

# Submission to the Human Rights Committee prior to Adoption of List of Issues for Nepal

APRIL 2013

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The Open Society Justice Initiative presents this submission to assist the Human Rights Committee in adopting its list of issues prior to its examination of Nepal's periodic report on implementation of the International Covenant on Civil and Political Rights. This submission focuses on Nepali laws, official policies, and practices that discriminate against marginalised groups, especially women and girls, in relation to their right to nationality and hampers their enjoyment of a range of other fundamental human rights.

## Executive Summary

The Open Society Justice Initiative (Justice Initiative) presents this submission to assist the Human Rights Committee in adopting its list of issues prior to its examination of Nepal's periodic report on implementation of the International Covenant on Civil and Political Rights (Covenant).<sup>1</sup> This submission focuses on Nepali laws, official policies, and practices that discriminate against marginalised groups, especially women and girls, in relation to their right to nationality.<sup>2</sup>

The Justice Initiative promotes the rule of law through litigation, legal advocacy, and reform of legal institutions aimed at enhancing the protection of human rights. A major focus of the Justice Initiative's work is the enforcement of international legal prohibitions on discrimination, statelessness, and arbitrary deprivation of nationality.

In Nepal, discriminatory citizenship laws deprive historically marginalised communities of access to citizenship certificates, rendering them effectively stateless. Arbitrary and discriminatory implementation of such laws exacerbates the problem. Impracticable requirements to prove Nepali citizenship and the systematic, wrongful denial of applications submitted with legally sufficient documents are two of the many barriers that prevent vulnerable Nepalis from accessing citizenship certificates. While resource constraints and institutional capacity limitations pose additional problems, structural discrimination and patriarchal attitudes create even greater barriers to implementation of the legal and policy framework related to citizenship certificates.

The problematic laws and practices raise questions regarding Nepal's compliance with its obligations under the Covenant's Article 12(2) and (4) on the right of every person to leave and return to his or her "own country," Article 16 on the right to recognition as a person before the law, Article 24 on every child's right to be registered immediately at birth and to acquire a nationality, Article 25 on the right to take part in public affairs and to vote, and Article 26 on the right to equality before the law. All of these provisions should be understood in conjunction with Article 2(1) on the right to non-discrimination.

The Justice Initiative encourages the Committee to include discrimination against marginalised groups in access to citizenship and citizenship certificates in its list of issues. Specifically, the Justice Initiative recommends that the Committee include the following questions:

- When will the gender-discriminatory provisions be removed from the Citizenship Certificate Distribution Procedure Directives of 2006?
- What concrete plans have been made to ensure implementation of several Supreme Court decisions affirming gender equality in access to citizenship?



- How will the Government implement the Presidential Decree of 14 March 2013 such that eligible children acquire citizenship certificates as Nepali citizens by descent?
- How will the Government ensure that the principles of equality and non-discrimination on the basis of gender, ethnicity, religion, descent including caste, and all other bases under the Covenant, are enshrined in Nepal's Constitution?
- In particular, how will the Government ensure that gender discrimination is not re-introduced into citizenship law through the constitutional reform process?
- What specific action is the Government undertaking to train local officials to apply citizenship law in an equal and unbiased manner?
- How will the Government educate both local officials and the general public on the procedure for appealing denial of citizenship documents?
- Is the Government making provisions for a register of citizens such that documentation held by individuals is not the only record of their citizenship?
- What plans, if any, does the Government intend to take to establish/clarify children's citizenship from birth?

# I. Legal framework for the right to nationality and citizenship certificates

## The importance of citizenship certificates

Nepal is an immensely diverse country.<sup>3</sup> Despite this diversity, long-standing discrimination based on gender, ethnicity, caste, language, religion and geography is deeply ingrained. One of the most egregious present-day manifestations of this discrimination is the denial of citizenship documents to marginalised communities. The limited access of marginalised groups to proof of citizenship profoundly restricts their enjoyment of a range of fundamental human rights, including those protected by the Covenant.

A citizenship certificate is the single most important legal document a Nepali can possess. It not only establishes the holder's official identity as a Nepali national; it also provides access to rights, opportunities, and state services not available otherwise.<sup>4</sup> Proof of citizenship is required to purchase or transfer land; register births, marriages, and deaths; open bank accounts, obtain micro credit loans, and register businesses; attend higher education institutions; acquire travel documents; receive state benefits for the disabled, widowed, or elderly; and run for public office. A citizenship certificate is required to enlist in the army, the armed police, and the civil police force. It also gives access to formal sector employment opportunities, such as full-time permanent jobs that provide sick leave and pensions, in contrast to temporary and seasonal work.<sup>5</sup>

Since Nepal began granting citizenship in 1952, it has increasingly restricted access to citizenship certificates by demanding difficult-to-obtain proof of Nepali citizenship, and by applying gender-discriminatory requirements. Regulations restricting access to citizenship certificates are justified by the open border with India and the perceived concomitant threat to security and sovereignty,<sup>6</sup> a desire to maintain a unified national identity, and population size concerns,<sup>7</sup> but also result from a patriarchal society and other entrenched systems of discrimination.<sup>8</sup>

## The process for applying for citizenship documents

Nepalis may apply for citizenship certificates when they reach age 16, the age of majority. In order to apply for citizenship by descent or naturalisation, a Nepali must produce the citizenship certificate of his or her father or mother and supporting documentation from the Village Development Committee (VDC) certifying place of birth or a birth certificate.<sup>9</sup> The application is made to the District Administration Office (DAO), where an administrative official has the discretion to grant or deny citizenship. Decisions may be appealed, but it is likely that most people do not appeal because of the time and cost involved or because they do not know that they can appeal.<sup>10</sup>

The 2007 interim Constitution and 2006 Citizenship Act and Citizen Rules provide the current legal framework governing citizenship, which may be acquired either through descent or naturalisation.<sup>11</sup> Article 8(2) of the interim Constitution provides that persons living in Nepal whose father or mother hold Nepalese citizenship are citizens of Nepal by descent.<sup>12</sup> Persons born in Nepal before mid-April 1990 and who have resided permanently in Nepal are considered citizens by virtue of their place of birth (Article 8(7)). However, if the father is a foreign citizen,

the child will only acquire Nepalese citizenship if he or she has resided permanently in Nepal and has not acquired the nationality of the father. Foreign women married to Nepalese men may acquire citizenship through naturalisation (Article 8(6)) but foreign men married to Nepali women have no such right. These facially gender-based distinctions reflect the dominance of patriarchy in the transmission of Nepalese nationality, in that a Nepali woman cannot pass her nationality to family members on the same footing as Nepali men.

Nepal has taken certain steps to address discrimination in access to citizenship certificates.<sup>13</sup> The 2006 Comprehensive Peace Agreement (CPA) explicitly recognised the systematic discrimination against Dalits, indigenous peoples, ethnic minorities, linguistic groups, women, and Madhesis. In 2007, Nepal launched a massive campaign to distribute citizenship certificates, in preparation for elections for the Constituent Assembly (CA) which took place in 2008. Deploying hundreds of teams that traversed the country's 75 districts, the government distributed citizen certificates to 2.6 million Nepalis.<sup>14</sup> However, approximately 800,000 eligible persons did not receive citizenship certificates.<sup>15</sup>

Regrettably, the children of individuals who were granted citizenship as part of the 2007 citizenship campaign have had their applications denied on the basis that such grant did not enable the recipient to convey citizenship to his or her children.<sup>16</sup> The Ministry of Home Affairs tried to resolve this problem by issuing a Circular in 2011 that confirmed granting nationality by descent to the children of citizens who had acquired citizenship by birth;<sup>17</sup> however, this Circular was challenged and deemed unconstitutional by the Supreme Court by judgment dated 16 February 2012. The Supreme Court suspended its application leaving the situation unclear.<sup>18</sup>

In early April 2013, President Ram Baran Yadav promulgated an Ordinance on the Amendment to the Nepal Citizenship Act (2013). This Ordinance was based on an earlier Decree of 14 March 2013, in which the President issued an order to remove difficulties on the implementation of the Constitution in accordance with Article 158 of the interim Constitution. The Decree, in point 21, states that "As children of those who acquired citizenship of Nepal by birth as per the proviso of Article 8(5) of the Constitution and born before they (their parents) acquired such citizenship certificate face difficulty in acquiring citizenship by descent as per the provisions in Clause 2 (b), children of those who acquired citizenship by birth accordingly would be provided with citizenship by descent."<sup>19</sup> This means that children of parents who acquired citizenship by birth will be granted citizenship by descent, even if they were born prior to that date that their parents' citizenship was recognized or documented.

The Decree is expected to come into effect immediately with the issuance of the above-mentioned Ordinance. However, the Government will still need to amend the Citizenship Act and issue directives to ensure its full implementation.

Birth registration is governed by the 1977 *Birth, Death and Other Vital Events Registration Act*. While the Nepalese Supreme Court struck down a facially discriminatory provision in the Act requiring children to be registered by male family members in 2005, the decision is still not being implemented in practice. A minority of children are registered at birth, with estimates ranging from 15% to 35%.<sup>20</sup>

## II. Obstacles to obtaining citizenship certificates

### A. Nepal's citizenship policies negatively affect historically marginalised groups, including women

A significant obstacle to obtaining citizenship certificates is the discretionary power of local administrative officials in DAOs,<sup>21</sup> amplified by a systemic lack of policy guidance, oversight, and accountability. For example, although land certificates are not required to apply for citizenship, DAOs may deny applications submitted without proof of land ownership.<sup>22</sup> Some may demand bribes or payments.<sup>23</sup>

Some of the most marginalised groups in Nepal are women and girls,<sup>24</sup> Dalits,<sup>25</sup> and *Janajati* and *Madhesi*<sup>26</sup> – groups that are not seen to personify or are subjugated within the Nepali national identity, and that often face multiple forms of discrimination.<sup>27</sup> Their political, social, and economic exclusion is closely connected to their restricted access to citizenship certificates and creates a self-reinforcing cycle of discrimination and inequality.

These marginalised groups which have historically suffered direct discrimination on account of their gender, caste or ethnicity, as well as other Nepalis who are impoverished, elderly, and geographically isolated, face difficulties in obtaining citizenship certificates. These barriers generally result from infrastructural problems that affect the majority of the population, but are particularly devastating to the marginalised and oppressed. One major obstacle is the inability to produce documentation that demonstrates “place of origin,” mostly caused by the lack of birth certificates. Since a majority of Nepalis, and especially members of socially-disadvantaged groups, do not have birth certificates (see Section B, below), most people have to rely on a letter from the VDC certifying their place of origin.<sup>28</sup> Due to migration for jobs and internal displacement, people may no longer live in their birth community or have sufficient ties within it to be able to secure a letter of support from the VDC.<sup>29</sup> The cost of travel to often distant DAOs, for which repeat trips may be necessary as well as overnight stays, makes acquisition of VDC letters of support prohibitively expensive for many.

Other barriers to obtaining citizenship certificates include the cost of photographs, photocopies, supporting documents, and official fees to apply. Language difficulties and illiteracy are additional barriers, and a lack of awareness of the benefits of having a citizenship certificate may prevent many from even applying.<sup>30</sup>

Gender-based discrimination also impedes access to citizenship certificates for women and for children applying for certificates at age 16. As noted above, Article 8 of the interim Constitution facially discriminates against women in the transmission of nationality to foreign spouses and children. Additionally, a married Nepali woman faces legally-mandated requirements that make her dependent on her Nepali husband and his family to acquire a legal identity of her own.<sup>31</sup> According to the 2006 Citizenship Certificate Procedures Directive, a married woman applying for a citizenship certificate must provide a copy of her marriage certificate, the citizenship certificate of her husband or father-in-law, and a citizenship certificate of a member of her family.<sup>32</sup> A child reaching the age of sixteen theoretically could apply for a citizenship certificate

based on the citizenship of either parent. In practice, though, DAOs generally grant citizenship certificates on the basis of the father's citizenship only. Children whose fathers are unknown or who are not recognized by their fathers are seriously disadvantaged by these practices.

## B. The trade in fraudulent citizenship certificates disadvantages eligible citizens

A black market exists for citizenship certificates.<sup>33</sup> The market arises from government officials "selling" citizenship certificates to foreigners or to Nepalis using fraudulent documents;<sup>34</sup> they may also unknowingly issue certificates to people who have fraudulent papers or are non-Nepali. Nepalis with citizenship certificates may also sell their certificates or falsely testify on someone's behalf for her application.<sup>35</sup> Yet, while the black market-trade in citizenship certificates provides some grounds for the government's fear of non-Nepalis fraudulently acquiring citizenship, the government has not taken sufficient effort to enforce laws cracking down on the illegal trade.<sup>36</sup>

In February 2011, the Nepali Supreme Court ruled that only citizenship certificates could be accepted as proof of identity for purposes of voter registration.<sup>37</sup> If the validity of a citizenship certificate were in question, other government-issued documents could be proffered to confirm its legitimacy, but they could not establish eligibility for registration. The Court also directed the government to take all measures to issue citizenship certificates to eligible Nepalis.<sup>38</sup>

This citizenship certificate requirement for voting has generated vociferous opposition because it will exclude an unknown number of historically marginalised Nepalis, particularly in the Terai.<sup>39</sup> Nepalis who were eligible to register to vote in previous elections without holding citizenship certificates, such as for the Constituent Assembly elections in 2008, will be disenfranchised.<sup>40</sup> Already, the number of registered voters is less than those in 2007. The Supreme Court ruling highlights both the exclusion of marginalised Nepalis from the voter rolls, and the discrimination and barriers that have deprived Nepalis of citizenship certificates.

## C. Birth registration practices negatively impact children's enjoyment of Covenant rights

In addition to undermining access to legal identity, the lack of birth registration can prevent children from attending primary and secondary school, taking mandatory formal examinations, accessing higher education, applying for scholarships, and receiving free school books.

More than 35 years have passed since Nepal began its civil registration procedures in 1977 with the passing of the *Birth, Death and other Vital Events Registration Act*. UNICEF estimates the birth registration rate at 35% but Nepal's Population Registrar estimated the number to be closer to 15%.<sup>41</sup> In Nepal, traditionally, no importance is given to birth certificates until they are needed,<sup>42</sup> which usually occurs when children attend school<sup>43</sup> or at age 16, when minors need to apply for citizenship certificates.

Requirements such as citizenship certificates and the costs that are involved with birth registration processes may prevent many people from registering the birth of child.<sup>44</sup> This is especially the case for marginalised groups, who are likely to be disadvantaged economically.<sup>45</sup> Until 2005, per Section 4(1)(a) of the *Birth, Death, and Other Personal Incidents Registration*

*Act*, births were registered by the father and, in his absence, by the eldest male member of the family. Although the Supreme Court declared this provision unconstitutional in 2005, in practice, women still face gender-based discrimination when they seek birth registration for their children. Local registrars are often unaware of the judgment and continue to enforce the impugned provision. In turn, children of unmarried mothers, unknown fathers, abandoned children, and children whose paternity is denied by the fathers lack access to birth registration, a vital first step in securing legal identity and, eventually, a citizenship certificate.<sup>46</sup>

### III. Concerns regarding compliance with obligations under the Covenant

Nepal's current nationality laws, policies, and practices discriminate against marginalised ethnic and caste groups and women. These measures raise questions about Nepal's compliance with its obligations under Article 12(2) and (4) of the Covenant on the right of every person to leave and return to his or her "own country," Article 16 on the right to recognition as a person before the law, Article 24 on every child's right to be registered immediately at birth and to acquire a nationality, Article 25 on the right to take part in public affairs and to vote, and Article 26 on the right to equality before the law. All of these provisions should be understood in conjunction with Article 2(1), which obliges all State Parties to "respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

#### Article 12

The Committee has held that the right to freedom of movement protected under Article 12 of the Covenant includes the right to obtain necessary travel documents, including passports, in recognition of the importance of access to personal identity documentation confirming nationality in the exercise of civil and political rights.<sup>47</sup> In its General Comment No. 27, the Committee elaborated the special significance of this Article in the context of long-term residents who are stateless or at risk of statelessness on account of policies or practices that deny them access to nationality, including access to personal identity documentation confirming nationality. The Committee stated that "The scope of 'his own country' is broader than the concept 'country of his nationality.' It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of Article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence."<sup>48</sup>

For women and other marginalised groups struggling to access citizenship certificates, the rights guaranteed under Article 12 are unavailable. Practically speaking, citizenship certificates are required for passport applications, making legal entry and exit from Nepal impossible without one in most cases. More fundamentally, the uncertain legal status of members of these groups undermines their enjoyment of the entire bundle of rights associated with freedom of movement. The groups described above have faced decades of discrimination in their country of birth and long-term permanent residence. The Committee’s inclusive interpretation of the concept of one’s “own country” captures both the causes and consequences of their circumstances with respect to enjoyment of the rights protected under Article 12.

## Article 24

Interpretation of Article 24 on the rights of children to protection, birth registration and a nationality is guided by “the principle that in all decisions affecting a child, its best interests shall be a primary consideration.”<sup>49</sup> In its General Comment No. 17, the Committee laid down key definitions and principles that also frame the application of Articles 24(2) and (3). Specifically it stated that “Under Article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee’s opinion, this provision should be interpreted as being *closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child’s legal personality.*” Providing for the right to have a name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant.<sup>50</sup> The Committee has also stressed in its case law that Article 24(2), requiring that every child be registered at birth and to have a name “is designed to promote recognition of the child’s legal personality.”<sup>51</sup>

The Committee has further stated that “special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, *States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born.* In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.”<sup>52</sup>

In Nepal, structural discrimination against women, girls and marginalized cast and other groups is especially invidious in its impact upon children and in particular its interference with the Covenant obligation to ensure their best interests are protected. Access to birth registration for marginalised groups is low, particularly among children of unmarried mothers and children whose father cannot be established. Birth certificates may be required in order to obtain a citizenship certificate at age 16, meaning that unregistered children will likely face difficulties in having their Nepali nationality recognised, in violation of the rights under Article 24(3). Where denial of citizenship certificates to parents prevents the immediate registration of children,

Articles 24(2) and 24(3) will also be implicated. At a minimum, Nepal’s practices ignore the Committee’s call in General Comment No. 17 that States must adopt all appropriate measure to ensure that every child acquires a nationality when he or she is born.

## Article 25

The Committee has made clear that in the enjoyment of the rights protected by Article 25 of the Covenant (to take part in the conduct of foreign affairs, to vote and be elected, and to have access to public service), no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>53</sup>

The impending exclusion of hundreds of thousands of individuals who are entitled to Nepali nationality from voting in upcoming elections triggers the core protections of Article 25. The measures will impact members of marginalized groups in gross disproportion to the general population. Members of these groups enjoyed the franchise in 2008 and recent moves to bar them from voting underscore the overriding need to reform policies and practices associated with access to citizenship certificates. For the purposes of compliance with Article 25, however, immediate steps must be taken to ensure that all eligible voters are able to participate in the political system.

## Article 26

In its General Comment No. 18, the Committee stated that Article 26 of the Covenant not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It also noted that provides in itself an autonomous right.<sup>54</sup> It prohibits discrimination in law or in fact in any field regulated and protected by public authorities.<sup>55</sup>

Though the Nepali government may argue that its citizenship and documentation policies are not intended to discriminate, in practice they have had a disproportionate – and negative – impact on marginalised groups, in particular girls and women.

In its last concluding observations on Nepal, dating from 1994, the Committee expressed “concern over the situation of women who, despite some advances, continue to be de jure or de facto the object of discrimination as regards ... transmission of citizenship to children.”<sup>56</sup> Nepal has yet to resolve the disadvantages that first troubled the Committee nearly 20 years ago. Discrimination against women and other marginalised groups still plagues the acquisition and enjoyment of nationality and the exercise of related rights protected under the Covenant.

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<sup>1</sup> Acceded to the Covenant on 14 May 1991 (no reservations).

<sup>2</sup> According to the Nepal Treaty Act of 1990, international human rights instruments to which Nepal is a party have the force of domestic law and prevail over domestic laws when the two conflict.

<sup>3</sup> The 2001 census listed 103 social groups based on caste, ethnicity, religion, language, and unidentified groups; no single group dominated numerically. According to the census, caste groups constituted 58

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percent of the population, Janajati (indigenous groups) 37 percent, and Hindus 80 percent. The Terai, a swathe of low-lying land sweeping west to east in the south of the country, is home to approximately half of the country's population. Three groups predominate in the region: Janajati, Madhesi, and Pahadis. Madhesis account for approximately one-third of Nepal's entire population.

<sup>4</sup> A citizenship certificate, and not a birth certificate, is required to obtain a passport. Passport applicants under the age of 16 must submit minor identification cards and their parents' citizenship certificates.

<sup>5</sup> Obtaining permission to publish a newspaper or operate a printing press, for example, is dependent on submitting the citizenship certificates of the publisher, editor, and board of directors.

<sup>6</sup> See *Nepal: A Report on Thematic Concept Paper and Preliminary Draft 2066 (2009-10 AD)* UNDP/Support to Participatory Constitution Building in Nepal (SPCBN)/CCD (Jan. 2010) drafted by Constituent Assembly's Committee for Fundamental Rights and Directive Principles. In the report, the Committee states: "The issue of citizenship has been extremely sensitive for Nepal owing to the special geo-political condition of Nepal, two giant neighboring countries in terms of geography and population, cultural similarity among the neighboring countries, open border and the like matters. Therefore, the concept paper and draft regarding citizenship has been prepared on the basis of a stern policy of keeping intact the sovereignty, national independence, integrity of Nepal and unfathomable love of the Nepalese people for their country."

<sup>7</sup> See Kamal Raj Sigdel, "Whose Nation Is It? An influx of just one percent of the neighboring country's population would increase Nepal's population by almost double, whereas even if the entire Nepali population is added to the neighbor's population, that would not make any difference," *The Kathmandu Post*. April 2, 2010.

<sup>8</sup> See Sapana Pradhan Malla, *An Update of Discriminatory Laws in Nepal and Their Impact on Women*, p. xi, FWLD (2006).

<sup>9</sup> See *The Nepal Gender and Social Exclusion Assessment Report*, World Bank, 2005.

<sup>10</sup> Although Article 18 of the 2006 Citizenship Act provides that an applicant may appeal a denial, interviewees in one UN survey suggested that local officials do not promote the option and little independent legal assistance reaches the villages. See UN Resident and Humanitarian Coordinator (UNRCHC) *Field Bulletins* (May, Aug. 2011).

<sup>11</sup> Nepal Citizenship Act 2063 (2006), 26 November 2006.

<sup>12</sup> Interim Constitution of Nepal 2063 (2007), Article 8(2) [Citizenship at the Commencement of the Constitution], available at [http://www.worldstatesmen.org/Nepal\\_Interim\\_Constitution2007.pdf](http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf).

<sup>13</sup> In 1995, the government-established Dhanapati Upadhyay Commission reported that 3.4 to 5 million Nepalis living in the country did not hold citizenship certificates.

<sup>14</sup> The government's inclusion of marginalized communities was received by some as a threat to the Nepali state: "the citizenship provision has paved a way for the distribution of millions of Nepali citizenship certificates to the foreigners...[The] government and... parliament persistently lack the will to safeguard Nepal's sovereignty, independence and territorial integrity." See Madan Regmi, "Ganapathy Forgets Prachanda," *The Kathmandu Post*, May 29, 2007.

<sup>15</sup> Various reasons are given for why 800,000 did not receive citizenship: 1) People could not be reached, did not have the money or time to travel to their DAO, or did not have the proper documentation and 2) Lack of documentation proving length of residence in Nepal, lack of awareness of the campaign, difficulty in getting supporting documents due to poverty or illiteracy, absent from the village at the time of distribution, apathy in communities for women to apply, damage or destruction of records at VDCs, and non-availability of VDC secretaries, particularly in conflict-affected areas to supply or certify supporting documents. See UNRCHC, *Field Bulletins* (May, Aug. 2011)

<sup>16</sup> UNRCHC, *Field Bulletins* (May, Aug. 8 and 11, 2011). According to a UNRCHC monthly report, there may be occurrences of DAOs denying applications from the children of those who acquired naturalized citizenship in 2007. There were reports that DAOs have seized citizenship certificates granted by mobile units in the 2007 campaign because of the reputation they acquired for facilitating fraudulent citizenship. UNRCHC *Field Bulletins* (Aug 11, 2011).

<sup>17</sup> Government of Nepal, Ministry of Home Affairs, "Grant of citizenship to the offspring of the citizens who have attained Nepali citizenship by birth." December 6<sup>th</sup> 2011.

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<sup>18</sup> The Supreme Court rendered what it described as an “interim order” granting a stay of the Home Ministry decision and a stay of notifications to the district administration offices, stating that “such things should be fixed by amending Article 8(2) of the Interim Constitution” and “until the final decision is made, such notifications shall not be carried out...” (unofficial English translation).

<sup>19</sup> Unofficial English translation. Copies of the Decree and the Ordinance are not yet widely available.

<sup>20</sup> Legal Identity for Inclusive Development, Asian Development Bank, 2007.

<sup>21</sup> See, e.g., “[Due to] lack of clarity in administrative procedures as well as the patriarchal mind set of the government officials, [the] transfer of citizenship remains a matter of discretion of the authorities.” Forum for Women, Law and Development (FWLD), *Shadow Report to CEDAW* (2011). Available at: <http://www.fwld.org>

<sup>22</sup> See *The Nepal Gender and Social Exclusion Assessment Report*, World Bank, 2005.

<sup>23</sup> UNRCHC, *Field Bulletins* Aug. 18, 2011. In the report, the following story is portrayed: “A middleman asked me for NRs 10,000, but I could not pay that much money because I am poor” says a woman from the *Tarai*. Others around her confirmed that money was required to obtain citizenship certificates, referring hesitantly to the VDC Secretary and other village leaders.”

<sup>24</sup> According to the National Women’s Commission (NCW): “Gender relations in Nepal continue to be defined by a patriarchal value system, which perpetuates women’s subordination... They are poorer than men with less access to property, income, inheritance and credit and often with little control over own or overall household earnings. They are less educated and more likely to be engaged in non-skilled work rather than in better paid professional, technical and management-related jobs.” National Women’s Commission. *Independent Report prepared by the National Women’s Commission of Nepal to supplement the Combined 4th and 5th Periodic Report Submitted to the CEDAW Committee by the Government of Nepal*, page 3. June 2011, available at [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/NWC\\_Nepal49.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/NWC_Nepal49.pdf)

<sup>25</sup> Dalits represent less than one percent of the civil service, police, and other public sector agencies. Approximately 23 percent of hill Dalits and 44 percent of Madhesi Dalits are landless. A number work as *Haliyas* (bonded labourers) in the Mid- and Far-West, even though the government abolished the practice in 2008. Recommendations for UPR Review on Nepal on Dalits. DRC Follow-up Committee-Nepal and International Dalit Solidarity Network. January 2011.

<sup>26</sup> Nepal’s National Planning Commission developed an inclusion index in 2008. The commission found the most excluded group is Madhesi Dalit, followed by Hill Dalits, Muslims, and Terai and Hill *Janajatis*. UNDP, *Human Development Report Nepal* (2009).

<sup>27</sup> Other historically excluded groups include the Tharu and Limbui in the Terai, Haliyas, and Nepalis in the Far- and Mid-West and high Himalayas due to their regions’ remoteness and lack of development. Not all Terai communities consider themselves Madhesi and political tensions have arisen over such a designation. In 2009, Tharu and Muslims protested against their categorization in the interim constitution as Madhesis; the protests were particularly known as the Tharu Movement. Asian Centre for Human Rights. Nepal: Pax Indianus Crumbles. December 2009, available at: <http://www.achrweb.org/briefingpapers/Nepal-BP-04-09.html>.

<sup>28</sup> For the most marginalized groups, such as Dalits, obtaining citizenship is all-the-more difficult because individuals who do not have documentation may not have sufficient ties within a community to be able to have people vouch for them. See National Dalit Confederation, *Terai Dalit Women. Situation of Citizenship, Political Participation and Good Governance* (2007). See also: Center for Human Rights and Global Justice, *Recasting Justice: Securing Dalit Rights in Nepal’s New Constitution* (New York: NYU School of Law, 2008).

<sup>29</sup> The 2003-04 Nepal Living Standards Survey found that 37 percent of Nepalis five-years and older were born outside the VDC of their current residence. The 2008 National Labor Force Survey found that 33 percent of Nepalis migrated outside their home district during and since the conflict. See *The Nepal Gender and Social Exclusion Assessment Report*, World Bank, 2005.

<sup>30</sup> Because forbearers did not have citizenship certificates, some Nepalis may not think they need one. Nini Gurung and Eric Paulsen, “Nepal Moves Mountains,” *Refugees*, No. 147, Issue 3, pp. 16-17, UNHCR (2007).

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<sup>31</sup> Until a November 28, 2005 Supreme Court decision, married women under the age of 35 were required by law to have written consent from their husbands in order to apply for a passport. The purported reason for the law was to prevent trafficking. “Nepal: High Court Says Women Can Get Passports,” *Off Our Backs*, Vol. 35, No. 11/12, p. 7 (Nov./Dec. 2005). See also *The Himalayan Times* reports that Madhesi women are not obtaining citizenship certificates because their husbands refuse to cooperate, even resorting to violence when asked to assist. (June 27, 2011). The UN reports how a woman from the Terai was unable to obtain a citizenship certificate because her migrant husband did not want to come back to deal with the administrative requirements for her application. UNRCHC (Aug. 18, 2011). The National Commission for Women reports: “[W]idows, divorcees or women whose husbands have deserted them face problems in acquiring citizenship for themselves as married women have to obtain the consent and assistance of their husband or husband’s family in order to apply for a citizenship certificate.” CEDAW submission (June 2011). In May 2011, a DAO denied a married woman’s citizenship certificate application because her husband’s whereabouts were unknown. The DAO stated she must divorce her husband to be eligible. The woman said after she obtained a divorce, she would rely on her father’s citizenship certificate for her application. *The Kathmandu Post* (June 2011).

<sup>32</sup> Citizenship Certificate Distribution Procedure Directive, 2006, Chapter 2, section (4)(5) reads: A Nepali women married before acquiring the citizenship certificate is required to submit the following additional documents for acquiring citizenship certificate in addition to above mentioned documents: (a) Proof of Marriage Registration, (b) Citizenship Certificate of husband or father in law, (c) Verification of any among husband, mother in law or father in law or elder brother in law or younger brother in law, (d) Copy of citizenship of father or mother or elder brother or younger brother of the maternal side. The foregoing is based on secondary source material as an official copy of the Directive is not publicly available.

<sup>33</sup> Three typical ways to acquire citizenship certificates illegally: 1) providing real documents based on fraudulent information or supporting documentation; 2) acquiring and altering existing documents; and 3) counterfeiting. Please see: Asian Development Bank, *Legal Identity for Inclusive Development* (2007).

<sup>34</sup> See “Bardiya DAO Bristles at Fake Citizens”, in which an Indian national who submitted fake documents was granted citizenship after paying the DAO. Ekantipur, April 30, 2011, available at: [www.ekantipur.com](http://www.ekantipur.com)

<sup>35</sup> Such examples of fraudulent obtainment of citizenship are one reason the 2007 citizenship campaign is seen as problematic.

<sup>36</sup> The Prevention of Corruption Act (2003) established the Committee for the Investigation of the Abuse of Authority (CIAA), which has jurisdiction over cases of fraudulent identity documents involving corruption among public officials.

<sup>37</sup> The Court reportedly stated that if eligibility were based on documents other than citizenship certificates, there was the risk of non-Nepalis registering to vote and “getting elected to the government bodies.” Please see: Dev Kumar Sunuwar. “Voter ID Row: Citizenship Sole Basis, Rules SC,” [www.ekantipur.com](http://www.ekantipur.com), Feb. 7, 2011.

<sup>38</sup> Although the Ministry of Home Affairs (MoHA) has directed DAOs to provide same-day citizenship certificates to eligible applicants, it is not conducting outreach to increase applications for citizenship certificates. The Carter Center. Second Interim Statement on the Election Commission of Nepal’s “Voter Register with Photograph” Program. Pages 9 - 10 (July 2011). In addition, responding to another writ, the Supreme Court reportedly directed MoHA to ensure that single women can easily obtain citizenship certificates so as not to ensure their eligibility for voter registration. Please see: Dev Kumar Sunuwar. “Voter ID Row: Citizenship Sole Basis, Rules SC,” [www.ekantipur.com](http://www.ekantipur.com), Feb. 7, 2011.

<sup>39</sup> Madhesis have been at the forefront of opposition to the citizenship certificate requirement; they argue that the current voter rolls should not be replaced but updated and corrected. They are concerned that a number of Madhesis and other ethnic and marginalized groups in the Terai will lose their right to vote because of documentation difficulties. The Carter Center. First Interim Statement on the Election Commission of Nepal’s “Voter Register with Photograph” Program. Page 7 (April 2011).

<sup>40</sup> Voter eligibility requirements also affected voter registration turnout. Given the lack of data on how many Nepalis do not have citizenship certificates (or proof of migration), it is difficult to determine to what extent eligibility requirements have prohibited voter registration. However, based on the fieldwork of

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government enumerators, between one-third and one-half of Nepalis lacked eligibility documents, were out-of-district, or were out-of-country. The Carter Center. Second Interim Statement on the Election Commission of Nepal's "Voter Register with Photograph" Program. Page 8 (July 2011)

<sup>41</sup> Legal Identity for Inclusive Development, Asian Development Bank, 2007.

<sup>42</sup> Registration can be made at the Ministry of Local Development, the DAOs, VDCs and municipalities.

<sup>43</sup> Although, legally birth certificates are not required to enrol a child in school, in practice many rural schools require them.

<sup>44</sup> Birth registration is free only if completed within 35 days of birth. A late fee of NRs.8 is applied if completed between 35 and 70 days. Applicants who register after the 70-day period are subject to a fine of up to NRs.50.

<sup>45</sup> "Although citizenship certificates are not legally required for birth registrations in Nepal, they are frequently required in practice." Asian Development Bank, *Legal Identity for Inclusive Development* (2007) p. 58.

<sup>46</sup> Government of Nepal, Country Report on Birth Registration, Ministry of Local Development, 2006. The report was submitted to the Asia and Pacific Regional Conference on Birth Registration in Bangkok, March 2006.

<sup>47</sup> UN Human Rights Committee, CCPR General Comment No. 27: Freedom of Movement, at para. 9, UN Doc CCPR/C/21/Rev.1/Add.9 (2 Nov. 1999); *El Ghar v. Libyan Arab Jamahiriya*, UN Human Rights Committee, No. 1107/2002, 29 March 2004, UN Doc. CCPR/C/82/D/1107/2002, at para. 7.3.

<sup>48</sup> UN Human Rights Committee, *General Comment No. 27: Freedom of Movement (Article 12)*, CCPR/C/21/Rev.1/Add.9.

<sup>49</sup> UN Human Rights Committee, *Bakhtiyari et al. v. Australia*, No. 1069/2002, HRC 2004 Report, Vol. II, Annex IX, Sect. DD, para. 9.7.

<sup>50</sup> UN Human Rights Committee, CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, at paras. 7-8, available at: <http://www.refworld.org/docid/45139b464.html>.

<sup>51</sup> UN Human Rights Committee, *Mónaco de Gallicchio v. Argentina*, No. 400/1990, HRC 1995 Report, Vol. II, Annex X, Sect. B, para. 10.5.

<sup>52</sup> UN Human Rights Committee, CCPR General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, at paras. 7-8, available at: <http://www.refworld.org/docid/45139b464.html>.

<sup>53</sup> UN Human Rights Committee, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25): 07/12/1996*, para. 3.

<sup>54</sup> UN Human Rights Committee, *General Comment No. 18 (Thirty-seventh session, 1989): Non-Discrimination, A/45/40 vol. I (1990) 173*, para. 1.

<sup>55</sup> *Ibid*, para. 12.

<sup>56</sup> Human Rights Committee, Concluding observations on Nepal, CCPR/C/79/Add.42, 10 November 1994.

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