



नागरिकताको अधिकारको लागि नागरिक समाजको संजाल

CIVIL SOCIETY NETWORK ON CITIZENSHIP RIGHTS

30 June, 2020

● Statement of Civil Society Network on Citizenship Rights ●

Even though, the Constitution promulgated in 2015 is progressive in relation to citizenship than its predecessors, this Constitution is not fully based on equality. 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. Thus, in the absence of legal amendments, a large number of people, constitutionally eligible to acquire a citizenship, by being deprived from acquiring a citizenship, are required to remain in a situation of statelessness. In relation to the matters mentioned above, in order to make timely amendments in the Nepal Citizenship Act as per the new Constitution, the Nepal Citizenship Act Amendment Bill, 2018, after being submitted in the House of Representatives, it has been two years since the Bill is under consideration in the State Affairs and Good Governance Committee of the House of Representatives. In this background, the State Affairs and Good Governance Committee passing the Report of Nepal Citizenship Act Amendment Bill on the day of June 21, 2020, the report has also been submitted in the House of Representatives on June 23, 2020 for a consideration/discussion.

It is the assumption of this "Civil Society Network on Citizenship Rights" that the said Report relating to the Bill to Amend the Nepal Citizenship Act passed by the State Affairs and Good Governance Committee has been successful to address much of the problems in the Nepal Citizenship Act.

AFFIRMATIVE PROVISIONS

- ◆ A child of a citizen, who has acquired the citizenship of Nepal by birth, shall upon attaining the age of sixteen, acquire the citizenship of Nepal by descent if both of parents of the child are citizens of Nepal.
- ◆ A person born in Nepal from a mother who is a citizen of Nepal and has resided in Nepal shall acquire the citizenship of Nepal by descent.
- ◆ A person, whose parents have not been traced, shall acquire citizenship by descent. If any of the parents (father or mother) of such person is found, in relation to the citizenship acquired by him or her (1) If a citizenship of Nepal by decent is acquirable pursuant to this Act, his or her citizenship shall be maintained by updating the details accordingly, (2) If a citizenship of Nepal by naturalization is acquirable pursuant to this Act, his or her citizenship shall be converted into a naturalized citizenship, (3) If a citizenship of Nepal is not acquirable pursuant to this Act, the citizenship acquired by him or she shall be revoked.
- ◆ The provision requiring the person born from a mother who is a citizen of Nepal whose father is a foreigner "to have born in Nepal" to submit application for naturalized citizenship has been removed.
- ◆ In case when a Nepali woman enters into a matrimonial relationship with a foreign citizen, the prohibition imposed on submitting application to acquire Nepali citizenship has been removed.

- ◆ The arrangement to receive non-resident Nepali citizenship certificate.
- ◆ In relation to a person born in Nepal from a mother who is a citizen of Nepal and also residing in Nepal and whose father could not be traced/identified, self-declaration made by his or her mother about the details that his or her father could not be traced/identified. The self-declaration made by a person acquiring citizenship shall be included in condition when in time of submitting the application if the mother of such a person has died or is mentally unsound.
- ◆ In relation to the following person found within the territory of Nepal whose paternity or maternity is not identified the following documents:
 - (1) If raised in institutions such as foster care, orphanage recognized by the Government of Nepal, recommendation from such an institution and based on it, recommendation from the related local level,
 - (2) If raised by a legal custodian, identification made by such a custodian along with his or her citizenship certificate and recommendation from the related local level,
 - (3) If raised up by other ways, recommendation from concerned local level.
- ◆ The arrangement for the responsibility of family member(s) to make verification of the person submitting application for citizenship: If information of details of inability to make verification by the member of the family is provided or even in condition of refusal to make verification, the concerned authority while making necessary examination in that relation, if the matter that the person submitting application for citizenship is a member of such family comes to be proven by legal facts and appears to be eligible to acquire citizenship pursuant to this Act, he or she shall be provided citizenship with the status as member of that family.
- ◆ The arrangement whereby any citizen may acquire citizenship for himself or herself by mentioning "other" as a basis for sexual identity.
- ◆ The arrangement inserted whereby, citizenship may be acquired by mentioning surname or nickname and in citizenship certificates where caste has been mentioned, correction may be made by mentioning surname or nickname.
- ◆ The "Civil Society Network on Citizenship Rights" heartily welcomes and supports the positive provisions proposed by Committee of State Management and Good Governance.

OUR CONCERNS

Even though, there are following concerns in the Report in relation to Nepal Citizenship Act Amendment Bill passed by the State Affairs and Good Governance Committee and presented in the House of Representative:

- ◆ Since the Constitution has itself provided for discriminatory provisions between Nepali father and Nepali mother, there is no provision for Nepali mothers to independently confer citizenship by descent to her children.
- ◆ In case when a Nepali woman enters into a matrimonial relationship with a foreign man, if that foreign man wishes to acquire a matrimonial naturalized citizenship, there is no provision whereby Nepali woman can confer citizenship to her husband.
- ◆ For a foreign woman who enters into a matrimonial relationship with a Nepali man to acquire a citizenship of Nepal according to law, the requirement that she has to wait for 7 years and a person acquiring a permanent resident permit for the time period until she acquires a Nepali citizenship, if it

is held that the person has worked contrary to the independence, sovereignty, territorial integrity and national interest of Nepal, the provision that the Government of Nepal may revoke the permanent resident permit acquired by such a person, shall create a situation of statelessness, if she has not acquired a citizenship of her country or if her former country does not provide citizenship owing to her marriage to a Nepali citizen and if there is a situation when she cannot acquire a citizenship in Nepal also.

- ◆ If a Nepali citizen entering into a matrimonial relationship with a foreign citizen, wishes to acquire a citizenship of Nepal, there is a provision that while making application to acquire the citizenship, the person shall provide evidence that he or she has not acquired other foreign citizenship or certificate relating to nationality or such form. The provision requiring to provide evidence of renunciation of such citizenship or certificate relating to nationality of such form previously acquired by him or her, results in a condition when a person will not be able to make application for citizenship, as in many other countries such sort of document is not provided. From this, a situation of statelessness is created by depriving the person to make application for a citizenship of Nepal.
- ◆ The provision that sexual identity of a third sex shall be mentioned in the record of citizenship based on the recommendation of a recognized Medical Doctor for a citizen to acquire a citizenship on the basis of sexual identity by mentioning "other" in the column of sex, will create unnecessary burden of proof for persons from sexual minority. Additionally, such procedures are not dignified and might hurt the dignity of such persons. Also, in many situations, a person born by carrying a sexual organ of woman or man in physical form but may have a different sexual feeling compared to the sex born in physical form, a person with different sexual feeling, who is not willing or are unable to change their sex by such medical procedures may not be able to produce such evidences.
- ◆ Even though the provision relating to self-declaration is positive, if such self-declarations are held to be false, there is a provision that the mother or child of such mother making such self-declaration shall receive punishment and the provision that if punished his or her acquired citizenship shall be automatically be revoked, will create a situation of statelessness.
- ◆ In case recommendation is made for citizenship or verification is made or the citizenship certificate is issued, if any matter is different or held to be false, there is a provision to punish the people's representative making recommendation for citizenship, the person making verification or the person issuing the citizenship certificate. However, since there is no protection for the works done in good faith, a situation is created where the concerned persons, in fear of punishment, will not provide necessary assistance in the process of acquiring citizenship.

OUR DEMANDS

Even in the situation that the constitution of Nepal provides for the constitutional right that no citizen of Nepal shall be deprived from acquiring citizenship, persons with (fulfilling the) eligibility to acquire citizenship are not just being deprived from citizenship in large number but are also being deprived from education, employment and other fundamental rights guaranteed by the constitution. In this context, we have the following demands:

- ◆ The Nepal Citizenship Act Amendment Bill should be passed 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 a citizenship and are stateless, as a result of the Nepal Citizenship Amendment Bill not being passed since a long time.

- ◆ In the Report relating to Nepal Citizenship Act Amendment Bill passed by the f State Affairs and Good Governance Committee by a majority, since there are still above mentioned shortcomings from the perspective of sexual equality, sexual minority, foreign citizen married to a Nepali citizen and landless class for the purpose of permanent residence, the Nepal Citizenship Act Amendment Bill be passed by completely addressing the said shortcomings.
- ◆ Since there are discriminatory provisions between Nepali woman and Nepali man in the Constitution of Nepal, on the right to citizenship, the process to amend the constitution be initiated without delay to guarantee equal right to citizenship between Nepali woman and Nepali man.
- ◆ After the Nepal Citizenship Act Amendment Bill is passed, for the guarantee of immediate implementation, Regulation and Directive according to the amendments to be made in the Nepal Citizenship Act be made and the implementation of the amended Nepal Citizenship Act be guaranteed by initiating other process.

AFFILIATED ORGANIZATIONS

 Working for Non-discrimination and Equality Forum for Women, Law and Development (FWLD)	 Citizenship Affected People's Network Nepal	 Shrii Shakti	 THRD Alliance For Equity and Justice Third Alliance for Equity and Justice	 Women for Human Rights (WHR)	 Saathi
 CAHURAST	 Advocacy Forum	 Women Friendly Disaster Management (WFDM)	 Biswas Nepal	 RRN	 माइती नेपाल • Maiti Nepal Maiti Nepal
 Nepal Mahila Ekata Samaj	 INWOLAG	 SEARCH Nepal	 HBWCSN	 Shanti Malika	 Institute of Human Rights Communication, Nepal (IHRICON)
 National Network for Beijing-review Nepal (NNBN)	 CAP-Nepal	 Shakti Samuha	 Jagaran Nepal	 AATWIN	 Homenet South Asia
 Chhori	 Sancharika Samuha Nepal	 Legal Aid and Consultancy Centre (LACC)	 Nepal Apanga Mahila Sangh	 Centre for Women's Awareness and Development (CWAD)	 Community Action Centre- Nepal (CAC-Nepal)
 Blue Diamond Society	 Identity, Dignity and Equality WOMEN ACT Women Act	 Media Mobilization for Sustainable Development- Nepal (MMSD)	 Sabah Nepal	 Media Advocacy Group (MAG)	