minorities. It has pursued the policy of recognising the identity of gender minorities and achieving effective implementation of relevant laws prohibiting discrimination on any ground. Any person, regardless of gender, is entitled to obtain citizenship along with an identity consistent with equal rights policy”.*¹¹

16. France recommended that the new Constitution be aligned with international conventions ratified by Nepal, while Azerbaijan recommended that Nepal continue efforts to bring legislation in line with international standards. Both recommendations were accepted.

17. Nepal also received recommendations to accede to a number of treaties including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (**Refugee Convention**), the International Convention for the Protection of All Persons from Enforced Disappearance (**CED**) and the Rome Statute. Nepal did not support these recommendations.¹²

18. Notably, during the first cycle, the OHCHR Compilation of UN information highlighted concerns by the United Nations Country Team (**UNCT**) regarding access to citizenship certificates for marginalised communities, *“including impoverished and landless persons”*.¹³ They also noted that persons lacking citizenship certificates were prevented from having basic rights, such as owning property or acquiring travel documentation.

19. The OHCHR Compilation of UN information also expressed concerns from UNCT and CEDAW regarding the obstacles faced by Nepali women who marry a foreign husband in transferring their nationality to family members:

*“UNCT was concerned that the draft citizenship provisions proposed as part of the new Constitution did not achieve gender equality by bolstering the rights of women, but rather by reducing the rights of Nepali men to convey citizenship to family members. In this context, UNCT alerted to the risk that such restrictions could lead to statelessness in many cases.”*¹⁴

⁹ Ibid. p 13. Recommendation made by the United States of America.

¹⁰ United Nations Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1*, 10th sess, UN Doc A/HRC/WG.6/10/NPL/2 (1 January 2009) p 7.

¹¹ Ibid. p 12.

¹² Ibid. p. 22. Recommendations made by Algeria, Moldova, Slovenia, and the Netherlands.

¹³ United Nations Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1*, 10th sess, UN Doc A/HRC/WG.6/10/NPL/2 (1 January 2009), p 7.

¹⁴ Ibid. N 6.

The Second Cycle

20. In advance of the Nepal's review during the Second UPR Cycle, ISI, the GCENR and other partners made a UPR submission on the right to nationality and statelessness in the country.¹⁵ A number of recommendations proposed in this submission were made to Nepal during its review. The following recommendations related to women's nationality rights and addressing statelessness were accepted by Nepal:

- a. 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);
- b. Amend the citizenship laws to allow citizenship through either parent (Hungary);
- c. Implement measures to ensure that the rights to acquire, transfer and retain citizenship are extended equally to all women and their children (New Zealand);
- d. 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);
- e. Amend legislation on nationality in order to be able to grant Nepali nationality through either parent (Spain);
- f. 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).
- g. Ratify the Refugee Convention, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness (Portugal).¹⁶

21. Whilst all of these recommendations were supported by Nepal, it incorrectly claimed that they were already implemented or in the process of implementation. As discussed below, it is clear both in law and practice that the above recommendations have not been successfully implemented.

22. Nepal also claimed that the 2015 Constitution of Nepal (**Constitution**) followed the principle of equality and non-discrimination, and that women were empowered to transfer their citizenship to their children and the Federal Parliament was mandated to enact federal laws to provide detailed provisions on the acquisition of citizenship.¹⁷ However, this claim does not accurately reflect the fact that Nepali women are still denied the right to confer nationality on their children in most circumstances as a result of discriminatory nationality provisions, explored in greater detail below.

Nepal's International Obligations

23. Nepal has international obligations to protect the right to a nationality and protect the rights of stateless persons on the basis of UN treaties to which it is a party. These include:

- a. the International Covenant on Civil and Political Rights (ICCPR), Article 24(3);

¹⁵ See 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' (2015), available at <https://files.institutesi.org/NepalUPR2015.pdf>.

¹⁶ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review Nepal*, 31st sess, UN Doc A/HRC/31/9 (23 December 2015), p. 19-22.

¹⁷ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review Nepal*, 31st sess, UN Doc A/HRC/31/9 (23 December 2015), p 9.

- b. the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 5(d)(iii);
 - c. the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 9;
 - d. the Convention on the Rights of the Child (CRC), Articles 7, 8;
 - e. the Convention on the Rights of Persons with Disabilities (CRPD), Article 18.
24. Nepal has not made any reservations to CEDAW or the CRC, which contain important protections against gender discrimination in nationality law (CEDAW Article 9) , the right of a child to acquire their parent’s nationality without discrimination on the basis of the parent’s gender, and the prevention of childhood statelessness (CRC Articles 7 and 8).
25. According to the Treaty Act of Nepal 2047 (1990), in instances where the provisions of a treaty to which Nepal is party are inconsistent with the provisions of national laws, *the provisions of the treaty shall be enforceable and supersede national laws which contradict them.*¹⁸ As such, these treaties impose a strict human rights regime on Nepal whereby the state has accepted obligations to ensure gender equality and non-discrimination and to safeguard against statelessness.
26. Nepal is not a party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

Statelessness in Nepal – A Snapshot

27. In 2017, an estimated 5.4 million people (constituting 24 percent of the population aged 16 and over) lacked citizenship documentation.¹⁹ While many undocumented persons will likely be recognised as citizens should they apply, a large but unquantified number within this group, have either been denied citizenship or are likely to be at risk of statelessness. Consequently, while it is not possible to accurately estimate the number of stateless persons in the country:
- a. The scale of the problem is significant, likely in the hundreds of thousands.
 - b. the lack of more accurate data is in itself an example of the failures of the state to identify and address this issue as the serious challenge it is.
28. UNHCR’s 2019 statistical information follows a recent pattern of reporting the number of stateless persons in Nepal as a ‘-’, indicating that Nepal has either reported zero stateless persons, or that data was ‘unavailable.’²⁰ UNHCR last provided statistical information on statelessness in Nepal in 2011, when it estimated the population to be 800,000.²¹ However, the government rejected the figure,²² and since then, no statistics have been reported. UNHCR has stated that a “*large number of individuals lack citizenship certificates*” but that “*these individuals are not necessarily all stateless*”,²³ but this explanation does not shed any further light on the scale of the problem.

¹⁸ Treaty Act of Nepal, 2047 (1990), Article 9(1).

¹⁹ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Nepal Country Report on Human Rights Practices for 2017*, p. 1.

²⁰ According UNHCR’s Report regarding global trends in forced displacement for 2019, a dash in the data table (“-”) indicates that the value is zero, not available or not applicable: UNHCR, *Global Trends – Forced Displacement in 2019* (2020), p. 78.

²¹ UNHCR, *UNHCR Global Trends* (2010), Table 1, p. 37.

²² A. Giri, ‘Govt Refutes UN’s “Stateless Nepalis” Report’, *Kathmandu Post* (3 October 2012).

²³ See, inter alia, UNHCR, *Global Trends – Forced Displacement in 2019* (2020), p. 77.

29. Statelessness is also prevalent among long-term refugee populations in the country. During the 1990s, over 100,000 ethnic Nepali Bhutanese – often referred to as ‘Lhotshampas’ – were displaced across the border into Nepal after being arbitrarily deprived of their nationality. The majority have since been resettled to third countries, but by the end of 2019, 19,574 remained in refugee camps in Nepal²⁴ – all of whom are stateless. Tibetans living in exile in Nepal since as early as the 1950s, and their descendants, may also face statelessness in some cases because the acquisition of Nepali nationality is reported to be largely impossible for this group.²⁵
30. Nepal is one of 25 countries globally with a nationality law that denies women the right to confer nationality on their children on an equal basis with men, and one of roughly fifty countries to deny women the right to acquire, change, or retain their nationality or confer nationality on spouses on an equal basis with men.²⁶
31. The high level of statelessness in Nepal is therefore a result of patriarchal structures that discriminate against women and their children; combined with discriminatory attitudes of officials that restrict access to documentation; a discriminatory, caste-based system; and the failure to provide a durable solution to long-term refugees and protect their children’s right to nationality.

National Law

32. Citizenship in Nepal is governed by the Constitution of Nepal and the Nepal Citizenship Act 2063 (2006). Citizenship can be obtained either by descent or naturalisation.. The Constitution recognises the right to identity as a fundamental right. Further, Article 10 states that “no Nepali citizen shall be denied the right to acquire citizenship”.²⁷ The Constitution deems Nepali Citizens to be:
 - a. persons acquiring citizenship by descent before the commencement of the Constitution; and
 - b. persons whose mother or father was a citizen of Nepal at birth.²⁸
33. However, as will be explored in greater detail below, this Constitutional provision is contradicted by other Constitutional provisions that deny women the right to confer nationality on their children. This pattern of contradiction can also be found in the Citizenship Act.
34. The existence of these discriminatory provisions have deprived those who should be eligible to acquire citizenship from obtaining it, rendering many stateless. These discriminatory provisions are outlined in the section below.

²⁴ UNHCR, *UNHCR Global Trends* (2019), Table 1.

²⁵ Institute on Statelessness and Inclusion, ‘World’s Stateless Report’ (2014), available at: <https://files.institutesi.org/worldsstateless.pdf>, p. 123.

²⁶ UNHCR, *Background Note on Gender Equality, Nationality Laws and Statelessness 2019*, (8 March 2019), available at: <https://www.refworld.org/docid/5c8120847.html>.

²⁷ Constitution of Nepal (2015), Article 10.

²⁸ Constitution of Nepal (2015), Article 11(2).

ISSUE 1 – Gender Discrimination in the Nationality Law

35. Nepal’s legal framework does not uphold women’s rights to pass nationality to their children or spouses on an equal basis with men. This denies women the rights of equal citizenship and the ability to freely choose a spouse, and results in the children and spouses of Nepali women being denied social, economic, and political rights granted to the children and spouses of Nepali men. It also increases the risk of statelessness amongst children.
36. While, as set out above, the Constitution implies that women should have the right to confer nationality on their children without discrimination, it later provides in Article 11 that persons born to Nepali women and foreign fathers can only acquire citizenship in certain contexts.
37. Pursuant to Article 11 (3) of the Constitution, a child of a citizen who has acquired citizenship by birth before the commencement of the Constitution will only be able to acquire citizenship by descent after becoming an adult if both parents are citizens of Nepal. This provision has been criticised for its lack of clarity as to the legal path by which such children can acquire citizenship, creating (risks of) statelessness.²⁹ Article 11 (3) is discriminatory as it limits single mothers’ ability to confer citizenship by descent on their children.
38. Article 11(5) of the Constitution states that persons born in Nepal to Nepali mothers can acquire citizenship by descent if their fathers cannot be traced. However, if it is later determined that the father is a foreign citizen, the child will lose citizenship by descent and become a naturalised citizen. This provision requires that Nepali women establish evidence of the citizenship of the child’s father as well as proof that the child was born in Nepal in order to obtain citizenship by descent; a burden of proof not imposed on a Nepali father.
39. The Nepal Citizenship Act contains similar provisions as the Constitution and grants the right to citizenship by descent to a person born to a father *or* mother who is a citizen of Nepal, per Article 3(1). However, this provision is directly contradicted by Article 3(2) and Article 5(2) of the Act.
40. Article 3(2) of the Citizenship Act provides that where a child is born “out of wedlock by a Nepali female citizen to a foreign national”, Article 5(2) of the Citizenship Act applies, which states that children of Nepali women and foreign men “may be granted naturalised citizenship”³⁰ if they meet certain criteria and submit an application.
41. The legal framework for acquisition of naturalised citizenship is provided in Article 5 of the Citizenship Act. In the context of a child born to a mother who is a citizen of Nepal who is married to a foreign citizen, the child seeking a naturalised citizenship certificate must submit the following documents:
 - a. a copy of the citizenship certificate of the mother;
 - b. a recommendation by the concerned Municipality or Village Development Committee certifying birth and permanent residency in Nepal; and
 - c. evidence to show that foreign citizenship has not been acquired based on the citizenship of the father.
42. Article 8 of the Citizenship Act stipulates that citizenship by descent cannot be given to the child of a Nepali mother married to a foreigner unless evidence is given to prove that the child

²⁹ Constitution of Nepal (2015), Article 11(3).

³⁰ The Nepal Citizenship Act 2063 (2006), Articles 3(1)-(2) and 5(2).

has not acquired the father's nationality.³¹

43. While naturalisation for children born out of wedlock to Nepali mothers and foreign fathers as set out in Article 5 of the Constitution and Article 3 (2) of the Citizenship Act could be an option for those not eligible for citizenship by descent, it is not a fundamental right embedded in the Constitution and therefore is heavily subject to state discretion. In fact, “*naturalization is not a legal matter but is rather a discretionary matter of Nepali officials who have the freedom to interpret the law in line with a patriarchal culture*”.³² In fact, only 13 naturalized citizenship certificates had been granted as of January 2017.³³ It is also believed that between 2009 and 2015, Nepali officials refused every citizenship application of children born to foreign fathers.³⁴
44. In 2011, the Nepal Supreme Court granted citizenship to an 18 year old girl through her Nepali mother, as her father was unknown.³⁵ Her application for a citizenship certificate was originally denied by the Government of Nepal.³⁶ Notably, the court referred to the CRC and the obligations upon the Government that are enshrined therein, namely to ensure that every child has a right to nationality. Despite calls by OHCHR and the international community, Nepal did not give effect to this judgment when drafting the Constitution.
45. Finally, spouses of Nepali men may acquire citizenship on the basis of marriage as outlined in Section 5(1) of the Act:

“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”

The Citizenship Act does not recognise the ability of Nepali women to confer nationality on a non-national spouse.

46. By denying women equal rights with men in terms of conferral of nationality on spouses, the law contravenes Constitutional mandates barring discrimination on the basis of gender. The only path to Nepalese citizenship for foreign male spouses is through the residence-based naturalisation process, which is subject to state discretion.

Citizenship Amendment Bill

47. In August 2018, an amendment to the Nepal Citizenship Act, the Citizenship Amendment Bill (**Amendment Bill**) was registered, and has since been under debate in parliament.
48. The Amendment Bill goes some way in addressing statelessness and gender discrimination,

³¹ Nepal Citizenship Act 2063 (2006), Article 8.

³² Susann Rothe, ‘Gender Discrimination in Nepal and how Statelessness hampers Identity Formation’ Statelessness Working Paper Series No. 2015/02, available at https://files.institutesi.org/WP2015_02_Rothe.pdf, p. 4.

³³ Jo Venkoc, *Of woman born – how gender discriminatory nationality laws contribute to statelessness in Nepal*, Torn Identity (17 February 2019), available at <https://www.thetornidentity.org/2019/02/17/nepal-nationality-laws/#note-2548-10>.

³⁴ Institute on Statelessness and Inclusion, Global Campaign for Equal Nationality Rights and Nepal Civil Society Network of Citizenship Rights (2015), *Nepal, Joint Submission to the Human Rights Council at the 23rd Session of the Universal Periodic Review - Summary, Update and Proposed Recommendations for the consideration of States*, available at http://www.institutesi.org/UPRNepal_short.pdf.

³⁵ Supreme Court of Nepal, *Sabina Damai and FWLD v. Government of Nepal*, Writ no 06/0703 (2011).

³⁶ The court stated that the law at the time clearly provided that it is the right of the child to get a citizenship certificate in the name of the mother who is already a Nepali citizen, in the case of an unidentified or missing father, as per Article 8(2) of the Interim Constitution. The court maintained that it is the fundamental and human right of the child to get their nationality from their mother.

although some gender discriminatory provisions would still prevail, even if the Bill is adopted without further amendment.

49. The Amendment Bill provides that:
 - a. A child born to a Nepali citizen mother who is residing in Nepal can obtain citizenship by descent.
 - b. A child whose parents cannot be identified can also acquire citizenship by descent.
 - c. A child born to a Nepali citizen mother and foreign father can acquire naturalised citizenship even if not born on the territory.
 - d. A foreign woman married to a Nepali man now apply for naturalised citizenship after 7 years, with certain conditions.
50. However, as set out above, proof that another citizenship has not been obtained, or proof of renunciation of a previous citizenship, must be provided. This makes it difficult to apply for citizenship as such documents may not be available in many countries.
51. Moreover, a foreign woman married to a Nepali man before the 7 years has passed will receive a permanent residence permit, which can be revoked if the individual is found to have acted against Nepal's independence, sovereignty, geographical integrity and national interest. This can lead to statelessness.
52. Despite these developments, the Amendment Bill has still not been passed and debate is currently postponed until the 2020 winter session.
53. Moreover, any amendment to the Nepal Citizenship Act must not be inconsistent with Constitutional provisions. Consequently, discrimination will only be legally eradicated pursuant to further Constitutional reform which addresses the contradictions in the Constitution.
54. The delay to the Amendment Bill has resulted in many people who could be eligible for citizenship either being made stateless or at risk of statelessness. Suraj Hazare Dahal, for example, is a 30-year-old stateless individual born to a Nepali mother and foreign father in Pokhara.³⁷ He was refused citizenship since children born to a Nepali mother and foreign father are required to provide proof that citizenship of the father's country has not been acquired. Suraj went to the Home Ministry to try and apply for naturalisation, but was denied entry due to lack of citizenship. He then went to the Indian embassy but they turned him away since "the embassy is only concerned with Indian citizens". He remains stateless and awaits the passing of the Amendment Bill.

ISSUE 2 - Discriminatory Access to Documentation

55. In addition to Nepal's nationality laws being discriminatory, they are also implemented in a discriminatory manner, which leads to increased difficulty of accessing documentation for women and children. Indeed, as set out in paragraph 27 above, in 2017, over 5.4 million people in Nepal did not have citizenship documentation.
56. The difficulty of obtaining documentation can in part be attributed to the arbitrary levels of discretion applied by relevant authorities and district administrations, comprised of mostly males, who frequently deny women and their children documentation due to discriminatory

³⁷ Case study provided by the Citizenship Affected People's Network, Nepal.

and patriarchal beliefs. For example, as of April 2019, the Kathmandu District Administration Office was not accepting citizenship applications from people with foreign fathers and individuals whose father's identity is unknown.³⁸ In response, the Home Ministry issued a notice to chief district officers across the country asking them to apply the appropriate rules and grant citizenship by descent to those individuals whose parents are citizens by birth.³⁹ As outlined in "Legal Analysis of Citizenship Law of Nepal":

*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.*⁴⁰

57. The application process itself also contributes to the low number of citizenship certificates that have been issued. Article 8 of the Nepal Citizenship Act provides guidance on the process, requiring the applicants to submit copies of certificates of their relatives from three generations of either their mother or father's side.⁴¹
58. Another major obstacle can be the inability to produce documentation that states a birthplace, which is caused by a lack of birth certificates among members of socially-disadvantaged groups.⁴² Poor access to birth registration, in turn, is also caused by discriminatory attitudes of officials. The cost of the application can also be prohibitive, as there are costs associated with obtaining photographs, photocopies, supporting documents, and application fees.⁴³
59. Whilst there is no legal barrier to women obtaining citizenship certificates through their parents after marriage to a Nepali man, *"in practice, married women are required to submit citizenship documents of their spouse and his family in order to obtain citizenship"*.⁴⁴
60. A married woman must submit a formal attestation from her husband, father, or, if widowed, her husband's family, that she qualifies for citizenship and has their permission to receive it.⁴⁵ This effectively means a woman's citizenship is contingent upon her male family members' cooperation. In many cases husbands have refused to attest for their wives for this purpose.⁴⁶
61. Once married to foreigners, Nepali women who had not obtained their own citizenship certificate do not have a right to subsequently obtain it, according to Article 8(1) of the Nepal Citizenship Act. This discrimination places women in a vulnerable position and at risk of statelessness. This continues despite a Supreme Court decision in 2007 ordering citizenship to be issued without discrimination on the basis of gender and marital status and finding that

³⁸ Tsering D Gurung, *Delay in decision over citizenship through mothers leaves young people waiting—and without much hope*, Kathmandu Post (3 April 2019), available at <https://kathmandupost.com/national/2019/03/24/delay-in-decision-over-citizenship-through-mothers-leaves-young-people-waitingand-without-much-hope>.

³⁹ Tsering D Gurung, *Delay in decision over citizenship through mothers leaves young people waiting—and without much hope*, Kathmandu Post (3 April 2019), available at <https://kathmandupost.com/national/2019/03/24/delay-in-decision-over-citizenship-through-mothers-leaves-young-people-waitingand-without-much-hope>.

⁴⁰ Forum for Women, Law and Development, 'Legal Analysis of Citizenship Law of Nepal' (2016), available at: <http://fwld.org/publications/legal-analysis-citizenship-law-nepal/>, p. 15.

⁴¹ Nepal Citizenship Act 2063 (2006), Article 8.

⁴² Open Society Justice Initiative, *Submission to the Human Rights Committee prior to Adoption of List of Issues for Nepal* (April 2015), p 5.

⁴³ Open Society Justice Initiative, *Submission to the Human Rights Committee prior to Adoption of List of Issues for Nepal* (April 2015), p 5.

⁴⁴ Institute on Statelessness and Inclusion, Global Campaign for Equal Nationality Rights and Nepal Civil Society Network of Citizenship Rights (2015), *Nepal, Joint Submission to the Human Rights Council at the 23rd Session of the Universal Periodic Review - Summary, Update and Proposed Recommendations for the consideration of States*, available at http://www.institutesi.org/UPRNepal_short.pdf, p. 5.

⁴⁵ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Nepal Country Report on Human Rights Practices for 2015*, p. 20.

⁴⁶ United States Department of State, Bureau of Democracy, Human Rights and Labor, *Nepal Country Report on Human Rights Practices for 2015*, p. 20.

married women do indeed have the right to acquire citizenship.⁴⁷

Importance of documentation

62. The role of citizenship certificates in Nepal is foundational. They determine who can participate in a whole series of activities across the state, and are often required to obtain other identity documents. As a result, stateless people and children of Nepali women residing in Nepal who are denied their mother's nationality are excluded from a wide range of political, social, civil, and economic rights and duties, resulting in institutional discrimination.⁴⁸
63. Without citizenship certificates, individuals are unable to: register marriages, births or deaths; purchase or transfer land; participate in votes; attend higher education institutions; open bank accounts; obtain travel documents; access credit; enlist in the army or police force; or obtain full-time permanent employment.⁴⁹ The court has confirmed that citizenship certificates are the only acceptable proof of identity for the purpose of voter registration, excluding those without certificates from participating in their right to vote.⁵⁰
64. For children, the lack of a birth certificate can mean being deprived of education. For women, being barred from obtaining citizenship documentation precludes their access to the courts and limits their ability to make legal claims to land and other property, restricting access to justice.

ISSUE 3 – Discriminatory Caste System

65. Nepal's caste system is also a source of discrimination and can result in statelessness, despite Article 24 of the Constitution, which provides the right against untouchability and non-discrimination on the basis of caste.⁵¹
66. The Dalit community is at the bottom of the social hierarchy and constitute 13.2% of the national population. They have experienced long-standing discrimination and have struggled to gain citizenship despite living in Nepal for many generations.
67. Discrimination, lack of awareness, and poverty affect Dalit's acquisition of citizenship. Inter-caste marriage is also an issue for Dalit women marrying outside their caste.⁵²
68. The Badi people, who belong to the Dalit community, have also been denied citizenship as a result of multiple forms of discrimination. Historically, Badi women were forced into sex work. Today, while the community faces continued marginalisation and limited resources such as land and job opportunities, some Badi women engage in sex work. Their children are deprived of birth registration and citizenship certificates due to the unknown status of their father.

⁴⁷ Supreme Court of Nepal, *Nakkali Maharjan v. Office of the Prime Minister and the Cabinet of Ministers et al* (2007).

⁴⁸ Susan Rothe, *Gender Discrimination in Nepal and How Statelessness Hampers Identity Formation*, Statelessness Working Paper Series No. 2015/02, p 3.

⁴⁹ Rameshwor Upadhyaya, *Problem of Statelessness in Nepal*, *Nuta Journal*, 6 (1&2); Open Society Justice Initiative, *Submission to the Human Rights Committee prior to Adoption of List of Issues for Nepal* (April 2015), p 3.

⁵⁰ Open Society Justice Initiative, *Submission to the Human Rights Committee prior to Adoption of List of Issues for Nepal* (April 2015), p 6.

⁵¹ Constitution of Nepal (2015), Article 10.

⁵² United Nations Web TV, 'Ensuring the right to a nationality - 11th session of the Forum on Minority Issues' (30 November 2018), available at <http://webtv.un.org/meetings-events/human-rights-council/watch/ensuring-the-right-to-a-nationality-11th-session-of-the-forum-on-minority-issues/5973592415001#t=2h04m10s>.

69. These groups are just two examples of lower-caste groups who face intersectional discrimination in Nepal. They suffer from a denial of rights such as the right to property, land, education, employment, right to vote, and other constitutional and legal entitlements, and are also prevented from registering births, which requires a citizenship certificate.

ISSUE 4 – The Impact of the COVID-19 Pandemic on Stateless Persons in Nepal

70. The COVID-19 pandemic has had a devastating and specific impact on vulnerable persons around the world, including the stateless, who face disproportionate risks. A joint statement by 84 civil society organisations,⁵³ as well as an ISI Impact Report,⁵⁴ set out the specific problems faced by stateless persons during the pandemic, and provide a series of thematic and targeted recommendations.

71. Lack of nationality documents means stateless people are often prevented from accessing basic services including healthcare and other social welfare services.⁵⁵ This means that many are without crucial safety nets to support them during this global health crisis.

72. The lockdown implemented in March 2020 resulted in indefinite uncertainty and an immediate loss of income, especially for those reliant on market trade, construction work and farming. In response, the government implemented a relief system distributing basic food items. However, this was dependent upon showing a citizenship certificate, and in some circumstances, also the citizenship certificate of the owner of their home, excluding millions of stateless persons.

73. In May, the Supreme Court issued an interim order for the government to issue relief regardless of citizenship or documentation stating that the “*State should respect the right to live with dignity of every person, even during the pandemic*”, and that “*there is no doubt relief should be provided without discrimination*”.⁵⁶ However, it remains unclear whether this will equate to inclusion in practice.

Breach of International Obligations

74. Through adherence to a discriminatory system which ultimately creates a class of stateless Nepali people, Nepal breaches its own constitution, which protects the right to acquire citizenship and prohibits discrimination. Such practices also breach a number of its international obligations.

75. Nepal’s gender discriminatory nationality laws undermine the child’s right to a nationality and cause childhood statelessness. This is in breach of the CRC, Article 7 of which requires the state to register the child immediately after birth and gives the child the right, from birth, to a name and nationality. States are obligated to implement these rights, especially in circumstances “*where the child would otherwise be stateless*”.⁵⁷ Article 8 of the CRC requires Nepal to respect

⁵³ Joint statement by 84 CSOs, ‘In Solidarity with the Stateless’ (27 May 2020), available at https://files.institutesi.org/Joint_Statement_in_Solidarity_with_the_Stateless.pdf.

⁵⁴ Institute on Statelessness and Inclusion, *Impact Report: Stateless in a Global Pandemic* (June 2020), available at https://files.institutesi.org/Covid19_Stateless_Impact_Report.pdf.

⁵⁵ UNHCR, *The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices* (May 2020), available at <https://www.refworld.org/docid/5eb2a72f4.html>.

⁵⁶ Unofficial translation of the Interim Order by Forum for Women, Law and Development (FWLD), on file with ISI.

⁵⁷ CRC, Article 7.

children's right to an identity "including nationality, name and family relations".⁵⁸ Article 2 of the CRC further obliges Nepal to uphold Convention rights (including the child's right to acquire nationality), without discrimination on the basis of the parent's sex,⁵⁹ and Article 3 stipulates that the best interests of the child shall be a primary consideration.

76. Denial of the right to nationality and resultant statelessness also undermines various obligations under the ICCPR. The obligation to ensure the right of every person to leave and return to their "own country"⁶⁰ is clearly put at risk in situations where the persons cannot travel due to a lack of a citizenship certificate. The right to recognition as a person before the law,⁶¹ the right of every child to be registered immediately at birth and to acquire a nationality,⁶² the right to take part in public affairs and to vote⁶³ and the right to equality before the law⁶⁴ are all violated by Nepal's institutional citizenship framework, which has led to children and women being denied citizenship certificates. Further, these provisions must be understood in the context of Article 2(1) of the ICCPR, which obliges Nepal to:

"respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

77. Nepal has also failed to fulfil its legal obligations under CEDAW, namely to safeguard against gender-based discrimination and uphold women's equal nationality rights in national law.⁶⁵ Gender-based discrimination that denies women equal rights with men to confer nationality on children and spouses and the right to acquire, change, and retain nationality are in direct contravention of this obligation. In CEDAW's concluding observations on the sixth periodic report of Nepal (October 2018), the Committee made a recommendation that Nepal:

*"repeal all remaining constitutional and legal provisions that discriminate against women and girls, particularly in the areas of nationality, distribution of marital property upon divorce and access to employment abroad."*⁶⁶

Recommendations

78. Based on the above analysis, the co-submitting organisations urge reviewing States to make the following recommendations to Nepal:
- I. In line with obligations under CEDAW, take immediate steps to amend or repeal all gender-discriminatory provisions in the Constitution and Nepal Citizenship Act and Rules, grant Nepali women the right to confer citizenship on children and spouses and to acquire, change, and retain citizenship on an equal basis with men, regardless of their marital status, and ensure the effective implementation of the law. This involves as a first step, passing the Amendment Bill to the Nepal Citizenship Act, without diluting

⁵⁸ CRC, Article 8.

⁵⁹ CRC, Article 2.

⁶⁰ ICCPR, Article 12.

⁶¹ ICCPR, Article 16.

⁶² ICCPR, Article 24.

⁶³ ICCPR, Article 25.

⁶⁴ ICCPR, Article 26.

⁶⁵ CEDAW, Article 9.

⁶⁶ Committee on the Elimination of Discrimination against Women, *Concluding observations on the sixth periodic report of Nepal* (23 October 2018), p 3.

its provisions.

- II. Take all necessary measures in line with obligations under the CRC and ICCPR to grant Nepali citizenship without delay to all children residing in the State party who would otherwise be stateless, particularly children born to Nepali mothers, and implement adequate safeguards to protect all children from statelessness.
- III. Review and improve the current application process for citizenship certificates and simplify the process with a view to expediting it and making it more accessible to all applicants.
- IV. Review and enhance the transparency of the system for reviewing and granting applications for citizenship and reduce the discretionary threshold for such decisions, so that citizenship certificates are granted upon meeting the relevant criteria.
- V. Create a process to provide training to District Administration Offices on the provision of citizenship certificates, and establish a complaint or review mechanism in case of denial of citizenship application or discriminatory practices by civil servants.
- VI. Conduct a comprehensive study on the state of statelessness of minority and lower-caste groups, and ensure that caste-based discrimination does not result in denial of citizenship.
- VII. Find durable solutions for the enduring statelessness of intergenerational refugee populations in Nepal.
- VIII. Accede to and fully implement the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.