

NEPAL CIVIL SOCIETY NETWORK ON CITIZENSHIP RIGHTS

Submission to the Human Rights Council at the 37th Session of the Universal Periodic Review

Nepal

1. The Nepal Civil Society Network on Citizenship Rights makes this submission to the Universal Periodic Review (UPR) in relation to Nepal.
2. The Nepal Civil Society Network on Citizenship Rights (the Network) is a network of over 50 civil society organizations working in various sectors of human rights in Nepal. The Network was formed during the tenure of the First Constituent Assembly of Nepal with the aim to lobby equal citizenship rights in the Constitution, and has continued to carry out various advocacy and lobbying activities for the equal citizenship rights in Nepal. As a Secretariat of the Network, Forum for Women, Law and Development (FWLD) has been coordinating the Network since formation of the Network.
3. This submission draws on the multiple years of research, advocacy, awareness raising, litigation and direct support related experience both in Nepal and internationally, of the respective member organisations of the Network. It focuses on the problematic provisions prevailing in the Constitution of Nepal as well as other laws that restrict both men and women from obtaining legal identity, especially citizenship certificates and birth registration certificates for children, which has a detrimental impact on them and their families.

UNIVERSAL PERIODIC REVIEW OF NEPAL UNDER THE SECOND CYCLE

4. Nepal was previously reviewed under the 10th session in 2011 (First Cycle) and the 23rd session in 2015 (Second Cycle). Multiple recommendations were made to Nepal in relation to the right of nationality¹ during the second cycle. Of these, the following recommendations which were all accepted by Nepal are the most 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

¹ UN General Assembly, Report of the Working Group on the Universal Periodic Report related to Human Rights Nepal available at: <http://un.info.np/Net/NeoDocs/View/7442> accessed on 13 March 2020

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

5. As this submission evidences, despite accepting several such recommendations related to enhancing equality in the area of citizenship right, Nepal’s failure to amend discriminatory citizenship law has had significant negative impact on a large portion of the Nepali population both men and women. Effective access to legal identity documents, mainly birth registration certificates and citizenship certificates, help ensure access to fundamental social, economic, and political rights. It is noted that Nepal implemented mobile registration in remote areas in 2007 and again in 2013 which led to more than 3.7 million individuals obtaining citizenship certificates, who had previously faced significant logistical and geographic challenges. However, a significant proportion of the population of Nepal who have so far not been able to obtain these main legal identity documents are effectively excluded from most national assistance (social security) and development programmes and cannot exercise their rights as citizens.

NEPAL’S INTERNATIONAL LEGAL OBLIGATIONS

6. Nepal has ratified the majority of the international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination (CERD), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of Persons with Disabilities (CRPD). Nepal has not ratified the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. Nevertheless, it is notable that Nepal ratified the CEDAW and the CRC without any reservation, which contain important protections against gender discrimination in nationality law² and the

² Article 9, the Convention on the Elimination of All Forms of Discrimination against Women

prevention of childhood statelessness³. Thus, the Government of Nepal therefore obligated to domesticate its international obligations protecting discrimination in nationality law into the national legislations and to create enabling environment to ensure the rights guaranteed by these international instruments.

7. Moreover, the Treaty Act of Nepal stipulates that, “In case of the provisions of a treaty, to which Nepal or the Government of Nepal is a party upon its ratification, accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.”⁴ Nepal therefore is obligated to treat the provisions of those international instrument as good as domestic laws. Furthermore, the Constitution⁵ requires the state to implement international treaties, agreements, to which Nepal is a party⁶.

PROBLAMATIC PROVISIONS IN THE CITIZENSHIP LAWS IN NEPAL

8. Despite the strong international obligations and assertions by the Government of Nepal the Constitution of Nepal⁷ an estimated six million individuals lack citizenship documentation, although the majority of these would be eligible for Nepali citizenship under local law⁸. The Constitution still includes several articles pertaining to nationality that discriminate on the basis of gender, and that are internally contradictory with other articles of the Constitution, which enshrine non-discrimination and the right to citizenship⁹ on one hand and on another hand contravene the rights guaranteed by the CEDAW¹⁰ and can lead to statelessness when fathers are stateless or also unable to confer their nationality on their children.
9. The Article 10(1) of the Constitution¹¹ states that no citizen of Nepal may be deprived of the right to obtain citizenship. However, in the absence provision of right to remedy in the violation of this provision, it is remained merely as discretional. Further, the Article 11(2) (b) of the Constitution¹² states that any person whose father or mother was citizen of Nepal at the time of birth is a citizen by descent. However, this provision is later contradicted by Articles 11(3), 11(5) and Article 11(7).
10. The Article 11(3) requires both the 'father and mother' to be citizens of Nepal for a child to acquire citizenship by descent in cases where one of the parents acquired citizenship by birth, preventing Nepali women to independently transfer her citizenship to their children. Similarly, the Article 11(5) states that a Nepali woman only retains the right to pass nationality by descent if her child is born and resided in Nepal and “whose father is not traced,” with condition that the citizenship of the child to be converted into naturalized if

³ Article 7 & 8, the Convention on the Rights of the Child

⁴ Section 9 (1), the Treaty Act, 2047 (1990) available at: <http://www.lawcommission.gov.np/en/archives/9646>

⁵ The Constitution available at: <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/constitution/constitution-of-nepal>

⁶ Article 51 (b)(3), the Constitution of Nepal

⁷ The Constitution of Nepal, 2015 available at:

<http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/constitution/constitution-of-nepal>
⁸ Acquisition of Citizenship Certificate in Nepal: Estimation and Projection (2015), Forum of Women, Law and Development (FWLD) also reported in “2019 Country Reports on Human Rights Practices: Nepal” (2019), U.S Department of State available at : <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/nepal/>

⁹ Nepal Citizenship Act, 2006, available at: <http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/nepal-citizenship-act-2063-2006>

¹⁰ Article 9 (2), the Convention on the Elimination of All Forms of Discrimination against Women

¹¹ The Constitution of Nepal

¹² The Constitution of Nepal

the father is known to be a foreigner. Further, the Article 11(7) states that the child of a Nepali woman married to a foreign man may only acquire naturalized citizenship if the child has permanently resided in Nepal and has not acquired citizenship of father's country. In addition to contradicting Article 11(2)(b), these provisions further violate Nepali citizens' right to equality before the law and equal protection the law as well as equal lineage right of women without gender-based discrimination, as enshrined in the Article 18 and 38 of the Constitution¹³.

11. The Constitution¹⁴ further discriminates against women with regard to the conferral of nationality on foreign spouses, a right reserved for Nepali men and denied to Nepali women. The Constitution¹⁵ where a foreign woman married to a Nepali man may apply for citizenship, if she wishes, with a marriage certificate and proof that she has initiated the renunciation of any other citizenship¹⁶ whereas, the Constitution is silent with respect to the ability of the foreign spouses of Nepali women to acquire citizenship through marriage. The provision¹⁷ when allows Nepali men to confer citizenship to their foreign wives if they wish and initiate proceedings renounce their previous nationality there is no provision of conferral of Nepali citizenship by Nepali woman to foreign spouse through marriage and their children. This has limited women's autonomy regarding nationality and the ability to transmit citizenship through marriage and to their children.
12. The Proviso of Article 11 (5) of the Constitution states that a child is born to a Nepali mother whose father is not identified, such children may be given citizenship by descent in cases where the child is born and residing in Nepal. However, the citizenship would be changed automatically to naturalized citizenship in cases where the father of such child is identified as a foreigner. This discriminatory provision not only fails to recognize the independent identity of the mother but also may result in stigmatizing both mother and child in genuine cases of unknown paternity involving incidents of rape, sex-work, trafficking, migrant women workers, extra-marital relationship and similar cases.
13. The Citizenship Act denies Nepali women equal rights to acquire and retain their own nationality. According to the proviso of Section 8(1)(a) of the Act¹⁸ Nepali women married to foreign men before obtaining citizenship certificate do not have a right to subsequently obtain it. This is not only internally contradicted with the constitutional provision but also contradicts with CEDAW Article 9(1). This continues despite of the decision made by the Supreme Court of Nepal in 2008 stating that a citizenship to be issued without any discrimination on the basis of gender and marital status¹⁹.
14. Putting a special condition for women creates a discrimination against them and puts their children at the risk of exclusion of legal identity. 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 way²⁰.

¹³ The Constitution of Nepal

¹⁴ The Constitution of Nepal

¹⁵ The Constitution of Nepal

¹⁶ Articles 11(6), the Constitution of Nepal

¹⁷ Articles 11(6), the Constitution of Nepal

¹⁸ Nepal Citizenship Act, 2006

¹⁹ Nakkali Maharjan v, Office of Prime Minister and the Cabinet of Ministers et al, Supreme Court of Nepal, 2007.

²⁰ Forum for Women, Law and Development (FWLD), "Legal Analysis of Citizenship Law of Nepal", 2016, pg. 15, available at <http://fwld.org/publications/legal-analysis-citizenship-law-nepal/>

²¹ The Constitution of Nepal

²² Nepal Citizenship Act, 2006 available at: <http://www.lawcommission.gov.np/en/archives/13035>

²³ Nepal Citizenship Rules, 2006 available at: <http://www.lawcommission.gov.np/en/categoryprevailing-lawrules-and-regulation>

15. Complementing to the Article 11 (7) of the Constitution²¹, the Section 5(2) of the Citizenship Act²² and Section 7 of the Citizenship Rules²³ deny Nepali women the right to confer their citizenship to their children by decent. Instead, such children have only the option to seek naturalization. However, the discretion wielded by state authorities in relation to naturalization is extremely wide, and the overwhelming majority of naturalization applications do not result in the conferral of nationality even after the decision made by the Supreme Court of Nepal.

CASE 1:

Citizenship of Nepali Mother's Children: Rights or Discretion?

Arjun Shah was born to Nepali mother, who has her citizenship by descent and Indian father who has been residing in Nepal for the last 38 years. When Arjun applied for the citizenship he was denied. Later he filed a writ at the Supreme Court in 2017 and the Court issued order to the Government of Nepal, Ministry of Home Affairs and District Administration Office, Mahottari to provide him with citizenship certificate by fulfilling due legal process. It has been more than two years now since the decision was made but his case is still under the review of the Cabinet of Nepal.

Source: Arjun Shah v. the Government of Nepal, the Ministry of Home Affairs et al, Writ No. 074-WO-0518, the Supreme Court of Nepal, 2017

16. The application process for the acquisition of citizenship by children born to Nepali women, outlined in the Citizenship Act²⁴ and the Citizenship Rules²⁵ is a challenging, bureaucratic process. According to the Section 5(2) and 5(3), this process requires the applicant to provide a copy of the mother's citizenship certificate; a recommendation by the local authorities certifying the child's birth and permanent residency in Nepal; and evidence that the child has not acquired the father's foreign citizenship. It is likely to be particularly onerous for the children of Nepali women – especially in women-headed households – to provide evidence that foreign citizenship has not been acquired.

17. The denial of equal nationality rights leads to both the denial of proof of legal identity and the denial of the right to a nationality. Furthermore, discrimination in Nepal's nationality laws inhibits women's ability, in practice, to freely choose a spouse, in violation of CEDAW Article 16, further entrenching traditional stereotypes regarding the primacy of male legal identity, and contributing to women's inequality within the family and society at large. Further entrenchment of such stereotypes is in breach of Nepal's obligations under the CEDAW Article 5(a).

CASE 2:

Nepali Women cannot confer Citizenship to Children

John (name changed) was born to Nepali mother and Indian father in Nepal and living here since then. He received his education in Nepal and now teaching in a private school. He got married to Nepali woman and has three children. He does not have a citizenship certificate for which he has been struggling for 23 years now, but he failed. One of his daughters is now studying nursing. Now more than he himself, he is worried about his children thinking that alike him they will also remained without citizenship.

Source: "National Conference with the People without Citizenship" Organized by FWLD, December 08, 2019

²¹ The Constitution of Nepal

²² Nepal Citizenship Act, 2006 available at: <http://www.lawcommission.gov.np/en/archives/13035>

²³ Nepal Citizenship Rules, 2006 available at: <http://www.lawcommission.gov.np/en/categoryprevailing-lawrules-and-regulation>

²⁴ Nepal Citizenship Act, 2006

²⁵ Nepal Citizenship Rules, 2006

18. Despite the Constitution²⁶ proclaims that no citizen of Nepal may be deprived of the right to obtain citizenship²⁷ the Nepal Citizenship Regulation, 2006 requires to submit documentation of recommendation from the orphan home (approved by the government)²⁸ or from the organization under which protection the child was grown up²⁹ or from the individual who has legally obtained guardianship of the child.³⁰ This restricts the street children or the orphan children who have grown up on their own from obtaining citizenship as well as stops them from enjoying their fundamental rights guaranteed by the Constitution.

CASE 3:

Street Children has no access to Citizenship

Kumar Joshi, a street child of Kathmandu worked as a domestic worker after his father abandoned him. While he was working he could study up to lower secondary but later on he left the house and started living in the streets of various places of Kathmandu. With the support of a non-government organization he completed his higher secondary level education and had different trainings. When he was reintegrated to the community he wanted to start his career but he needed a citizenship for this therefore, he applied for citizenship. But he was denied as he could not submit the documents specified by the law since he was brought up in the street.

Source: Kumar Joshi v. the Government of Nepal, the Ministry of Home Affairs et al, Writ No. 069-WS-0037, Supreme Court of Nepal, 2012

19. Further, even almost five years after the promulgation of the constitution, necessary amendments in the prevailing Nepal Citizenship Act, 2007 in line with the constitution has not been possible. In the absence of legal amendments, a large number of people, constitutionally eligible to acquire a citizenship, by being deprived from acquiring a citizenship. In this context, after two years since the Nepal Citizenship Act Amendment Bill submitted to the House of Representatives (HOR) the State Affairs and Good Governance Committee of HOR had recently passed the Bill and had submitted to the HOR plenary for consideration. Unfortunately, the passage of the Bill has been postponed due to the sudden decision of the Government to end the parliament session. Because of this, along with hundreds and thousand people who are eligible to obtain Nepali citizenship, hundreds of children of the citizens by birth who are entitled to obtain citizenship by descent are being denied as the amendment of existing law is lingering for longer time. This way, many citizens of Nepal are being deprived of their citizenship for none of their fault. Hence, there must be a provision of compensation for these categories of people.
20. The Nepal Citizenship Act Amendment Bill, passed by the State Affairs and Good Governance Committee of the House of Representative, Federal Parliament by a majority has yet to address shortcomings from the perspective of sexual and gender identity, Nepali citizen married to a foreign citizen has to submit of proof of not acquiring citizenship of foreign country or renounced, no provision for complaint mechanism, issues of landless people for the purpose of permanent residence to apply for citizenship, there is no provision whereby Nepali woman can confer citizenship to her foreign husband. Likewise, the provision whereby an individual wishes to be mentioned 'other' in the citizenship certificate

²⁶ The Constitution of Nepal

²⁷ Article 10 (1), the Constitution of Nepal

²⁸ Rule 3 (3) (a), the Nepal Citizenship Regulation, 2006

²⁹ Rule 3 (3) (a and c), the Nepal Citizenship Regulation, 2006

³⁰ Rule 3 (3) (b), the Nepal Citizenship Regulation, 2006

on the basis of his or her sexual and gender identity shall submit a recommendation of a recognized Medical Doctor. This will create unnecessary burden of proof for persons from sexual and gender minority as well as such procedures may not be dignified and might hurt the dignity of such persons.

21. While the Article 39 (1) of the Constitution first ever in any constitution of Nepal explicitly proclaims that “every child shall have the right to name and birth registration along with his or her identity”. The recent National Identity Card and Civil Registration Act, 2020 which came into the force repealing the previous Birth, Death and Other Personal Events (Registration) Act, 1976 prerequisites document of citizenship certificate for national identity card. This also requires for birth registration. As a result, the children who do not have access to citizenship might be systematically excluded from national identity card and birth registration. It further restricts landless people from acquiring national identity card as they have difficulties in accessing citizenship certificate as well.

CASE 4:

Denied a Birth Registration Due to Lack of Citizenship of Father

Ram (name changed) does not have a citizenship as he was brought up by a Brahmin priest after he lost his father when he was only 8 years old and her mother left him. He could not pursue study and work. He got married in 2018 and has a daughter. When he went to the ward office to register the birth of his daughter, he was denied due to lack of citizenship of him though his wife has already obtained the citizenship. He was then informed by the officials that without his citizenship certificate and without his marriage certificate daughter's birth cannot be registered.

Source: "National Conference with the People without Citizenship" organized by FWLD, December 08, 2019

22. Due to gender discrimination in Nepal's citizenship law often results in exclusion of birth certificate and citizenship of children whose mothers have faced discrimination, despite Nepal's obligations under various international human rights treaties. Further, the Constitution guarantees right to birth registration³¹ however recently enacted law³² requires national identity card for birth registration and a citizenship is made mandatory to obtain a national identity card resulting systematic exclusion of children who are born in Nepal.
23. Amidst of the lockdown imposed by the Government of Nepal due to the given situation of COVID 19, the Government announced the relief package targeting to the workers of unorganized sector and helpless people. The Standard³³ prepared to distribute the relief package made citizenship certificate or any identity document a mandatory document to receive the relief due to which huge number of people without citizenship certificate were excluded from the benefit of the Government's relief package³⁴. The Supreme Court of Nepal issued an interim order to the Government telling to provide relief materials immediately to the economically marginalized and helpless people without requiring them to provide citizenship certificate keeping in the mind the people's right to food and on grounds of humanity. However, there are still cases reported where the people without citizenship certificate are denied of the relief package.

³¹ Article 39 (1), "Every child shall have the right to name and birth registration along with his or her identity", the Constitution of Nepal also available at <http://www.lawcommission.gov.np/en/archives/981>

³² National Identity and Civil Registration Act, 2019

³³ The Standards relating to the Relief Distribution to the Workers of an Unorganized Sector and Helpless People, 2020

³⁴ Ibid, Number 8 (a), (b) and (c) of the Annex 1

PREJUDGES IN IMPLEMENTATION OF THE CITIZENSHIP LAWS

24. In addition to Nepal's nationality laws being discriminatory, they are also implemented in a discriminatory manner, with local authorities frequently denying women and their children access to documentation due to discriminatory and patriarchal beliefs. As a result, despite of the positive jurisprudence of the Supreme Court of Nepal, unfair and impractical administrative burdens and barriers continue to be imposed against women attempting to confer their citizenship to their children.
25. Deep rooted patriarchal mind set and the attitude of public servants and first instance decision makers in Nepal as well as prevalent socio-cultural bias towards women is also responsible for the continuing discrimination of women in the area of citizenship. There is the understanding among the people including public servants and people at the authorities that women once married, go away to the husband's house and take up the family name and nationality of their husband still prevails in Nepal which not only fails to recognize an independent identity of women and the equal rights guaranteed to women but also creates an extreme barriers to women in getting citizenship. This has widened the scope of the vulnerability of statelessness in the Nepali women who marry foreign citizens before having obtained their own citizenship certificate, are barred from subsequently doing so.
26. While there is no legal barrier to women obtaining citizenship certificates through their parents after marriage with Nepali men, in practice, married women are required to submit citizenship documents of their spouse and his family in order to obtain citizenship placing women who experience violence in their married life in a vulnerable position.

CASE 5:

Patriarchal Effect on Right to Nationality of Nepal Women

Sukumaya Tamang (42) of Mawanpur trafficked to a circus in Kanpur, India when she was just 12 years old. While she was there she got married to an Indian citizen and has a daughter out of the marriage. After the death of her husband she came to her home at Mawanpur, Nepal. When she felt a need of citizenship she went to the ward office for recommendation to apply for citizenship she was denied saying that since she is married, she must go to her husband's house and acquire citizenship from his husband's family. She even went to the Hetauda Municipality and CDO Office of Mawanpur district but received the same answer. She filed a case to the Supreme Court in 2012. It has been more than 8 years but her case yet to be decided.

Source: Sukumaya Tamang v. the Government of Nepal, the Ministry of Home Affairs et al, Writ No. 069-WS-0013, Supreme Court of Nepal, 2012

CASE 6:

Women are denied of Citizenship if she has no support from Husband and His Family

21 years old Meena Paudel (name changed) was married at the age of 17 and has a 5 years old daughter. She had not obtained a citizenship before the marriage. Her marriage is not pleasant as her husband abuses her and his family is not supportive as well. When she went to register the birth of her daughter she was asked to submit her husband's citizenship. Realizing that she also needs citizenship for everything she applied for it but she was denied by the officials as she could not submit documents asked from her husband's side. She is not being able to acquire her citizenship and birth registration of her child as the officials ask for documents from her husband and his family but she does not have support from them.

Source: Case collected from Saathi Nepal, 2020

27. Due to the non-recognition of independent identity of women in conferring the citizenship to children of women, in particular single mothers, are being denied citizenship certificates and registration of their children, which prevents those women and their children from gaining access to education, opening bank accounts, obtaining driver's license, voting, managing their property, acquiring travel documents, applying for employment in the public sector and benefiting from social services.

CASE 7:

Discriminatory Provisions restrict Single Mother to confer Citizenship to her Children

As Samita's (name changed) father's family was not supporting, her parents lived separately after their marriage. Unfortunately, her father died when she was a child. She was brought up by her mother only and does not have any connection with her father's family. She needed to submit her birth registration or citizenship certificate to enroll in Bachelor's level education. So, she went to the local authorities requesting for recommendation for the citizenship but denied for several times asking her to submit either the citizenship certificate of her father, or his death certificate, or any document that shows her connection with her father. Since then she has been going to the concerned authority but she has been denied several times as she is not being able to submit the documents that show her connection with her late father.

Source: "National Conference with the People without Citizenship" Organized by FWLD, December 08, 2019

CASE 8:

Non-recognition of Independent Identity of a Single Mother

Shreya Sakya was brought up by a single mother as she was not accepted by her father and his family when her mother had filed a case of polygamy against her father and legally separated. She has a birth registration from Kathmandu district and received education in Kathmandu. Her mother has her citizenship from Kathmandu district as well. When she turned to 16 years old, she went to apply for recommendation letter for citizenship certificate from the local authority but she was denied stating that they should seek recommendation from her father's permanent address.

Source: *Shreya Sakya v. the Government of Nepal, the Ministry of Home Affairs et al, Writ No. 075-WO-1016, the Supreme Court of Nepal, 2019*

28. The requirement to mention citizenship certificate number of father or mother or of the concerned person while registering vital event, especially the birth, is only for record purpose however, in practice, requiring the name and citizenship information of father and mother or male family member birth registration is discouraging and troublesome. This is because of the perception of local registrars that a birth registration is the solid ground for claiming citizenship later on.
29. The Supreme Court has provided many landmark judgments related to citizenship, where concerned offices were issued directive orders to provide citizenship to the applicants. The Ministry of Home Affairs also issued circulars in order to implement the decisions. However, the implementation of the decisions has benefited the concerned applicants only, despite the Court creating precedents on the issue applicable to other similar cases. The decisions, thus, did not let to a change in the laws, obliging individuals with the same legal shortcomings to file another individual lawsuit. The latter aspect prevents many individuals from easily enforcing their rights to have a citizenship.

RECOMMENDATIONS

30. In light of the fact that Nepal did accept the recommendations like to 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; to amend legislation on nationality in order to be able to grant Nepali nationality through either parent; to implement measures to ensure that the rights to acquire, transfer and retain citizenship are extended equally to all women and their children and to ensure that provisions in the Constitution guarantee the equal rights of women as well as their right to acquire, retain and transfer citizenship however as this submission evidences, despite accepting several above mentioned recommendations by the member states under the second cycle of the UPR has failed to implement of the accepted recommendations which has had significant negative impact on a large portion of the Nepali population. Based on our collective and continuous research, advocacy and engagement on the issue the report would like to recommend the following:

- (i) Fully promote, respect, protect and fulfill its obligations under international human rights law. In particular, ensure that it's Constitution, national laws, policies and practices on nationality fully comply with the Article 9 of CEDAW that guarantees equality and prevention from statelessness, the Articles 7 and 8 of CRC, and with general principles of equality and non-discrimination enshrined in different international treaties.
- (ii) Ensure realization of the constitutionally recognized right of all citizen to a nationality, without discrimination. Recognize that the right to a nationality is not subject to the unfettered discretion of administrative authorities, but instead should be protected by the State, which has an obligation to implement court decisions in this regard. Thus, ensure proper implementation of the decisions of the courts including Supreme Court and High Courts³⁵.
- (iii) Take immediate steps to amend/repeal discriminatory provisions that prevent women from acquiring, retaining and transferring citizenship on an equal basis with men in the Constitution particularly Article 11(3), 11(5), 11(6), 11(7).
- (iv) Recognize the independent right of each parent to provide citizenship based on lineal descent to their children, and the right of both women and men to confer citizenship to their foreign spouse on equal terms. Ensure effective implementation of the section 3 the Citizenship Act³⁶ which states that a person born at the time when his/her father or mother is a citizen of Nepal, shall be a citizen of Nepal by descent at birth not after 16 years of age and the section 5 of the Act³⁷ which spells that a child born to a Nepali female citizen from marriage with a foreign citizen in Nepal and having permanent domicile in Nepal, if s/he has not acquired the citizenship of the foreign country on the basis of his/her father may be granted naturalized citizenship.
- (v) Pass the Nepal Citizenship Act Amendment Bill as soon as possible, as hundreds of thousands of people eligible to acquire citizenship according to the constitution of Nepal are also being deprived from acquiring citizenship and are in statelessness due

³⁵ Group of lawyers including the lawyers of FWLD submitted a memorandum on 02 July 2020 to CDO of the Banke district to provide citizenship to 38 persons deprived from citizenship certificate without further delay by implementing fully the decision made by the High Court Tulsipur, Nepalgunj Bench, whereby it has ordered to provide citizenship certificate to them

³⁶ Nepal Citizenship Act, 2006

³⁷ Ibid

to the Bill not being passed since a long time. Emplace a provision for compensation to those individuals who qualify to obtain citizenship but failed to acquire Nepali citizenship as the result of lingering by the government.

- (vi) Conduct training especially targeting to law enforcement agencies to address patriarchal and discriminatory societal attitudes that undermine the equality and dignity of Nepali women.
- (vii) Expand its civil registry to ensure that all eligible persons irrespective of age are issued legal identity documents, in particular birth certificate and citizenship certificates, in an accessible, affordable and timely fashion, including through expanded outreach at all local levels, to reduce the risk of statelessness and allow access to crucial social, economic and political rights and services.
- (viii) Ensure universal coverage of civil registration most importantly birth registration, regardless of the legal identity of the parents including citizenship certificate or national identity cards, in line with the Constitution of Nepal and Nepal's international human rights obligations.
- (ix) Ensure that the people's right to live with dignity is respected at the time of a pandemic and they are provided with the services and relief packages by the Government without any discrimination particularly based on citizenship certificate. Ensure the proper implementation of the Interim Order issued by the Supreme Court of Nepal in regard to providing relief package to the people without requiring them citizenship certificate.
- (x) As the Government of Nepal noted the recommendation during the second cycle of the Universal Periodic Review of Nepal ratify the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.