

April 1, 2009

Dr. Tara Niraula
President
Nepalese Americas Council

RE: Recommendations on NRN Issues in the New Constitution of Nepal

Dear Dr. Niraula:

As the coordinator of the Task Force to recommend incorporation of NRN related issues in the new Nepali Constitution, I am pleased to present the attached recommendations on behalf of the task force that you had constituted.

As Nepalis living in Nepal and abroad, we are all witnessing major political changes in Nepal. The historical Constituent Assembly has called for suggestions from all Nepalis, including NRNs. Towards that goal, and in coordination and solidarity with fellow NRNs all over the world, you had entrusted us the task of reaching out, collecting suggestions, discussing, deliberating and coming up with recommendations on different topics as detailed below to be considered for inclusion in the new constitution.

In that spirit, we the members of the task force, being fully aware of this critical political exercise, and mindful of this rare opportunity, appealed, made genuine efforts to reach out to the larger US Nepali community seeking suggestions and input on various issues related to NRNs. The task force under my leadership had broadly identified a number of issues, which were divided as follows among the task force members:

1. Girija Gautam and Suman Timsina: Enabling Persons of Nepali Origin (PNO) holding Non-Nepali Citizenship to retain their Nepali citizenship.
2. Mukesh Singh, Ambika Adhikari, and Ratan Jha: Investment related laws, such as commercial bench, tax treaties, arbitration laws, time bound issues, etc.
3. Madhavi Karki and Sharda Thapa: Women inheritance rights.
4. Madhavi Karki, Nembang Sherpa and Amrit Sunar: NRNs inheritance rights.
5. Mukesh Singh, Madhavi Karki, and Sharda Thapa: Constitutional provisions against gender, employment and age discriminations.
6. Khagendra G.Chhetry., Ratan Jha and Suman Timsina: Issues related to human rights of NRNs to be secured in the new Constitution of Nepal.

The respective task force members assumed responsibilities on the issues assigned to them. They researched, shared their findings, deliberated and exchanged on those issues and incorporated the suggestions received. At the end of this process, the task force members prepared their recommendation, which is attached hereto. This report is now officially presented to you.

I would like to take this opportunity to thank you and the Nepalese Americas Council for the trust and confidence on us and for the opportunity to work with you on this matter of historical significance. I would also like to thank all the fellow task force members for the constructive exercise, for their time and efforts and for the timely report.

Thank you.

Very truly yours,

KHAGENDRA CHHETRY
Coordinator

I

ENABLING PERSONS OF NEPALI ORIGIN (PNO) HOLDING NON-NEPALI CITIZENSHIP TO RETAIN THEIR NEPALI CITIZENSHIP

Nepalis have been immigrating to foreign countries in search of economic and educational opportunities for centuries. As these opportunities are still inadequate within Nepal, this trend is expected to continue for a foreseeable future. Motivated by the attractive opportunities, well over 500,000 Nepalis have settled in USA, Canada, Western Europe, Australia, New Zealand and other more developed countries. An estimated 1.5 million plus are working in the Middle East and several East Asian countries.

In order to participate effectively in community activities, to travel without hindrance, to run the family more efficiently, to enjoy social benefits like pensions and several other practical considerations, many of them, especially those who emigrated to the developed nations, have acquired citizenship of their newly adopted countries and thus become PNOs.

As the current Citizenship laws of Nepal requires automatic revocation of Nepali citizenship once a Nepali acquires citizenship of another country, a PNO automatically loses his/her Nepali citizenship upon taking a foreign citizenship, even if, Nepal remains very special and close to his/her heart. The PNOs always wish to maintain strong emotional ties to their motherland. They stay in regular touch, travel to Nepal frequently, follow and contribute to her development, and help whenever needed, politically as in Jana Andolan I & II, as well as in other areas. Wherever they live and whatever the circumstances, they always remain a proud Nepali, in heart and in spirit. Thus, a saying goes: “ONCE A NEPALI ALWAYS A NEPALI, NO MATTER WHERE HE/SHE GOES AND/OR LIVES”.

HOW OTHER COUNTRIES ALLOW MIGRANTS TO RETAIN THEIR CITIZENSHIP WHEN THEY ACQUIRE CITIZENSHIP OF ANOTHER COUNTRY?

Many countries allow their migrants to retain citizenship of their home country following acquisition of a new citizenship. Some countries apply certain restrictions and others do not. More developed and prosperous countries such as USA, Canada, UK, Australia, New Zealand, Israel, France, Ireland, Russia and several others allow their citizens to retain all the rights even after they acquire citizenship of another country. Some developing countries such as Bangladesh, Pakistan, Brazil, Columbia, Mexico, Barbados, Philippines and many others also allow their citizens to retain their current citizenship without restriction. However, there are other countries like, India, Sri Lanka, Slovenia and others, which allow their citizens to retain citizenship with certain restrictions.

These restrictions could vary depending on a particular country's situation and needs. For example, India grants “Overseas Citizen of India ” (OCI) status to the persons of Indian Origin (PIOs) as long as the laws of the PIO's newly adopted country allow retention of

their current citizenship. PIOs are considered citizens of India, who migrated and acquired citizenship of a foreign country other than Bangladesh and Pakistan.

The government of India calls them Overseas Citizens of India and allows them to retain their Indian nationality with certain restrictions. The fundamental differences with a normal Citizen of India, is that the OCI are not entitled to:

- a) Vote
- b) Be a candidate for Lok Sabha / Rajya Sabha / Legislative Assembly / Council
- c) Hold constitutional posts such as President, Vice President, Judge of Supreme Court / High Court etc.
- d) Hold employment in the government.

Thus, in reality, it does not matter what terminology is used as long as the contents of the rights and privileges are generally consistent with similar practices and allows the citizens to retain their current nationality. How to word and define such terms is naturally the prerogative of an individual nation.

Similarly, in Sri Lanka, grant of dual nationality is contingent upon offering economic and other contributions to the country of origin. This kind of arrangement could open up controversies resulting from the arbitrary application in practice and treating rich and poor diasporas member unfairly.

WHAT CAN BE DONE IN NEPAL?

Nepal should look at its diaspora as a resource like several other forward-looking countries have long done. Significant contributions in the development of Israel by Jewish Diaspora, India by the Non-Resident Indians (NRIs) and the initial investments of the overseas Chinese in China are some of the glaring examples of different diaspora's roles and contributions in the development of their countries of origin. Nepal should also consider Nepali diaspora as a valuable resource, and make a serious attempt to tap into the human, financial and educational resources of all Non-Resident-Nepalis (NRN) who always proudly consider Nepal their "home", no matter where they live.

At this juncture, Nepalis at home and abroad, are all witnesses to a historical change, as the country is embarked on a journey to write a new democratic constitution for a new Nepal. The global NRN community requests the government of Nepal to allow the PNO to retain their Nepali citizenship when they acquire the citizenship of another country. This will be a generous and worthy gift to the NRN community by the new Nepal, which will cement the bonds between Nepal and the PNOs more firmly. Through such a grant, Nepal will follow the examples set by the developed and forward looking countries, which encourage their nationals to retain their citizenship for life. In the Nepali context, PNOs would be allowed to retain their Nepali citizenship even after acquiring citizenship of another country. This provision should apply to PNOs, their spouses, children and grand children. Nepalis living in SAARC countries could be excluded similar to the provision in the newly adopted NRN Act. The proposed law will benefit those PNOs,

whose newly adopted countries have provisions that allow retention of their home country citizenship.

HOW IT WOULD WORK IN NEPAL?

As a result of the requested provision allowing PNOs to retain their Nepali citizenship following acquisition of citizenship of a foreign country (if adopted), there will have to be a departure from the existing provisions to the contrary (the automatic revocation clause in the current constitution and Nepal Citizenship Act). The Constituent Assembly therefore should incorporate a provision to that effect in the new constitution, which will provide the constitutional basis for the “retention clause”, which will replace the “automatic revocation clause”. This provision should expressly provide that PNOs will be allowed to retain their Nepali citizenship even after they acquire citizenship of another country. The provision however could incorporate the restrictions expressly stating that the PNOs will not be entitled to:

1. Vote or to contest election.
2. Hold constitutional or public position.

The constitution should clearly authorize parliament/government, as the case may be, to adopt new legislation or to make necessary amendment to the current Citizenship Act to make it consistent with the proposed constitutional provision.

Even if the NRN community is open to the above-stated restrictions in their Nepali citizenship there could still be discussion and dialogues on the details. Further, necessary thought will have to be given to the rights and privileges granted to descendants of first-generation PNOs as well as to the status of and an accommodation for non-PNO spouses.

The restrictions curtailing the right to vote, to contest election or to hold constitutional and public office by the PNOs will show distinctly fundamental differences between the citizenship retained by PNOs and Nepalis living in Nepal. Suitable provisions could be made for PNOs returning permanently to Nepal to re-establish residence and their voting and electoral rights could be reinstated or restored, if so desired.

Once the scope of rights and restrictions is ascertained and necessary provision is incorporated in the constitution, the Citizenship Act will have to be amended to make it consistent. The existing provision of automatic revocation of Nepali citizenship will have to be revised and replaced by the retention provision. The existing citizenship certificate for PNOs may be replaced by a new one clearly incorporating such restrictions. The details and the most appropriate route to achieve that could be worked out as we continue along this process.

This is a recommendation and request to allow Persons of Nepali origin (PNO) holding Non-Nepali citizenships to retain their Nepali citizenship on behalf of the NRN community for consideration by appropriate government agency.

II

NON-RESIDENT NEPALI INHERITANCE RIGHTS

Nepalis have inherited a rich culture, tradition and beautiful country from our ancestors. They worked very hard in their lifetime to protect and nurture the country and our values and pass on to us the best they could. We are proud of what they have done for our children and us.

We are enormously proud to be Nepalese. We all love Nepal as our mother country and we are committed to contribute substantially in its all round development; no matter where we live and work.

In the recent years a large number of Nepalese have immigrated to different parts of world for education and economic opportunities. In this process, they have pursued different professions and conducted businesses around the world and continue to do so in greater numbers. Many of them have become permanent residents or citizen of their countries of residence. Nonetheless, they have been contributing best of their ability in Nepal's development efforts. The recent foreign remittance boom and economic development are some of the examples. They have tremendous enthusiasm and zeal to do much more as they gain maturity and experience in the adopted countries. Nepalese are recent immigrants, particularly in North America, compare to the Diaspora from our neighbors: China and India. We all know well that expatriate population have played a pivotal role in taking India, China and many other countries to a next level in terms of development in the field of technology, science and the economy.

It would not be exaggerating to say that the Nepalese Diaspora also feels it can do for Nepal what the others have done for their countries.

Members of the None Resident Nepali Community have sentimental attachment to their ancestors' properties and land, which they rightfully would have received by will or traditional sharing with their parents or relatives. They feel strongly that they should continue to have legal right to inherit them and legal provisions should be made for this. In addition, the right to bestow inheritances unto spouses, children and relatives needs to be safeguarded. None Resident Nepali Diaspora Communities have sentimental attachment with their ancestor's properties and land, which they would receive by will or traditional share given by their parents or relatives. They have strong feeling that they should have legal right to inherit them. They are in dilemma due to lack of legal provisions to own or use them. Though the current NRN Act provides some benefit to NRNs and PONs on inheritance rights, it is nonetheless very limited in nature. This section only provides for intestate inheritance of the property belonging to a deceased NRN to their heirs (whether NRN, or POI). However, there is no provision of NRNs' rights to inherit property in the event of death of their Nepali citizen relatives. Therefore, in the inheritance provisions of Nepali law, as reflected in the *Muluki Ain*, the NRNs

should have inheritance rights on par with Nepali citizens. Though this right would by default be granted to NRNs in the event they are granted dual citizenship, this argument is nonetheless incorporated here to argue for the alternative.

We understand that the existing law allows only buying and selling of new property by foreign citizen who of Nepali Origin within strictly specified and proscribed legal parameters. It does not contain adequate legal provision for bestowing inheritances, disposing off or utilizing property for any other purposes. Some areas of concern are:

The right of second and successive generation PNO to inherit property and bestow inheritances has to be clearly defined and safeguarded.

The rights of foreign-born spouses of non-Nepali origin to inherit property from their spouses and their rights to property in Nepal upon a divorce are not clear.

The rights of children from these unions have to be defined when the foreign-origin spouses retain custody and do not live in Nepal.

Residual property rights of divorcee foreign-born spouses within Nepal of property acquired in Nepal during matrimony upon a divorce.

Neighboring South Asian countries: India, Bangladesh and Shree Lanka appear to have legal provisions to allow non-resident citizens' to inherit their ancestors' assets and this has substantially benefited these countries. Many European countries award dual citizenships to emigrants' children on account of familial relationships with their mother country for multiple generations. Nepal too could benefit by instituting similar dual citizenships and comparable inheritance legal laws. NRN think that this kind of legal provision would bring enormous benefits to Nepal. To summarize some of them, however, this is not an exhaustive list:

- Attachment with Nepal as a mother country and pass on the same spirit and enthusiasm to their children and their children's children
- More investment
- Set up businesses
- Promote Nepal in North America and world stage
- Bring in new technologies, knowledge and science in Nepal
- Send new generation educated Nepali boys and girls to work in Nepal as a volunteer to contribute in its development efforts. In turn, they can learn culture, heritage and tradition. This would further enhance new generation's attachment to Nepal, etc.
- Nepalese are increasingly becoming world-class scientist, engineers, doctors and entrepreneurs; they can easily take the economic and human resources to Nepal.

The world is becoming smaller day by day from changing technologies, globalization of trade and business practices. Nepal is also changing very fast in many respects and this is another change that should carry out.

Therefore, we North American NRN community sincerely request the Constitution Assembly to give a serious consideration to make suitable provision in the new Constitution of Nepal to address the concerns described here. The impact of this provision would be enormously positive and contribute substantially in achieving the vision of a new democratic Nepal.

III

Provision of Non Resident Nepalese Women's Inheritance Rights in the Proposed Nepalese Constitution

1. Background

For decades, thousands of Nepalese, both men and women have become citizen of other nations, especially developed nations. Even after assuming other citizenships they continue to love Nepal, have patriotic feelings towards Nepal and contribute to the Nepalese economy.

In the context of writing a democratic constitution for a new Nepal, the global community of non-resident Nepalese, represented by the NRNA, requests the Government of Nepal to ensure that equal inheritance/property rights are afforded to both men and women in the new constitution. Existing inequities in the Nepali constitutions to date and prevalent unequal treatments in law or practice must be eradicated.

2. Why are women's inheritance rights important?

Nepalese women are/were also full-fledged citizen of Nepal. Therefore, in writing the constitution, they should be treated equally - as first class citizen, not as an inferior class. No constitutional provisions that discriminate in any form against women should exist in the new constitution. If that occurs, it will be contradictory to Universal Declaration of Human Rights, 1948 and CEDAW, 1979, which Nepal has ratified. Women need to have equal rights with men allowing them equal access to opportunities and benefits.

This will lead to gender equality, equity and empowerment. This helps women:

- improve their condition and status
- reduce vulnerability and permit them to cope with difficult situations

- have more confidence, high self esteem and self-reliance
- have more decision making power/role in productive, reproductive and community activities
- to be involved at the individual, household, community, national and international levels .

3. How can NRN Women's Inheritance Rights be ensured?

The following points should be taken into consideration in the new Nepalese Constitution.

- Provision of equal inheritance/property and related rights to all women and men
- Provision of these rights to all NRN.
- Provision of dual citizenship to permit NRN the right to exercise these rights.

IV

Constitutional provisions against Gender, Employment and Age Discrimination.

Gender:

- State shall make laws to ensure that there will be no discrimination based on gender and equal rights and opportunities in the political, economic and social spheres should available to both genders, born or assumed.
- State shall make laws to ensure that there will be no discrimination based on gender with respect to property right. This will include but limited to inheritance right.

Employment

- There should not be any discrimination against any citizen on the grounds of religion, race, caste, sex, age etc. State can make affirmative discriminations in

favor of women or disadvantaged groups. There should be equality for equality of opportunities in matter of public or private appointments for all citizens.

- There shall be equality of opportunity for all citizens regardless of religion, race, caste, sex, age, descent and place of birth, etc. in matters relating to employment or appointment to any office under the State. There shall be equal pay for equal work. State shall direct its policy towards securing all citizens, men and women, equally, the right to means of livelihood. State should make provision towards eliminating all exploitation and implementing humane conditions of work at all levels and ensuring maternity relief.
- State shall make laws to ensure that there is no age discrimination in public or private employment.
- State shall create enforcement body to ensure that all the discrimination related matters are resolved in just and timely manner. This body will have authority including but not limited to handle civil rights related matters.

Equal Protection: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of Nepal. Laws will not be inconsistent with or in derogation of fundamental rights.

V

Investment Related Laws

As more and more Nepalis have ventured out of the country in search of better economic opportunities, their opportunities somehow become limited by virtue of their citizenship. This is primarily because Nepal does not have treaties with other countries that allow Nepalis to avail themselves of benefits that such treaties would provide. One visible example is the Treaty Traders and Treaty Investors provision of U.S. Immigration and Nationality Act. This provision permits nonimmigrant visa status for a national of a country with which the United States maintains a treaty of commerce and navigation who is coming to the United States to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country, or to develop and direct the operations of an enterprise in which the national has invested, or is in the process of investing a substantial amount of capital. SAARC countries like Bangladesh, Pakistan and Sri-Lanka are Treaty countries. However, Nepal is not. Therefore, even if Nepalis are capable of undertaking ventures as traders or become investors in the U.S., they still cannot avail themselves of this non-immigrant visa because of the absence of treaty between Nepal and the U.S. Similar treaty benefits may be available to Nepalis in other developed countries but the absence of Treaty would result in the loss of those opportunities. Other such treaties that would be beneficial to NRNs and Nepalis living abroad would be treaties avoiding double taxation, treating allowing Nepalis to recover

income cuts which they lose in the event they leave the host country (e.g. Nepalis pay for social security benefit from their paychecks in the U.S. but get no benefits at the end when they leave the country). Thus investment related treaties are important to ensure that Nepalis rights are protected and promoted overseas.

VI

Equal Treatment (Anti-Discrimination Laws) and Human Rights Issues

While procuring dual citizenship right is of paramount significance to the NRNs and PNOs, anti-discrimination laws are equally important to enforce the rights derived from the dual citizenship and these are also human rights issues. In other words, it is important to have laws in place that would discourage if not penalize any discriminatory treatments towards NRNs and PNOs with dual citizenship because of their status as a holder of foreign citizenship as well. Priority to Nepalis holding solely Nepali citizenship is often the trend but this should be discouraged with an equal treatment provision in the new Constitution for those NRNs and PNOs, who hold dual citizenship. Without such anti-discriminatory provision/s, the NRNs and PNOs will continue to feel like foreigners despite being granted Nepali citizenship.

Thank you.

Sincerely,

Khagendra Chhetry, Coordinator

Girija Gautam

Suman Timsina

Mukesh Singh

Ambika Adhikari

Ratan Jha

Madhavi Karki

Sharda Thapa

Madhavi Karki

Nembang Sherpa

Amrit Sunar

Dated: April 1, 2009