

Joint Submission to the
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BHUTAN

Main Submitting Organisation:

Nationality For All (NFA)

Co-submitting Organisation:

Statelessness and Dignified Citizenship Coalition - Asia Pacific (SDCC-AP)

April 8, 2024



**STATELESSNESS AND
DIGNIFIED CITIZENSHIP
COALITION (SDCC-AP)**

**Joint Submission
to the Human Rights Council
at the 47th Session
of the Universal Periodic Review.**

BHUTAN

Introduction

1. Nationality for All and the Statelessness and Dignified Citizenship Coalition - Asia Pacific make this joint submission to the Universal Periodic Review (UPR), on the right to nationality and human rights challenges on statelessness in Bhutan.
2. This submission focuses on:
 - I. Childhood statelessness
 - II. Discrimination based on ethnicity
3. Nationality For All (NFA) is a regional organization working to promote the right to nationality and address statelessness in the Asia Pacific region. NFA works closely with stateless persons, persons affected by statelessness, grassroots organizations, activists, and national NGOs. NFA aspires to increase the proximity to power of persons with lived experience of statelessness through their meaningful participation in the statelessness ecosystem.
4. Statelessness and Dignified Citizenship Coalition - Asia Pacific (SDCC - AP) is a newly formed regional coalition of civil society organizations and activists working together to address statelessness and ensure the right to nationality for all in the Asia Pacific region. SDCC's work includes advocacy, research, and capacity building.
5. The co-submitting organisations have developed this submission in close collaboration with a Bhutanese activist that works on the right to nationality, the rights of stateless people and refugees, and related issues. However, after careful consideration of the growing risks faced by them, we collectively decided that they would not be named as co-submitters.

Previous UPR of Bhutan under the First, Second, and Third Cycle

6. Bhutan was previously reviewed during the 6th, 19th, and 33rd Sessions of the UPR, in 2009, 2014, and 2019 respectively.
7. During the 33rd Session, Bhutan received a recommendation from Peru to “Continue measures to eradicate discrimination against children of Nepalese ethnic origin, particularly with regard to their access to education and citizenship”;¹ from France to “Enable women to transmit Bhutanese nationality to their children under the same conditions as men”;² from the United States of America to “Resume discussions with the

¹ Peru (Rec. 158.50). The recommendation was noted by Bhutan

² France (Rec. 158.63). The recommendation was noted by Bhutan

Government of Nepal on the status of individuals in Nepal who assert claims to Bhutanese citizenship or residency”;³ from Argentina to “Take the measures necessary to guarantee effective procedures to determine the nationality of refugee children based on the right to a nationality, in particular Nepalese boys, girls and adolescents”⁴

8. During the 19th Session, Bhutan received a recommendation from France to “Harmonize the procedure for transmitting Bhutanese nationality in order to allow women to transmit Bhutanese nationality to their children on the same terms as men”⁵; from Canada to “Accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and the 1961 Convention on the Reduction of Statelessness”⁶, both of which were noted by Bhutan.

Bhutan’s International obligations

9. Bhutan has international obligations to protect the right to a nationality, without discrimination including on the basis of sex, and protect the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others, the Convention of the Rights of the Child (CRC) (see Articles 2, 3, 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (see Article 9), the Convention on the Rights of Persons with Disabilities (CRPD) (see Article 18).⁷ Furthermore, the right to nationality is protected under Article 15 of the Universal Declaration on Human Rights (UDHR). The UDHR also provides each individual the “right to leave any country, including his own, and to return to his country” which is similarly reflected in Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which Bhutan is a signatory.⁸
10. Bhutan has not ratified other core international human rights treaties which present further obligations concerning the right to nationality. These include: the International Covenant on Civil and Political Rights (see Article 24.3), the International Covenant on Economic, Social and Cultural Rights (see Article 2.2 and Article 3), or the International Convention for the Protection of All Persons from Enforced Disappearance (see Article 25).⁹
11. In 2017, the CRC Committee recommended that Bhutan “dissociate birth registration from citizenship and simplify the birth registration procedure after the 12 months”.¹⁰ Further, the Committee recommended ensuring that “single mothers can register their children and ensure that children born to either a Bhutanese mother or father, including in cases when the identity of the father cannot be ascertained, are granted Bhutanese citizenship”.¹¹ The Committee also stressed the need for negotiations to ensure the return

³ United States of America (Rec. 158.68). The recommendation was noted by Bhutan

⁴ Argentina (Rec. 158.69). The recommendation was noted by Bhutan

⁵ France (Rec. 120.33). The recommendation was noted by Bhutan.

⁶ Canada (Rec.120.14). The recommendation was noted by Bhutan

⁷ *Multilateral Treaties Deposited with the Secretary General*, United Nations Treaty Collection, <https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=en> (last visited April 2, 2024).

⁸ Article 13 (2) UDHR;

⁹ *Multilateral Treaties Deposited with the Secretary General*, United Nations Treaty Collection, <https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=en> (last visited April 2, 2024).

¹⁰ Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Bhutan, 5 July 2017, CRC/C/BTN/CO/3-5, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FCO%2FBTN%2FCO%2F3-5&Lang=en

¹¹ Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Bhutan, 5 July 2017, CRC/C/BTN/CO/3-5, available at:

or resettlement of children living in refugee camps in Nepal and reunite them with their families.¹² As a party to CRC, Bhutan is obligated to ensure all children have the right to acquire a nationality as well as that every birth is registered immediately.¹³

Statelessness in Bhutan

12. Between the years 2019-2022, Bhutan reported zero stateless persons.¹⁴ UNHCR has identified Bhutan as a country that possesses information about stateless persons but lacks any reliable data.¹⁵ While there are no formally reported stateless populations there was a concerted focus on the denationalisation and expulsion of Nepali-speaking communities, the ‘Lhotshampa’, in the 1980s and 90s.¹⁶ Anonymous sources have confirmed that as many as 40,000 stateless persons affected by this denationalisation remain in Bhutan, the majority of whom are siblings and relatives of the resettled refugees. Further, the U.S. State Department, media and civil society have reported the existence of stateless children in Bhutan who were born to unwed mothers unable to prove the identity of the child’s father, as well as mothers married to permanent resident fathers.¹⁷
13. Stateless individuals in Bhutan also are devoid of access to public healthcare, employment, primary and secondary education, enrolment in higher education institutions, obtaining travel documents, and owning businesses.¹⁸ This is because documents such as “no objection certificates” or police clearance certificates are usually required to get access to the above-mentioned services, which stateless persons are not eligible for.¹⁹ In cases where stateless persons have been able to acquire travel documents, the government despite consistently denying having stateless persons in Bhutan, has indirectly acknowledged statelessness by listing their nationality as ‘Resident’.

The Bhutan Nationality Law

14. The citizenship law of Bhutan operates solely through *jus sanguinis* provisions, providing that a person is considered a citizen at birth if *both* of their parents are Bhutanese citizens, regardless of their place of birth.²⁰ There is no definition of statelessness included in the citizenship legislation of Bhutan.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FBTN%2FCO%2F3-5&Lang=en

¹² Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Bhutan, 5 July 2017, CRC/C/BTN/CO/3-5, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FBTN%2FCO%2F3-5&Lang=en

¹³ Bill Frelick, ‘Bhutan’s Ethnic Cleansing’ Human Rights Watch (Online 1 February 2008) <<https://www.hrw.org/news/2008/02/01/bhutans-ethnic-cleansing>>

¹⁴ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html> [accessed 30 May 2023]

¹⁵ UNHCR, ‘Global Trends: Forced Displacement in 2021’ (June 2022) Annex, Table 5

¹⁶ Bill Frelick, ‘Bhutan’s Ethnic Cleansing’ Human Rights Watch (Online 1 February 2008) <<https://www.hrw.org/news/2008/02/01/bhutans-ethnic-cleansing>>

¹⁷ “2022 Human Rights Report: Bhutan,” United States Department of State (blog), 2022, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/bhutan/>.

¹⁸ “2022 Human Rights Report: Bhutan,” United States Department of State (blog), 2022, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/bhutan/>.

¹⁹ “2022 Human Rights Report: Bhutan,” United States Department of State (blog), 2022, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/bhutan/>.

²⁰ Bhutan Citizenship Act (1985) s 2; The Constitution of the Kingdom of Bhutan (2008) Article 6(1).

15. A person can apply for a Bhutanese naturalized citizenship after attaining the age of 21 and after having lived in Bhutan for 20 years, and must be able to speak, read and write Dzongkha proficiently with good knowledge of the culture, customs, traditions, and history of the country.²¹
16. Despite these laws, for the southern Bhutanese community and some Sharchops, citizenship can only be granted by the Royal decree.

Childhood Statelessness

17. Bhutanese nationality law does not include provisions for foundlings and children of stateless parents to acquire citizenship. Since Bhutan's nationality law requires both parents to be citizens for the child to acquire citizenship, many children born to unwed mothers who are not able to ascertain the identity of the father are at the risk of statelessness. Further, this also puts children born to a Bhutanese mother and a stateless/non-Bhutanese father at risk of statelessness.²² This has led to exponential growth in statelessness in Bhutan, and while the exact figures of statelessness are unknown, activists say it may be more than 5% of the total population.
18. The requirement that both parents must be citizens for their children to acquire citizenship in Bhutan undermines the independent notion of nationality conferral. This is against Article 9 of CEDAW and inhibits the exercise of Article 7 of CRC.

Discrimination based on Ethnicity

19. The ethnic Nepali community known as 'Lhotshampas' were stripped of their citizenship in the late 1980s with the Bhutanese government expelling them from the country in the early 1990s.²³ More than 100,000 'Lhotshampas' arrived in Nepal as refugees in the 1990s and lived in Nepal for more than 20 years.²⁴ Most of them have now been resettled with 6,365 persons remaining in the refugee camps in Nepal.²⁵ Sources have confirmed that currently, around 40,000 stateless persons live in Bhutan, most of whom belong to the Lhotshampa ethnicity. Those who were expelled from Bhutan and have now resettled in other countries still cannot visit their homeland. This is violative of an individual's right to leave and return to one's country under article 5 of ICERD.²⁶
20. While in law, there *prima facie* exists no discrimination on the basis of ethnicity, in practice, the application for naturalization is discriminatory against Nepali-speaking persons. Thousands of stateless Lhotshampas, upon turning 15, have applied for Bhutanese citizenship through naturalization, yet their applications have remote chances

²¹ Bhutan Citizenship Act (1985) s 4.

²² United States Department of State, 'Bhutan 2021: Human Rights Report' (April 2022) 10.

²³ Maximillian Mørch, 'Bhutan's Dark Secret: The Lhotshampa Expulsion' The Diplomat (Online, 21 September 2016); 'Lhotshampas' Minority Rights (WebPage) .

²⁴ Maximillian Mørch, 'Bhutan's Dark Secret: The Lhotshampa Expulsion' The Diplomat (Online, 21 September 2016); 'Lhotshampas' Minority Rights (WebPage)

²⁵ Global Trends: Forced Displacement in 2022" (United Nations High Commissioner for Refugees, June 14, 2023), <https://www.unhcr.org/global-trends-report-2022>; Giri, Anil. "Government Decides to Allow Bhutanese Refugees to Do Business." The Kathmandu Post, The Kathmandu Post, 2022, [kathmandupost.com/national/2022/03/06/government-decides-to-allow-bhutanese-refugees-to-do-business](https://www.kathmandupost.com/national/2022/03/06/government-decides-to-allow-bhutanese-refugees-to-do-business); <https://thediplomat.com/2016/09/bhutans-dark-secret-the-lhotshampa-expulsion/>

²⁶ Article 5, International Convention on Elimination of All Forms of Discrimination, available at: <https://www.ohchr.org/sites/default/files/cerd.pdf>

of acknowledgment.²⁷ Nepali-speaking applicants, eligible for naturalisation, have waited decades, living their lives in limbo, without any information on the result of their application. In contrast, applicants from other ethnic communities, like the Drukpas, receive preferential naturalization treatment.

21. In 2022, sources have confirmed that the current regime seized the stateless Lhotshampas' freedom of movement by denying the issuance and re-issuance of their travel documents. This sudden, atrocious act has effectively confined all stateless Lhotshampas within Bhutan. Those who had travelled overseas with a travel document became trapped in various foreign countries due to the denial of their travel document renewals.
22. Royal Bhutanese Embassies/Missions in countries such as the USA, Kuwait, Belgium, Australia, and Thailand consistently refused to provide consular assistance to stateless Lhotshampas facing legal challenges in these countries. Anonymous sources have quoted several incidents involving Royal Bhutanese Embassies/Missions in the USA, Kuwait, Belgium, Australia, and Thailand where they have intimidated stateless individuals and threatened them with forced deportation by host countries. Moreover, sources have reported the Embassies/Missions threatening to forcibly repatriate stateless persons using a one-way emergency travel permit. This intimidation puts these individuals into constant trauma, uncertainty and likely persecution on return to Bhutan without having citizenship.
23. Sources confirm that there is credible evidence of gross misconduct and intimidation against the stateless Lhotshampas by various public offices, agencies, and agencies including the Zimpon's (King's Secretary) office, on a regular basis. Lhotshampas are treated with extreme disdain in these offices.
24. These are clear examples of deprivation of citizenship based on ethnicity. Introducing arbitrary requirements to validate citizenship is against the principle of the right to nationality as mentioned under international human rights law.

Impact of Statelessness

25. Activists have reported that speaking against statelessness is perceived as speaking against the Royal authority so anyone who voices their concerns on the citizenship law and the issue of statelessness is penalized. There are no civil society organizations operating out of Bhutan that advocate on this issue for this reason. Many resettled refugees that we spoke to have also expressed the fear of retaliation against their remaining family members in Bhutan for openly condemning the actions of the government.
26. In Bhutan, stateless persons cannot obtain the 'no objection certificates' and the police clearance certificates that are required to access public health care, employment, access to primary and secondary education, enrolment in higher education, travel documents, and business ownership.²⁸
27. Stateless persons are denied ownership of land, property, and assets. According to the Constitution of Bhutan, a Bhutanese citizen while can buy land, but cannot sell or transfer that land to a person who is not a citizen.²⁹ This leads to stateless people facing socio-economic exclusion, leading to precarious living conditions and other legal vulnerabilities.

²⁷ André A, 'Waiting for the King' (Himal Southasian, 2013)

<<https://www.himalmag.com/reportage/waiting-for-the-king>> accessed 8 April 2024

²⁸ "2022 Human Rights Report: Bhutan."

²⁹ The Constitution of the Kingdom of Bhutan, Article 9

28. Initiated in 2022, stateless persons are denied travel documents. This shocking crackdown has rendered them completely unable to travel beyond Bhutan's border.

Recommendations

29. Based on the above information, the co-submitting organizations urge reviewing States to make the following recommendations to Bhutan:

- I. Take all necessary steps to ensure the removal of all ethnic discriminatory practices against the 'Lhotshampas' such that they are allowed access to Bhutanese nationality.
- II. Ensure access to basic services in a non-discriminatory manner such that all individuals have equal access to adequate housing, water, electricity and other basic services.
- III. Improve the collection of data and information on statelessness, civil registration and legal identity more generally in Bhutan.
- IV. Provide timely acknowledgment of citizenship applications along with clear and non-discriminatory pathways and procedures to citizenship for long-term stateless resident populations as stipulated under Bhutanese law.
- V. Ratify and fully implement the two Statelessness Conventions, 1951 Refugee Convention and Protocol ICCPR, ICESCR, and ICERD.
- VI. Immediately resume issuing travel documents to stateless persons to respect and restore their universal right to freedom of movement.
- VII. Take measures to ensure that children born in Bhutan who would otherwise be stateless, have the ability to acquire nationality and have access to identity documents as full citizens.
- VIII. Instruct all Bhutanese Embassies and Missions overseas to provide the necessary consular assistance to stateless persons living overseas who use Bhutanese travel documents.
- IX. Grant Bhutanese Embassies and Missions overseas the authority to issue and re-issue travel documents to stateless persons for enhanced transparency and efficiency.
- X. Identify the offices and individuals alleged to be responsible for or complicit in intimidating stateless persons to stop all forms of intimidation, harassment, and discrimination against these individuals.
- XI. Allow civil society, non-governmental, voluntary organizations, and individuals the freedom, autonomy, and necessary safety to advocate for and address socio-economic discriminations, including statelessness.