

Reducing *de facto* statelessness in Nepal

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Despite a recent large-scale government campaign to encourage applications for citizenship certificates in Nepal, many factors still impede take-up, in particular among certain sections of Nepalese society such as women, IDPs and indigenous communities.

From 1951, Nepal granted citizenship on the basis of a person's birthplace and descent. Naturalisation was possible for those who had been resident in the country for at least five years. A decade later, however, the provisions relating to naturalisation became more restrictive, placing emphasis on 'Nepalese origin' and the ability to speak and write Nepali. A new constitution in 1990 brought in legislation which restricted the granting of citizenship by descent to Nepali men, repealed the granting of citizenship by birth and required foreigners to be resident in the country for 15 years before qualifying for naturalisation. Estimates in 1995 of the number of those without full citizenship (and therefore often *de facto* stateless) ranged from 3.4 million to 5 million.

The aftermath of the 2006 democracy movement saw massive changes, including promises of amendments to the citizenship laws. Arguably the primary and political objective of the change was to issue citizenship certificates to as many Nepalis as possible in order to facilitate their participation in the Constituent Assembly election. New laws were quickly drafted and adopted, though with limited consultation. They revived the provision for citizenship by birth in Nepal but included a clause making applications for citizenship by birth valid for only two years after the enactment of the Citizenship Act of 2006 – until 26 November 2008.

There followed a massive and generally successful government campaign that resulted in the distribution of citizenship certificates to nearly 2.6 million eligible citizens – that is, all Nepali nationals aged

16 and above. The campaign took place in all 75 districts of Nepal, employing some 4,000 staff, between January and April 2006.

The citizenship certificate

Nepal's citizenship certificate confirms the legal identity of Nepali nationals and proves access (or improved access) to rights, opportunities and services that would not normally be available to non-citizens including: formal sector employment; banking facilities or micro-credit schemes; registration of businesses; civil registration of births, marriages and deaths; registration of property transactions; higher education; passports; and government benefits and allowances (for the aged, widowed, disabled, internally displaced and victims of the armed conflict). Failure to obtain a citizenship certificate often results in dire consequences that amount to *de facto* statelessness.

In order to obtain their citizenship certificate, citizens must produce documentation, such as the citizenship certificate or land registration of immediate family, and obtain supporting documentation from their Village Development Committee Secretary and other citizens with citizenship certificates.

Discussions during UNHCR field missions suggest that most citizens want their citizenship certificate but that there are many factors impeding them from obtaining one:

- lack of knowledge or motivation
- cost of obtaining photographs, photocopies and supporting documents (though official fees are nominal, these additional costs may be prohibitive)
- nomadic lifestyles which make application difficult as people may not be connected to a particular ward or village
- discriminatory and patriarchal practices in some communities which discourage women and girls from applying
- destruction or damage (during the 1996-2006 Maoist insurgency) to local registration offices, which provide supporting documentation
- remoteness of District Administration Offices – the only place where citizenship certificate applications can be made – and cost of travel; even if the application forms are in order, repeated trips or several days' stay in the district town are commonly required.
- more recently due to the violence in the Terai region, many VDC Secretaries have themselves been displaced and so are not available to sign supporting documentation.

UNHCR estimates that there are still some 800,000 Nepali citizens who are *de facto* stateless today. A number of national and international NGOs working in Nepal are challenging the practices, laws and policies which give rise to *de facto* statelessness. Some, as shown by the following examples, have targeted a specific area of need.

Women

Given the blatant discrimination against women in Nepal's citizenship regulations, which prevent married women from obtaining a citizenship certificate without the approval

of their husband or father-in-law and prevent women married to foreigners from passing citizenship to their children other than through naturalisation, the Forum for Women Law and Development (FWLD¹) has recently put citizenship issues at the forefront of their activities. FWLD has carried out research, issued requests in the media for notification of discriminatory practices, provided legal services related to citizenship, organised district-level awareness-raising conferences, produced advocacy materials and developed networks to make citizenship a national concern.

Citizenship certificates are a necessary part of micro-finance schemes as they are needed to open bank accounts, to obtain VAT registration and to be a member of a cooperative. Women in Makwanpur District have been encouraged to obtain their citizenship certificates as part of a micro-finance initiative supported by Plan Nepal.² More than ten thousand women are now involved in cooperatives and many of them are now also receiving training in managing cooperatives and mobilising rural women.

A study in 2006 by the Alliance Against Trafficking in Women and Children (AATWIN, a coalition of more than 20 NGOs and Community-Based Organisations) focused on the citizenship issues of survivors of trafficking, Badi women (a Dalit minority group), women in polygamous relationships and women living in squatter areas. The research concluded that there was a pressing need to combat constitutional discrimination and deprivation of women in the matter of citizenship certificates and that this “be combined with the fight against poverty and promotion of social inclusion, gender equity and women’s empowerment.” AATWIN proposes a mass legal literacy campaign for women, including advocacy on citizenship rights linked to other basic and economic rights.

IDPs

Many people displaced within Nepal during the violent years of the Maoist insurgency face almost insurmountable difficulties in obtaining a citizenship certificate. A displaced person needs first to get a

certificate from the VDC Secretary of his or her home village – who may themselves have been displaced and not been replaced. IDPs are also often reluctant to make contact with the authorities. The Norwegian Refugee Council³ worked through its Information Counselling and Legal Assistance project to help IDPs secure important replacement documents – but replacing the citizenship certificate is hard, usually requiring an expensive and sometimes perilous journey to the district headquarters of origin. Married women face particular difficulties as they often need permission from their husband or father-in-law for legal and administrative procedures.

Academics and lawyers have added their voices to oppose the discriminatory nature of the nationality laws and specifically pointed out the conflict between Nepal’s nationality laws and its international obligations to ensure the rights of all. In 2006 an initiative supported by the Finnish Embassy recommended that the citizenship certificate be issued to all indigenous Nepalis upon the recommendation of their ethnic organisation – appearing to favour a form of the principle of *jus connexionis* (the right of attachment) over *jus soli* and *jus sanguinis*.

In a landmark ruling in 2005, brought by Nepali NGO Propublic,⁴ the Supreme Court declared that in the absence of the father a child’s birth must be registered based on the mother’s citizenship. The court ruled that the Registrar must register the birth of a child of indeterminate paternity, including those born to sex workers. However, the judgment was not widely circulated and some local authorities are reluctant to implement this law citing a lack of procedural directives, and so problems with birth registration and consequently citizenship certificates continue for children of unmarried mothers, unknown fathers, those abandoned by their father and those whose father denies the relationship.

UNHCR’s fieldwork supports the widely held view that the warmth of the welcome extended to citizens – in the form of legislation, personal treatment and local political mobilisation – is a significant factor, especially amongst the marginalised,

in encouraging citizenship certificate applications. UN agencies, the Nepali government, NGOs, CBOs and donors need to keep citizenship on their respective agendas in Nepal. There is scope – and need – for initiatives that may include:

- linking birth registration with provision of the citizenship certificate
- awareness-raising campaigns to ensure all Nepali women obtain a citizenship certificate
- protecting IDPs by ensuring that the Procedural Directives which give effect to the national policy on IDPs and include matters relating to documentation are signed into effect
- using Nepal’s next census in 2011 to count the number of Nepalis without citizenship certificates and establish the reasons for this
- providing additional support and mobile teams to indigenous communities especially those residing in very remote locations
- ensuring legislation is not discriminatory
- assisting rescued trafficked women to have access their citizenship certificate.

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1. <http://www.fwld.org.np>

2. <http://www.plan-international.org/wherewework/asia/nepal/>

3. <http://www.nrc.no>

4. <http://www.propublic.org>

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