

Summary, Update and Proposed Recommendations for the consideration of States

SUMMARY

Nepal is one of 27 countries that discriminates against women in their ability to confer nationality on their children, and one of over 60 that denies women equal rights to acquire, change, retain or confer their nationality on foreign spouses. All levels of Nepal's law and policy framework - the Constitution, Citizenship Act, Rules and Local Government Policies – are gender discriminatory, and contravene Nepal's obligations under the CEDAW and CRC. Their impact is exacerbated by poor access to birth registration, ignorance and prejudice among decision makers and the lack of a right to appeal or review decisions. The consistent failure to implement Supreme Court decisions upholding the right to equality of women has left the victims of gender discriminatory law with no resolution to their situation. Key elements of the problem are:

1. The children of Nepali women and foreign men have no right to a nationality and can only access citizenship through naturalisation. There is no such restriction on men. This impacts all women, not only those with foreign spouses, as authorities do not accept applications submitted only by mothers, demanding proof of the father's identity to confirm he is not a foreigner.
2. Authorities exercise wide discretion on naturalisation. In 6 years, not one application of a child of a foreign father succeeded.
3. While there is no legal barrier to women obtaining citizenship certificates through their parents after marriage, in practice, married women are required to submit citizenship documents of their spouse and his family to obtain citizenship. Nepali women who marry foreigners before having obtained their own citizenship certificate, are barred from subsequently doing so.
4. While Nepali men can convey their nationality to foreign spouses and their children, Nepalese women cannot.

The detrimental consequences on the lives of those affected are significant. They include: statelessness; lack of access to socio-economic rights including education, healthcare and a livelihood; restrictions on free movement; barriers to accessing services such as bank accounts and mobile phones; inability to own or inherit property; and significant emotional and psychological impact.

UPDATE

The Submission highlighted the failures of the Constituent Assembly to meaningfully address these issues in the Constitution drafting process. These concerns have materialised, with the new Constitution adopted and entered into force in September 2015, (while an improvement), continuing to propagate gender discrimination. Under the new Constitution which imposes no conditions on fathers, Nepali mothers may apply alone for citizenship on behalf of their child, only if the father is 'unknown', a term with significant stigma attached. Even in such cases, if the father is later established to be a foreigner, the child loses citizenship by decent and is declared to be a naturalised citizen. While foreign women married to Nepali men have access to citizenship, the Constitution is silent on the ability of foreign men married to Nepali women to naturalise. While disappointing, the Constitution does require all laws to be revised within a two year period. With international and national pressure, this is an opportunity to plug these and other gaps through revisions to the Nationality Act.

RECOMMENDATIONS

The Joint Submission made 8 recommendations which are summarised below. We urge states to draw on those which complement their foreign policy priorities, when making their own recommendations to encourage Nepal to revise its nationality law, policy and practice in compliance with international standards at the 23rd Session of the UPR:

1. Ensure that Nepal's national laws, policies and practices fully comply with Article 9 CEDAW and Articles 7 and 8 CRC, and with general principles of equality and non-discrimination enshrined in international treaties.
2. Constitutionally recognise the fundamental human right to a nationality, without discrimination. Recognise this right is not subject to the unfettered discretion of administrative authorities, but must be protected through judicial oversight.
3. Amend/repeal discriminatory provisions in the Constitution, Act and Rules that prevent women from acquiring, retaining and transferring citizenship on an equal basis with men, and ensure effective implementation of the law.
4. Recognise 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.
5. Promote universal birth registration, including for children of refugees, foreigners, stateless persons and single mothers.
6. Address discriminatory societal attitudes that prejudice public decision making and undermine the equality of Nepali women.
7. End statelessness in Nepal by conferring citizenship to all persons who have been denied citizenship due to the prevalence of gender discriminatory nationality laws, and prevent statelessness from occurring in the future.
8. Accede to the 1954 Statelessness Convention and the 1961 Convention on the Reduction of Statelessness.

¹ The Joint Submission can be accessed here: <http://www.institutesi.org/NepalUPR2015.pdf>