

Committee on the Rights of the Child
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson, 52 rue des Pâquis
CH-1201 Geneva, Switzerland
30 April 2015

Re: Nepal – 69th Pre-sessional Working Group of the Committee

Distinguished Committee Members,

The [Forum for Women, Law and Development](#),¹ the [Institute on Statelessness and Inclusion](#),² and the [Global Campaign for Equal Nationality Rights](#)³ respectfully submit this letter in advance of the Committee on the Rights of the Child's (the Committee's) discussion on Nepal at its 69th Pre-sessional Working Group. This letter draws the Committee's attention to the impact that Nepal's gender discriminatory nationality law has on child rights, particularly in relation to Articles 2, 3, 7, 8, 24, and 28 of the Convention on the Rights of the Child (CRC). The letter concludes by proposing questions for the Committee to include in its List of Issues to be raised with the government of Nepal.⁴

Gender Discrimination in Nepal's nationality law

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. Women are also denied the right to acquire, change and retain citizenship fully and independently, and to pass their nationality to foreign spouses. In addition to Nepal's law being discriminatory, it is also implemented in a discriminatory manner. Furthermore, the birth registration rate in the country is extremely low, and in practice, citizenship is only confirmed after the age of 16. Collectively, all of these factors can also result in serious violations of children's rights. Most significantly, many children born to Nepali mothers are rendered stateless. Their statelessness or lack of legal status impedes their access to fundamental socio-economic rights including education and healthcare, and they also face restrictions in terms of freedom of movement. The disadvantages of statelessness follow children into adulthood, impeding their access to employment and various other human rights. Stateless adults are more likely to have stateless children, and thus, with every generation, the extent of the problem and its impact on children grows further.

Violation of Articles 7 & 8 CRC

Article 7 of the CRC states that a child has "the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents." States are particularly called on to ensure these rights "where the child would otherwise be stateless." Article 8 CRC obligates Nepal to respect the child's right to an identity "including nationality, name and family relations".

¹ The Forum for Women, Law and Development (FWLD) was established in 1995 and has been working on citizenship rights from its inception, providing legal services to victims of discriminatory citizenship laws, delivering training and conducting research and advocacy.

² 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.

³ The Global Campaign for Equal Nationality Rights mobilizes international action for the removal of gender discriminatory provisions from all nationality laws and is led by its Steering Committee of the Office of the UN High Commissioner for Refugees, UN Women, Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, and Women's Refugee Commission.

⁴ This letter draws on a recent joint civil society submission to the Universal Periodic Review of Nepal made by its authors. 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*, March 2015. Available at: <http://equalnationalityrights.org/images/NepalUPRprinting.pdf>

As indicated above, the Nepali legal framework and the manner in which it is implemented does not comply with its obligations under Articles 7 & 8 CRC. Following are key areas of concern in this regard:

- Article 8(2)(b) of the Interim Constitution of Nepal 2007 states that anyone “whose father or mother is a citizen of Nepal at the birth of such person” is eligible for Nepali citizenship. However, Article 8(7) of the Interim Constitution provides that the children of Nepali women and foreign men can only access citizenship through naturalisation, and not 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. Furthermore, the overwhelming majority of naturalisation 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 naturalisation application was successful.
- Poor levels of birth registration⁵ enhance the likelihood of statelessness, as without a birth certificate, it is difficult for single women applying on behalf of their children, to establish paternity.
- The Nepali practice of conferring citizenship documentation after the age of 16 further exacerbates the situation. On the one hand, it is likely that this practice is a violation of Nepal’s obligations under Article 8 CRC to respect the child’s right to an identity. On the other, the further the process to confirm nationality is pushed back, the greater the likelihood that nationality will be denied (due to the increased likelihood of the father being out of the picture and/or documentation being lost), thus undermining Nepal’s Article 7 obligation.
- In addition to the above examples of discriminatory/inadequate law and policy, the attitudes of public servants and first instance decision makers in Nepal remain largely discriminatory towards women and patriarchal. This prevalent attitude heightens the possibility of children being rendered stateless.

While the Nepali Constitutional reform process is an opportunity to address this situation, the current draft text, if passed, would almost certainly result in even greater numbers of stateless children and other violations of children’s rights. The present draft reads: “for the child to be a citizen of descent both the father AND⁶ mother need to be citizens of Nepal during the time of birth”. 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. As the draft provision 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.

Nepali women’s inability to confer nationality to foreign spouses also threaten a child’s right to know and be cared for by his or her parents. For example, when foreign men are denied access to their spouses’ nationality, they may be forced to live away from their children due to challenges in acquiring residency permits and obstacles to employment.

Violation of Articles 24 and 28 CRC

Nepal’s discriminatory nationality law also negatively impacts children’s access to healthcare and wellbeing, in violation of Article 24 CRC. Children of Nepali women who are unable to access their mother’s citizenship as a result of gender discriminatory nationality laws may be required to pay higher fees than citizens for healthcare services. Similarly, gender discrimination in Nepal’s nationality laws impedes a children’s access to education,⁷ in violation

⁵ According to UNICEF, between 2005 and 2012, only 42.3% of births were registered in the country. See http://www.unicef.org/infobycountry/nepal_nepal_statistics.html.

⁶ Emphasis added

⁷ Ibid.; Open Society Justice Initiative, Children’s Right to a Nationality, available at: <http://www.ohchr.org/Documents/Issues/Women/WRGS/RelatedMatters/OtherEntities/OSJChildrenNationalityFactsheet.pdf>

of Article 28 CRC. Children of Nepali women who are unable to access their mother's citizenship as a result of gender discriminatory nationality laws are often prevented from attending public school until all children with citizenship are registered and are often forced to pay higher school fees.⁸ Many, because of their nationality status, will not have access to state-sponsored education. This situation continues through secondary and tertiary education, severely limiting children's access to education and, later, job opportunities. Resultantly, stateless children are also vulnerable to exploitation, including human trafficking and child labour.⁹

Violation of Articles 2 and 3 CRC

The situation described above also is in violation of Articles 2 and 3 CRC. The freedom from discrimination enshrined in Article 2 is undermined both by the gender discriminatory nationality law, and by its implementation which further disadvantages the children of mothers who come from ethnic minorities and/or lower castes. The prevailing situation in Nepal where nationality is only confirmed after the age of 16 and children can be rendered stateless is in clear contravention of the principle of the best interests of the child, as are the various human rights impacts that flow from the lack of a legal status, including in relation to access to education and healthcare. In fact, childhood statelessness has been described as "antithesis to the best interests of children".¹⁰ The degree of non-compliance of discriminatory nationality laws with these guiding principles to the CRC demonstrate that they are fundamentally at odds with the Convention's purpose.

List of Issues

In light of the above information, we respectfully urge the Committee to raise the following questions with the government of Nepal in its List of Issues:

- What steps are proposed to urgently bring Nepal's nationality law into compliance with its obligations under CRC Articles 2, 3, 7 & 8, in particular by ensuring children's right to acquire a nationality, respecting the child's right to an identity, protecting the child from discrimination, ensuring the best interests of the child at all times and protecting all children from statelessness?
- What steps are proposed 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?
- What steps are proposed to ensure that all children in Nepal have equal access to education, healthcare and other socio-economic rights, regardless of their legal status?

We thank you for the opportunity to submit this letter to the Committee, and remain committed to promoting equal nationality rights for all children in Nepal and throughout the world. If the Committee requires any further information or clarification, please do not hesitate to contact us.

Sincerely,

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⁸ Maureen Lynch and Melanie Teff, "Childhood Statelessness," *Forced Migration Review*, Vol. 32, available at: <http://www.fmreview.org/FMRpdfs/FMR32/31-33.pdf>

⁹ Open Society Justice Initiative, Children's Right to a Nationality, available at: <http://www.ohchr.org/Documents/Issues/Women/WRGS/RelatedMatters/OtherEntities/OSJIChildrenNationalityFactsheet.pdf>

¹⁰ *Nubian Minors v. Kenya*, African Committee of Experts on the Rights and Welfare of Children, 22 March 2011, 002/2009.