



BEING LGBT IN ASIA: NEPAL COUNTRY REPORT

A Participatory Review and Analysis of
the Legal and Social Environment for
Lesbian, Gay, Bisexual and Transgender (LGBT)
Persons and Civil Society



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This report encompasses the major discussions, findings, and recommendations from the Nepal National LGBTI Community Dialogue held at the Radisson Hotel in Kathmandu on 22–23 April 2014 and also includes materials from a desk review of published literature on LGBT issues, a survey of NGOs, and an examination of case studies. Due to frequent changes in LGBT community advocacy and politics in Nepal, there may be recent developments that have not have been included in this report at the time of publication.

This report was written by Adheep Pokhrel, Bharat Man Shrestha and Saurav Jung Thapa.

All photos in this report are of participants of the Nepal National LGBTI Community Dialogue. They were provided by Biplav Pradhan and Nilima Malla, interns from the UNV Nepal Field Unit.

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Valuable comments and input on drafts of the report were provided by Thomas White, Deputy Director, Governance and Vulnerable Populations Office, USAID Regional Development Mission Asia (RDMA); Vy Lam, American Association for the Advancement of Science Fellow; and Edmund Settle, Policy Advisor at UNDP APRC. Andy Quan was the report’s editor. Special thanks to the following people who provided reference materials, guidance, and translation during the development of the report: Sunil Babu Pant, Manisha Dhakal, Bina Pokharel, Hikmat Khadka, Bhaba Thami, Ruben del Prado, and Daniel Coyle.

The National LGBTI Community Dialogue and country report were supported by UNDP and USAID through the regional ‘Being LGBT in Asia’ initiative and by UNICEF Nepal. Covering eight countries—Cambodia, China, Indonesia, Mongolia, Nepal, the Philippines, Thailand and Viet Nam—this joint learning initiative aims to understand the legal, political and social challenges faced by LGBT people, relevant laws and policies, and their access to justice and health services. The initiative will also review the needs of LGBT organizations, the space they operate in, their capacity to engage on human rights and policy dialogues, and the role of new technologies in supporting LGBT advocacy.



ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
APRC	Asia-Pacific Regional Centre (UNDP)
BDS	Blue Diamond Society
BLIA	Being LGBT in Asia
CA	Constituent Assembly
CAT	Convention Against Torture and Other Cruel and Inhumane Treatment
CBO	Community-Based Organization
CEDAW	Convention on the Elimination of Discrimination Against Women
CFAR	Centre for Advocacy and Research
CORE	Community Organized Rights and Equality
CPA	Comprehensive Peace Accord
CPN-U	Communist Party of Nepal - United
CPN-UML	Communist Party of Nepal - United Marxist and Leninist
CSO	Civil Society Organization
CTEVT	Council for Technical Education and Vocational Training
DAC	Dialogue Advisory Committee
DIC	Drop-in Center
FHI	Family Health International (now FHI 360)
FSGMN	Federation of Sexual and Gender Minorities, Nepal
FTM	Female-to-Male Transgender
GLSMNN	Gay and Lesbian Sexual Minority Network Nepal
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDAHOT	International Day Against Homophobia and Transphobia
IFN	Inclusive Forum Nepal
ILO	International Labour Organization
IVF	In-Vitro Fertilization
KP	Key Populations
LGBT	Lesbian, Gay, Bisexual and Transgender
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MDG	Millennium Development Goal
MOHP	Ministry of Health and Population
MOLJ	Ministry of Law and Justice
MOWCSW	Ministry of Women Children and Social Welfare
MP	Member of Parliament
MSA	Multi-Country South Asia Global Fund Program
MSM	Men who have sex with men

MSWs	Male Sex Workers
MTF	Male-to-Female Transgender
NC	Nepali Congress Party
NFDD	National Forum for Development and Democracy
NGO	Non-Governmental Organization
NHRC	National Human Rights Commission
OHCHR	Office of the United Nations High Commissioner for Human Rights
PLHIV	People Living with HIV
RPP	Rastriya Prajatantra Party (National Democratic Party)
SLC	School Leaving Certificate
SOGI	Sexual Orientation and Gender Identity
SSRP	School Sector Reform Plan
TAG	Technical Advisory Group
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNFPA	United Nations Fund for Population Activities
UNRC	United Nations Resident Coordinator
USAID	United States Agency for International Development
WHO	World Health Organization

EXECUTIVE SUMMARY



Group photo of all the participants from the dialogue

BACKGROUND

This report reviews the legal and social environment for LGBT¹ people and organizations in Nepal alongside the discussions and findings from the Nepal National LGBTI² Community Dialogue held in Kathmandu in April 2014. It provides an overview of LGBT rights as related broadly to human rights conventions and laws, the legal environment and socio-cultural environment, and religion; and more specifically to education, employment, family affairs, health, media, political affairs and the capacity of LGBT organizations. The Dialogue brought together 57 activists from LGBT organizations from diverse backgrounds and subgroups along with representatives from the government, the National Human Rights Commission, UN agencies, the US government, and other development partners. The Dialogue was organized by the United Nations Development Programme (UNDP) in partnership with the United States Agency for International Development (USAID) with support from the United Nations Children's Fund (UNICEF) Adolescent Development and Participation Section (ADAP).

The report is part of a broader initiative entitled 'Being LGBT in Asia: A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society.'

- 1 LGBT people, LGBTI people and/or people of diverse SOGI are terms that may be used interchangeably in this report. LGBT and LGBTI are standard terms used by the UN to refer to people with non-traditional sexual orientations and gender identities and are not intended in any sense to exclude a more broad spectrum of sexual orientation and identity.
- 2 Several participants of the Nepal Dialogue requested the inclusion of intersex people in the title of the Dialogue, hence LGBTI rather than LGBT. In other parts of the report, we have used the standard acronym of LGBT. However, the intent and activities of BLIA have always included a broad range of sexual and gender minorities, including 'I'.

Launched on Human Rights Day, 10 December 2012, 'Being LGBT in Asia' is a first-of-its-kind Asia-wide learning effort undertaken with Asian grassroots LGBT organizations and community leaders alongside UNDP and USAID. With a focus on eight priority countries – Cambodia, China, Indonesia, Mongolia, Nepal, the Philippines, Thailand and Viet Nam – the effort examines LGBT lived experiences from a development and rights perspective.

'Being LGBT in Asia' has a number of objectives. It encourages networking between LGBT people across the region, building a knowledge baseline and developing an understanding of the capacity of LGBT organizations to engage in policy dialogue and community mobilization. Through this work, 'Being LGBT in Asia' promotes understanding of the inherent human rights of LGBT people and the stigma and discrimination they face throughout the region. It also outlines steps toward LGBT-inclusive development work for UNDP and the UN system, USAID and the US Government, and other development partners, through research like this report and other social and multimedia products. Finally, this initiative highlights the views expressed by LGBT participants at national community dialogues and links stakeholders who work to enhance LGBT human rights across Asia.

LGBT ADVOCACY IN NEPAL

The context for LGBT advocacy in Nepal is complex, set in a tumultuous political environment and a complex society. Tolerance of diverse sexual orientations or gender identities (SOGI), i.e. being lesbian, gay, bisexual or transgender, can be perceived to be high. The visible presence of individuals of diverse genders and sexualities in Nepal goes back centuries and has been recorded in ancient religious texts. This is seen as contributing to tolerance. The main religions of Nepal, Hinduism and Buddhism, encompassing close to 95 percent of the population, are not seen as homophobic. The country lacks the violent religious extremism of some other countries in the region. The frequent gender segregation of society allows for a culture where friendship and physical contact between men is possible, and can enable male-to-male sexual activity (even though this may be related to sexual opportunity instead of sexual orientation or gender identity). Finally, in the last two decades there have been extraordinary political victories for LGBT advocacy, most prominently a Supreme Court ruling in December 2007 that promoted the human rights of LGBT people including anti-discrimination, same-sex marriage and the explicit recognition of transgender people.

Political advances have not necessarily translated into the daily lives of LGBT individuals who may experience discrimination and violence in all aspects of their lives – in employment, family, health care and education. The government bureaucracy may not be interested or may not have the capacity to implement policies and laws that can benefit LGBT people. In a country blighted by extreme poverty, the human rights of LGBT individuals may take less priority than issues perceived to be more urgent such as fulfilling basic needs including having enough food and adequate shelter. In fact, human rights for any Nepali may be difficult to prioritize in the face of widespread and crushing poverty.

Furthermore, Nepali society is divided and diverse, as is the LGBT community. With different castes, ethnicities and social classes, differences between urban and rural locations and the diversity of the LGBT community according to gender, sexual orientation, age, class, ethnicity and other factors, it is important to avoid generalizations and it is incorrect so speak of one LGBT community, even though this is done for practical purposes.

This report found a lack of research on LGBT lives and history before the early 2000s. A 2001 report by FHI and the Blue Diamond Society (BDS) was based on interviews with approximately 1000 men who have sex with men (MSM) in Kathmandu. The study found a fluidity in sexual identities and practices (with many MSM married to women) and little knowledge about men having sex with men, HIV risk, and safer sex practices.³

3 Family Health International (now FHI 360), "Rapid Ethnography of Male to Male Sexuality and Sexual Health, Kathmandu, Nepal," December 2001: <http://www.hivpolicy.org/Library/HPP000564.pdf>

Instead of an epidemiological or anthropological focus, this report concentrates on the political developments since the 1990s in Nepali society and how they are correlated with the growing visibility and strength of the LGBT movement which has created the environment for today's social, political and cultural context for LGBT advocacy.

Nepal's tumultuous transition from an absolute Hindu monarchy to a lively democracy in the 1990s and 2000s opened up space for LGBT organizing that resulted in some of the most visible advances in LGBT rights in Asia and the Global South. The emergence of civil society and NGOs started after the 1990 People's Movement, a multi-party protest movement that forced King Birendra Bir Bikram Shah to cede his absolute powers and allow for the establishment of a constitutional multi-party democratic system. This change also opened up the door for donor investment in various development issues in Nepal, including on HIV.

International donor money to respond to HIV helped galvanize LGBT advocacy, starting with the establishment of the Blue Diamond Society (BDS) in 2001. BDS has been at the forefront of LGBT activism ever since with more than 50 branch offices across the country. In the past decade and half it has been joined by several other NGOs such as Mitini Nepal, Saino Nepal, Sahara Samaj, Ekata Nepal, Naulo Srijana Nepal and Paribartan Nepal. The initial focus on MSM and transgender women has expanded to include lesbians and transgender men and has also broadened to a human rights focus. LGBT organizations and individuals also participated in the civil society movement also aligned with a broader political and social movement which galvanized against the royal coups in 2002 and 2005 and eventually led to the overthrow of the monarchy. Joining forces with broader civil society allowed the LGBT movement to gain visibility, and this was exemplified with the nomination of Asia's first openly gay parliamentarian Sunil Babu Pant who served as a Member of Parliament (MP) from 2008 to 2012.

The Supreme Court ruling of 2007 is the most prominent LGBT political victory to date in Nepal. In 2007, four LGBT NGOs⁴ were successful in a petition against the government in *Sunil Babu Pant and Others v. Government of Nepal and Others*, resulting in the verdict calling on the government to scrap laws that discriminate on the basis of SOGI, to recognize a third gender category,⁵ and to establish a committee to explore the legalization of same-sex marriage.

However, of these three areas, the only one with some implementation was the third gender category. Little progress has been seen on the rest due to political instability including the collapse of the Constituent Assembly (CA) in 2012 following its failure to write a constitution. Although the second Constituent Assembly elections in November 2013 were contested by more than 60 prominent LGBT leaders, none were elected by vote, or nominated under the proportional representation system.

There continues to be a high level of visible and public advocacy around policy and legislative reforms to ensure LGBT rights, and LGBT issues are prominently featured in mainstream media. This is in contrast to the lived experiences of most LGBT people who are generally compelled to hide their sexual orientation or gender identity and are frequently subject to human rights violations, stigma, and discrimination. Despite the notable advances on paper, the actual lives of the vast majority of LGBT people in Nepal is still challenging due to widespread poverty, rigid social norms, and an unsympathetic legal framework and bureaucracy. The recommendations arising from the Nepal National LGBTI Community Dialogue reflect the enormous amount of work that participants felt need to be accomplished by the government, community organizations, NGOs, international organizations and other stakeholders.

4 These four organizations and lead activists involved were Blue Diamond Society (Sunil Babu Pant), Mitini Nepal (Mina Nepali), CruiseAIDS Nepal (Sanjeev 'Pinky' Gurung) and Parichaya Nepal (Manoranjan Kumar Vaidya)

5 'Third gender' and 'other' are often used interchangeably in Nepal.



Honorable guests, including Health Minister, during the opening session of dialogue

FINDINGS

Some of the report's key findings are:

- **Laws, policy and human rights treaties:** Same-sex relations or LGBT identities are not a criminal offence in Nepal. Activists are concerned by recent proposed amendments to the Civil and Criminal Code (which will update and replace the current “Muluki Ain”)⁶ prepared by the Ministry of Law and Justice, including not recognizing same-sex marriage and whether the vague reference to “unnatural sex” could be used against LGBT people. While the Supreme Court ruling of 2007 ordered investigations into the possibility of same-sex marriage and the introduction of anti-discrimination laws, nothing has happened. The ruling did recognize a “third gender” category. There is an omission of LGBT persons from laws such as sexual assault laws. Several generic laws, such as the Public Offences Act of 1970⁷ are misused to harass LGBT people. Nepal has signed and ratified a wide range of international treaties that seek to protect human rights and has various domestic laws and policies on human rights and HIV (including components on rights), but these are not necessarily implemented at the community level.
- **Sociocultural environment:** Nepal is a largely patriarchal society and does not easily accept people of diverse sexual orientations, although there may be tolerance. Furthermore, factors such as caste, class, and gender play a major role in shaping attitudes towards sexuality and visibility in Nepal. Among all LGBT people, an indigenous transgender women identity known as metis⁸ is usually most

6 Muluki Ain of 1854 (Gen. Code), Nepal Law Commission: <http://www.lawcommission.gov.np/en/documents/prevaling-laws/func-start-down/605/>

7 Public (Crime and Punishment) Act, 2027 (1970), Nepal Law Commission: http://www.ncf.org.np/upload/files/182_en_some-public-crime-and-punishment-act-2027-english.pdf

8 A self-identified label used by feminized males (cross-dressers) who have sex with men, and used their feminine behaviours in public

visible and dominant in the public awareness and discourse. Other LGBT issues and identities are frequently conflated with or confused for being one and the same as meti issues and identities. In a country still shrouded by the caste system and riven by ethnic identity politics, a discourse on sexual identity seems to be less of a priority. Despite official recognition and the lack of open condemnation of homosexuality in social mores, family pressure and social expectations still force most people into not coming out⁹ and to getting married against their will or desire to persons of the opposite sex.

- **Religion:** More than 80 percent of Nepal's population practices Hinduism and more than 10 percent follow Buddhism, according to the census of 2011. Discrimination from religious groups is minimal due to a Hindu and Buddhist majority that are seen as not overtly homophobic. The Hindu epics record diverse sexual orientations and gender identities. References to sexual orientation or same sex behaviour are barely discussed in the Pali Canon, the scriptural texts that hold the Buddha's original teachings.¹⁰ So, it is perceived that religion does not contribute strongly to discrimination and harassment of LGBT individuals, except where it influences social mores and traditions.
- **Education:** Some LGBT students drop out of school due to bullying and harassment.¹¹ Key issues identified at the Dialogue were homophobic and transphobic bullying, and the lack of an LGBT-friendly environment in educational settings. Prejudice can come from other students and also from teachers and education officials. There is a need for training and anti-discrimination laws for teachers and staff in schools to ensure the physical safety and mental well-being of LGBT youth. Transgender students can be denied access to exams because of problems with identification cards and uniforms. Key achievements of LGBT advocacy include the introduction of SOGI-positive courses at universities and a syllabus for grades 7–9 that includes information about sexual and gender diversity,¹² making Nepal the second country in Asia after Mongolia to have these issues included in school curriculums.
- **Employment:** Nepal does not have anti-discrimination laws to cover employment. Many LGBT people report sexual harassment and discrimination during recruitment and employment. Those who are heteronormative in appearance and can hide their sexual orientation or gender identity can feel safer, though they may feel burdened by this. Transgender people confront explicit discrimination when their citizenship or identity documents may not reflect their chosen gender, or they have difficulties in obtaining documents in their preferred gender which would then enable them to seek employment.
- **Family:** The heterosexual family structure has the greatest influence on the lives of LGBT people in Nepal, yet acceptance by families is severely limited due to overwhelming social and cultural pressures to enter a heterosexual marriage and create a family, as well as by rigid conventional expectations of gender roles. Most LGBT people simply do not "come out" or open up about their identities due to the stigma, confusion, and the loss of face this could create for their families. Same-sex couples may find it difficult to find housing or experience discrimination from neighbours. LGBT people also face discrimination because of their inability to get married, have their relationships recognized, and/or to adopt children. Lesbian couples are denied access to in vitro fertilization (IVF).

spaces. The South Asian equivalent for metis is kothis.

9 Bibek Rajbhandari, "Living Gay: A Perspective from Nepal", 2012: <http://bibekjournal.wordpress.com/2012/06/29/notes-from-nepal-living-gay-a-perspective-from-nepal/> (accessed May 2014).

10 Religious Tolerance. "Beliefs about homosexuality among the Buddhist traditions", July 9, 2013: http://www.religioustolerance.org/hom_budd.htm

11 UNESCO, "Education Sector Responses to Homophobic Bullying", (Paris: UNESCO, 2012): <http://unesdoc.unesco.org/imagenes/0021/002164/216493e.pdf>

12 Pahichan, <http://pahichan.com/archives/2555>

LGBT individuals in heterosexual marriages may be reluctant to divorce because of strict moral and social conventions that stigmatize divorce.

- **Health:** Access to health care is a problem particularly for transgender individuals. The HIV epidemic disproportionately affects MSM, with more than one-fifth HIV prevalence among this sub-population.¹³ The HIV epidemic focused attention and brought an influx of donor funding to respond to HIV infections among transgender women, gay men, and other men who have sex with men. However, much more information and research is needed into the health needs of the broader LGBT community including mental health issues, reproductive health issues among lesbians, and the usage of hormones by transgender people.
- **Media:** The Nepali media reports on the political challenges and victories of the LGBT community and has played an important role in highlighting issues like violence against transgender female sex workers. However, they are criticized for not reporting on the lived experiences of the wide diversity of LGBT people, or reporting on them in an inaccurate and sensational manner. There is a regular LGBT radio program that communicates information and advice about sexual and gender minorities' health and rights issues throughout Nepal and there is some LGBT reporting on community radio and state TV. The Nepali movie industry has now produced films like *Soongava*¹⁴ and *Love U Man*¹⁵ that depict same-sex relationships.
- **LGBT organizing and capacity:** There are presently over 55 LGBT civil society organizations (CSOs) throughout Nepal with most of them concentrated in major urban areas and the southern Terai belt. Organizations such as BDS are well established and have significant funding at their disposal. In recent years, there have been concerns about sustainability and long-term commitment to the work of several organizations as many of them are entirely donor dependent. Financial resources for emerging organizations are seen as inadequate because of the concentration of funding among established NGOs. Newer organizations, especially those serving marginalized subgroups such as lesbians, are especially struggling for funding. Finding staff with sufficient skills, retaining staff, paying staff a competitive salary, and cronyism are significant challenges to most NGOs in Nepal and LGBT organizations are no exception. Weak organizational capacity has hindered new organizations particularly outside of Kathmandu. Collaboration with other civil society organizations, development partners, and various government ministries is generally cordial. Much remains to be desired in terms of cooperation between LGBT NGOs due to conflicts attributable to personalities clashes and over competition for funding.

RECOMMENDATIONS

The recommendations came out of issue-based discussions on education, employment, family affairs, health care, media and politics by the LGBT community members who participated in the national dialogue. Some of the recommendations are specifically directed at relevant government ministries and others are more generic. The numbering of recommendations is indicative only and does not reflect prioritization or importance.

13 UNDP et al., "Country Snapshots: Nepal HIV and Men Having Sex with Men", 2012: <http://www.aidsdatahub.org/sites/default/files/documents/MSMSnapshots-Nepal.pdf>

14 Patrick Frater, "Lesbian Drama 'Soongava' Is Nepal's Oscar Contender," *Variety*, 26 August 2013: <http://variety.com/2013/film/news/lesbian-drama-soongava-is-nepals-oscar-contender-1200588744/>

15 Lex Limbu, "Love U Man Trailer", accessed June 2, 2004, <http://lexlimbu.com/blog/2012/10/19/love-u-man-film-trailer>

1. Education

Recommendations ranged from teacher training to curriculum integration and considering appropriate physical facilities for LGBT inclusion and sensitivity.

1. The Ministry of Education should:

- Be accountable for the effective implementation of recently introduced curricula that includes LGBT issues for secondary and advanced levels of the education system for both public and private institutions.
- Increase access to formal education for Nepalis in rural areas and improve mechanisms to inform and educate them about LGBT issues.
- Provide SOGI awareness and human rights training to faculty, staff, and students.
- Develop mechanisms that address acts motivated by hate and bias (including homophobic bullying in schools) and include provisions for punishing perpetrators.

2. In schools and other educational facilities, it is recommended that:

- Introduce teacher training programs that discuss sexual orientation and gender identity. The impact of teacher training on these issues should be monitored and evaluated.
- Introduce scholarship quotas for sexual and gender minority students, similar to quotas provided for women, Dalits, and other disadvantaged minorities.
- The Council for Technical Education and Vocational Training (CTEVT) and Teacher Service Commission should introduce quotas for LGBT teachers and professionals.
- Reproductive health and sex education in schools should cover SOGI issues and non-heterosexual sexuality including discussion of the high risks of HIV and other STIs faced by gay men, transgender women, and other MSM.
- LGBT resource centres and libraries should be established, particularly in universities to encourage LGBT-related social and academic activities.
- School Management Committees should have at least one LGBT representative.
- Recruit psychologists to provide mental health support for LGBT students.
- Seating arrangements in classrooms should not be segregated by gender.
- Strict school uniform policies should be scrapped and a more liberal policy instituted so that transgender students do not feel pressure to either conform or drop out.
- Build separate toilets for transgender students or gender neutral toilets.

3. At the policy level it is recommended that:

- An “other” category should be provided in educational and legal documents in addition to “male” and “female”.
- As one of Nepal’s biggest development partners, the World Bank should include SOGI issues as a component of training program curriculums in its various projects.

2. Employment

1. The Ministry of Labor and employers should provide psychosocial support for LGBT people to increase their participation and productivity in the workforce.
2. The Government of Nepal should provide legal support to victims of employment-related discrimination based on SOGI status.
3. Businesses should provide equal treatment to everyone at the workplace on issues relating to remuneration, insurance, and social welfare. Same-sex couples and their children should be able to avail of the same benefits and privileges that are accorded to heterosexual couples and families.
4. Businesses that have LGBT-friendly policies should be promoted and commended.
5. Violators of the Labor Code who discriminate against LGBT people in the workplace should be penalized.
6. LGBT community advocates should:
 - Lobby for policies at the Ministry of Labor that ensure LGBT people's rights to work free of fear, bias, and discrimination.
 - Organize, support and encourage LGBT entrepreneurs and business owners.
 - Work with existing government projects to mainstream LGBT issues at the national level.

3. Family Affairs

1. The Government of Nepal should:
 - Implement laws and policies that fully protect the rights of people of diverse sexual orientations and gender identities.
 - Legalize same-sex marriage with the same age of consent as heterosexual marriages.
 - Allow same-sex couples to adopt children with the same conditions as heterosexual couples.
 - Create a legal and social environment conducive for same-sex families.
2. The LGBT community should:
 - Provide support and legal services to LGBT persons facing problems with their families.
 - Educate family members and raise awareness of parents and families of LGBT people to promote respect for diversity.
3. LGBT children should be given acceptance and recognition from their parents, regardless of their sexual orientation and identity.

4. Health

1. The Government of Nepal should:
 - Review, amend, and/or repeal existing health laws and policies that adversely affect the health and well-being of LGBT people.

- Implement the Nepal HIV Investment Plan (NHIP) 2014–16: The NHIP is Nepal’s strategic approach to HIV programming, budgeting and implementation.
 - Should ensure that the Ministry of Health and Population (MoHP) and Law and Justice (MoLJ) amend and approve the HIV Bill to protect the rights of HIV-positive individuals, including LGBT people.
2. The health care system in general should:
- Address inequities in health care and improve health services. LGBT people face barriers to equitable health care that profoundly affect their overall well-being.
 - Improve understanding of disparities in health outcomes, provider attitudes and education, and explore ways to improve the environment for LGBT individuals seeking care.
 - Enhance the capacity of health systems to respond to the health needs of LGBT people and to expand coverage to deliver HIV prevention, treatment, care and allied health services, along with providing inclusive sexual and reproductive health services.
 - Sensitize and train health care providers on LGBT health needs.
 - Provide psychosocial and mental health services in addition to HIV programmes.
 - Guarantee non-discriminatory access to services.
 - Meet transgender-specific health needs:
 - Create an evidence base for providing transgender-specific health care to address gender dysphoria.
 - A more rigorous research and development program is needed to understand the health implications of hormone use such as the need for proper counselling on medication, dosage, and surgery, as well as psychological support.
3. Health departments, including health centers and pharmacies, need to have manuals on providing friendly services to LGBT people.
4. To avoid discrimination against LGBT people which may discourage them from using health services medical staff should be trained and educated on sexual diversity.
5. Government, researchers and the community should jointly develop and implement research activities to develop better evidence. Research is needed to develop and test the effectiveness of interventions designed to address health inequities and negative health outcomes experienced by LGBT people. Interventions that increase access to care or address the mental or physical conditions that lead to impaired health would assist in reducing these disparities. Interventions focused on marginalized or overlooked subgroups are especially needed. Research findings and data should also be disaggregated so that targeted HIV interventions can be designed for gay men/other MSM and for transgender women.
6. LGBT advocates and broader society should foster and encourage positive social influences on the lives of LGBT people. Social support plays an important part in mental health. The role of social structures such as families, schools, workplaces, religious institutions, and community organizations in the lives of LGBT people should be understood more fully.

5. Media

1. The LGBT community and advocates should:
 - Sensitize and train staff of media outlets and journalists in all mediums (print, broadcast and Internet) on SOGI and LGBT issues.
 - Build up media as a watchdog to promote SOGI sensitivity.
 - Create role models: High profile celebrities, leaders and officials – regardless of SOGI – who will speak out and advocate on LGBT rights issues.
 - Ensure that different LGBT voices are heard so that the rich diversity of the community can be demonstrated and not just the narrow voice of any one subgroup.
 - Ensure messages are about a variety of LGBT issues in addition to HIV.
 - Use social media, networking, multimedia, drama and flash mobs to educate people.
 - Engage actively with mainstream media to raise awareness and improve understanding of the full range of LGBT identities, issues, and challenges. Relying solely on LGBT-focused programs or outlets will be inadequate and ineffective in raising broader social awareness.
 - Media outlets should:
2. Provide more coverage of national and international LGBT events and days such as IDAHOT and Pride Week.
 - Hire openly LGBT people so that issues related to sexual and gender minorities can be given more coverage that is balanced and informative.
 - Stop sensational coverage of sex stories about transgender women and instead promote stories of LGBT successes and achievements.
 - Develop community radio programs and develop strategies in partnership with a range of LGBT organizations.
 - Interview positive, accepting families and parents to create influential role models.
 - Disseminate correct information on LGBT health and rights issues so that society will become familiar with alternative and legitimate models of a family in addition to those headed by traditional heterosexual couples.



INTRODUCTION

Lesbian, gay, bisexual and transgender (LGBT) people all over the world continue to face challenges. Despite increasing calls for equality and freedom from all forms of discrimination and oppression, LGBT people face a lack of employment opportunities¹⁶ and prejudice when accessing health care,¹⁷ housing¹⁸ and education.¹⁹ Lesbians are the victims of “corrective rapes”²⁰ while LGBT individuals continue to be murdered in different countries. Transgender Europe reported in 2012 that 1083 transgender people were victims of homicide from 2008 to 2012.

Dramatic examples of the challenges faced by LGBT people are found around the world:

- In 2009, a bill was introduced in Uganda that called for life in prison for homosexual offences. In December 2013 the Uganda Anti-Homosexuality Act 2014 was passed by parliament and signed into law by the President in February 2014 (before eventually being invalidated by the Constitutional

16 Sears, B. & Mallory, C. (2011). Documented Evidence of Employment Discrimination and Its Effects on LGBT People. The Williams Institute. Retrieved 30 August 2013 from <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>

17 Winter, C. (2012) Responding to LGBT Health Disparities. Ryan Barker & Thomas McAuliffe (Eds.). Missouri Foundation for Health. Retrieved 23 August 2012 from <http://www.mffh.org/mm/files/LGBTHealthEquityReport.pdf>

18 Grant, J. M., Mottet, L. A., Tanis, J. et al. (2011) Injustice at Every Turn: A Report of the National Transgender Discrimination Survey. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force. Retrieved from www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf

19 Burns, C. (2011). Fact Sheet: LGBT Discrimination in Higher Education Financial Aid. Center for American Progress. Retrieved 20 August 2014 from http://www.americanprogress.org/wp-content/uploads/issues/2011/08/pdf/lgbt_factsheet.pdf

20 Brown, R. (2012). Corrective Rape in South Africa: A Continuing Plight Despite an International Human Rights Response. 2012 Annual Survey of International & Comparative Law (Spring, 2012). Golden Gate University School of Law.

Court of Uganda in August 2014). Same-sex relations and marriage can be penalized by life imprisonment; even the ‘promotion’ of homosexuality is punishable by jail.

- In June 2013, a law was passed in Russia with a clause banning “the propagandizing of non-traditional sexual relations among minors”, with prescribed fines for providing information about homosexuality to people under 18 ranging from 4000 rubles (US\$121) for an individual to 1 million for organizations.²¹
- In December 2013, India recriminalized homosexuality under Section 377 of the Indian Penal Code that dates back to 1861. This reversal followed a widely hailed and progressive Delhi High Court ruling in 2009 in which Section 377 had been “read down” and declared invalid.

Presently, 83 countries and territories criminalize LGBT identities and relationships, seven countries institute the death penalty for same-sex relations, fewer than 50 countries punish anti-gay discrimination in full or in part; and only 19 countries ban discrimination based on sexual orientation and/or gender identity.^{22, 23}

But world leaders and others are acting to counter stigma, discrimination, and human rights violations against LGBT persons. In 2011, the United Nations Human Rights Council (HRC) adopted Resolution 17/19, which paved the way for the Office of the United Nations High Commissioner for Human Rights (OHCHR) to issue the first UN report on human rights and sexual orientation and gender identity (SOGI). The report provides evidence of the discrimination faced by people because of their sexual orientation or gender identity in the areas described above.²⁴ High Commissioner Navi Pillay challenged UN member states to help write a new chapter in UN history by ending discrimination faced by LGBT people. In addition:

- This call was echoed in a speech delivered in December 2011 by former US Secretary of State Hillary Clinton on LGBT rights on International Human Rights Day. As Clinton emphasized, LGBT people are an “invisible minority” who are arrested, beaten, terrorized and even executed. Many “are treated with contempt and violence by their fellow citizens while authorities empowered to protect them look the other way or, too often, even join in the abuse”.
- On 6 December 2011, US President Barack Obama issued a Memorandum on International Initiatives to Advance the Human Rights of LGBT Persons. This directed all agencies engaged abroad to ensure that US diplomacy and foreign assistance promote and protect the human rights of LGBT persons.
- On 7 March 2012, UN Secretary-General Ban Ki-moon delivered a message during a Human Rights Council meeting on violence and discrimination based on SOGI. Noting the pattern of violence and discrimination directed at people because of their sexual orientation or gender identity, he said, “This is a monumental tragedy for those affected – and a stain on our collective conscience. It is also a violation of international law.” “The time has come,” he stated, to take action.

21 BBC (2013) Q&A: Gay rights in Russia (13 August 2013). Retrieved 29 August 2014 from <http://www.bbc.co.uk/news/world-europe-23604142>

22 United States Agency for International Development. (n.d.) LGBT Global Development Partnership: Promoting Lesbian, Gay, Bisexual, and Transgender Inclusive Development. Retrieved on 20 August 2014 from <http://www.usaid.gov/sites/default/files/documents/2496/USAID%20Fact%20Sheet%20LGBT%20Global%20Partnership.pdf>

23 International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) (2014) State-Sponsored Homophobia: A world survey of laws: Criminalisation, protection and recognition of same-sex love. Itaborahy and Zhu. May 2014, 9th Edition. Retrieved 18 July 2014 from http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf

24 Office of the United Nations High Commissioner of Human Rights (OHCHR) (2011), “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity”, 17 November 2011 report submitted to the Human Rights Council. Retrieved 27 August 2014, from http://www.ohchr.org/Documents/HR-Bodies/HRCouncil/RegularSession/Session19/A-HRC-19-41_en.pdf



NEPAL NATIONAL LGBTI COMMUNITY DIALOGUE AND COUNTRY REPORT

UNDP Nepal and UNICEF Nepal Country Offices, with support from the UNDP Asia-Pacific Regional Centre and USAID's regional and Nepal missions, hosted the Nepal National LGBTI Community Dialogue (the Dialogue) in Kathmandu on 22–23 April 2014. The Dialogue was one of the first key activities of the Nepal component of 'Being LGBT in Asia' and was organized with guidance from a nine-member Dialogue Advisory Committee (DAC) of leading LGBT activists from around Nepal. The Dialogue aimed to inform and engage UN agencies, US government stakeholders, Nepal government officials and development partners on the critical human rights challenges faced by the LGBT community. It also aimed to review examples of successful change and advocacy, and inform decision-making to advance programming on human rights, LGBT rights, and development in Nepal.

During the two-day event, participants shared stories of their lived experiences, discussed challenges faced, identified opportunities for change, and proposed recommendations for the LGBT community, the Government of Nepal, and the development community in six themes: education, health, employment, family affairs, the media, and community and politics.

The Dialogue was attended by 57 activists. To achieve inclusive and diverse representation, special attention was given in its planning to ensure the participation of traditionally less-represented LGBT subpopulations in Nepal such as lesbians, transgender men, youth and adolescents, the elderly, those from disadvantaged socioeconomic backgrounds, and those living with HIV. Participants included 11 self-identified lesbians, 15 gay men, two bisexual individuals, 15 transgender women, nine transgender men, one intersex person, one queer person, and three allies. The event was also attended by high-level representatives from the UN, the US government, USAID Nepal, different ministries of Nepal, governmental agencies and development partners.²⁵

The first session of the dialogue was a LGBT community-only session where participants discussed their experiences of grassroots work, individual and organizational strengths, challenges and barriers, key human rights issues, and issues such as accessing appropriate health care. The participants made final recommendations in each theme area following these extensive discussions. During the second open session (in the second half of the second day), participants shared their recommendations with relevant stakeholders including government officials, UN agencies, USAID, development partners, human rights advocates, researchers, civil society activists, and academics working on LGBT human rights and broader development issues.

This report begins with an overview of the political and social situation of LGBT people in Nepal, followed by an examination of the legal environment, sociocultural context, and political and organizational environment on LGBT rights. The following sections focus on the discussions and recommendations made by the participants of the dialogue in the six thematic areas. In addition, case studies are included that depict the contemporary human rights experiences of LGBT individuals, based on discussions of the dialogue participants and published literature. The final section of the report discusses the current capacity of LGBT organizations in Nepal.

25 The UN presence at the Dialogue was led by UNDP Country Director Shoko Noda, UNICEF Nepal Representative Hanna Singer, UN Women Representative Ziad Sheikh, and UNAIDS Nepal Country Coordinator Dr. Ruben F. del Prado. Staff from UNDP Asia-Pacific Regional Centre (APRC), UNDP Nepal, UNICEF, UNV, UNFPA, UN Women, UNAIDS, ILO and the UNRCs Office were also present. US Government representation was led by Ambassador Peter W. Bodde who gave opening remarks and Acting USAID Mission Director Sheila Lutjens provided closing remarks. Other US Embassy and USAID staffs were also present. The government delegation was led by the Minister of Health and Population and included the Member Secretary of the Same-Sex Marriage Committee, Acting Secretary of the National Human Rights Commission, an Under-Secretary of the Ministry of Women, Children, and Social Welfare, an Advocate for the Supreme Court, a Deputy Superintendent of Police of the Human Rights Cell, a Human Rights Officer from the National Human Rights Commission, and a Section Officer from the Department of Passport at the Ministry of Foreign Affairs.



LGBT Human Rights Office, Bharat Shrestha, presenting on the work of the “Being LGBT in Asia” Initiative work and Nepal National LGBTI Community Dialogue in Nepal



BEING LGBT IN ASIA

“Being LGBT in Asia (BLIA): A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society” is a first-of-its-kind Asia-wide learning effort undertaken with Asian grassroots LGBT organizations and community leaders alongside UNDP and USAID. With a focus on eight countries – Cambodia, China, Indonesia, Mongolia, Nepal, Philippines, Thailand and Viet Nam – the effort examines LGBT lived experiences from a development and human rights perspective. It encourages networking between LGBT people across the region, building a knowledge baseline, and developing an understanding of the capacity of LGBT organizations to engage in policy dialogue and community mobilization and to inform policy and programming in the development context through a participatory process that emphasizes innovative approaches, including the use of video, the Internet, and social media. It also helps to create multimedia and social media tools and resources, engage youth leaders to support LGBT civil society, and to improve the capacity of the UN family and US Government to work with LGBT civil society organizations across Asia.

An important objective of ‘Being LGBT in Asia’ is bringing together emerging communities of practice among individuals and organizations working on LGBT issues throughout the region, including development partners, governments, LGBT civil society organizations, and faith-based organizations. By investing in and developing a network of creative interactions among agencies and grassroots development partners, stakeholders will be better positioned in the future to realize LGBT-inclusive development approaches and programming. In each country, a national LGBT community dialogue has been the first key activity of the initiative followed by the development of comprehensive country reports.



CONTEXT FOR LGBT ADVOCACY IN NEPAL

History

Records of the existence and tolerance of individuals in Nepal of diverse SOGI date back to prehistorical and medieval times, including religious recognition of LGBT identities in ancient Hindu epics. A “third gender” and references to male and female homosexuality have been acknowledged in Hinduism since Vedic times, for instance, in the great Hindu epics, the Mahabharata²⁶ and the Ramayana²⁷ that are described in medieval Hindu temples, scriptures and practices including the Khajurao²⁸ temple in India and the renowned Kama Sutra texts.²⁹ Additionally, there are transgender deities in Hinduism, for example Ardhanarisawar, “the androgynous, merged form of Lord Shiva and the goddess Parvati”.³⁰ However, it is debatable whether this history has any influence on the current lived experiences of LGBT Nepalis.

Patriarchy and heteronormativity

A powerful system of patriarchy pervades Nepal society and influences formal and informal interactions from politics to the daily lives of LGBT people. Men dominate every aspect of public life including but not limited

26 In the Hindu epic, the Mahabharata, which is designated as a key source of Hindu religion and philosophy, there are two major third-gender characters: Shikhandi and Brihanla.

27 The Hindu epic, the Ramayana, has a story about homosexuality. Once there was a king named Dilip who had two wives but died without leaving an heir. One day, Lord Shiva appeared in the dream of the King's widows and said they will have a child if they made love together. The queens made love and one day one of the queens gave birth to a child. The child grew to become a great King Bhagiratha, who brought River Ganges from the heaven to earth.

28 The Khajuraho temple in India openly depicts both male homosexuality and lesbianism in carvings on its walls.

29 The Kama Sutra, written in 150 BC contains passages describing eunuchs or “third-sex” males performing oral sex on men. Accessed at <http://www.kamashastra.com/kama209.htm>

30 London, Jennifer. 2011. “U.S. helps Nepal Lead Way on Gay Rights.” <http://www.latitudenews.com/story/u-s-helps-nepal-lead-way-on-gay-rights/>



Lesbian film-maker, Nilu Doma Sherma presenting her "Stories of Being Me: Kathmandu video", together with Nepali movie actress, Priyanka Karki

to politics, media, higher education, government bureaucracy, and the private sector. As in other South Asian societies, men are also much more visible in streets and public spaces than women who are pressured to limit public exposure and remain in private spaces. This framework makes it harder for women to come out as lesbians than for men to come out as gay. Despite the successes and funding of a women's rights movement, the patriarchy is still strong.³¹ A 2011 Convention on the Elimination of Discrimination Against Women (CEDAW) shadow report prepared by a group of women's rights organizations underscored the problem: "Nepali society has enforced behavioral norms for women, which emphasize suppressing sexuality and prescribing codes for keeping their bodies 'pure'. This limits women's control over their sexuality. Different standard[s] are used to determine sexuality of men and women."³²

The valuing of male power over female causes difficulties that can be particularly pronounced for lesbian women and transgender men. As a result of numerous social and structural constraints, lesbians often find themselves in a position that one report, which included research on sexual violence against lesbians, characterized as "a three layered oppression: for being women, for being a minority, and for being subordinates."³³

In addition to patriarchy, heteronormative norms require young adult men and women to marry and procreate at relatively early ages. In such an environment, there are very limited opportunities and spaces for people from diverse sexual orientation and gender identities to express themselves or be open.

The role of caste and class

The Nepalese caste system is the traditional system of social stratification of Nepal. It is complex and continues to this day. The caste system defines social classes by a number of hierarchical endogamous groups often termed as Jāt. The class system divides group of people according to the differences in wealth and access to political

31 Forum for Women, Law and Development, Informal Sector Service Center, Institute of Human Rights Communication Nepal International Alert, National Business Initiative, Saferworld, "Women's insecurities and the workplace in Nepal: A study from Banke and Bara districts" February 2014: <http://www.saferworld.org.uk/resources/view-resource/796-womenas-insecurities-and-the-workplace-in-nepal> (accessed June 2014)

32 Shadow Report on the Fourth and Fifth Period Report of the Government of Nepal on CEDAW, 2011: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FWLD_NepalCEDAW49.pdf

33 Knight, K., Miller, K., Shrestha, B., Thapa, D., Khadka, H., Limbu, P. (2013). Global LGBTI human rights partnership Bridges to Justice: Case study of LGBTI rights in Nepal, Copyright 2013 by Astraea Lesbian Foundation for Justice, p.14

power. Caste and class distinctions affect the ways in which LGBT people relate to sexual and gender identities and the challenges they face.

However, research and data is lacking. It is difficult to define how caste and class interact to shape attitudes towards Nepali LGBT people. It is likely that urban members of the “higher” castes or relatively privileged groups would be more tolerant of homosexuality because of higher education and greater exposure to media and foreign influences that may be more positive about diverse SOGI. Transgender people, especially *metis* are more likely to be found and tolerated among the people of the Terai as they have historic antecedents in that region and share many similarities with *hijira* communities in neighbouring India.

However, the visibility of LGBT people in different caste and ethnic groups varies from region to region and sometimes even from family to family, so it cannot be concluded that there is any one dominant approach towards sexual and gender minorities, or to generalize how each of these groups treat LGBT people.

Religion

More than 80 percent of the population of Nepal are Hindu and more than 10 percent are Buddhist.³⁴ Hinduism and Buddhism in Nepal cohabit closely. Their deities share physical spaces in temples and stupas. Adherents of both religions often worship in the holy houses of the other. Their values and rites substantially overlap. In Nepal, these forms of religions are seen to create a relatively tolerant space for sexuality in comparison with other countries. Unlike other religions such as Christianity and Islam that have been interpreted to condemn homosexuality as unnatural, sinful and amoral, Hinduism and Buddhism are relatively tolerant and neutral on issues of sexuality and gender identity.³⁵

Nepal is also unique compared to its neighbors in the region in that it does not suffer from the religious extremism and conflicts found in other countries in the region such as India, China, Bangladesh and Bhutan.³⁶ Religious extremism can take the form of virulent anti-homosexuality. Hostile views against homosexuality and transgender identity could potentially arise from minority Islamic and Christian groups (much like in India where conservative Muslim and Christian groups took the lead to recriminalize homosexuality under Section 377), but their attitudes have not influenced public policy and social attitudes to any discernible degree in Nepal. Instead, it is felt that the Nepalese religious context has led to more neutral attitudes.

The dominant Hindu religion of Nepal neither promotes nor condemns homosexuality³⁷, but heterosexuality is regarded as the norm in a society overwhelming focused on the importance of traditional families and procreation. A fruitful marriage is seen as the ultimate goal and paradigm for happiness. It results in numerous offspring and is supported by a well-structured extended family system. The problems posed by homosexuality in the Dharma Shastras (Sacred Law) of Hinduism could be considered legal ones, relating to lack of offspring and the inheritance of ancestral property.

However, moral disapproval is also present. Any form of non-procreative sex, heterosexual or homosexual, is seen as a deviance from the goal of procreation and discouraged. Many Hindus consider homosexuality taboo because the scriptures do not specifically mention homosexuality and LGBT persons are seen as defying rigid societal gender norms, leading to stigma and discrimination against them.

34 National Census of Nepal (2011) available at <http://cbs.gov.np/wp-content/uploads/2012/11/National%20Report.pdf>

35 All you need to know about Hinduism, “Homosexuality and Hinduism”, accessed June, 2014: <http://history-of-hinduism.blogspot.com.au/p/homosexuality-and-hinduism.html>

36 Compared to the religious conflicts in the other countries discussed, Bhutan’s religious conflict between the ruling Buddhist elite and Hindu minorities gets little coverage. More information about this dynamic can be accessed at: Thapa, Saurav Jung “Bhutan’s Hoax of Gross National Happiness” Wave Magazine (13 July 2011) available at <http://fletcher.tufts.edu/News-and-Media/2011/07/13/Thapa-Jul13>.

37 H S Rao, (July, 2009). “Hinduism does not condemn homosexuality”. Rediff News: <http://news.rediff.com/report/2009/jul/03/hinduism-does-not-condemn-homosexuality.htm>.

There is a wide diversity of opinions about homosexuality in Buddhism. Buddhism is often characterized as distrustful of sensual enjoyment and sexuality in general.³⁸ The relationship between Buddhism and sexual orientation varies by tradition and teacher. Traditionally, homosexual conduct and gender variance are seen as obstacles to spiritual progress in most schools of Buddhism. As such, monks are expected to refrain from all sexual activity and sexual intercourse is specifically forbidden with either sex.³⁹ Buddhism in its earliest form did not clearly define sexuality rules for lay followers, limiting the rules mostly for monks. Therefore the determination of whether or not homosexuality is acceptable for a layperson is not considered a religious matter by many Buddhists.⁴⁰

As such, there is no homosexual code of conduct created by Nepali Buddhists scholars. The Dalai Lama of Tibetan Mahayana Buddhism – who is well known and has many followers in Nepal – initially interpreted same-sex relationships as sexual misconduct.⁴¹ However, he later changed his mind and declared his support for human rights for all “regardless of sexual orientation”⁴² and threw his considerable moral weight behind gay marriage, condemning homophobia and declaring that sex is fine as long as it is consensual.⁴³

Homosociability

While discussions on sexual matters are considered a social taboo, sexual relations between males are well documented (though there is a dearth of research and information about sexual relations between females).⁴⁴ Sexual activities between men is relatively common in Nepali society as it is in other South Asian societies.⁴⁵ This is inevitable given that male access to females is limited, mild to strict gender segregation is the norm, concern over female virginity remains paramount, and a culture of “male homosociability and homoaffectionalism” exists.⁴⁶ Men holding hands together in public and the sharing of beds in gender-segregated households are common. The social bonds between members of the same gender appear to permit more than in other countries, including erotic contact. These spheres of “homosociability” create enabling environments for male-to-male sexual activities in Indian sub-continent.⁴⁷ It can be concluded that such activities may not be an expression of personal identity, but one of opportunity, accessibility, and the desire for sexual release.⁴⁸ Interestingly, the same dominant Nepali patriarchal system that structures, polices, and reinforces gendered norms of heterosexuality simultaneously creates conditions that provides a secretive environment of homoerotic behavior among some men.

38 Jackson, Peter Anthony (December 1995). “Thai Buddhist accounts of male homosexuality and AIDS in the 1980s”. *The Australian Journal of Anthropology* 6 (3): 140–53. doi: 10.1111/j.1835-9310.1995.tb00276

39 See, for example, the Pandakavattu section of the Mahavagga. 1:61, 68, 69; Vinaya: Mahavagga, 1:71, 76. Additionally, “The Story of the Prohibition of the Ordination of Pandaka” justifies the ban by giving an example of a monk with an insatiable desire to be sexually penetrated by men, thus bringing shame upon the Buddhist community. *Vinaya*, Vol. 4, pp. 141–142.

40 “GLBT in World Religion” Thomas Paine Unitarian Universalist Fellowship (2008): <http://www.tpuuf.org/2008/08/03/glb-in-world-religions/>.

41 James Shaheen, “Gay Marriage: What Would Buddha DO?”. *Huffington Post*, August 13, 2009, http://www.huffingtonpost.com/james-shaheen/gay-marriage-what-would-b_b_230855.html

42 Dennis Conkin, 1997, “Dalai Lama urges ‘respect, compassion, and full human rights for all,’ including gays”: <http://quietmountain.org/links/teachings/gayrites.htm> (Accessed August 2014)

43 *The Telegraph*, 2014, “Dalai Lama Supports Gay Marriage”. Available at <http://www.telegraph.co.uk/news/worldnews/asia/tibet/10682492/Dalai-Lama-supports-gay-marriage.html> (Accessed August, 2014)

44 Tamang, Seira. Patriarchy and the Production of Homo-Erotic Behaviour in Nepal. *Studies in Nepali History and Society* 8.2 (December, 2003): pp. 225-258.

45 Ibid.

46 Khan, Shivananda, “Cultural Constructions of male sexualities in India”, June 1995: www.nfi.net/Essays/95/Cultural%20Constructions%2095.DOC.

47 Balachandran, Chandra S, (2004), “A Preliminary Report on Emerging Gay Geographies in Bangalore, India. In *Sexual Sites, Seminal Attitudes: Sexualities, Masculinities and Culture in South Asia*”, Sanjay Srivastava, ed., pp. 165-187. New Delhi: Sage Publications

48 Tamang, Seira. Patriarchy and the Production of Homo-Erotic Behaviour in Nepal. *Studies in Nepali History and Society* 8.2 (December, 2003).



A HISTORY OF LGBT HUMAN RIGHTS IN NEPAL

The following section provides an overview of LGBT human rights in Nepal, starting with a description of the political context for LGBT advocacy over the last three decades. Despite the recognition of LGBT identities in ancient Hindu epics, there is very little research and information on the lives of LGBT individuals in modern times.

Research and information only started to become available from the late 1990s. A 2001 report by FHI and the Blue Diamond Society (BDS) interviewed approximately 1000 men who have sex with men (MSM) in Kathmandu. The study found fluidity in sexual identities and practices (with many MSM married to women) and little knowledge about men having sex with men, HIV risk and safer sex practices.⁴⁹

Among all LGBT people, an indigenous female transgender identity known as *metis*⁵⁰ is usually most visible and dominant in the public awareness and discourse. Other LGBT issues and identities are frequently conflated with or confused for being one and the same as *metis* issues and identities. Due to this connotation, the public is largely unaware about the vast diversity of sexual and gender identities within the LGBT community.

Instead of an epidemiological or anthropological focus, this report concentrates on the political developments since the 1990s in Nepal society and how they correlated with the growing visibility and strength of the LGBT movement and created the environment for today's social, political and cultural context for LGBT advocacy.

In 2013, two reports available within months of each other underscored the contradictory status of the current LGBT movement. One proclaimed Nepal's LGBT rights movement "under serious threat" while the other called

49 Family Health International, "Rapid Ethnography of Male to Male Sexuality and Sexual Health, Kathmandu, Nepal," December 2001: <http://www.hivpolicy.org/Library/HPP000564.pdf>

50 A self-identified label used by feminized males (cross dressers) who have sex with men, and used their feminine behaviours in public spaces. The South Asian equivalent for *metis* is *kothis*.



Transgender women performing cultural "Maruni" dance during the opening session

Nepal "Asia's most gay-friendly country."⁵¹ Both reports highlight the "hopes and fissures in social, legal, and political gains"⁵² described in the Nepal Country Report.

LGBT advocacy in Nepal: 1990 onwards

In 1990, multiparty democracy with a constitutional monarchy was introduced and opened space for large scale civil society organizing. This included the emergence of non-governmental organizations (NGOs) including LGBT activists and organizations.

By 2000, more than 30,000 NGOs were registered with the Social Welfare Council.⁵³ As a consequence, civil society activism emerged as a major force in national and local life and politics. The UN and international donors began to consider NGOs as primary implementing partners on poverty alleviation and economic growth and promoting the inclusion of vulnerable groups including sexual minorities and people living with HIV. The increase in engagement with NGOs was attributed to the frustration of many donors with the government bureaucracy which they viewed as ineffective compared to NGOs.⁵⁴ Donor funds included significant resources targeted at halting and reversing the HIV epidemic.

Since 1990, a remarkable series of events saw the increasing acceptance of homosexuality in law and politics with fundamental changes to the legal and social framework, even though these advances would generally not be translated into the daily lives of LGBT people.

The community of people of diverse SOGI began to organize themselves in 2001 under a non-governmental organization called Blue Diamond Society (BDS) led by activists including Sunil Babu Pant, Manisha Dhakal, Pinky Gurung, Dolly Maharjan, Niruta Panday, Malaika Lama, 'Alex' and Zora Bai. A few activists such as Krishna Maharjan and Umesh Panday had been active in the informal social organizing of gay men in the 1990s prior to

51 Knight, K., Miller, K., Shrestha, B., Thapa, D., Khadka, H., Limbu, P. (2013). Global LGBTI human rights partnership Bridges to Justice: Case study of LGBTI rights in Nepal, Copyright 2013 by Astraea Lesbian Foundation for Justice, p.39

52 Ibid.

53 Government of Nepal, Social Welfare Council, "NGOs affiliated with Social Welfare Council," http://www.swc.org.np/SWC_NGOs_Total.pdf

54 UNDP Human Development Report 1998, <http://hdr.undp.org/en/reports/national/asiathepacific/nepal/name,2785,en.html>, cited in Program for Accountability in Nepal, "The Political Economy of Social Accountability in Nepal" 2010: <http://siteresources.worldbank.org/NEPAEXTN/Resources/223554-1296055463708/PoliticalEconomy.pdf>

the establishment of BDS. BDS was remarkable in the Nepali context as it represented the first time that a NGO working specifically for LGBT rights and with well defined human rights and health goals had been established.

LGBT advocacy in Nepal: After 2000 and the end of the Maoist civil war

Nepal's LGBT movement, led by BDS expanded rapidly because their key challenges were framed to international donors by prioritizing rights based interventions targeting the HIV epidemic. By the late 2000s, their work expanded to include broader human rights programming primarily funded by bilateral and multilateral donors and foundations. In doing so, they rightly drew a connection between HIV and the legal and social frameworks and environments that can either impede the response to the epidemic or improve it,⁵⁵ depending on whether they are punitive or supportive.

The 2000s provided many opportunities for the LGBT movement. Citizens supporting a return to democracy poured out in cities across the country in 2006 demanding an end to the monarchy and the civil war.⁵⁶ This movement was described as a People's Movement which was mostly spontaneous although its outlines had been planned by the Maoists and democratic parties.⁵⁷ LGBT rights activists used this opportunity to assert their rights by joining the popular uprising.⁵⁸ After a Comprehensive Peace Accord was signed by the government and the Maoists in November 2006 it brought the decade-long armed conflict to a formal close, and led to Nepal's first CA elections in 2008. The end of the civil war provided space for civil society including LGBT groups to vastly expand programming and access external funding. It allowed for vulnerable groups, including sexual and gender minorities, to organize and advocate for greater inclusion and a stake in the political process. They sought to make the state recognize their identities and be cognizant of their rights.

Several political parties canvassed different groups for support. BDS was able to convince political parties to include LGBT issues in party manifestos, including the three biggest parties – the Nepali Congress (NC), the Communist Party of Nepal – United Marxist Leninist (UML), and the Communist Party of Nepal – Maoists (Maoists).⁵⁹ On April 2008, the Constituent Assembly (CA) election results were announced by Chief Election Commissioner Bhojraj Pokharel. ⁶⁰ The founder and executive director of Blue Diamond Society, Sunil Babu Pant, was nominated as a Member of Parliament/CA by the Communist Party of Nepal (United) under the proportional representation quota.⁶¹ Pant served as a MP until 2012. In becoming an MP, he made history by becoming Asia's first openly gay parliamentarian.

The remarkable advocacy by the LGBT community resulted in notable gains in legal and constitutional recognition as well as the frequent and high profile visibility of LGBT people in public spaces. It also attracted wide civil society support and a commensurate larger presence in the public domain and discourse.

55 Godwin, John. "Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: An agenda for action." UNDP and APCOM, Bangkok, July 2010, pp. 2-7

56 From 1996 to 2006, a violent Maoist insurgency undermined good governance efforts and disrupted civil society functioning due to threats from the ultra-left Maoist rebels and successive right-wing governments headed by King Gyanendra Bir Bikram Shah and the military following coups in 2002 and 2005. The 2006 movement to restore democracy arose from broad opposition to military rule under the royal regime.

57 International Crisis Group, "Nepal: From People Power to Peace?," Asia Report N°11510, May, 2006: <http://www.crisisgroup.org/en/regions/asia/south-asia/nepal/115-nepal-from-people-power-to-peace.aspx>

58 Mark Schoffman, "Gay community joins Nepal protests," Pink News, 19 April 2006: <http://www.pinknews.co.uk/2006/04/19/gay-community-joins-nepal-protests/>

59 Jo Becker, "Campaigning for Justice: Human Rights Advocacy in Practice," Stanford University Press: 2013.

60 Pokharel had overseen the historic elections despite daunting challenges such as bringing a rebel group that had been waging war for ten years into an electoral process and organizing elections in a country of 25 million in the absence of any laws governing the shape and form of the electoral system.

61 The Carter Center, "Observing Nepal's 2008 Constituent Assembly Election," http://cartercenter.org/resources/pdfs/news/peace_publications/election_reports/FinalReportNepal2008.pdf

The Supreme Court verdict of 2007

A Supreme Court verdict in December 2007 has been the most prominent and visible legal and policy victory for LGBT people in Nepal. This verdict followed a petition in April 2007 by individuals from four leading LGBT NGOs⁶² against the government of Nepal. *Sunil Babu Pant and Others v. Government of Nepal and Others* called for the abolishment of laws discriminating against LGBT individuals, the establishment of a committee to study the possibility of allowing same-sex marriage, and the legal recognition of a “third gender.”⁶³

The ruling had numerous implications. It clearly placed LGBT issues within the discourse of human rights. The Supreme Court verdict acknowledged that LGBT individuals should enjoy the same legal rights as other citizens, calling for several sweeping protections of LGBT citizens, and enacting anti-discrimination laws to protect LGBT persons. With judgments recognizing rights that LGBT people deserved as citizens, citizenship became the basis for the court to advocate for equal rights, thus avoiding a framing of “special” or “new” rights. LGBT rights were also positioned as being in accordance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR). The Supreme Court decision also affirmed the state’s position as a regional and international model for promoting the fundamental rights of individuals.

More broadly, the decision brought Nepal to international attention for having made one of the most progressive rulings in favour of LGBT rights. This ruling came at a time when over 80 countries criminalized same sex behavior.⁶⁴ Nepal’s progressive ruling was viewed by many LGBT rights advocates especially in the Global South as a model on how advocacy can achieve political and social change. South Africa is the only other country extending comparable constitutional protections and recognition to LGBT people. However, challenges remain in the implementation of the rulings on same-sex marriage and anti-discrimination at the policy level and in spirit.⁶⁵

The government’s Three-Year Interim Plan (2007–10) which sets out decisions and policies commits to social inclusion including LGBT people. The lack of implementation of stated policies in the Plan continues to pose an obstacle to the full realization of sexual and gender minority rights.⁶⁶ The Constituent Assembly which had been elected in 2008 collapsed in 2012. This delay also poses obstacles to the effective implementation of the 2007 Supreme Court verdict. Many within the Nepali LGBT community hope that the new constitution will be promulgated by the end 2014 by the second CA, and that it would implement the recommendations of the 2007 Supreme Court verdict, including providing the full range of equal rights and anti-discrimination protections for LGBT people and same-sex marriage.

“When we gather again next year for Gai Jatra in 2015, we hope we are able celebrate the new law,” said 28-year-old Bipin Lamichane, who wants to marry the partner he has lived with for five years. But changing laws, he said, may be easier than changing minds in a country where arranged marriage is still the norm, and up to a decade ago homosexuals were occasionally jailed for up to three months on accusations of “unnatural sex.” Sometimes even if

62 The petitioners were Blue Diamond Society (Sunil Babu Pant), Mitini Nepal (Mina Nepali), CruiseAIDS Nepal (Sanjeev ‘Pinky’ Gurung) and Parichaya Nepal (Manoranjan Kumar Vaidya)

63 National Judicial Academy, “Decision of the Supreme Court on the Rights of Lesbian, Gay, Bisexual, Transsexual and Intersex (LGBTI) People”, 2008: <http://www.gaylawnet.com/laws/cases/PantvNepal.pdf> and http://www.humandignitytrust.org/uploaded/Library/Case_Law/Sunil_Babu_Pant_and_others_v_Nepal_Government_and_others.pdf

64 Human Rights Watch, “This Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism,” 2008: http://www.hrw.org/sites/default/files/reports/lgbt1208_web.pdf. (Marriage equality was present in only five countries during this period – South Africa, Canada, Belgium, Netherlands, and Spain).

65 429 Magazine, “Nepal pioneers a third gender on official documents, but concerns persist,” 6 March 2013: <http://dot429.com/articles/1599-nepal-pioneers-a-third-gender-on-official-documents-but-concerns-persist>

66 See Government of Nepal National Planning Commission, Three Year Interim Plan Approach Paper (2007/8-2009/10), (July 2007), available at <http://www.unpei.org/PDF/Nepal-3-year-interim-plan-eng.pdf> (discussing an interim plan to achieve social inclusion within the Nepali society)



Participant from the dialogue

we get laws in writing, there is a big problem of implementation,” Lamichane said. “There is still more that needs done.”⁶⁷

However, the lack of implementation in policy is not limited to the Supreme Court verdict or to LGBT issues. In August 2014, it was revealed that the Ministry of Law and Justice and the related committee of the CA were working to revise the Civil and Criminal Code (which will update and replace the current “Muluki Ain”)⁶⁸ to submit it to the full CA for passage sometime before the end of the year.

“Nepal is in the process of drafting a new constitution, and the participants demand that the human and fundamental rights of individuals of diverse sexual orientation and gender identities be enshrined in the constitution.”

- Discussion from the Dialogue

The Nepali Congress-led coalition government stated that it is important to finalize the civil and criminal codes as they had languished in draft form for six years and because revision of the current codes would provide an opportunity to improve the legal framework protecting civil, political, economic, social and cultural rights, as well as prohibiting discrimination.

However, activists are concerned that the codes do not explicitly protect LGBT rights by recognizing same-sex relationships, and in fact may include ambiguous language that could diminish the legal and policy gains that have been achieved.

67 Associated Press, “Nepal gay community parades for same-sex marriage”, 2014: <http://newsinfo.inquirer.net/628143/nepal-gay-community-parades-for-same-sex-marriage>.

68 Muluki Ain of 1854 (Gen. Code), Nepal Law Commission: <http://www.lawcommission.gov.np/en/documents/prevaling-laws/func-start-down/605/>



PROTECTION OF RIGHTS OF LGBT PEOPLE



LAWS, POLICY AND HUMAN RIGHTS TREATIES

The development of laws and policy that promote and support LGBT advocacy is closely related to events in Nepal's political affairs over the last decade. Much of the progress on achieving LGBT rights was made after the restoration of multiparty democracy in May 2006 and the promulgation of an interim constitution shortly thereafter.

Legality of homosexuality

Same-sex relationships and identifying as lesbian, gay, bisexual or transgender have never been criminalized in Nepal. However, the current draft Civil and Criminal Code (which will update and replace the current "Muluki Ain"), prepared by the Ministry of Law and Justice regressively defines sexual acts as occurring between a man and a woman (penile-vaginal sex). Unnatural sex is not defined in the Civil and Criminal Code. The law on which this section is similar to the Indian Penal Code (Section 377) which defines unnatural sexual offenses as voluntary "carnal intercourse against the order of nature with any man, woman or animal."⁶⁹ It should be made clear that unnatural sexual acts will not be interpreted to criminalize consensual adult same-sex activities and relationships. Archaic laws in former British colonies in Asia such as Bangladesh, Pakistan, Sri Lanka, Myanmar, Malaysia and Singapore utilize similar language in their criminal codes.⁷⁰

69 For a detailed overview of the legal battles around this law in India, see: LGBT Section 377, Lawyer's Collective, Available at <http://www.lawyerscollective.org/vulnerable-communities/lgbt/section-377.html>

70 Godwin, Bangkok, July 2010.

Same-sex marriage

In the 2007 petition to Supreme Court, *Pant and Others v Government of Nepal and Others* supported same-sex marriage claiming, “It is an appropriate time to think about decriminalizing and destigmatizing same sex marriage by amending the definition of unnatural coition.”⁷¹ The Supreme Court ruling ordered an examination of the possibility of same-sex marriage in Nepal.

In the Supreme Court case of *Rajani Shahi v. National Women’s Commission*⁷² the verdict stated:

Individuals can decide as to choosing their ways of living either separately or in partnership together with homosexuals or heterosexuals – with or without solemnizing marriage. Although in the prevailing laws and tradition “marriage” denotes legal bond between heterosexuals (male and female), the legal provisions on the homosexual relations are either inadequate or mute [sic] by now.⁷³

There has been no progress to date on legalizing same sex marriage since the Supreme Court verdict (2007). A draft same-sex marriage report has been produced under the leadership of Ministry of Health and Population but has not been endorsed or shared with the public.⁷⁴

“The participants urge the Same-Sex Marriage Law Committee to release the pending report on the review of the same-sex law. The committee was established in 2008 to review and research the need for the law. However, the report findings and conclusions of the report are yet to be shared with the LGBT community and the public.”

– Discussion from National Dialogue

Several same sex marriages have been performed despite the absence of any official law.⁷⁵ These symbolic marriages are not recognized by the state and have no legal validity within Nepal . It should be noted that some European countries have recognized same-sex weddings in Nepal to grant the Nepali spouses residency and citizenship.⁷⁶

Nepal’s draft Civil and Criminal Code (which will update and replace the current “Muluki Ain”) still refers to marriage as between only a man and a woman. The current proposed revisions do not include same-sex marriage. Section 70(1) states that marriage is between a man and woman and that the man has to be at least 22 years old and the woman 20 years old. The LGBT community has expressed grave concern over the revisions. The United Nations system in Nepal is leading the drafting of a joint statement that calls on the Government of Nepal to define marriage as between two consenting adults of any gender and with no age discrimination.

71 Decision of the Supreme Court on the Rights of LGBT People, p.276

72 The petitioner, a 30-year-old woman named Rajani Shahi, told the Court that she left her husband because she was attracted to other women. Her husband allegedly rejected that claim and sought her return, asking for help from Nepal’s National Women’s Commission to get her back. According to the decision and media reports, the Commission recommended Shahi enter a women’s shelter, but then later transferred her to a facility where women and girls who have been victims of trafficking undergo rehabilitation. In the process of ordering Shahi released from the rehabilitation facility in Kathmandu, the Court discussed her sexual orientation and related rights. Please see Knight, K. et al. New York, 2013.

73 *Rajani Shah v. National Women Commission et al.*, Supreme Court of Nepal, April 11, 2013, Writ No. 069-WH-0030 discussed in Knight, K. et al. New York, 2013p.41

74 Weena Pun, The Kathmandu Post, “Report on same-sex marriage: Sexual minorities await with bated breath”, 2014: <http://www.ekanti-pur.com/the-kathmandu-post/2014/01/22/top-story/report-on-same-sex-marriage/258435.html>

75 “Nepal’s ‘First Gay Wedding’ Ceremony Held”: <http://www.bbc.co.uk/news/world-south-asia-13847299> (Accessed August, 2014)

76 Interview with an acquaintance of one of the authors who settled in a Western European country in 2013 following his wedding to a same-sex partner the same year. This wedding was recognized by the European country for immigration and visa purposes for the Nepali spouse.



The organizer team with United Nations Volunteers for the dialogue

Anti-discrimination

The 2007 Supreme Court decision issued directive orders to the Government of Nepal to amend existing discriminatory laws and to formulate appropriate legislation to protect the rights of sexual minority groups. It stated, “Although, there is no distinct law that declares the relation between homosexuals as criminal (it is kept within the definition of unnatural coition), there is a claim that the state mechanism has implicitly contributed to the discrimination created due to negative attitude of the society towards these people which cannot be ignored.”⁷⁷

A further judgment was issued on 18 November 2008 where the Supreme Court reiterated that all LGBT persons are defined as “natural persons” and that their physical growth as well as their sexual orientation and gender identity (SOGI) and expression are all part of a natural process. Thus, equal rights, identity and expression must be ensured regardless of sex at birth.⁷⁸

Recognition of third gender

“The 2007 decision by the Supreme Court which recognized a third gender ‘other’ category on citizenship documents is only available to individuals who have not previously applied for citizenship. Those who have already obtained citizenship certificates are unable to change their gender. This infringes the rights of individuals below the age of 18 at the time of the decision as well as to those who already have their citizenship but wish to change it.”

– Discussion from the National Dialogue

The Supreme Court’s December 2007 verdict recognized a third gender. Additionally, in 2013 the Home Ministry announced a decision to provide citizenship under the category of ‘other’ for citizens who do not wish to be identified as male or female.⁷⁹ So far, only a handful of people have so far

77 Pant and Others v. Government of Nepal and Others (2007)

78 Gaylawnet: <http://www.gaylawnet.com/laws/np.htm#sodomy> (Accessed August, 2014)

79 Associated Press, “Nepal to issue “third gender” IDs For citizens who do not wish to be identified as male or female, “third” allows greater

been given a citizenship card with the new self-identified 'other' gender identity. Nepali local and district administrations still request proof to certify one's gender, while the national government only issues citizenship cards with the third category to new applicants.⁸⁰ Obtaining a citizenship certificate with one's chosen gender can be of crucial importance for an individual, because, "[w]hen an individual's cultural legibility is not affirmed by their identity papers, even everyday quotidian transactions become moments of vulnerability."⁸¹

There are many possible reasons for the low number of people who have received 'other' citizenship certificates. One could be inefficiencies, prejudice, or lack of awareness among the government bureaucracy. Some transgender men and women may wish to identify as male and female and not an "other" gender category with which they have no emotional or practical attachment. It may reflect confusion on the part of transgender individuals on what the 'other' category means. In fact, the definition of third gender is unclear. The entire LGBT community is often misrepresented as third gender and many lesbians and gay men do not wish this label to be applied to them.⁸²

An element of confusion in the 2007 Supreme Court ruling is that its 'other' category appears to conflate sexual orientation with gender identity, without making a clear distinction. It is a confusing and inaccurate legal category.⁸³ For example, it was reported that a lesbian in Nepal successfully changed her documentation to reflect her 'other' identity.⁸⁴

In South Asia, transgender women identities are historically more acceptable and visible. It may be somewhat easier to achieve equal rights for them on paper – although in practice they might suffer more violence and harassment than other sexual or gender minority communities. For instance, in India some LGBT activists worry that the recent Supreme Court verdict on transgender rights will mostly benefit transgender women communities.⁸⁵ Other less visible identities in South Asia, such as lesbians and gay men, may find it harder to be understood by society. Transgender men identities are even more invisible and harder to protect.

Since 2010, Nepal's Election Commission has allowed people to register to vote as third gender solely on the basis of self-identification. Additionally, the 2011 national census allowed citizens to identify as "third gender."⁸⁶ In practice this has meant very little as the challenges of classifying oneself as third gender included lack of interest or discrimination on the part of census-takers, logistical problems and a flawed data collection process.

Argentina and New Zealand provided models for the introduction of the third gender category in administrative systems ranging from voter registration and housing census to citizenship

ease with legal documents": 2013, http://www.salon.com/2013/01/22/nepal_to_issue_third_gender_ids/

80 Angel L Martinez Cantera, Al Jazeera "The country is a pioneer in rights for gender and sexual minorities, but many continue to face marginalization", 2014: <http://www.aljazeera.com/indepth/features/2014/03/nepal-third-gender-201431181229222617.html>

81 Currah, P. and Mulqueen, T. "Securitizing Gender: Identity, Biometrics, and Transgender Bodies at the Airport." *Social Research* (Vol 78), pp. 557, 561 (2011).

82 From a discussion of transgender citizenship and identity issue at the National Dialogue.

83 Budhiraja, S., Fried, S. and Teixeira, A. "Spelling it Out: From Alphabet Soup to Sexual Rights and Gender Justice." *Development, Sexual Rights and Global Governance*, edited by Amy Lind, New York: Routledge. (2010) pp. 131–144.

84 Angel L Martinez Cantera, Al Jazeera "The country is a pioneer in rights for gender and sexual minorities, but many continue to face marginalization", 2014

85 Dinesh C Sharma, "Changing landscape for sexual minorities in India" July 2014, *The Lancet*: [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)61070-9/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)61070-9/fulltext) and <http://timesofindia.indiatimes.com/India/Supreme-Court-recognizes-transgenders-as-third-gender/articleshow/33767900.cms>,

86 Michael Bochenek and Kyle Knight "Establishing a third gender category in Nepal: process and prognosis" (2012) *Emory International Law Review*, vol. 26. Available at: http://law.emory.edu/eilr/_documents/volumes/26/1/recent-developments/bochenek-knight.pdf

certificates.^{87,88} With the support of BDS, the Home Ministry drafted policies on citizenship certificates, which are crucial for many basic functions in daily life including the voter registration for the 2013 election.⁸⁹ The census's failure to record a significant number of third gender people was unexpected⁹⁰ and the Home Ministry's policies had much less impact on the ground than expected. Advocacy to recognize third gender citizenship rights has continued in various fora, including with the United Nations system in Nepal⁹¹ and Nepal's Universal Period Review (UPR) in 2011.⁹²

Other laws and policies

It is reported that police utilize generic laws such as the Public Offences Act (1970) to harass and intimidate LGBT individuals, even though homosexuality is not illegal. Human Rights Watch reported in February 2013 that four transgender women were arrested and charged under this Act, "a vaguely worded law that can result in up to 25 days in detention and a fine amounting to more than US\$300."⁹³ Other LGBT activists have reported threats and harassment. Some worry that the continued existence of a reference to "unnatural sex" in the draft Nepali Civil Code can be used by authorities as an excuse for harassment, extortion, and refusal of public services. Current sexual assault laws only cover non-consensual sexual intercourse where the perpetrator is male and the victim is female. As such, sexual assault of a man or a third gender person is not considered to be rape, but is treated as a lesser offence.⁹⁴

Human rights treaties

The rights of LGBT people are enshrined in numerous international human rights instruments such as the right to non-discrimination. As Nepal is a signatory to numerous treaties, which should, in theory, support the human rights of LGBT people. In addition to ratifying these international treaties, Nepal has various domestic laws and policies on human rights and on HIV that include rights-based components. Nepal also lacks explicit laws or policies on sex work. As a large number of sex workers are transgender women, a lack of positive policies around sex work affects them. However, the implementation of these treaties and policies generally remain unrealized.

Nepal has signed and/or ratified the following international treaties for the protection of human rights. Ratification dates are provided below:⁹⁵

87 Ibid.

88 The New Republic, "What We Can Learn From Nepal's Inclusion of 'Third Gender' on Its 2011 Census," July 18, 2011: <http://www.newrepublic.com/article/world/92076/nepal-census-third-gender-lgbt-sunil-pant>; The Kathmandu Post, "Separate and Unequal," August 31, 2011: <http://www.ekantipur.com/the-kathmandu-post/2011/08/31/oped/separate-and-unequal/225780.html>; The Kathmandu Post, "Zero in 26,620,809," October 1, 2011: <http://www.ekantipur.com/the-kathmandu-post/2011/10/01/oped/zero-in-26620809/226915.html>

89 Knight, K., et al. New York, 2013, p.24.

90 Kyle Knight, "What Can We Learn from Nepal's Inclusion of Third Gender on Its 2011 Census", July 18, 2011, New Republic: <http://www.newrepublic.com/article/world/92076/nepal-census-third-gender-lgbt-sunil-pant> (Accessed June, 2014)

91 Remarks by Jyoti Sanghera, Representative of OHCHR-Nepal On the Occasion of an Interaction on Equal Rights to Sexual Minorities: Right to Citizenship Certificate Hotel Everest, Kathmandu, July 7, 2011: http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2011/July/2011_07_07_Jyoti's_Speech_sexual_minorities_E.pdf

92 UN Human Rights Council, seventeenth session, Report of the Working Group on the Universal Periodic Review of Nepal, A/HRC/17/5, March 8, 2011: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/42/PDF/G1111642.pdf?OpenElement>

93 HRW. "Nepal: Climate of Fear Imperils LGBT People." <http://www.hrw.org/news/2013/04/01/nepal-climate-fear-imperils-lgbt-people>

94 Blue Diamond Society (BDS), Heartland Alliance for Human Needs & Human Rights -Global Initiative for Sexuality and Human Rights, "The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Nepal", (Geneva, June, 2013): http://tbinter-net.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/INT_CCPR_NGO_NPL_14738_E.pdf

95 http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20%26%20Publications/hiv_aids/rbap-hhd-2013-NHRI-Background-Brief-Nepal.pdf

1. Universal Declaration of Human Rights: 1948
2. International Covenant on the Elimination of Racial Discrimination (ICERD): 30 January 1971
3. International Covenant on Civil and Political Rights (ICCPR): 14 May 1991
4. International Covenant on Economic, Social and Cultural Rights (ICESCR): 14 May 1991
5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 14 May 1991
6. International Convention on the Elimination of Discrimination against Women (CEDAW): 22 April 1991 and the Optional Protocol on CEDAW: 18 December 2001



POLITICAL AFFAIRS

Nepali politics is becoming more inclusive of LGBT issues and people, particularly after Sunil Babu Pant became Asia's first openly LGBT national parliamentarian. However, political hyper partisanship has resulted in a failure to deliver a new constitution since 2008. This has created instability and further political gains for LGBT people are unlikely while the gains already achieved stand a real risk of being reversed.

Political parties have been accused of using sexual and gender minorities as a "vote bank" to gain votes for election campaigns. After elections, they do not follow through on their promises and there are no mechanisms in place to hold them accountable. A Dialogue participant said, "In reality... political party representatives hardly understand the issues and sentiments of the LGBT community despite making grand statements about our rights."

Dialogue participants recommended that each political party appoint LGBT focal persons. The inclusion of these focal persons will ensure that issues concerning sexual and gender minorities are covered and supportive policies are introduced.

In addition LGBT groups feel the need to be more active in advocating and lobbying to include LGBT issues at the policy level in government bodies, as well in calling for and monitoring the implementation of supportive policies. Clear targets for lobbying should be identified. The media should be engaged to ensure policymakers are informed and responsive to the needs of the LGBT community. It was felt by some that, at present, too much of the energy of community organizations is directed towards achieving limited high profile gains or hosting media-friendly events with dramatic visuals. Little follow up is done to implement or sustain the major policy and legal gains that have already been achieved.

"We are pretty sure that the issue of LGBT won't be raised at all in the Constituent Assembly unless we have a representative there. In such a situation, we strongly demand that the parties ensure at least one member from our community through 26 lawmakers yet to be nominated."

– Laxmi Ghalan, Director of Mitini Nepal⁹⁶

96 Republica, February 2, 2014, "LGBTs warn of protests if excluded from CA": http://www.myrepublica.com/portal/index.php?action=news_details&news_id=69707 (Accessed June, 2014)

“The time has to come to fight for our rights otherwise we will never get them.”

– Dialogue Participant

The second Constituent Assembly elections in November 2013 were contested by more than 60 prominent LGBT leaders.⁹⁷ However, none of the openly LGBT candidates who stood for under the first-past-the-post competitive quota system managed to win a seat. Prominent among the contestants were Laxmi Ghalan, a 32-year-old lesbian who fought the election from Makawanpur district as a candidate for the Rastriya Prajatantra Party, and Badri Pun, a transgender man, who attempted to be nominated as a proportional representation candidate from Myagdi-2 representing the Communist Party of Nepal (UML). Furthermore, no openly LGBT person – including Sunil Babu Pant who was previously a nominated Member of Parliament – managed to get nominated under the proportional representation quota to be an MP. Therefore none of the current MPs in Nepal’s large 601-person parliament are openly lesbian, gay or transgender. Many community members have expressed their concern that this lack of representation might deprive them of a voice in the nation’s top legislative body. There are also no senior openly LGBT government bureaucrats or political appointees.

The security forces are another key part of the state in which more inclusive policies are needed to make LGBT people safer and feel more welcome. The case of two Nepal Army soldiers who were accused of having a lesbian relationship and summarily arrested, imprisoned, and dishonourably dismissed in 2007 because of their sexuality attracted much negative publicity for the army.⁹⁸ The Ministry of Defense and Nepal Army should conduct a review of their policies and procedures and make the necessary changes to avoid incidents like this in the future. As one of the oldest and most stable institutions of the Nepali state, the army should come under much more scrutiny and pressure from activists and others to change their policies to be more LGBT-friendly.

One of the Dialogue participants discussed the importance of allowing openly LGBT individuals into the Nepal Police and the Armed Police Force in order to sensitize police officers on sexual minority and gender identity issues. Additionally, police officers – who regularly and closely interact with civilian populations – should be provided sensitivity training about LGBT and other minorities so that they are aware and respectful of diversity. This could decrease police violence against the LGBT community, especially transgender women, including those who engage in commercial sex work.

Many dialogue participants stated that until sexual and gender minorities accept and speak up about their identities in greater numbers, LGBT issues will never gain the attention they deserve due to the absence of a critical mass of voices. To achieve political rights and power, “the community has to come together as one and leverage synergy between lesbians, gays, bisexuals, transgender, queer and intersex people” said one participant, expressing the prevailing sentiments among community members. However, it was recognized that coming out is not easy, and before this can happen, greater political activism and social changes is necessary.

Government

In contrast to the challenges in everyday life, there is a high level of visible advocacy for LGBT rights at the political level, particularly in the area of policies and legislation. Nepali LGBT activists and

97 Blue Diamond Society, “62 LGBT Candidates In Nepal To Run In Upcoming Elections”: <http://bluediamondsociety.wordpress.com/2013/07/04/62-lgbt-candidates-in-nepal-to-run-in-upcoming-elections/>

98 Haviland, Charles “Nepal Army Sacks Lesbians,” BBC News, 1 July 2008: http://news.bbc.co.uk/2/hi/south_asia/7483499.stm

NGOs were successful in advocating for the inclusion of gender non-confirming identity “others” on official government registers and programs, including the 2011 census,⁹⁹ policies about the educational curriculum,¹⁰⁰ and the Passport Regulation Act.¹⁰¹ The Government of Nepal has also provided a small amount of annual funding for LGBT issues since 2011.¹⁰² Furthermore, the Ministry of Health and Population and the National Center for AIDS and Sexually Transmitted Infections Control (NCASC) have in general been very supportive of LGBT rights and health issues. The National Human Rights Commission (NHRC) established an internship opportunity for an LGBT individual.¹⁰³ Community-based LGBT organizations have been able to construct gender-neutral public toilets in some cities in some cases using government funds.¹⁰⁴

However, LGBT people do not receive the same government quotas and special favours as with other recognized minorities. Excluded and marginalized communities such as Dalits, Janjatis, Madhesis, Muslims, and Tharus are recognized as minorities with special needs with a quota system that benefits minorities and ensures social inclusion. LGBT people are underrepresented in state institutions and a quota would be a useful tool to advance sexual and gender minority visibility and rights. “Despite being recognized sexual minorities, we have not had the chance to enjoy our full rights, unlike the Dalits, Janajatis, and the physically disabled,” said a Dialogue participant.

The Dialogue recommended that appointing an LGBT focal person in the Ministry of Education, Ministry of Home, Ministry of Foreign Affairs, Ministry of Law, and other key ministries would help ensure the promotion of LGBT rights and the formulation of policies that protect LGBT human rights. The Ministry of Health, the National Center for AIDS and STI Control, and the National Human Rights Commission already have working-level staff who specialize on LGBT and other human rights issues and the same practice would benefit other ministries.

Multilateral institutions

LGBT organizations have lobbied international stakeholders in Kathmandu, including UN agencies, foreign embassies, and development agencies to be more inclusive of LGBT issues. The United Nations system in Nepal has begun including questions about sexual orientation and gender identity in its surveys.¹⁰⁵ UNDP Nepal hosts a national United Nations Volunteer LGBT Human Rights Officer as part of the regional ‘Being LGBT in Asia’ initiative.¹⁰⁶ UNICEF Nepal’s Adolescent Development and

99 Kyle Knight, The Huffington Post, “Nepal’s Third Gender and the Recognition of Gender Identity”, April 24, 2014: http://www.huffingtonpost.com/kyle-knight/nepal-third-gender_b_1447982.html

100 <http://ilga.org/ilga/en/article/ozvxE5o1JN>

101 <http://ilga.org/ilga/en/article/ozdj1Xy1x2>

102 This amounted to Nepali Rupees 300,000 per annum, which is approximately \$3000.

103 IDLO/UNDP, “Nepal: Assessing the Capacity of National Human Rights Institutions in South Asia to Address Discrimination and Human Rights Relating to HIV, Sexual Orientation and Gender Identity,” June 2012: <http://regionalcentrebangkok.undp.or.th/practices/hiv/ids/documents/HIV-2013-NHRI-Background-Brief-Nepal.pdf>

104 Kyle Knight, The Kathmandu Post, “Flushing Out Genderism,” April 28, 2012: <http://www.ekantipur.com/2012/04/28/opinion/flushing-out-genderism/353100.html>

105 United Nations Resident and Humanitarian Coordinator’s Office, “Workforce Diversity in NGOs: Gender Equality and Social Inclusion status of NGOs in an Eastern Hill district,” June 9, 2011: http://un.org.np/sites/default/files/Field%20Bulletin%20-%20Issue%20-%20209_Workforce%20diversity_GES1%20status%20in%20NGOs_June-2011.pdf

106 Details on the ‘Being LGBT in Asia’ initiative can be accessed through the UNDP Asia-Pacific Regional Centre website at <http://asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/being-lgbt-in-asia/>

Participation¹⁰⁷ implements a program through FSGMN to prevent HIV among adolescents from sexual and gender minorities.

The US Embassy has been particularly supportive of LGBT activism in Nepal. It joined the Australian and Norwegian Embassies in co-sponsoring a regional LGBT sports festival in October 2012,¹⁰⁸ hosted a reception at the Ambassador's residence for the same event, and hosted a panel discussion of prominent activists on LGBT issues at the embassy premises in June 2013.¹⁰⁹ Additionally, the US Embassy provided approximately \$15,000 in funding for the Pink Himalayan Community Center, BDS' new central office in Dhumbarahi, Kathmandu which they moved into in September 2013.

Recommendations on laws, policy and political affairs from the dialogue:

- The government should take immediate action to implement the Supreme Court verdict of December 2007 and related directives so that LGBT people may enjoy full protections and rights.
- Greater involvement is needed by LGBT groups to advocate and lobby for positive policy changes and for monitoring the implementation of supportive policies.
- Legalize same sex marriage and provide for the same age of consent for marriage for all sexes and genders.
- Outlaw and legislate penalties for discrimination on the grounds of sexuality, sexual orientation, or HIV positive status.
- Provide for representation of openly LGBT Members of Parliament in the Constituent Assembly.
- Expand the program of government quotas for minorities to include LGBT people in addition to Dalits, indigenous people, religious minorities and ethnic minorities.
- Appoint focal persons in key ministries to lobby for LGBT rights issues and ensure implementation of LGBT-friendly policies.
- Change the human resources and operating policies of the Nepal Army, Nepal Police, and the Armed Police Force to ensure they welcome openly LGBT servicemen and servicewomen.
- Sensitivity training for police forces to ensure they do not engage in violence against LGBT people and are respectful of diversity.

107 More details on the program are available in the UNICEF Nepal Country Program Document 2013-2017, pp. 9-10, at http://www.unicef.org/about/execboard/files/Nepal-2013-2017-final_approved-English-14Sept2012.pdf

108 Roshan Mahato, a DAC member for the Dialogue and head of FSGMN was the coordinator for the regional sports event. He was assisted by Danielle Toole Sanford, a consultant from the US Embassy. Greg Louganis, four time US Olympics gold medalist in swimming was the chief guest for the awards ceremony for the sports festival.

109 This event was moderated by one of the report co-authors, Saurav Jung Thapa (currently Technical Officer – LGBT and Human Rights at UNDP Asia-Pacific Regional Centre), in his capacity at that time as a member of the US Embassy Youth Advisory Council 2013 and as Technical Advisor of Blue Diamond Society. The panelists at that event were Bharat Man Shrestha (another co-author and currently LGBT Human Rights Officer at UNDP Nepal and a member of the US Embassy Advisory Youth Council 2014), Pinky Gurung (DAC Member and Chair of the BDS board), Roshan Mahato (DAC Member, Coordinator of FSGMN, and Secretary of the BDS board), and Basu Guragain (DAC Member, then Project Officer at Gay Group Nepal, and presently Coordinator of FSGMN). It was attended by approximately 50 Nepali young leaders from all walks of life and by US Embassy and USAID staff.



EDUCATION

Nepal's school system is divided into primary, lower secondary, secondary and higher secondary education. Basic education lasts eight years, with a five-year primary cycle and a three-year lower secondary cycle. Students take a further two years of schooling at the secondary level, which concludes with the *School Leaving Certificate* (SLC) Examination, required for admission to the upper secondary level. Upper secondary schooling consists of two additional years undertaken within the school system or through a similar certificate program offered at foreign universities. However, most courses are offered in Nepali.

Nepal's Education Board oversees all schools throughout the country and has included sexual and gender diversity as part of the school curriculum on sexual and reproductive health for grades 6, 7 and 8 under the 'Health and Physical Education' subject. The new syllabus includes components on same-sex attraction and transgender issues among other topics related to sexual health and awareness.

The School Sector Reform Plan (SSRP), considered the overarching policy document governing the Nepal school education system, does not mention LGBT persons or SOGI issues, although one of its aims is to increase and ensure quality and systematic education to all minority groups coexisting in Nepal. While other minority groups such as Dalits, religious minorities, and ethnic minorities are explicitly mentioned, this is not the case for LGBT people.

The main challenges described by LGBT Dialogue participants related to physical harm, access and facilities, to be specific: physical danger from homophobic and transphobic bullying, poor mental health from bullying within one's community, in school or by family members, limited access to education, discriminatory attitudes of teachers, an absence of an LGBT-friendly curriculum for students, and the lack of toilets for transgender people in educational settings.

In the Nepal Government's commitment to its "Three-Year Interim Plan", the government committed to:

"...to institutionalize a well developed human rights culture, by controlling violations of human rights in all sectors."¹¹⁰

Inclusion of sexuality and gender in the school curriculum is a positive first step taken by the government towards spreading awareness regarding LGBT issues and combating homophobia in schools of Nepal. With support from the World Bank, BDS has developed training packages, conducted trainings and made toolkits for more than 600 teachers over the last year to sensitize them on the topic. Some teachers have formed their own groups to help other teachers and schools to educate about homophobia. The toolkit provides basic information about sexuality and gender issues while also helping schools propose practical solutions to and identify problems faced by LGBT students, such as bullying and harassment.

However, the education sector has yet to introduce and implement major reforms to make Nepali education institutions a safe and an accepting place for all students of diverse SOGI. BDS's efforts should be recognized and used by other organizations working in the area to replicate at a larger national scale.

110 Blue Diamond Society (BDS), Heartland Alliance for Human Needs & Human Rights -Global Initiative for Sexuality and Human Rights, "The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Nepal", (Geneva, June, 2013): http://tbinter-net.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/INT_CCPR_NGO_NPL_14738_E.pdf

Homophobic attitudes in education officials, teachers, and students are mainly shaped by a lack of understanding of gender and sexuality. This exacerbates hostility towards LGBT students and means they are susceptible to isolation, bullying, harassment, and discrimination if their identity is disclosed to their teachers and fellow students.¹¹¹

“Particularly, learners whose sexuality is perceived to differ from the norm, or whose gender identity or behaviour differs from the set biological sex are often vulnerable to prejudice in classrooms and in school.”

– Dialogue Participant

According to a UNESCO Report,¹¹² studies in a range of countries demonstrate young people are more likely to experience homophobic bullying in schools with less bullying at home or in the community. This reality is no different in Nepal. Dialogue participants noted that homophobic remarks and physical harassment is common and practiced by teachers, staff, and fellow students.

As discussed earlier, Nepal currently lacks anti-discrimination laws or hate crimes legislation to protect people from violence, harassment, or discrimination based on their sexual orientation or gender identity. Therefore acts of prejudice and discrimination by teachers and education officials can go unpunished and keep recurring. School officials and administrators are often not trained to understand issues facing those of different SOGI, and therefore cannot maintaining a healthy and safe school environment for learning for all children.¹¹³

Homophobic bullying, in particular intimidation, public ridicule and having belongings stolen is strongly associated with absenteeism. In some cases, students miss classes or pretend to be ill to avoid admitting to the loss of books, equipment, or homework.¹¹⁴ Bullying has a negative impact on the victims in terms of academic performance and school attendance. This often leads to depression or other mental health issues, such as self-harm, low self-esteem, substance abuse and suicidal tendencies. Most who are bullied will not be able to seek support from their families, with sexuality a taboo issue. However, bullying on the basis of SOGI is often not reported by mainstream media and is not seen to be of concern to school authorities.¹¹⁵

Transgender students face particular challenges regarding uniform policies and a lack of toilet facilities as other students express discomfort at sharing toilet facilities with them. Transgender students may be barred from a classroom or entering an exam hall if the gender of their uniform does not match their gender identity, i.e. not reflecting the gender they were assigned at birth. Some transgender youth have reported being unable to take the national exam necessary for entering higher education because of this. Others report being accused of fraud. In order to avoid this, some drop out of school.¹¹⁶

111 Rabin Pathak et al., (2010) Gender Identity: Challenges to Accessing Social and Health Care Services for Lesbians in Nepal. *Global Journal of Health Science*, 2(2), pp. 207–214

112 UNESCO (2012). Good Policy and practice in HIV and health education: Education sector responses to homophobic bullying. <http://unesdoc.unesco.org/images/0021/002164/216493e.pdf>

113 Blue Diamond Society (BDS) and Heartland Alliance for Human Need & Human Rights- Global Initiative for Sexuality and Human Rights (2013)

114 UNESCO (2012)

115 Ibid.

116 Blue Diamond Society (BDS) and Heartland Alliance for Human Need & Human Rights- Global Initiative for Sexuality and Human Rights (2013)

In spite of many challenges, there have been major achievements in the education sector in relation to SOGI issues. The national flagship educational institution, Tribhuvan University (TU) has included LGBT issues in its master's level curriculum for their gender and feminist studies program. Students in the Sociology and Anthropology faculty have been tested on sexual and gender minority issues in their final exams since 2011. TU faculty members and LGBT organizations have worked together to add LGBT issues to the curriculum to give students an inclusive and broader understanding of gender and sexuality with courses on the historical and contemporary challenges faced by LGBT people as well as their rights, diversity, identities, and representation in society. The chief of TU's Department of Sociology and Anthropology, Om Gurung, has stated publicly that a larger number of students have shown interest in gender and feminist studies courses after LGBT issues were added to the curriculum. A leading women's college in central Kathmandu, Padma Kanya Campus, has also included LGBT issues in its curriculum for various subjects since 2011.



CASE
STUDY
#1

CASE STUDY¹¹⁷

"On a muggy summer morning, about 50 students pursuing their social work degree sit inside a classroom at Kathmandu Model College. It is not a regular lecture but an orientation and interaction on sexuality. Dressed in a black top and a skirt, frequently tucking her shoulder-length hair behind her ear, Bhumika Shrestha speaks about her own sexuality. A transgender woman, Shrestha explains and also raises questions on gender, sexuality and sexual orientation. Some students think that all LGBT people are cross-dressers or transgender, and others say they have not come across any gays or lesbians. Most Nepalese, in general, share the same notion. Roshan Mahato, founder of the Sexual and Gender Minority Student Forum Nepal, says he was discriminated against in the university when his peers found that he was gay after a discussion on gender issues in his postgraduate sociology class. After careful consideration, he established the Forum in 2009 to raise awareness about the issue. "I thought," says the 27-year-old, "through our awareness programs, we should make them learn about the issues, through the curriculum itself. So we don't have to explain what LGBT is every time."

Recommendations from the Dialogue on education:

- The Ministry of Education should be accountable for recently introduced curricula that includes LGBT issues for primary, secondary and higher secondary levels of the education system for both public and private institutions.
- As many Nepalis in rural areas lack access to formal education, mechanisms to inform and educate them about LGBT issues should be developed.
- Provide SOGI awareness and human rights training to faculty, staff, and students and develop mechanisms that address hate and bias-motivated acts (including homophobic bullying in schools) and include provisions for punishing perpetrators.
- The Government of Nepal should issue new citizenship documents to LGBT students who opt for an "other" gender option.

117 Bibek Rajbhandari, "Nepal's LGBTI-Rights Movement: Personal Perspectives (AUDIO, PHOTOS)" The Huffington Post July 25, 2012: http://www.huffingtonpost.com/bibek-bhandari/nepal-lgbti-rights-movement_b_1694277.html

- In schools and other educational facilities, it is recommended that teacher-training programs that discuss sexual orientation and gender identity be introduced. The impact of teacher training on these issues should be monitored and evaluated.
- Introduce scholarship quotas for sexual and gender minority students, similar to quotas provided for women, Dalits, and other disadvantaged minorities.
- The Council for Technical Education and Vocational Training (CTEVT) and Teacher Service Commission should introduce quotas for LGBT teachers and professionals.
- LGBT resource centres and libraries should be established, particularly in universities to encourage LGBT-related social and academic activities and school management committees should have at least one LGBT representative.
- Recruit psychologists to provide mental health support for LGBT students and ensure that seating arrangements in classrooms are not segregated by gender. Strict school uniform policies should be scrapped and a more liberal policy instituted so that transgender students don't feel the pressure to either conform or drop out. Build separate toilets for transgender students.
- Reproductive health and sex education in schools should cover SOGI issues and non-heterosexual sexuality including discussion of the high risks of HIV and other STIs faced by gay men, transgender women, and other MSM.
- As one of Nepal's biggest development partners, the World Bank should include SOGI issues as a component of training program curriculums in its various projects.



EMPLOYMENT

Employment needs and conditions of LGBT people are not well documented and underresearched. LGBT individuals in Nepal face challenges in employment as individuals and as members of a community subject to discrimination and abuse, compounded by their often-inferior social status and position. Discrimination is common in the workplace based on perceived LGBT identity and HIV status and occurs during recruitment and employment. Sexual harassment of LGBT employees was widely reported by the Dialogue participants, although little has been documented through police reports or other formal testimonies. Victims are reluctant to speak out in public and often hide their stories due to fear of being denied new jobs and the fear of being stigmatized.

Most discrimination happens due to the personal prejudice of employers, lack of awareness of sexual diversity and weak laws. For example, an owner of a hotel in Thamel was wary of hiring LGBT employees as he assumed if he hired transgender people that he would get less business or guests would leave, stating that hiring LGBT people would disturb the peace and tranquility of the hotel and no laws required him to hire LGBT people or protect them from discrimination.¹¹⁸ Many Dialogue participants hoped that progressive global corporate practices would be adopted by Nepali employers so as to minimize discrimination and bias such as this.

118 Interview with hotel staff in Thamel, Kathmandu in June 2014.

In the broadest sense, homophobia and transphobia in society and the education system will be replicated in the workplace; the damage of homophobia and transphobia may affect LGBT employees in terms of their self-esteem and mental health, which will affect their quality of work.

Many LGBT people and especially transgender women have difficulty finding jobs that meet their expectations and competencies. Gay men and lesbians on the other hand, if their sexual orientation cannot be recognized by their outward appearance, are “safe” as long as they remain in the closet. This can cause various mental health issues from the pressures of hiding their sexuality. Employers may increase their workload due to the belief that they have no family obligations to fulfill.¹¹⁹

The difficulties faced by transgender people in acquiring citizenship cards affect their employment opportunities as most workplaces in Nepal require citizenship documents to hire employees. One Dialogue participant explained, “Many employers ask for your citizenship to hire you, but when you fail to produce one because you don’t have one, you are most likely disqualified for the job.” Their credibility and credentials are often overlooked in the light of their transgender identity and appearance. Transgender women are assumed to be sex workers because of their appearance and behavior. Transgender people are often subject to discrimination and limited to low-level employment, including in the entertainment industry and sex work.

CASE
STUDY
#2

HOSTILITY TOWARDS A TRANSGENDER MALE EMPLOYEE¹²⁰

Ravi Basnet (real name withheld), a female-to-male transgender person employed at a college, believed that his immediate supervisor frowned upon his decision to transition. Ravi’s suggestion to provide awareness training and an open forum in which colleagues could ask questions was dismissed by his supervisor. Some of his colleagues distanced themselves from him, while his male colleagues expressed discomfort with his use of the men’s restroom. The human resources department eventually supported his right to use the restroom corresponding with his gender identity. However, without clear communication on this issue from management, it remained a source of discomfort for both Ravi and his colleagues.

Before coming out as transgender, Ravi Basnet had received no complaints about his work and there was no indication of poor performance. Though the college did not have a policy of performance complaints against an employee, he later discovered that his colleagues had labeled him as being incompetent and useless. Basnet said he was looking for new employment.

Not all LGBT people will face the same challenges in the workplace. Seira Tamang in her research¹²¹ categorizes sexual minorities into two main groups based on their socioeconomic background. Those that belong to a higher socioeconomic background are well-educated and employed in the mainstream market and often keep their sexuality to themselves or limited within a tight social circle. These individuals usually identify as gay or lesbian and do not feel the need to disclose their sexuality

119 Discussions on employment among Dialogue participants.

120 Interview, Kathmandu, May 2014.

121 Tamang, S. (2003) “Patriarchy and the Production of Homo-Erotic Behaviour in Nepal” Studies in Nepal History and Society 8(2): pp. 225-258, December 2003: http://martinchautari.org.np/files/2_%20Seira%20Tamang.pdf

at the workplace due to perceived homophobia. On the other hand, many openly LGBT people belonging to lower socioeconomic backgrounds, who generally tend to identify as transgender or third gender, may not have the skills, education, or opportunities to hold professional employment. As a result of lack of employment or underemployment, many LGBT people in Nepal are living below the poverty line.

Most traditional work settings in Nepal such as the government service, educational institutions, health care services and the private sector are not welcome or tolerant of openly LGBT people. Certain sectors such as design, fashion, the arts, performance and entertainment are generally more welcoming. Several prominent beauty queens and celebrities came out in support of LGBT rights in a video produced for B-Change Foundation and 'Being LGBT in Asia' by a lesbian activist and film director in Kathmandu who was involved in the production of the lesbian romance movie *Soongava*, Nepal's official selection for the Oscars in 2013.¹²²

Civil society organizations have reported to some extent being involved in setting up vocational training centers and developing life skills training programs for different marginalized groups. But little has been done to seek mainstream employment for LGBT persons, especially transgender people, who are more visible and hence particularly vulnerable to exploitation and discrimination.

Recommendations from the dialogue on employment:

- The Ministry of Labor and employers should provide psychosocial support for LGBT people to increase their participation and productivity in the workforce. The government should also provide legal support to victims of employment-related discrimination based on SOGI status.
- Businesses should ensure equal treatment to everyone at the workplace on issues relating to remuneration, insurance, and social welfare. Same-sex couples and their children should receive the same benefits as heterosexual couples and families do from the workplace. Violators of the Labor Code who discriminate against LGBT people in the workplace should be penalized.
- Businesses that have LGBT-friendly policies should be promoted and commended.
- LGBT community advocates should lobby for policies at the Department of Labor that ensure LGBT people's rights to work free of fear, bias, and discrimination; organize, support and encourage LGBT entrepreneurs and business owners; and work with existing government projects to mainstream LGBT issues at the national level.



SOCIETY AND FAMILY AFFAIRS

Nepal is still burdened by a rigid and hierarchical caste system and emerging from a recent violent conflict. In this context, family and society are the most important influence on LGBT people in Nepal. Despite official recognition on paper and some political advances, it is family pressure and social expectations that force most LGBT people to stay firmly in the closet. There is little discussion of why this happens and the harm it causes both to LGBT people and to the opposite sex partners they may marry. Coming out as an LGBT individual to family, friends and society is uncommon.

122 Nilu Doma Sherpa, *Stories of Being Me*, available at <http://www.being-me.net/stories-of-being-me/film-makers/nilu-doma-sherpa/>

Family life is central to the lives of Nepali people. Social life for many individuals, especially in rural areas, revolves around family. This is significant as about four-fifths of Nepalis live in rural regions. Families are almost without exception formed out of marriage between heterosexual couples and family life is deeply influenced by ancient Hindu principles and traditions. “Marriage is seen as obligatory and sacramental, more than just a bond between two individuals but one between families. It is the promise of continuity in patriarchal family lines and has deep religious, social, and institutional significance.”¹²³ This concept of marriage is therefore a main cause of discrimination against LGBT people. The pressure to get married, produce children, and to start a family have forced LGBT people to either conform and marry someone of the opposite sex or else to physically and/or emotionally distance themselves from their families.

Since society is close-knit and family and kinships are prominent, image and “saving face” play a significant role in an individual’s life. Many parents of LGBT children fear that a child being gay or transgender will make them lose face and become an object of derision. Instead of the individual, people are more accountable and obliged to society and community. A family’s prestige and social position almost always trumps individual freedom and choice. Making sacrifices for the sake of family is seen as honorable and desirable. Families attribute sadness, worries, and depression to having a lesbian, gay or transgender child. Some families are angry or neglect their LGBT member. They worry about losing honor and fear the discontinuity of the family line and shame in the presence of other community members.¹²⁴

While urbanization is bringing some change, the general expectations of gender roles, i.e. that a man is the breadwinner and a woman is the caretaker of the house, prevails strongly in the villages and in rural areas where the bulk of the population lives. This can make it especially hard for lesbian couples to set out on their own and earn an independent living, as working women face many more daunting challenges in Nepali society than men.

Nepali society often does not distinguish among the diverse sub-groups within LGBT community – lesbian, gay, bisexual and transgender people – with the most common misconception being that all LGBT people are transgender women who cross dress and engage in sex work. “It is because most gays and lesbians are not out, and they cannot be differentiated by appearance from heterosexuals, while third gender people and cross dressers are distinct and visible that people often have misconceptions understanding LGBT identity,” explained Pinky Gurung, a long-time and well-known transgender activist and president of the board of BDS. In a study, “Self-perception of Stigma and Discrimination among Men Having Sex with Men,” the majority of the respondents who identified themselves as men did not have problems with their families because they did not disclose their sexual orientation due to the fear of discrimination. Compared to gay men, those with indigenous transgender identities such *metis* experience more discrimination in their families due to their visible feminine appearance.¹²⁵

An important social and family issue for LGBT individuals in Nepal is access to housing and inheritance rights. Securing a place to live is one of the biggest obstacles faced by the some LGBT people, especially transgender women or feminine gay men. These subgroups are often likely to be kicked out of their homes and communities by families and relatives. Other landlords will most often

123 Keera Allendorf, “Determinants of Marital Quality in an Arranged Marriage Society”, National Center for Biotechnology Information, Jan 2013, 42(1): 59–70, Available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3711098/>

124 Oli N, Onta S, September 2012, “Self-perception of Stigma and Discrimination among Men Having Sex with Men”, JNHRC Vol. 10 No. 3 Issue 22: <http://www.jnhrc.com.np/index.php/jnhrc/article/viewFile/331/330> (Accessed June, 2014)

125 Ibid

not lease out places to them because of ignorance and the fear that they might engage in sex work in their neighborhoods.¹²⁶

Same-sex couples living together will likely face discrimination as it is next to impossible for them to live together without facing raised eyebrows, intrusive questioning, and discrimination of some kind. The media have reported on a number of same-sex couples cohabitating in urban areas. These reports highlight couples that do not conform to social expectations of gender roles attract disapproval.

Bhakti Shah, who was fired from the Royal Nepal Army in 2007 when officers accused her of having a relationship with another enlisted woman is still hiding her relationship from landlords and neighbors. "People still think we are two friends or sisters sharing an apartment," Shah said. "How can we tell everyone we are a couple when we don't have anything on paper to back it?" Equal legal rights and status would give Shah and others the documentation to prove a union and live without fear or subterfuge.¹²⁷

As discussed earlier, there has been no progress on legalizing same-sex marriage. Neither is there provision for same-sex couples to adopt children and for lesbian couples to access IVF. Dialogue participants recommended that gay and lesbian couples be allowed to adopt children, jointly own property, open joint bank accounts, and inherit from one another. These rights have been included in the official manifesto of the Maoists.¹²⁸ According to Dialogue participants, other major political parties such as the NC and UML have also expressed support for LGBT rights. Lesbian, gay and bisexual individuals married to a partner of the opposite gender often do not want to end their marriages due to taboos associated with divorce. Although divorce is legal for heterosexual couples, the condemnation associated with it compels them to stay in the relationship. Some conservative interpretations of Hinduism prohibit divorce, intercaste marriage, and widow remarriage, while condoning polygyny.¹²⁹

Another debate that has arisen recently is over inheritance rights. There are initiatives being taken to amend 'age-old' inheritance laws that make male children automatic heirs to parental property. Furthermore, women have been denied an equal right to inherit property and can only do so if they do not have male siblings or if they meet onerous and outlandish conditions such as staying single till middle age and taking care of their parents. A panel led by former Chief Justice Khil Raj Regmi has submitted a report recommending a change in the law so inheritance becomes gender-neutral and bequeathed through a will rather than birthright.¹³⁰ There are no clear laws to guide whether a male child can inherit property should he undergo a sex change. An example is Roshan Khatri (real name withheld) who chose to change his sexual identity. Before the sex change, he was the sole heir to his parents' property. Now that he has undergone sex change, his sister has come forward to claim her share of the wealth stating that now that she has another sister, she has valid grounds to contest the inheritance laws that favor male progeny.¹³¹

Finally, many prominent NGOs, especially those working on social and women's rights issues, have been indifferent or silent on supporting LGBT rights, even though they work on social and family affairs. Their support for a broader and more inclusive human rights and development agenda would be welcome.

126 These concerns about access to housing and inheritance rights were frequently expressed by Dialogue participants.

127 Oli and Onta (2012)

128 Overdorf, J. "Nepal's other revolution: Red turns to Pink" 9 November 2011, Global Post: <http://www.globalpost.com/dispatch/news/regions/asia-pacific/111108/nepals-other-revolution-red-turns-pink>

129 Keera Allendorf (2013)

130 Beed, A. "Changing inheritance laws: Rich parents don't have to mean rich children," Nepali Times Vol. 515, 13 August 2010

131 Interview with feminist activist, Lazimpat, Kathmandu, May 2014

Recommendations from the dialogue on family affairs:

- The Government of Nepal should implement laws and policies that fully protect the rights of people of diverse sexual orientations and gender identities.
- The Government of Nepal should legalize same-sex marriage with the same age of consent as heterosexual marriages.
- Same-sex couples should be allowed to adopt children with the same conditions as heterosexual couples and a legal and social environment conducive for same-sex families should be created.
- The LGBT community should provide support and legal services to LGBT persons facing problems with their families and educate family members and raise awareness of parents and families of LGBT people to promote respect for diversity.
- LGBT children should be given acceptance and recognition from their parents, regardless of their sexual orientation and identity.

**HEALTH**

LGBT individuals experience unique health disparities. Although the acronym LGBT is used as an umbrella term, and the health needs of this community are often grouped together, each of these letters represents a distinct population with its own sets of health concerns that again depends on caste, ethnicity, socioeconomic class, geographic location, age, gender, HIV status, and other factors. And these differences have important health implications for each group. It is essential to emphasize these differences at the outset of the country report because in some contemporary scientific discourse, and in the popular media in Nepal, these groups are routinely and misleadingly treated as a single population under umbrella terms such as “third gender” or LGBT.

– Discussion from the National Dialogue

The HIV epidemic focused attention on the health needs of LGBT individuals in Nepal. It dramatically increased donor funding and led to the inclusion of LGBT issues in government policies for the first time. Gay men, transgender women and MSM account for 21.6 percent of all HIV cases in Nepal. This puts them at over 12 times higher risk of HIV infection than the general population.¹³² The epidemic has spurred widespread activism for the rights and well-being of the LGBT population, especially by transgender women and gay men. Many community-based organizations working on HIV and human rights have been established.

The HIV epidemic also provided an opportunity for the government to scale up funding and interventions for HIV prevention, treatment, and care and support that directly benefited LGBT organizations and affected subpopulations. An HIV bill was drafted with the aim of creating enabling environment for HIV programming and service delivery. However, it has not been endorsed by the parliament and does not appear to be close to enactment.¹³³

132 UNDP (2012)

133 Marlyn F Borromeo, “Nepal’s Epidemic Characterized Still As “Concentrated”, New Spotlight, (Vol : 05 Nov 2011): <http://www.spotlightnepal.com/News/Article/-%E2%80%9CNepal%E2%80%99s-Epidemic-Characterized-Still-As-%22Concent>

Non-HIV-related health issues of LGBT people are often overlooked. For instance, much remains unknown about the overall status of sexual and gender minorities on mental and psychological health issues. The specific needs of transgender men and lesbians including reproductive health are seldom discussed or explored.

The dominant heterosexual cultural norms in Nepal create a basis for stigma and attendant prejudice, discrimination, and violence, which underlie society's general lack of attention to the health challenges of LGBT people. For some individuals, this may be complicated by additional dimensions of inequality such as caste, ethnicity, and socioeconomic class, resulting in stigma at multiple but mutually reinforcing levels, which make them reluctant to access health services. At the same time, these subgroups – across class and caste lines – have many experiences in common, key among them being the oppressive experience of stigmatization.

Most LGBT people in Nepal have reported encountering stigma from an early age and this experience shapes how they perceive and interact with all aspects of society including health care institutions.¹³⁴ Likewise, heterosexual individuals (including health care professionals) have been socialized in an environment where sexual and gender minorities are stigmatized. This inevitably affects attitudes and behaviors towards LGBT people. Institutions and systems that affect the health of LGBT people have developed in societies that traditionally stigmatize these groups. This has important implications for the ability of healthcare providers and institutions to address the health needs of sexual and gender minorities.¹³⁵

CASE
STUDY
#3

DISCRIMINATION IN THE HEALTH CARE SYSTEM

“Health professionals ask how we should treat you since you are not male or female. They don’t know us. They don’t want to treat us,” said one transgender individual.¹³⁶

When speaking to a doctor at Bir Hospital in Kathmandu, Radhika (real name withheld) gave her opinion that due to a preconceived notion that all transgender women and gay men are infected with HIV, the doctors are apprehensive about treating them. When asked what could be done to provide fair treatment to them, she replied that the best way to go would be to seek care from doctors recommended by trusted community organizations.¹³⁷

Individuals also endure discrimination from both state actors and other citizens based on the fact or perception that they are sex workers and/or HIV-positive. For instance, activists reported that transgender individuals are denied access to public health care facilities because they are often perceived to be sex workers and/or HIV-positive, although sex workers and HIV-positive individuals are still entitled to health care regardless of their health status.¹³⁸

134 Discussion from the National Dialogue.

135 Institute of Medicine (US) Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, (2011) “The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding”, The National Center for Biotechnology Information: <http://www.ncbi.nlm.nih.gov/pubmed/22013611>

136 Singh et al., Human Rights Violations Among Sexual and Gender Minorities in Kathmandu, Nepal: A Qualitative Investigation, BMC INT’L HEALTH & HUM RTS. 12:7 (16 May 2012). Available at <http://www.biomedcentral.com/1472-698X/12/7>

137 Discussion from the National Dialogue.

138 Ibid.

Fear of discrimination also prevents LGBT individuals from seeking medical treatment. Because of hostile or insensitive attitudes towards sexual minorities from untrained health care providers, “the fear of judgment and punishment can deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services.” This effectively interferes with their right to health.¹³⁹

Denying an individual equal access to health care or deterring them from seeking health care based on the person’s sexual orientation or gender identity constitutes discrimination and is a clear violation of both the ICCPR and the ICESCR to which Nepal is a signatory.¹⁴⁰ This denial interferes with their right to life and right to be free from discrimination under articles 6(1) and 2(1) of the ICCPR, respectively.¹⁴¹ It also interferes with their right to health under article 12 of the ICESCR, which places a higher burden on states to provide accessible health facilities, goods, and services to individuals living with HIV.¹⁴² Furthermore, such discriminatory treatment towards individuals based on their sexual orientation, gender identity, and/or perceived HIV status is inconsistent with Nepal’s current interim constitution, which also provides for individuals’ fundamental right to health care.¹⁴³ The state has a responsibility to protect LGBT people and allow them access to health care without fear or barriers. This responsibility is currently unmet.

When LGBT people get tested for HIV, there is a lack of information for what to do or where to go for help if the test results are positive. Limited information or knowledge about support mechanisms exists in hospitals and organizations where testing occurs. Dialogue participants noted that this has frequently led to severe mental trauma and distress for many individuals. Several LGBT organizations operate drop-in centers (DIC) around the country that provide LGBT-friendly HIV prevention, education, testing, counseling, and treatment. Dialogue participants also noted that these community-operated DICs often provide more effective HIV services and are able to more effectively reach high risk individuals than services solely provided by the government. The chief sources of funding for current HIV programs run by BDS and its affiliated community organizations are through Multi-Country South Asia Global Fund grant managed by UNDP Asia-Pacific Regional Centre¹⁴⁴ a national Global Fund grant managed by Save the Children (USA), and the World Bank/Pool Fund program funded by multiple donors.

Many Nepali transgender people take hormone supplements with little knowledge about their side effects and long-term health hazards. Health care professionals may administer hormone treatments for financial gain without explaining the consequences to their patients. Due to the unsupervised use and overuse of hormones, transgender participants at the Dialogue reported experiencing adverse side effects that can be fatal, both in the short and long term. They also stressed the need for more research into the effects of hormone usage on transgender people.

139 See United Nations General Assembly (A/HRC/14/20), Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council Fourteenth session Agenda item 3 (Apr. 2010). Available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf><http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf> (Discusses the impact of laws criminalizing consensual same-sex conduct on sexual minorities’ right to the highest attainable standard of health)

140 BDS and Heartland Alliance for Human Needs and Human Rights -Global Initiative for Sexuality and Human Rights (2013),

141 ICCPR, supra note 7, art. 6(1) (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”); ICCPR, supra note 7, art. 2(1) (“Each State Party to the present Covenant undertakes to respect and to 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.”)

142 U.N. Hum. Rts. Comm., supra note 33.

143 BDS and Heartland Alliance for Human Needs and Human Rights -Global Initiative for Sexuality and Human Rights (June, 2013)

144 Multi-Country South Asia Global Fund HIV Programme, UNDP Asia-Pacific Regional Centre, available at <http://asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/multi-country-south-asia-global-fund-hiv-programme/>



Different coloured identity card for different thematic group participants

Another health issue relates to development programs and disaster relief and is an area in which USAID Nepal has taken the lead. Research suggests that development staff often overlook gender identity and sexuality in post-disaster relief missions and contexts because they may cause unease for some people and because of a lack of protocols to deal with these issues across different cultural contexts.¹⁴⁵ But this is to the detriment of LGBT people. As an example, in disaster relief after flooding in Sunsari district in eastern Nepal, transgender women were reportedly not being given food supplies because they did not fit into conventional definitions of families with children.¹⁴⁶

The government has expressed a commitment to the health and rights of LGBT people. However, policies that would translate these commitments into practice are lacking.¹⁴⁷

The health status of LGBT individuals over the course of their lifetimes

Dialogue participants discussed the health status of LGBT people in three life stages: childhood and adolescence, early/middle adulthood, and later adulthood. Within these stages, participants looked at mental health, physical health, psychosocial health, risk and protective factors, health services, and contextual influences.

Childhood/Adolescence: LGBT youth face the same challenges as their heterosexual peers during this stage but LGBT-related stigma and discrimination contribute to disparities in health status between sexual- and gender-minority youth and heterosexual youth. The HIV prevalence of 1.3 percent among young MSM.¹⁴⁸ A Save the Children report¹⁴⁹ also suggests that young LGBT people often suffer from depression, anxiety disorders, substance abuse (smoking, drug use, alcohol consumption)

145 Knight, K., Sollom, R. (2012) Making Disaster Risk Reduction and Relief Programmes LGBTI Inclusive: Examples from Nepal. Humanitarian Practice Network. September 2012, Available at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-55>

146 Kyle Knight and Courtney Welton-Mitchell, "Gender identity and disaster response in Nepal", Forced Migration Review, Available at <http://www.fmreview.org/sogi/knight-weltonmitchell>

147 At the opening session of the Nepal National LGBTI Community Dialogue in April 2014, the Minister for Health and Population gave an impassioned statement that the Constitution guarantees human rights for all and that the Ministry promises to accept the community's recommendations from the Dialogue for consideration and implementation. Such high level support indicates that the government is an ally with which community groups and development partners can work together to achieve their health and human rights goals.

148 UNDP et al., (2012)

149 Sharma, Mahesh. (2012) Building the Evidence Base for Protecting and Promoting the Rights of Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) Children in Nepal. Save the Children (May 2012)

and even suicide or suicidal ideation. Young transgender women and young LGBT people in general are at significant risk of homelessness.

Early/Middle Adulthood: Lack of proper and adequate information on LGBT identity can lead to an unhealthy and stressful adulthood for many LGBT people, especially among those who stay in the closet and are not open about their SOGI identity.¹⁵⁰ Adult LGBT people appear to experience more mood and anxiety disorders, more depression, and an elevated risk for suicidal ideation when they fail to achieve Nepali society's rigid heteronormative expectations.

Lesbians, bisexual women and transgender men (LBT) use preventive health services less frequently than heterosexual women. For instance, according to Dialogue participants, it is difficult for transgender men to maintain hygiene as they find it hard to access sanitary pads during their periods from pharmacies and retailers. Many adult transgender people also undergo hormone therapy, surgery, breast implantation or binding, and sex-reassignment surgery (SRS). Most of them are not aware about the short- or long-term health complications that these can entail. Additionally, the legal status of SRS is unclear. But the government has set a precedent by allowing a post-operative Nepali citizen to change her official identity from male to female.¹⁵¹

HIV and STIs continue to exact a severe toll with disproportionate effects on gay men, bisexual men, other men who have sex with men, transgender women, and sex workers. Health complications can result for HIV-positive individuals on anti-retroviral therapy (ART) as well as those who are on ART and simultaneously undergoing hormonal therapy.

Later Adulthood: Elderly LGBT experience stigma, discrimination and victimization across the course of their lives and into old age. LGBT elders experience unstable family situations and loneliness. Depression levels and suicide appear to be elevated among older lesbians and gay men. There is some evidence that LGBT elders exhibit lower crisis competence (a concept reflecting resilience and perceived hardiness) than heterosexual counterparts.¹⁵² HIV and STIs impact older LGBT individuals as much as younger individuals and this is often overlooked. Limited research available suggests that elderly transgender people experience negative health outcomes as a result of long-term hormone use. Disability among elderly LGBT people is a topic rarely considered and needs to be addressed.

The key health needs for the LGBT community that were highlighted during the Dialogue were the need for sensitization and training of health care service providers to address stigma and discrimination, additional outreach efforts for HIV prevention and care, non-discriminatory access to health care, and psychosocial support for transgender persons. Other key issues that are often neglected are sanitation and the reproductive health care needs of lesbians and transgender men.

Recommendations from the dialogue on health:

- The Government of Nepal should review, amend, and/or repeal existing health laws and policies that adversely affect the health and well-being of LGBT people and implement the Nepal HIV Investment Plan (NHIP) 2014–16. The NHIP is Nepal's strategic approach to HIV programming, budgeting and implementation.

150 Institute of Medicine (US) Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, (2011)

151 Anil Giri, "Govt Recognizes first Nepali, post operative Transsexual", The Kathmandu Post, September 28, 2014: <http://www.ekantipur.com/the-kathmandu-post/2012/09/27/nation/govt-recognises-first-nepali-post-operative-transsexual/240135.html>

152 Institute of Medicine (US) Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, (2011)

- The Ministry of Health and Population (MoHP) and Law and Justice (MoLJ) should amend and approve the HIV Bill to protect the rights of HIV-positive individuals, including LGBT subpopulations such as transgender women, gay men, and other MSM who are disproportionately affected by HIV.
- The health care system in general should address inequities and improve health services – LGBT people face barriers to equitable health care that profoundly affect their overall well-being; improve understanding of disparities in health outcomes, provider attitudes and education, and ways to improve the environment for LGBT individuals seeking care; enhance the capacity of health systems to respond to the health concerns of LGBT people; and to expand coverage to deliver HIV prevention, treatment, care and allied health services, along with providing inclusive sexual and reproductive health services.
- Health service providers need to be sensitized and trained on LGBT health care needs so that they can provide psychosocial and mental health services in addition to HIV programmes. Sensitivity can help ensure a non-discriminatory attitude when providing services.
- Transgender-specific health needs need to be met by creating an evidence base that will enable the provision of transgender-specific health care to address gender dysphoria. Rigorous research and development is needed to understand the health implications of hormone use such as the need for proper counselling on medication, dosage, and surgery, as well as psychological support.
- Health departments, including health care centres and pharmacies, need to have manuals on providing friendly services to LGBT people.
- Government, researchers and the community should develop and implement intervention research.
 - Research is needed to develop and test the effectiveness of interventions designed to address health inequities and negative health outcomes experienced by LGBT people.
 - Interventions that increase access to care or address the mental or physical conditions that lead to impaired health would assist in reducing these disparities.
 - Interventions focused on marginalized or overlooked subgroups are especially needed.
 - Research findings and data should also be disaggregated so that targeted interventions can be designed, for instance with different kinds of HIV programming for gay men/other MSM and for transgender women.
- LGBT advocates and the broader society should develop positive social influences on the lives of LGBT people. Social support plays an important part in mental health. The role of social structures – such as families, schools, workplaces, religious institutions, and community organizations – in the lives of LGBT people should be understood more fully.



MEDIA

The role of the Nepali media in informing and educating the public about LGBT issues is significant. Radio penetration throughout the country is very high. Urban populations generally have access to electronic media such as television, social media, and/or print media. It is essential that information about LGBT events and issues disseminated by the media be neutral and accurate. According to a UNDP and Centre for Advocacy and Research (CFAR) report about South Asia, researchers found prejudiced, inaccurate and sensationalized news coverage that has increased stigma, distorted the public's views of sexual orientation and gender identity issues, reinforced harmful stereotypes, and inaccurately reported on community issues.¹⁵³

Despite the legal recognition of sexual and gender minorities in Nepal, traditional gender identities and heteronormativity have shaped media coverage and approach towards LGBT issues. The majority of Dialogue participants noted that LGBT issues are regularly covered in the media, but the coverage is often about scandalous stories rather than progressive or thoughtful reporting.

“Why is our media not promoting different types of images of LGBT people? We see a lot of ‘masala’ headlines and news that comment on transgender dance moves and clothes but hardly see any coverage about the important events we have in which government and civil society are involved. I don’t think the Nepali media really cares about our real issues. They just want to use us for commercial purposes.”

- Discussion from the National Dialogue

Sensational coverage of LGBT and especially transgender issues has been the norm and the Nepali media have demonstrated at times a limited understanding of sexual and gender minority issues. At the same time, Nepali media have also played an important role in highlighting LGBT issues and bringing them to the public consciousness. Prior to the groundbreaking Supreme Court judgment of 2007, many media reports graphically described the brutal rapes and attacks that *metis* were subjected to by the police and other security forces during the civil war years between 1996 and 2006.

The media widely reported on how crucial HIV and health care services for marginalized subpopulations of MSM and transgender women were jeopardized by social and structural barriers.¹⁵⁴ There is clear recognition that media engagement thus far has helped break the silence on an issue (sexuality) that was often treated as being taboo and off limits. Coverage of human rights violations against the LGBT community by the media also served as documentation which served as evidence by the Supreme Court in 2007 when it pronounced the historic judgment to stop all forms of discrimination against sexual and gender minorities.¹⁵⁵

The Nepali media have also played a crucial role in advancing human rights protections for LGBT people through their reporting of hate crimes. They often positively report on events and activism organized by community groups such as the annual gay pride parades held on the Hindu festival of *Gai Jatra*, including the parade in Kathmandu in August 2014. English language dailies such as *The Kathmandu Post*, *Republica* and *The Himalayan Times* along with weeklies such as *Nepali Times* and

153 UNDP and Centre for Advocacy and Research. “A Framework for Media Engagement on Human Rights, Sexual Orientation and Gender Identity in South Asia,” New Delhi, April 2014.; http://asia-pacific.undp.org/content/rbap/en/home/library/hiv_aids/a-framework-for-media-engagement-on-human-rights--sexual-orienta.html (Accessed July, 2014)

154 UNDP and CFAR, New Delhi, (May 2014)

155 Ibid.

monthlies such as *Wave* and *Himal South Asia* have been particularly progressive and balanced in their reporting about LGBT issues and challenges. Some of the topics covered by the media include an opinion-editorial (op-ed) on gay marriage in *The Kathmandu Post*¹⁵⁶ and Nepali Times pieces about gay marriage¹⁵⁷ about backtracking on commitments by the state on LGBT rights¹⁵⁸ and about the work of the Constituent Assembly's committee on same-sex marriage.¹⁵⁹ The International coverage of these events has also been supportive.¹⁶⁰

Michael Kirby, an openly gay former Australian judge, has spoken of the positive power of media in reshaping attitudes to be more supportive and accepting of diversity of sexualities and gender identities:

“An important element in securing a change in global attitudes to sexual orientation and gender identity has been the operation and outreach of international media. No longer can the actualities of sexual variation be kept a secret. In today's world, satellite TV, global media, the Internet and social networking have reduced the barriers to awareness and discovery of sexual variations. The inclusion of characters in popular television programs, both of documentaries and soap operas, has helped to change human perceptions of this issue. The revelation by leading citizens that they are homosexual or bisexual has begun the process... of shattering the reinforcement for the binary (heterosexual) illusion that previously prevailed because of silence and shame.”¹⁶¹

With increasing exposure of LGBT issues and activists in the national and international media, it is likely that social awareness and acceptance of sexual and gender diversity will increase.

A radio program *Pahichan* initiated by BDS is broadcast on 11 FM stations throughout Nepal. The program communicates information and advice about sexual and gender minority health and rights issues. It has become an important support platform for the LGBT community, especially from rural areas, to voice their concerns and to get advice and support.

Such radio programs strengthen LGBT communities by disseminating information and helping spread awareness in both rural and urban areas. However, Dialogue participants highlighted that “ghettoizing” these discussions to LGBT media may have a negative effect on efforts to integrate LGBT issues into mainstream media coverage of broader human rights and development issues in Nepal.

A strategy to mainstream LGBT issues into different types of media outlets may eventually produce more concrete results and wider public acceptance of sexual diversity rather than limiting discussion of these issues to a narrow audience. This may be happening. Community radio stations which have wider coverage and larger influence are reported to have incorporated LGBT issues in their radio

156 Thapa, Saurav Jung “The Case for Gay Marriage,” *The Kathmandu Post*, 2 September 2012, Available at <http://www.ekantipur.com/the-kathmandu-post/2012/09/01/free-the-words/the-case-for-gay-marriage/239117.html>

157 Shakya, Ayesha “Hidden in Plain View,” *Nepali Times*, 1 August 2014, Available at <http://nepalitimes.com/article/nation/LGBT-hidden-in-plain-view-nepal,1564>

158 Pant, Sunil Babu “Nothing About Us, Without Us,” *Nepal Times*, 1 August 2014 <http://nepalitimes.com/regular-columns/Comment/right-of-equality-of-gender-and-other-minorities-under-threat,335>

159 Teo, Basil Edward “Equality in Paper At Least,” *Nepali Times*, 1 August 2014 <http://nepalitimes.com/article/nation/LGBT-%20equality-in-paper-at-least,1563>

160 Gurubacharya, Binaj “Nepal's Gay Community Celebrates Gaijatra by Parading for Same Sex Marriage,” Available at http://www.huffingtonpost.com/2014/08/11/nepal-gay-parade-_n_5668993.html

161 Kirby M. (2010) ‘Deconstructing homophobia’ in UNDP (2010) High-level dialogue Report: Punitive laws, human rights and HIV prevention among men who have sex with men in Asia Pacific, Hong Kong, 17 May 2010. Bangkok: UNDP. p. 20

dramas and programs. Sunil Pant hosted a talk show on gender and sexuality issues in the state-run Nepal Television. Nepali movies on same-sex relationships are now being produced.

Challenges remain in sensitizing media personnel, providing concrete evidence of stigma and discrimination, and positively influencing public perception of sexual minorities. Journalist Gopal Khanal from *The Kathmandu Post* says there is a “pressing necessity for more and divergent voices to represent community issues to sustain or revive media interest in LGBT issues.”¹⁶²

Dialogue participants shared that media reporting of LGBT issues has generally been narrowly focused on a few positive gains on paper such as the Supreme Court’s decision of 2007 and a few high visibility events such as annual pride parades. There is limited reporting in national media about other pressing challenges such as the following: the daily social struggles of openly LGBT people; ostracism by families and communities; pressure for gay men and lesbians to marry a member of the opposite sex; lack of protective laws and policies (on housing, health, education, employment, and property inheritance); and, the additional hurdles faced by lesbians and transgender men. Finally, participants also pointed out that while the media covers legal and policy breakthroughs, they have failed to play a ‘watchdog’ role by not consistently reporting on progress on implementation of LGBT protective laws and policies.

Dialogue participants urged their fellow community members to proactively engage with the media to change the prevalent negative coverage. There has been a lack of conscious or strategic efforts by LGBT organizations to work with the media on key issues at critical times to capture their interest. Instead, positive developments and gains have been used to create short-term interest in a few stories. A longer-term positive body of long-term opinions and support in favour of the community has not been fostered.¹⁶³

The LGBT community needs to reach out and build stronger relationships with the media. Engagement with mainstream media is needed to ensure balanced and respectful portrayal of LGBT and health issues in order to lessen stigma and discrimination.

- Discussion from the National Dialogue

Despite many LGBT-related advances in Nepal, print and broadcast media generally do not prioritize LGBT issues as key topics and invest in understanding them. “As long as we do not come out in public as LGBT and start talking about our issues, we will never be a priority,” said Bishnu Adhikari, a prominent transgender male activist and a participant at the National Dialogue and one of the few openly LGBT media professionals in the country.

Recommendations from the dialogue on media:

- The LGBT community and advocates should sensitize and train journalists in all mediums (print, broadcast and Internet) on SOGI and LGBT issues.
- The media should be encouraged to act as a watchdog to promote SOGI sensitivity.
- High profile celebrities, leaders, and officials who will speak out and advocate on LGBT rights issues should be used as role models to promote positive self image for the LGBT communities.

162 UNDP and CFAR, New Delhi, May 2014

163 Ibid.

- There is an urgent need to ensure that different LGBT voices are heard so that the diversity of the community can be demonstrated and not just the narrow voice of any one subgroup. It is essential that messages about a variety of LGBT issues are covered by the media and they do not just limit themselves to covering HIV.
- Social media, networking, multimedia, drama and flash mobs should be utilized to educate people. LGBT communities need to engage actively with mainstream media to raise awareness and improve understanding of the full range of LGBT identities, issues, and challenges. Relying solely on LGBT-focused programs or outlets will be inadequate and ineffective in raising broader social awareness.
- Media outlets should cover national and international LGBT events and days such as IDAHOT and Pride Week and hire openly LGBT people so that issues related to sexual and gender minorities can be given more coverage that is balanced and informative.
- Media outlets should move away from sensational coverage of transgender sex stories and instead promote stories of LGBT successes and achievements. Interview positive, accepting families and parents to create effective role models.
- Media outlets should develop community radio programs and develop strategies in partnership with a range of LGBT organizations.
- Media outlets should disseminate correct information on LGBT health and rights issues so that society will become familiar with alternative and legitimate models of a family in addition to those headed by traditional heterosexual couples.



LGBT ORGANIZING AND CAPACITY IN NEPAL

Community organizing by LGBT people in Kathmandu started informally around 2000 in Ratna Park. After months of social interactions in the park, Nepal's first LGBT community organization, Blue Diamond Society (BDS), was registered by pioneering LGBT activists Sunil Babu Pant, Manisha Dhakal, and Pinky Gurung with the government's Social Welfare Council as a sexual health and human rights organization with no explicit mention of homosexuality.¹⁶⁴ Other pioneers of the LGBT movement in Nepal that helped to establish BDS were Dolly Maharjan, Niruta Panday, Malaika Lama, Alex and Zora Bai.

BDS is now among the largest NGOs in the country and has a massive reach, visibility, and national influence. As Nepal's most prominent LGBT organization, it has established offices in more than 30 districts, networks in 50, and one hospice devoted to caring for HIV-positive MSM and transgender people. The organization also offers a host of HIV-related services, including educational programs, peer outreach, HIV testing, sexually transmitted infection (STI) treatment, safe-sex advice, and condom distribution. At the same time, the organization has taken on a significant national role as a respected advocate for policy change on a broad range of issues related to human rights, MSM, transgender persons, and health care.¹⁶⁵

164 Nori, Dalia "The loudest whisper in society: Knowledge, Attitudes and Practice in regards to sexual health of transgender male to female in Kathmandu, Nepal," https://gupea.ub.gu.se/bitstream/2077/33386/1/gupea_2077_33386_1.pdf; Jo Becker, "Campaigning for Justice: Human Rights Advocacy in Practice," Stanford University Press: 2013

165 Amfar The Foundation for AIDS Research, "Blue Diamond Society: Speaking out about health and human rights": <http://www.amfar.org/content.aspx?id=9292>

BDS s initially supported by a USAID grant administered by the American organization Family Health International (now FHI 360) and focused on HIV prevention and service delivery aimed at halting and reversing the spread of HIV among transgender women and men having sex with men. Grants from Sidaction and Elton John AIDS Foundation were used for the care and support of PLHIV. BDS's emergence signaled the rise of LGBT rights activism which eventually expanded into public awareness campaigning and social mobilization.¹⁶⁶

Since 2001, many other LGBT organizations have been established in Kathmandu and in most major and minor urban areas of the country. Presently there are over fifty LGBT organizations in the country, providing services to more than 40 out of 75 districts. Many of them are branch offices of BDS and are affiliated to its sister organization the FSGMN.¹⁶⁷ Mitini Nepal was established in 2007¹⁶⁸ and was the first organization to be dedicated specifically to LBT rights. Other groups such as the National Forum for Democracy and Development (NFDD), Inclusive Forum Nepal (IFN), Gay and Lesbian Sexual Minorities Network (GLSMN) and Core Nepal operate independently. The broad range of community groups working on LGBT issues and their differing mandates and target populations reflect the diversity and scope of their work on HIV, health, LGBT issues, and broader human rights concerns. These organizations have lobbied and raised awareness about rights violations against LGBT people in their own homes, in society, and by the state.

BDS' leadership was accused of mismanagement and financial irregularities by the Kathmandu District Administration Office (DAO) in 2012 and 2013. As a result, life saving and other services were disrupted and staff were unpaid for as long as eight months due to its operating license not being renewed. Subsequent investigations by multiple government agencies (by the Kathmandu District Administration Office and the Social Welfare Council) and an investigation by BDS' largest donor (The Officer of the Inspector General/OIG at the Global Fund to Fight AIDS, Tuberculosis and Malaria) proved inconclusive led to the renewal of BDS' operating license.

Human Rights Watch described the situation as harassment of BDS by the government: "The government has repeatedly said it would release a report regarding corruption allegations against Blue Diamond Society, but several months have passed and no report has been published."¹⁶⁹ The Office of the Inspector General of the Global Fund has yet to issue its report on BDS even though it concluded its investigation in July 2013.

HIV funding has been focused exclusively on transgender women and MSM as these subgroups are at exponentially higher risk of contracting HIV than the general population and other sub-groups have been left out of programming.¹⁷⁰ The HIV and health emphasis has primarily strengthened transgender female and gay male leadership in the burgeoning LGBT rights movement. In 2014, 13 years after its founding, a woman from the Terai, Monica Jha, became the director of BDS.

166 Program for Accountability in Nepal, "The Political Economy of Social Accountability in Nepal" 2010: <http://siteresources.worldbank.org/NEPALEXTN/Resources/223554-1296055463708/PoliticalEconomy.pdf>

167 FSGMN was established in 2007, as an umbrella network organization of LGBT organizations that focuses on capacity building and network strengthening of its member organizations in Nepal.

168 Mitini Nepal was initially a project of BDS but eventually evolved into a separate licensed organization.

169 Human Rights Watch (2013) Nepal: Climate of Fear Imperils LGBT People, 1 April 2013. Retrieved 30 July 2014 from <http://www.hrw.org/news/2013/04/01/nepal-climate-fear-imperils-lgbt-people>, p. 107

170 According to a Lancet special issue on HIV in MSM published in July 2012, MSM are more than 17 times more likely to contract HIV than the general population and transgender women are as much as 48 times more likely: http://www.amfar.org/uploadedFiles/_amfarorg/On_the_Hill/SummaryPtsLancet2012.pdf and <http://www.thelancet.com/series/hiv-in-men-who-have-sex-with-men>

Women's rights organizations have supported LGBT rights issues at key junctures. The Forum on Women, Law and Development (FWLD) assisted BDS file a case against the army when two women were accused of lesbianism and expelled in 2007.¹⁷¹ In 2005, BDS supported a lesbian couple escape threats of rape and death from their families when the latter discovered they were in a relationship. This couple eventually established Mitini Nepal.¹⁷² The group later became Nepal's first independent LBT rights organization and is now a leader in the sector. However, Mitini Nepal's programmatic reach and capacity is relatively limited.

A controversial issue is population estimations. The estimated size of a target group can be used to seek political and financial support. If the LGBT population in Nepal is sizeable, it could be argued that sufficient resources need to be mobilized for supportive programs. However, privacy issues remain a concern in studies of this type. Similar issues have been raised in relation to data collection about sexual and gender minority populations globally¹⁷³ and Nepal is no exception.

To initially appeal to international donors and UN agencies, LGBT organizations in Nepal and the region focused primarily on HIV prevention and treatment and community systems strengthening. Recently there has been greater recognition of the need to work on promoting supportive legal environments and strengthening human rights for LGBT people. Based on this momentum, bilateral and multilateral donors have increasingly funded LGBT rights related programs and/or ensured the inclusion of LGBT issues in broader development programming. This support has been led by the governments of the United States, Sweden, Denmark, Norway, and Australia and by the United Nations.

As LGBT NGOs have become more involved in policy dialogues and program implementation combined with the lack of a formal oversight mechanism, they have often become targets for social and political 'mudslinging'. These have included accusations of mismanagement, corruption, cronyism, and nepotism. NGOs have also been accused of representing foreign powers at the expense of national interests.¹⁷⁴ They are also vulnerable to media and public criticism as their principal accountability is international donors.¹⁷⁵



CAPACITY ASSESSMENT

Participants at the national dialogue were asked to answer two sets of survey questions.¹⁷⁶ The first set of questions asked for an organizational analysis of financial, human resources, organizational capacity, and collaborations and coalitions. We note that the survey provides glimpses of the perspectives of select LGBT organizations and activists and cannot provide a full, comprehensive,

- 171 UK Gay News, "Still No Hearing Date for Sacked Soldiers Accused of Being Lesbians." 17 Nov 2007: <http://www.ukgaynews.org.uk/Archive/07/Nov/1602.htm>
- 172 Knight, K., Miller, K., Shrestha, B., Thapa, D., Khadka, H., Limbu, P. (2013). Global LGBTI human rights partnership Bridges to Justice: Case study of LGBTI rights in Nepal, Copyright 2013 by Astraea Lesbian Foundation for Justice, p.15
- 173 Gates, Gary "LGBT Identity: A Demographer's Perspective," Loyola of Los Angeles Law Review, 1 March 2012: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-LLR-Spring-2012.pdf>
- 174 Mishra, Chaitanya "New Predicaments of 'Humanitarian' Organization," in NGO, Civil Society and Government in Nepal: Critical Examination of their Roles and Responsibilities, 2001.
- 175 Program for Accountability in Nepal, "The Political Economy of Social Accountability in Nepal" 2010: <http://siteresources.worldbank.org/NEPALEXTN/Resources/223554-1296055463708/PoliticalEconomy.pdf>; For a discussion on the "cartelization of credibility" and other donor-driven fetishizing of specific organizations and its impact on their work, including over-taxing of staff due to burdensome and shifting reporting requirements, see Seira Tamang, "Civilizing Civil Society: Siera Tamang, Civilizing Civil Society: Donors and Democratic Space Studies in Nepali History and Society, 2002: [http://martinchautari.org.np/files/seira_tamang_7\(2\).pdf](http://martinchautari.org.np/files/seira_tamang_7(2).pdf)
- 176 These survey questions elicited responses from only some organizations. Many responses were incomplete and therefore could not be part of this assessment.

and/or objective picture of the organizational capacity for all LGBT organizations. The conclusions below are based on the information provided by some participants.

Financial Resources

The majority of LGBT activists participating in the Dialogue stated that inadequate financial resources affect their operations. Their most reliable source of funding are grants available through international donors. Very few organizations reported receiving assistance from the government which allocates a small budget to support LGBT rights work in its plans and policies every year.

Sustainability and long-term viability are a huge challenge for community organizations due to their dependency on external funding. Fierce competition for resources and implementation sites by established community organizations often limit opportunities for smaller and newer organizations to mobilize resources and provide fresh and innovative solutions.

Human Resources

Dialogue participants reported that many community organizations lack competent staff with academic and technical skills in the workforce. Turnover of qualified and experienced staff is an ongoing problem due to difficult working conditions, low pay, and no benefits. Owing to this high turnover of staff, most organizations have informal governance structures and rely on volunteers. Small numbers of staff and volunteers are thinly stretched on different projects and on advocacy work therefore opportunities for career advancement are limited. Finally, personality based and top-down hierarchical leadership is the norm and financial transparency and accountability mechanisms are generally weak.

Organizational Capacity

Most of the organizations assessed themselves as having weak organizational and management systems. This was especially true of new organizations based outside the Kathmandu Valley. Inadequate organizational infrastructure (such as computers, furniture, printers and communication equipment) has hindered basic functioning. Most organizations may have clear and appropriate policies in place although understanding of these policies is limited and implementation is often not in conformity with the stated policies.

Collaboration and Coalitions

LGBT organizations generally have cordial relations with other civil society organizations, development partners, and the government at various levels (local, national, regional, international) although they have not been able to parlay these cordial relations into substantive achievements. Interacting effectively with government and legislature remains a challenge for organizations in the rural areas where mobilizing communities is more difficult. Relations between LGBT organizations are multifaceted and complicated by dynamics around competition for resources, turf protection, personality clashes, differing visions, and different goals. As such, the LGBT movement still lacks an effective and broad coalition that is able to clearly articulate and represent the interests of various LGBT constituencies.

The LGBT movement in Nepal has achieved notable constitutional, legal, and policy successes. These achievements are often cited by LGBT organizations throughout the Asia-Pacific region and the Global South as a model for community advocacy and building partnerships with key stakeholders

such as broader civil society, human rights advocates, and government officials. These alliances with different stakeholders need to be further strengthened, and LGBT issues should be integrated into broader discourses on human rights, inclusive development, and political reform. The participants of the National Dialogue reaffirmed that the LGBT rights movement in Nepal cannot achieve its goals by relying solely on a few high profile issues or on a few media savvy leaders. A grassroots movement which focuses on a variety of issues including empowering a new generation of activists and giving space to emerging leaders is needed.



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ANNEX 1: BACKGROUND AND TIMELINE OF LGBT ADVOCACY IN NEPAL

1988	<ul style="list-style-type: none"> • First HIV case was diagnosed in a foreign citizen in Nepal
1989/90	<ul style="list-style-type: none"> • The first People’s Movement occurred leading to the end of the Royal Panchayat (party-less) political system. This provided space for several civil society organizations to proliferate
1992	<ul style="list-style-type: none"> • The Government of Nepal founded the National AIDS Coordination Committee to lead the multi-sectoral response to HIV
1996	<ul style="list-style-type: none"> • Maoists launched a so-called “People’s War” seeking to violently overthrow the monarchy and the democratic polity and impose a one party dictatorship
2000	<ul style="list-style-type: none"> • Informal organizing among sexual and gender minorities began in several parks in Kathmandu
2001	<ul style="list-style-type: none"> • June: Ten members of the Nepali royal family including the King and Queen were massacred inside the royal palace by the Crown Prince who also shot himself and died in hospital a few days later, sending the country into a period of grave political instability • September: A group of LGBT individuals registered the Blue Diamond Society (BDS) with the Social Welfare Council, making it Nepal’s first NGO dedicated to sexual health and rights
2004	<ul style="list-style-type: none"> • June: A lawyer filed a case at the Supreme Court, saying BDS’s activities—and the promotion of homosexuality—are illegal under Nepali law; the court delayed hearings multiple times • August: 39 members of BDS were arrested and held without charge for 13 days, drawing unprecedented international media and human rights attention
2005	<ul style="list-style-type: none"> • February: King Gyanendra suspended the Parliament and appointed a government led by himself, and imposed martial law • April: A group of transgender people were attacked and arrested in Kathmandu, drawing international condemnation
2006	<ul style="list-style-type: none"> • January-March: Police carried out a “sexual cleansing drive” in Kathmandu as insecurity in the city remained high • May: A People’s Movement led by democratic parties and Maoists rebels overthrew the King’s absolute rule, the monarchy was subsequently abolished by a new parliament in 2008 • LGBT activists joined the protests against the monarchy and built alliances • Activist Sunil Babu Pant was invited as one of 29 experts from all over the world to attend the final consultation meeting for the Yogyakarta Principles • November: Maoist rebels and the government signed a Comprehensive Peace Accord, ending the ten year civil war that resulted in over 16,000 casualties

2007	<ul style="list-style-type: none"> January: In anticipation of spring elections, LGBT activists brought in South African Justice Edwin Cameron and UN officials to talk about diversity and representation in politics April: Four LGBT NGOs (Blue Diamond Society, Mitini Nepal, Parichaya Samaj and Cruiseaids) petition the Supreme Court to end discriminatory laws on the basis of sexual orientation and gender identity
	<ul style="list-style-type: none"> May: Nepal's first LGBT umbrella network, the Federation of Sexual and Gender Minorities Nepal (FSGMN) was established and registered under the Social Welfare Council December: The Supreme Court issues a landmark decision on December 21 to: 1. end laws discriminating against LGBT individuals; 2. legally recognize a "third gender"; 3. establish a committee to study the possibility of allowing same-sex marriage. December: The International Gay and Lesbian Human Rights Commission (IGLHRC) awarded BDS the Felipa de Souza Award.
2008	<ul style="list-style-type: none"> Supreme Court gives consent to same sex marriage and instruction to the government to formulate a law; confirms rights to own property and right to employment April: A group of gay men stood for Nepal's first post-war parliamentary election; Sunil Babu Pant was chosen by the CPN-U (Communist Party of Nepal-United) for a proportional representation seat, making him the first openly-gay federal-level official in Asia September: The Maoist Minister of Finance and soon to be prime minister, Dr. Baburam Bhattarai, included sexual and gender minorities in the national budget, the first acknowledgement of the population by the government after the 2007 Supreme Court decision
2010	<ul style="list-style-type: none"> January: Sexual and Gender Minority Student Forum was established, an assembly with 1500 students was held to kick it off
2011	<ul style="list-style-type: none"> June: Nepal's national population and housing census (conducted every decade) was launched, including categories for male, female, and third gender on its basic data form
2012	<ul style="list-style-type: none"> May: Nepal's Constituent Assembly and Parliament dissolved having failed to produce a constitution in its unsuccessful four-year term June: The Government of Nepal officially directed all district offices to begin issuing citizenship documents listing male, female, or other genders without any delay October: Nepal hosted first South Asian LGBTI Sports Festival
2013	<ul style="list-style-type: none"> April: Nepal hosted a UN Asia-Pacific Seminar on Human Rights, Sexual Orientation and Gender Identity which was organized by the Ministry of Women, Children and Social Welfare April: The Supreme Court recognized a live-in relationship between two lesbians despite the efforts of the family of one of the women to separate them November: The second Constituent Assembly election was peacefully conducted in the country: 62 LGBT people declared their candidacy in the upcoming parliamentary election but none managed to win a seat

2014	<ul style="list-style-type: none">• April: New Constituent Assembly was formed with no open representation from LGBT community following the failure of all 62 candidates to win a seat or to be nominated under the proportional representation mechanism• February: Sunil Babu Pant was one of 278 people from all over the world nominated for the Nobel Peace Prize by a Member of the Norwegian Parliament• February: Passport Department of Ministry of Foreign Affairs proposed to the government of Nepal to amend the Passport Regulation Act in order to include an “Other” category in passports• March: Curriculum Department of the Ministry of Education incorporated LGBT issues in the secondary (Grades 6, 7 and 8) and university-level education curriculum• June: Department of Immigration, Ministry of Home Affairs, Nepal recently issued Nepal's immigration and customs form that includes a “third gender” option
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ANNEX 2: LEGAL LIVING SITUATION OF LGBT INDIVIDUALS IN NEPAL

Same-sex sexual activity legal	✓ (since 2007*)
Equal age of consent	✓
Anti-discrimination laws in all areas	✗
Same-sex marriages	✗
Recognition of same-sex couples	✗
Step-child adoption by same-sex couples	✗
Joint adoption by same-sex couples	✗
Gays and lesbians allowed to serve openly in the military	✓
Right to change legal gender	✓ (since 2011)
Third gender option	✓
Access to IVF for lesbians	✗
Commercial surrogacy for gay male couples	✗

* legality unclear before that though not overtly outlawed



ANNEX 3: LIST OF LGBT ORGANIZATIONS IN NEPAL

NAME OF ORGANIZATION	ADDRESS	TELEPHONE	EMAIL	CONTACT PERSON	ORGANIZATION FOCUS	TARGET BENEFICIARIES
BDS Banepa	Kavrepalan-chok	9803833965		Jayaram Koju	HIV Prevention	MSM/MSW
BDS Syangja	Syangja	9814141532		Shankhar Rokaha	HIV Prevention	MSM/MSW
BDS Dhankuta	Dhankuta	9817360783	deepa_adhikari@yahoo.com	Hari Man Shrestha	HIV Prevention	MSM/MSW
BDS-Ilam	Ilam	9844669027		Rabina Nepal	HIV Prevention	MSM/MSW
Bharosha Samaj*	Rupendehi	071-541203	rupendehibds@gmail.com	Chals Raj Sijapati	HIV Prevention	MSM/MSW
Blue Diamond Society*	Kathmandu	01-4443350	bluediamondsociety@yahoo.com	Monika Jha	HIV Prevention, treatment and Integration	MSM/TGs people living with HIV
Blue Heaven	Bara	053-550118	bdsbara@gmail.com	Sudip Thapa	HIV Prevention	MSM/ MSW
Care & Support *	Kathmandu	9841456991		Rajesh Lam	HIV Prevention and Treatment	MSM/MSW
Care & Support-Bhairahawa*	Rupendehi	9807581752	aanik7@yahoo.com	Aanik Rana	HIV Prevention & Treatment	MSM/MSW
Care & Support-Biratnagar	Morang	9807027870	balramchaudary49@hotmail.com	Balram Chaudary	HIV Prevention, and Treatment	MSM/MSW
Care & Support-Dhangadi	Dhangadi				Prevention, Treatment and Integration	MSM/MSW and Transgender
Chabahil Sattelite DIC	Kathmandu	9803309109	deepakmaharjan2003@yahoo.com		HIV Prevention	MSW/MSM
Chautari Nepal*	Mahottari	044-521128	mahottaribds64@gmail.com	Ram Baran Yadav	HIV Prevention, Treatment and Integration	MSW/MSM
CORE Nepal	Kathmandu	9851040980	core_nepal@hotmail.com, tamang.actionforchildrights@yahoo.com,	Salina Tamang	Gender and Sexuality	
Cruise Aids Nepal*	Kathmandu	01- 6219785	cruiseaids@gmail.com	Sanjeev Gurung;	Prevention, Treatment and Integration	MSW/MSM

NAME OF ORGANIZATION	ADDRESS	TELEPHONE	EMAIL	CONTACT PERSON	ORGANIZATION FOCUS	TARGET BENEFICIARIES
Ekata Nepal*	Kailali	091-521464	humanrightsdgd@gmail.com	Pareena Chaudary	HIV Prevention and Integration	LGBTI
Federation of Sexual and Gender Minorities Nepal (FSGMN)*	Kathmandu	01-4000012	fsgmn@yahoo.com	Basu Guragain	Capacity Building and Network Strengthening	LGBTI
Friends Hetauda	Makwanpur	057-526389	makwanpurbdshetauda4@gmail.com	Suraj Thapa	HIV Prevention	MSM/MSW
Gay and Lesbian Sexual Minorities Network Nepal*	Kathmandu	9841780256	sujan_2036@yahoo.com	Binod Lama	HIV Prevention, Human Rights and Advocacy	
Pink Triangle Nepal (PTN)*	Kathmandu	9803041650		Bishow Raj Adhikari	HIV Prevention	MSM/MSW
Human Conscious Society*	Chitwan	056-2520265	humanconsciousociety@gmail.com	Dev Shrestha,	HIV Prevention	MSM/MSW
Human Health Society*	Dang	82-563130	bdsdang21@gmail.com	Shilpa chaudary	HIV Prevention	MSM/MSW
Human Welfare Society*	Sunsari	025-586730	humanwelfare.ith@gmail.com	Binod	HIV Prevention, Treatment and Integration	LGBTI Group
Inclusive Forum Nepal (IFN)*	Kathmandu	9841329465	inclusiveforum@gmail.com	Badri Pun		
Indreni Srijanshil Samaj*	Kailali	9814650238		Rameshowr Prasad Mahato	HIV Prevention, Treatment and Integration	MSM/MSW and Transgender
Jeevan Jyoti Samaj*	Siraha	033-561532	lahanbds@gmail.com	Laxmeshwor Prasad Yadav	HIV Prevention	MSW/MSM
Kalanki DIC	Kathmandu	9803317150		Subash Mali	HIV Prevention	MSM/MSW
Lead Nepal	Jhapa	023-585319	damakbds@gmail.com	Chanchala Subba	HIV Prevention, Treatment and Integration	LGBTI Group
Mitini Nepal*	Kathmandu	01-4433118	mitini.nepal@gmail.com	Laxmi Ghalan	Human Rights, Politics and Advocacy	LBT
Mono Supporting Maple Group*	Rupendehi	071-524862	msmgnepal@gmail.com	Manila Neupaney	HIV Prevention and Treatment	MSM/MSW
National Forum for Democracy and Development*	Kathmandu	9849258266	kdrmrjn@gmail.com	Kedar Maharjan		
Naulo Srijana Nepal*	Banke	9848038900		Ankit Poon	Integration	LGBTI and Women

NAME OF ORGANIZATION	ADDRESS	TELEPHONE	EMAIL	CONTACT PERSON	ORGANIZATION FOCUS	TARGET BENEFICIARIES
Nava Jeevan	Kapilvastu,	9817498800	bds_kapilbastu@yahoo.com	Giri Bahadur Thapa	HIV Prevention	MSW/MSM
Naulo Bihani	Kaski	061-622230	noulobihani@gmail.com	Raju Thakali	HIV Prevention	MSW/MSM
Our Equal Access*	Bhaktapur	01-6619490	bhaktapurbds@gmail.com	Jyoti Thapa	HIV Prevention	MSW/MSM
Pahichan Nepal*	Sarlahi	9841705616/ 046521386	sharlahibds@gmail.com	Surya Shrestha	HIV Prevention	MSW/MSM
Parachiya Samaj*	Lalitpur,	5521504 2191245	parichayasamaj@gmail.com	Umesh Shrestha	HIV Prevention	NA
Rainbow Nepal	Jhapa	9804979541	kakarvittadic@gmail.com	Prem Thapa		MSW/MSM
Rainbow Plus	Chitwan	056-229309	rainbowplusco@gmail.com	Raju Baral	Treatment, Care and Support	PHLA & Lesbians
Sahara Samaj*	Sunsari	9803869725	sahasasamaj25@gmail.com	Suman Tamang	Integration	LGBTI
Sahayatra Nepal*	Kanchanpur	099-525361	mahendranagardic@gmail.com	Arjun Subedi	HIV Prevention, Treatment and Integration	MSM/MSW and TG
Sahayatri Samaj	Parsa	051528606/ 9807175328	sandhyatamang@gmail.com/ssbirgunj@yahoo.com	Sanjeev Lopchan	Prevention and Treatment	MSW/MSM
Sahayogi Samaj	Saptari	031- 522215/ 9841385447	bds.rajbiraj@gmail.com	Dev Narayan Chowdary	HIV Prevention	MSW/MSM
Saino, Nepal	Chitwan	9803276681	sainonepal@yahoo.com	Sarada Adhikari	HIV Prevention, Treatment and Integration	LGBTI
Sambridha Samaj*	Morang	9842111127	sambridha.samaj2012@gmail.com	Muna Magar	HIV Prevention	MSM/MSW
Saptarangi Nepal	Rautahat	055-540378	routahot.bds@gmail.com	Suraj Limbu	HIV Prevention	MSW/MSM
Sashakti Karan Nepal	Nawalparasi	078- 521057	parasibds2009@gmail.com	Puspa lama	HIV Prevention	MSW/MSM
Sexual & Gender Minorities Student Forum, Nepal*	Kathmandu	01-4000147	sgmsfn@yahoo.com	Basu Guragain	HIV Prevention, Treatment and Integration	LGBTI
Sudhur Paschim Samaj*	Dhangadi	091-521464	dhangadhibds@gmail.com	Raju Lama	HIV Prevention, Treatment and Integration	MSM/MSW and Transgender
Sunaulo Kiran	Baglung	9867643937		Kiran lama	HIV Prevention	MSM/MSW
Sundar Sansar	Bardiya	084-421212	bardiyaabds@gmail.com	Kajol Chaudary	HIV Prevention and Integration	MSM/MSW
Sunoulo Bihani Samaj	Dhanusha	041- 527290/ 9844027741	sbs.jnp@gmail.com/ santosh.janakpur@gmail.com	Santosh Kumar Thakur	HIV Prevention	MSW/MSM
Surkhet BDS	Surkhet				HIV Prevention	MSM/MSW

NAME OF ORGANIZATION	ADDRESS	TELEPHONE	EMAIL	CONTACT PERSON	ORGANIZATION FOCUS	TARGET BENEFICIARIES
The Rising Dawn*	Sunsari	025-533534	sunsaribds@yahoo.com	Suhani Rajdhami	HIV Prevention, Treatment and Integration	Transman, bisexual and Gay
Udeshya Nepal	Kirtipur	9813334927/ 9841355341	deepakmaharjan2003@yahoo.com	Deepak Maharjan		MSW/MSM/TG
Western Star Nepal*	Banke	081-526320	western.starnepalgunj@gmail.com	Sudip Kumar Bhatta	HIV Prevention	MSM/TGs in Nepal



ANNEX 4: INDIGENOUS LGBT TERMS IN NEPAL

LESBIAN	GAY	BISEXUAL	TRANS- GENDER (MTF)	TRANS- GENDER (FTM)	INTERSEX	OTHERS
Samalingi Mahila	Samalingi Purus	Duilingi	Meti		Antarlingi	Panthi
			Kothi			Ta
			Fulumulu			MSM
			Hijara			Tesro Lingi
			Nachaniya			Dohori
						Trtiya Pakriti
						Npumsaka



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