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STATELESSNESS NETWORK
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Committee on the Elimination of Discrimination against Women **Nepal**

71st Pre-Sessional Working Group
(12 - 16 Mar 2018)

**Thematic Submission on
Article 9**

Committee on the Elimination of Discrimination against Women
Human Rights Treaties Division (HRTD)
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Re: Nepal – 71st Pre-Sessional Working Group (12 Mar 2018 - 16 Mar 2018)

20 February 2018

Distinguished Committee Members,

We respectfully submit this letter in advance of the Committee on the Elimination of Discrimination against Women's (CEDAW) discussion on Nepal at its 71st pre-sessional working group from 12 Mar 2018 - 16 Mar 2018. The co-submitting organizations are greatly concerned about prevailing gender discrimination against Nepali women, who are denied the right to confer nationality on their children and spouses and to acquire and retain their own nationality on an equal basis with men, with severe consequences for women and their families. This letter will focus on continued violations of women's nationality rights in Nepal in direct violation of Articles 2 (non-discrimination including in policy measures) and 9 (nationality), resulting in further violations of articles 3 (guarantee of basic human rights and fundamental freedoms), 5-a (eliminating prejudices and customary and all other practices), 13-a and b (economic and social benefits), and 16-1 b and d (marriage and family life) of the Convention on the Elimination of All Forms of Discrimination against Women. This submission complements the Nepal Civil Society Shadow Report for the Pre-Session of the 6th Periodic Report on Nepal, and builds on the Report's section on CEDAW Article 9.¹

The [Global Campaign for Equal Nationality Rights](#)² mobilizes international action for the removal of gender discriminatory provisions from all nationality laws through its coalition of national and international organizations and activists. 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

¹ See http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_NGO_NPL_30016_E.pdf

² Steering Committee members include Equality Now, Equal Rights Trust, the Institute on Statelessness and Inclusion, Women's Learning Partnership, and Women's Refugee Commission, which houses the Global Campaign.

advocacy. The Civil Society Network on Citizenship Rights of Nepal is a coalition of civil society organizations jointly strategizing advocacy efforts on citizenship rights in Nepal. The Network formulates strategies to enhance equal citizenship rights in Nepal and also organizes various programs related to citizenship. The [Institute on Statelessness and Inclusion](#) (the Institute) is an independent non-profit organization dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. The [Statelessness Network Asia Pacific](#) (SNAP) is a civil society network with the goal of promoting collaboration and information sharing on addressing statelessness in Asia and the Pacific. [Equality Now](#) is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries.

The Committee's previous review of Nepal

Gender discrimination in Nepal's nationality laws, as provided by the Constitution of Nepal, 2015 ("Constitution"),³ and Nepal Citizenship Act, 2006 ("Citizenship Act"),⁴ and its rules, has been an enduring concern for many years. In its previous Concluding Observations following its review of Nepal in August 2011, the Committee expressed its deep concern regarding the obstacles faced by women who wish to transfer citizenship to their children and foreign spouses and married women who wish to obtain citizenship certificates. The Committee recommended that the State party: **"(a) Ensure that the new Constitution provides for equal and full citizenship rights for women, including the right to transfer citizenship to their children and foreign husband; (b) Implement training programs for Government officials at all levels on legal provisions relating to the transfer of citizenship; (c) Conduct a second comprehensive national campaign to issue citizenship certificates, taking into account the difficulties faced by women in securing proof of nationality; (d) Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; (e) Ensure that children born in the territory of Nepal who would otherwise be stateless be granted Nepalese citizenship."** (CEDAW/C/NPL/CO/4-5). Several other UN treaty monitoring bodies, including the Human Rights Committee and the Committee on the Rights of the Child (CRC), have also addressed this issue in their most recent reviews of Nepal's implementation of their respective human rights treaties. Furthermore, the issue of gender discrimination in its nationality laws has been addressed by the Human Rights Council and member states during Nepal's previous Universal Periodic Review. All of these human rights

³ Constitution of Nepal 2015, available at: https://www.constituteproject.org/constitution/Nepal_2015.pdf

⁴ Nepal Citizenship Act, 2006, available at: <http://www.refworld.org/pdfid/4bbca97e2.pdf>

mechanisms, as well as yours, have urged Nepal to amend its nationality laws. However, despite Nepal repeatedly acknowledging its obligations in this regard, it has failed to end gender discrimination in its nationality laws.

Nepal's Gender Discriminatory Nationality Laws

Nepal is one of 25 countries globally that deny 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. Despite assertions by the Nepali Government to the contrary, the Constitution⁵ 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 citizenship.⁶ The discriminatory provisions in the Constitution are compounded by several provisions of the Citizenship Act, and its Rules, which also discriminate against women.

According to the Constitution's Article 11(2)(b), any person whose father or mother is 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). 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. According to Article 11(5), 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 the father is known to be a foreigner. 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 another citizenship. 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 enshrined in Article 18 of the Constitution.

Furthermore, the application process for the acquisition of citizenship by children born to Nepali women, outlined in the Citizenship Act is a challenging, bureaucratic process. According to the Section

⁵ Article 11 (3,5,6,7) of the Constitution of Nepal 2015.

⁶ 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/>

5(2 & 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.

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 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.⁷

The Constitution 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. Inequality stems from the Article 11 (6) of the Constitution and Sections 5 (1) and (4) of the Citizenship Act, whereby a foreign man married to a Nepali woman is not allowed to acquire citizenship by marriage.⁸ A Foreign woman married to Nepali man may apply for citizenship, with a marriage certificate and proof that she has initiated the renunciation of any other citizenship. The Constitution and the Citizenship Act are silent with respect to the ability of the foreign spouses of Nepali women to acquire citizenship through marriage, meaning that their only path to naturalization is the general path provided to non-nationals with no family links to Nepal, and that includes onerous residency and other requirements.

Beyond denying Nepali women the right to confer nationality to children and spouses on an equal basis with Nepali men, 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 Citizenship Act, Nepali women married to

⁷ Ibid., pg. 15.

⁸ According to Section 5(1) of the Nepal Citizenship Act, 2006, a foreign woman married to a Nepali man acquires naturalised citizenship by marriage by submitting a marriage certificate and the evidence of procedure for renunciation of foreign citizenship. However, a foreign man married to a Nepali woman can only apply for pure naturalised citizenship, at the discretion of the Government of Nepal and subject to high requirements, such as a minimum residency of 15 years, renunciation of foreign citizenship, ability to read and write Nepali, among others (Section 5 (4)).

foreign men are not permitted to obtain documentation of citizenship by descent if they have not acquired it before their marriage, in contradiction with CEDAW Article 9(1).

The Impact of Gender Discriminatory Nationality Laws

Gender discrimination in Nepal's nationality law results in wide-ranging human rights violations and hardships faced by Nepali women and their families. Gender discrimination in the nationality laws jeopardizes family unity, and undermines affected persons' access to education, healthcare, formal employment, financial services, inheritance, property rights, and freedom of movement. 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.⁹ Further entrenchment of such stereotypes is in breach of Nepal's obligations under CEDAW Article 5(a).

Discrimination against Nepali women in the nationality laws also contributes to gender-based violence, as recognized in CEDAW General Comment No. 19. Preventing affected women from family stability, and their children from citizenship, stable residency, the right to education and healthcare, and social services on equal basis with Nepali men is a form of legally-sanctioned gender-based violence, depriving Nepali women of equal protection under the law.¹⁰

Suggested Questions for the State Party's List of Issues

In the context of the issues raised in this submission, and drawing the Committee's attention in particular, to Nepal's failure to implement the previous recommendations of the Committee and other human rights mechanisms, the co-submitting organizations respectfully urge the Committee to raise with the Nepali Government in its State Party's List of Issues the following questions with regard to violations of the Convention on the Elimination of All Forms of Discrimination against Women addressed in this letter:

⁹ Global Campaign for Equal Nationality Rights – UNHCR, "CEDAW Quick Reference Guide: Statelessness and Human Rights Treaties," 2017, available at: <http://equalnationalityrights.org/images/zdocs/CEDAW-Quick-Reference-Guide.pdf>

¹⁰ See Comm. on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 19, Violence against Women, Paragraph 1, 4, 6, 7-e and f, and 8 (11th session, 1992)

- Can the Nepali Government provide a detailed assessment of the harmful impact of its sex discriminatory nationality laws on *inter alia* statelessness and the right to nationality, access to services and the enjoyment of other human rights of affected persons, impact on women's safety and security and vulnerabilities to gender-based violence, impact on inheritance and property rights of women and the equal protection of Nepali women under domestic law?
- What steps is the Nepali Government taking and within what timeframe to amend the nationality laws to ensure that all female citizens have the same rights as male citizens to confer nationality on their children and non-national spouses, and to acquire and retain their nationality?
- What actions is the Nepali Government taking to ensure that families can access their rights under naturalization laws, as well as their economic and social rights until the Constitution and Citizenship Act is revised?
- What further proposals are being considered by the Nepali Government to alleviate the effects of the discrimination in the nationality laws, including violations of economic and social rights, until Nepal's nationality laws can be fully amended?
- What support might be needed, if any, to further this process?

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.



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For and on behalf of all co-submitting organizations