



Intersex Justice in Nepal

Inspiring Action through Research

*Country report on the situation of
Intersex Rights in Nepal*

2024

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List of Acronyms

BDS: Blue Diamond Society

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

CBS: Central Bureau of Statistics

CDO: Chief District Officer

CEDAW: Convention on Elimination of All Forms of Discrimination Against Women

CFC: Campaign for Change

CRC: Convention on Rights of the Child

DRM: Disaster Risk Management

HRC: Human Rights Committee

ICCPR: International Covenant on Civil and Political Rights

KII: Key Informant Interviews

LGBTI+: Lesbian, Gay, Bisexual, Transgender, Intersex

NGO: Non-governmental organization

NHRC: National Human Rights Commission

PIL: Public Interest Litigation

PoMSOGIESC: People of Marginalized Sexual Orientation, Gender Identity, and Sex Characteristics

SGM: Sexual and Gender Minority

SOGIESC: Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics

UNDP: United Nations Development Programme

UNESCO: United Nations Educational, Scientific and Cultural Organization

UNICEF: United Nations Children's Fund

UPR: Universal Periodic Review

USD: United States Dollars

VCLT: Vienna Convention on Law of Treaties

Preface

This report details the study's findings on the present status of intersex rights in Nepal. This study is an effort to expand the current corpus of knowledge on intersex rights. The study aimed to recognize government initiatives and policies and identify the discrepancies between policies, laws, and initiatives and the real need of intersex people. The study involved conducting interviews and reviewing the literature to derive a better understanding of the plight of intersex people.

Acknowledgement

I would like to express my gratitude to all the individuals and organizations who helped in furnishing this report on “Legal Status of Intersex People in Nepal (Legal Overview).” Firstly, I would like to thank Mr. Esan Regmi for his valuable insights and input. Your courage and strength in sharing your personal experience have helped to shed light on the issues faced by intersex people and to create awareness about the need for better understanding and support.

I am grateful to my colleagues for their support and encouragement throughout the process of writing this report. Your feedback and suggestions have been invaluable in shaping this report. I hope this report will help raise awareness about the issues faced by intersex people and address them.

Thank you all for your invaluable contributions and support.

Executive Summary

This report highlights the concerning situation of intersex people in Nepal. The report is divided into four sections, which delve into an overview of the intersex movement, NGO and government efforts, a legal review of the rights of intersex persons, and recommendations. Intersex people and intersex issues have often been in the shadow of the broader LGBTI++ movement. The advent of the intersex movement was in the year 2016 after the first national intersex workshop where intersex people started raising their issues. This resulted in the institution of an NGO called Campaign for Change (CFC). However, the term “intersex” was recognized in the landmark pronouncement of Sunil Babu Pant v. Government of Nepal. This judgment was groundbreaking as it acknowledged LGBTI++ people as natural persons, ordered to quash discriminatory laws thereof, and legalized same-sex marriage.

Despite these advancements, the Government of Nepal has remained indifferent to many intersex issues, including the legalization of same-sex marriage. The Government has not made strides to protect intersex persons or to ensure their rights. There is a lack of understanding of intersex traits and their issues among general people, including bureaucrats, policymakers, educational professionals, and institutions. The limited understanding has invited several issues, including discrimination, stigmatization, exclusion, and bullying.

Intersex individuals are often viewed as third gender or put in the “other” category. The general public fails to understand that LGBTI++ comprises three different subjects. The acronym LGBTI++ includes three different categories of identification, LGB denotes sexual orientation, T is a gender identity, and I is a sex characteristic. There is a widespread misconception that intersex people are part of the transgender, or third gender, community. However, there is a semantic distinction between the intersex and third gender, as the former is a sex characteristic while the latter is gender identity. This important semantic distinction is commonly brushed over as intersex people are clubbed together with transgender or third gender people. Viewing all LGBTI++ groups under the same category has resulted in a data deficit of intersex people. This has been a barricade to their advocacy to ensure their rights and representation. The lack of sex-segregated data, which is exacerbated by the inadequate data collection methods in the national census, has led to an unidentified number of intersex individuals in the country.

While Nepal's constitution provides assurance of obtaining citizenship based on preferred gender identity, intersex individuals face challenges in acquiring citizenship. They are forced to take citizenship and obtain birth certificates under the 'other' category. Further, the law does not allow correction of gender or sex on birth certificates and there are consequential complications in the school enrollment and citizenship process as well.

In 2015, the Constitution recognized the term "gender and sexual minorities," which includes LGBTI++ individuals. Despite this, intersex individuals in Nepal are not adequately protected under the current legal framework, and multiple forms of human rights violations are reported. The existing legislation in Nepal falls short in protecting intersex people's bodily autonomy. The law does not. Moreover, the mandate of having to undergo sex re-assigning surgeries to change their gender in citizenship violates their bodily autonomy and undermines their bodily integrity.

In Nepal's education system, there is a lack of inclusivity. The education is outdated and conservative curricula, provides limited and fragmented information about sexual and gender minorities, and restricts the understanding of the multitude of issues such gender minorities face. The education system, including teachers and curricula, is unaware of the differences between sex, gender, and sexual orientation. The spread of misconceptions and ignorance perpetuates stigmatization and discriminatory behavior towards intersex people. Furthermore, the lack of training on intersex traits and their subsequent unique health issues make seeking health services a challenge for intersex persons. Inaccessibility to proper healthcare, specifically physiological and psychological health professionals further ostracizes the intersex community and infringes on basic human rights.

Further, rights related to marriage, adoption, and property inheritance are limited to heteronormative notions of "male" and "female." These standards barr intersex individuals from accessing such legal provisions. The impact of the absence of legislation and policies on the workforce sector is also overlooked, reinforcing heteronormative standards in the workplace.

In conclusion, the lacuna in laws and policies addressing the rights and well-being of intersex people in Nepal has resulted in many human rights violations, multiple forms of discrimination, and exclusion. There is an urgent need to reform laws so that they protect intersex individuals' rights, raise mass awareness, enhance healthcare services, and promote equal opportunity in all aspects of life.



1. Introduction

- 1.1 Background Information**
- 1.2 Main Problems Faced by Intersex People in Nepal**
- 1.3 Goals and Objectives**
- 1.4 Methodology**

1.1 Background Information

In Nepal, people subscribe to the concept of the gender binary, that gender and sex are limited to two options: men/males and women/females. This concept fails to encompass various other sexual and gender minorities. People with diverse sexual orientations, gender identities, gender expression, and sex characteristics (SOGIESC) are frequently disregarded in Nepali discourse about gender protection and promotion.

Nevertheless, Nepal's social and religious history has always respectfully recognized individuals other than males and females. For example, Hindus worship Lord Shiva's Ardhanarishwar, a half-woman, half-man form.¹ There are various references to diverse gender and sexual identities and expression in scattered throughout Hindu mythologies. The Mahabharat includes the story of Shikhandi, who was born female but raised as a man and later underwent a sex change to become a man.² Additionally, according to the historical account of the Mahabharat, one of the prominent characters, Arjun, is claimed to have disguised himself as Britannica, a eunuch music and dance teacher of King Virat's daughter. While intersex individuals are not explicitly mentioned, these examples suggest that some traces of diverse gender and sexual identities have been present in Hinduism for thousands of years. The word "tesro lingi" translates to "third gender" in English and was frequently applied to them.³ However, in the context of Nepal, the social and political acceptance as well as the legal recognition of intersex people are almost nonexistent.

The understanding of the term "intersex" intermingles with the wake of the movement of the LGBTI++. After 1990, the restoration of democracy prompted a favorable situation for rights-based activism and touched upon the issues of social exclusion.⁴ As an aftermath, it expanded the space for the emergence of civil society organizations in the form of non-governmental organizations (NGOs). This time, a rhetoric of human rights as a universal right was also established. This fostered a conducive environment for SOGIESC groups to come forward and openly discuss their identity.⁵ However, the conditions and plight of sexual and gender minorities never came to the forefront and were often spurned.

In early 2000, many informal group meetings among gay, lesbian, and transgender people began to grow in Ratnapark, an infamous place where sex workers gathered.⁶ The Sexual and Gender Minority (SGM) people discussed the problems

¹ Gyanu Chhetri, *Perceptions About the "Third Gender" In Nepal*, 11 DHAULAGIRI JOURNAL OF SOCIOLOGY AND ANTHROPOLOGY 96–114, (2017) <https://www.nepjol.info/index.php/DSA/article/view/18824/15350>.

² Syama Allard, *Shikhandi: The Mahabharata's Transgender Warrior*, THE HINDU AMERICAN FOUNDATION, (Jun. 23, 2021, 9:29 PM), <https://www.hinduamerican.org/blog/shikhandi-the-mahabharatas-transgender-warrior>.

³ Ibid.

⁴ Kyle, Knight, *Bridges to Justice: Case Study of LGBTI Rights in Nepal*, ASTRAEA LESBIAN FOUNDATION FOR JUSTICE, LGBT GLOBAL DEVELOPMENT PARTNERSHIP, (Jun. 23, 2021, 9:29 PM), <http://www.astraeafoundation.org/uploads/files/Astraea%20Nepal%20Case%20Study.pdf>.

⁵ Ibid.

⁶ Sunil Pant, *Constitutional Change and Participation of LGBTI Groups; A Case Study of Nepal*, INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (2015).

they faced, exclusion, social stigmatization, and difficulties sustaining livelihood. After 2001, the shared experience and sentiments and the state security forces' atrocities sparked the "Break the Silence" campaign.

Eventually, the grassroots activists Sunil Babu Pant, Manisha Dhakal, and Pinky Gurung established the Blue Diamond Society (BDS) to raise social and political awareness of SGM issues.⁷ At the time, the constitution of Nepal included no mention of sexual and gender diversity. Consequently, registering the BDS as an NGO promoting health services for sexual and gender minorities proved difficult. The BDS faced many challenges in the effort to acquire consistent and regular support for target locations and communities.⁸ After years of activism regarding sexual minorities' rights, Sunil Babu Pant and other human rights advocates from Mitini Nepal, Cruise AIDS, and Parichaya Samaj instituted a case before Nepal's Supreme Court. They demanded proportional representation and Laws that safeguards the LGBTI++ community.⁹ The Supreme Court made a historic ruling that opened a space for sexual and gender minorities.¹⁰ By invoking the Yogyakarta Principles, the Court defined "sexual orientation" and "gender identity". The Court meticulously categorized non-heteronormative sexualities, focusing on the LGBTI++ community before delving into specific subcategories. These categories are recent in Nepal and were developed by the judges using the Nepali translation of English terms which were interpreted as the following:

- Mailasamalingi (female homosexual): A woman who is sexually and romantically attracted to another woman.
- Purushsamalingi (male homosexual): A man who is sexually and romantically attracted to another man.
- Duilingi (bisexual): People who are sexually and romantically attracted to both men and women.
- Tesro lingi (third gender)
- Antarlingi (intersex): Intersexuality is the state of a living thing of a gonochoristic species whose sex chromosomes, genitalia, and/or secondary sex characteristics are determined to be neither exclusively male nor female. An intersex organism may have biological characteristics of both the male and female sexes.

This judgment marks history in Nepali jurisprudence but also inducted new vocabulary to the Nepali language that recognizes and defines the diverse sexualities beyond heteronormativity.¹¹

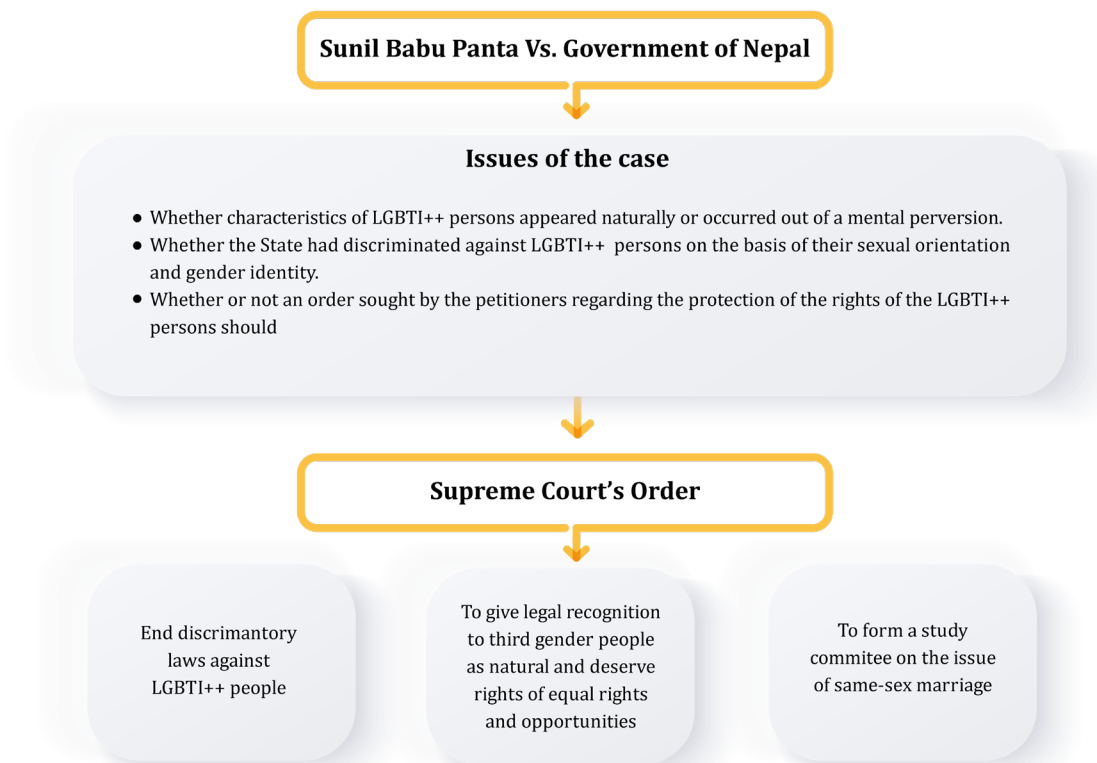
⁷ "ABOUT US", OFFICIAL WEBSITE OF BLUE DIAMOND SOCIETY NEPAL. <https://bds.org.np/about-us/> (last visited Sep. 23, 2021).

⁸ BLUE DIAMOND SOCIETY, DEVEX, <https://www.devex.com/organizations/blue-diamond-society-80671> (last visited Oct. 13, 2021).

⁹ Sunil Babu Pant v. Government of Nepal, NKP 2065, D.N. 7958.

¹⁰ Ibid.

¹¹ Barbara Beradi Tadie, *Engendering Minorities in Nepal: The Authority of Legal Discourse and the Production of Truth*, 30 ORAL TRADITION JOURNAL, 361-386, (2016).



Even after the momentous Supreme Court decision, the movement advocating for recognizing non-binary individuals did not receive much attention. This movement was ambiguous and sometimes did not fully address the issues of Nepal's diverse SOGIESC. The writ petition contained a few notes that dealt with intersex people. However, no conclusive decision was reached on intersex individuals. The Supreme Court's ruling wrongly clubbed all LGBTI++ people under the bracket of gender and sexual minority.¹² Nonetheless, this was the first-time the term “intersex” was recognized in a formal written document.

In spoken languages in Nepal, intersex persons are generally crudely referred to and understood as “Hijada”. According to the BDS, they have different nomenclature in different parts of the country, such as “Fulu fulu” in the Mountain regions, “Singaru” in the Western Hills, “Maugiya” in the Maithili language, and “Kothi” in the Tarai region.¹³ Activists have also strived to expand the linguistic framework to broaden the scope of queer community’s representation. One such measure is the induction of “PoMSOGIESC,” an acronym for “People of Marginalized Sexual Orientation, Gender Identity, and Sex Characteristics,” as a substitute for the more commonly used LGBTI++. Nepali activists created the term “PoMSOGIESC” to encompass a broader range of individuals who may face discrimination due to their sexual orientation, gender identity, or sex characteristics.

Esan Regmi, a senior intersex activist, has been vocal about intersex people’s rights since he joined the BDS in 2011. Much to his surprise, he did not meet

¹² *Supra Note 9.*

¹³ *Supra Note 1.*

other intersex persons within the organization. Though the Blue Diamond Society included intersex in the broader LGBTI++, intersex people's issues were not reflected in their strategies and programs.¹⁴ This inspired Regmi to begin sharing his experiences, which he used to connect with other intersex individuals. In 2015, he participated in the first intersex persons pre-conference event in Taiwan, where he got the opportunity to connect with six other intersex activists from different parts of Asia who came together to discuss their issues.¹⁵ Along with limited access to community, there was a lack of advocacy specifically for intersex people up until the end of 2016.¹⁶ Regmi realized the need for exclusive intervention in order to make intersex people's voices perceptible. Hence, in 2017, he established Campaign for Change (CFC), the first and only organization led by intersex people. Its goals were to bring the needs of intersex people to national, regional, and international attention. It strived to create a safe and enabling environment for the intersex community. The organization worked to recognize the rights of the intersex community by capacitating and enhancing skills, building knowledge, and raising awareness of the intersex community.¹⁷

1.2 Main Problems Faced by Intersex People in Nepal

The Constitution of Nepal recognized "gender and sexual minorities" in 2015.¹⁸ However, Nepal's legal framework does not distinctly recognize the rights of intersex persons. Instead, LGBTQI++ are grouped together under the term "gender and sexual minorities" in Article 18 of the Constitution of Nepal. Intersex persons, along with the other groups in the LGBTQI++ community, do not want to be clustered and equated into one category. They believe their life experiences differ to varied degrees from those of other sexual minority groups, even if their experiences of discrimination, isolation, shame, and bullying due to gender nonconformity may be comparable. Intersex persons in Nepal are not guarded against human rights breaches under Nepal's current legal framework.¹⁹ Local activists have reported human rights abuses, including substantial gaps in protecting physical integrity, bodily autonomy, and discriminatory protection.²⁰

The collation of stories of intersex persons unwraps numerous challenges faced by intersex persons.²¹ Their experiences divulged that intersex persons are

¹⁴ Interview with Esan Regmi, Senior Intersex Activist, (March 20, 2023), Kathmandu.

¹⁵ *Intersex Asia Talks: Special Conversation with Esan Regmi on the journey of CFC Nepal*, INTERSEX ASIA, (May 11, 2021, 8:45 PM) <https://intersexasia.org/3268-2/>.

¹⁶ Ibid.

¹⁷ *Supra* Note 1.

¹⁸ THE CONSTITUTION OF NEPAL, art 18, cl.3 & art 42, cl.1.

¹⁹ CEDAW/C/NPL/CO/6, *Concluding observations on the sixth periodic report of Nepal*, COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, UNITED NATIONS, (14th November, 2018, 10:30 AM), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FNPL.%2FCO%2F6&Lang=en.

²⁰ *Supra* Note 16.

²¹ Ibid.

denied the right to inheritance, marriage, and adoption. They face several issues in obtaining citizenship with preferred gender identity and face difficulty in amending names and gender identity²² in the birth certificate and citizenship.²³ The stories also revealed exclusion from family and society, isolation, school bullying, discrimination, and mental trauma.²⁴ NGO reports to the 6th Report of Nepal on Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also showed non-consensual medical interventions, including genital mutilations and hormone therapy among intersex children.²⁵

Intersex persons face marginalization and exclusion, even within the broader LGBTI++ movement. Their specific issues often do not receive adequate attention in public discussions and are frequently misunderstood. One of the contributing factors to this marginalization is the tendency to categorize diverse LGBTI++ groups as “other,” due to which their identity and the unique challenges are overlooked.

People who possess sexual characteristics, such as genitals, reproductive glands, and chromosome structures, that do not conform to conventional binary concepts of male or female bodies are referred to as intersex individuals. There are over 40 known variations of intersex conditions, some of which involve having both male and female genitals, ambiguous genitalia, diverse external genitalia, internal reproductive organs, and chromosomes other than the traditional XX for females and XY for males. It is important to note that individuals with intersex traits also have their own gender identities. Intersex people may identify themselves as male, female, or non-binary. Therefore categorizing all intersex individuals as “other” apart from men and women not only violates their right to gender identity but also disregards their existence altogether. It is crucial to acknowledge that sex characteristics based on reproductive organs, gender identity based on self-perception, and sexual orientation determined by the gender to which one feels attractions are three distinct domains that should be considered separately. Policymakers fail to realize that they are different from one another face different problems in addition to the issues that overlap.

Moreover, intersex individuals often face societal exclusion and ignorance due to the belief that intersex people result from karmic retribution. The NGO Report to the 6th Report of Nepal on the CEDAW has revealed that some religious beliefs attribute intersex traits to result from misdeeds or sins committed in a previous life.²⁶ This belief has led to prejudice, discrimination, and ostracism. As a result, people perceive intersex individuals as impure or unfortunate. These beliefs further perpetuate misconceptions and contribute to a lack of understanding

²² THE CONSTITUTION OF NEPAL, art 12

²³ *Supra* Note 18.

²⁴ *Ibid.*

²⁵ Markus Bauer & Daniela Truffer, *NGO Report to the 6th Report of Nepal on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, INTERNATIONAL INTERSEX HUMAN RIGHTS NGO, Compiled by Esan Regmi & Parsu Ram Rai (2018) <http://intersex.shadowreport.org/public/2018-CEDAW-Nepal-NGO-Intersex-IGM.pdf>.

²⁶ *Ibid.*

and acceptance of intersex variations. They have profound implications on the mental and emotional well-being of intersex individuals as they may struggle with feelings of shame, guilt, and a sense of being spiritually flawed.²⁷ Intersex rights activists claim that Nepal has not adequately identified people of intersex variation.²⁸ The scarce statistical data regarding intersex people has been the roadblock in devising intersex-responsive policy.

1.3 Goals and Objectives

The research has the following main objectives:

-The objective of the study at this stage is to provide a country-level investigation intended to enhance understanding of the legal status of the intersex community as well as the mechanisms and safeguards (or gaps) for intersex people in Nepal. The specific objectives are as follows:

- Analyze the efficacy of present legislation and policy mechanisms relevant to intersex persons.
- Recognize the efforts of organizations working for the rights of intersex persons.
- Provide governments and civil society organizations with a conceptual framework and methodology for addressing intersex people's issues.

1.4 Methodology

The study methods and tools were designed to capture the experiences of intersex persons. Hence, the study adopted a qualitative approach to data collection. Primary information was gathered from Key Informant Interviews (KII), and secondary information was collected from relevant literature to understand the legal, social, and political context of intersex people. The information collected through secondary resources helped to triangulate the information during the analysis and findings. Further details are explained below:

Desk Review

A desk study was undertaken to discern the relevant papers, which included the Constitution of Nepal, international treaties, Supreme Court rulings, and research reports on the situation and problems of intersex persons in Nepal. The desk review aided in gaining knowledge of the legal, social, and political context of intersex people in Nepal. A feminist critical approach was applied throughout the desk review. The list of documents reviewed is provided in **Appendix 1**.

²⁷ *Supra* Note 17.

²⁸ *Supra* Note 14.

Key Informant Interview (KII)

Only six KII have been conducted at this study stage, including non-governmental and government actors: Sarita KC, Mitini Nepal, Esan Regmi, CFC, Nepal; Dr. Kiran Rupakheti, Joint Secretary, Nepal Planning Commission, Rajesh Dhital, Director, Statistic department. The details are provided in **Appendix II**.

2. Current NGO & Government Efforts

- 2.1 Work Done by Intersex-led Organizations**
- 2.2 Government Efforts So Far**
- 2.3 Analysis of Work Done So Far**

This section delves into the strides made by the Government and various organizations relating to the inclusion, protection, and guarantee of the human rights of intersex persons. It also analyzes Nepal's international commitments and constitutional provisions that affect intersex persons.

2.1 Work Done by Intersex-led Organization

There were not many attempts made to advocate intersex issues up until 2016. On February 8 and 9, 2016, a national level meeting regarding the challenges faced by intersex people in Nepal was held in Kathmandu for the first time. The meeting provided an imperative opportunity for activists to advocate for inclusion in the continuous discussion about human rights for sexual minorities. More specifically, the meeting offered a space for intersex persons to communicate about their experiences and connect.²⁹

The meeting was organized by a senior intersex activist and supported by the United Nations Development Programme (UNDP) Bangkok office. It brought together 13 intersex persons from Nepal with various gender identities and sexual orientations and representatives from the National Human Rights Commission (NHRC), UNDP, and United Nations Children's Fund (UNICEF).³⁰

Following the meeting, CFC raised issues of intersex people at the UN platform.³¹ The meeting allowed intersex persons to share their stories and the challenges that affect intersex people in Nepal. For their voice to be heard and their viewpoint to be included in ongoing efforts in Nepal to ensure rights for all sexual minorities, it was a crucial step toward inclusiveness.

After the successful meeting, a shadow report was submitted on the intersex issue for the seventy-second session of the CRC. The CRC committee made a concluding observation on intersex issues to Nepal Government.³² The CRC Committee had applauded the State Party's efforts in the recent addition of a third gender category to identity documents that recognize genders other than "male" and "female" and the inclusion of "gender and sexual minority" in the grounds for discrimination that is prohibited under Article 18 of the new Constitution (Right to Equality). The committee was more concerned about the:

²⁹ Jensen Byrne, *The Dawn of a National Intersex Movement: The First National Intersex Workshop in Nepal*, BEING LGBTI IN ASIA, (Feb. 29, 2016, 5:30 PM) <https://medium.com/being-lgbti-in-asia/the-dawn-of-a-national-intersex-movement-the-first-national-intersex-workshop-in-nepal-621e8d7a826e#ucq2ckc1q>.

³⁰ Ibid.

³¹ *Intersex Right Movement in Nepal*, CAMPAIGN FOR CHANGE, (Feb. 22, 2022, 5:10 PM), <https://nepalcfc.org/intersex-rights-movement-in-nepal/>.

³² CRC/NPL/CO/3-5, *Concluding observations on the combined third to fifth periodic reports of Nepal*, COMMITTEE ON THE RIGHTS OF THE CHILD, UNITED NATIONS, (8th November, 2016, 10:30 AM) <https://intersexrights.org/un/crc-npl-co-3-5/>.

- Lack of awareness, high level of stigma, discrimination, and challenges faced by an intersex child in accessing identity documents.
- Cases of medically unnecessary surgeries and other procedures performed on intersex children before they can give their informed consent. These surgeries frequently have unavoidable consequences and can result in extreme physical and psychological suffering as well as cases with no recourse or compensation available.
- Coordination of an awareness-raising campaign to prevent the stigmatization and discrimination against intersex people.
- Insurance of identity documents to intersex children.
- Guarantee that, without adequate counseling and support, no child shall be subjected to unnecessary surgical and medical treatment.

However, the Nepal government failed to implement it. Likewise, on August 6 and 7, 2017, a second national-level meeting was organized where intersex individuals and parents of intersex children gathered. Here they participated and shared their experiences and talked about the challenges faced by intersex people and their parents.³³

In 2018, a shadow report on intersex issues was submitted to the CEDAW committee. This report highlighted the concerns and challenges faced by intersex people in Nepal. As a result, CEDAW made a concluding observation on intersex issues, indicating their increased attention to this matter.³⁴ CEDAW expressed deep concern regarding discrimination experienced by intersex persons in Nepal. The committee noted abuse, infanticide, and forced marriages involving intersex individuals. However, the practice of medically unnecessary procedures was of particular concern to CEDAW. These procedures on intersex infants and children in Nepal within the country or abroad were done illegally without informed consent, as the children were too young to provide it themselves.³⁵ CEDAW recognized the violations of intersex individuals' human rights and underscored the urgent need for protective measures. The committee's concluding observations served as a call to action for the Government of Nepal to take concrete steps to protect and ensure the rights of intersex persons. The committee made the following recommendation to the Nepal government:

- Provide targeted financial support and legal aid in commonly spoken languages.
- Adopt legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent.

³³ CAMPAIGN FOR CHANGE, <https://nepalcfc.org/> (last visited Oct. 6, 2021).

³⁴ CEDAW/C/NPL/CO/6, *Concluding observations on the sixth periodic report of Nepal*, COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, UNITED NATIONS, (14th November, 2018, 11:00 AM), <https://intersexrights.org/un/cedaw-c-npl-co-6/>.

³⁵ Ibid.

- End discrimination by healthcare providers against intersex persons by raising awareness among providers, with the support of female community health volunteers, of the rights of those groups and the importance of reporting.

Even with all the endeavors and advocacy by the LGBTI++ movement, there remains a dearth of intersex representation in positions of authority and policymaking. They tragically overlapped with third gender identity, often leading to a sense of tokenism towards the intersex community in Nepal. Moreover, the lack of proper representation among the LGBTI++ community and activism created a lack of access to health services, education, and employment opportunities for intersex persons. Hence, it was very important to bring intersex people's narratives and stories into the movement.

From November 14 to 16, 2019, CFC organized the third national meeting, supported by Center for Culture and Leisure (COC) Netherlands through Intersex Asia.³⁶ In this meeting, 15 participants from different parts of Nepal participated and published a national statement on intersex rights. It presented the rights of intersex people in Nepal, overviewed the global movement, and shared the participants' personal experiences. At the end of the meeting, they developed a statement on intersex people in Nepal, which was later shared publicly and covered by the media in both English and Nepali.³⁷

Esan Regmi and Rukshana Kapali, prominent LGBTI++ activists, have also filed a writ petition in the Supreme Court demanding an amendment to Citizenship Act, Regulations, Procedures, and Guidelines to make it more inclusive regarding sexual and gender identity.³⁸

Thus, the petitioner files a writ petitioner asking for the following remedies:

- Guidelines for Issuance of Citizenship to Sexual and Gender Minority Persons as "Other" in the Case of Gender, 2069³⁹
- Title, Preamble including Sections 1(1), 2(b)(c)(d), 3(1), 4(1) and Sections 5, Schedule 7 and 12 of the Citizenship Regulations,
- Rule 14, Section 17(1) of the Citizenship Act, 2063, (2006)
- Guidelines for Procedures for Distribution of Citizenship Certificate, Sections 37, 38, and 39 of 2063,
- Rules for Correction of Age, Name, and Caste, Rules of 2017, 6,6(1)(2),
- Section 25 of the National Identity Card and Registration Act, 2076,

³⁶ Ibid.

³⁷ Intersex Asia, *Intersex Asia Annual Report 2019*, INTERSEX ASIA NETWORK, Bangkok, Thailand, (2020) https://intersexasia.org/docs/report/IAAR_2019.pdf.

³⁸ Rukshana Kapali & Esan Regmi v. Government of Nepal, Mandamus, C.N. 077-WO-0695, Supreme Court, Nepal.

³⁹ *Guidelines for maintaining the gender identity of people with intersex sexual orientation, 2078*, SUPREME COURT, NEPAL. (Aug. 15, 2021, 10:48 PM) <https://nepalafc.org/wp-content/uploads/078-WO-1145-Intersex-Nirdeshika-Model.pdf>.

(2019), Section 45(1)(2) of the Secondary Education Excellence (SLC) Examination Conduct and Management Guidelines, 2068, and Section 45(1)(2) of the Higher Secondary Education Council Examination Guidelines, 2068 (2012) Section 6 since the provisions in this document are discriminatory and ineffective in terms of protection and promotion of the rights of persons with minorities of sexual orientation, gender identity, and sexual characteristics to establish their true gender identity and accordingly receive personal identification documents including Citizenship and lead a dignified life.

- A review of the mentioned laws and make necessary amendments, modifications, and additional legal arrangements, issue orders, and other appropriate orders in the name of the opposition, including the Prime Minister and Council of Ministers Office.

However, this case is still pending in court, and the issues are yet to be decided. Regardless of all the efforts by the CFC, and social activists, there are still many gaps.

2.2 Government Efforts So Far

The Nepali government often has been heedless to the concerns of SOGIESC people, and intersex falls under the shadow even within this community. Therefore, it is difficult to pinpoint the Government's intersex-oriented endeavors. However, some of the Government's effort collectively addresses the issues of SOGIESC people, including intersex. Following the Supreme Court's ruling in the case Sunil Babu Pant vs. Government of Nepal,⁴⁰ which directed the Government to amend or repeal all laws that discriminate against SOGIESC people and to form a seven-member committee to draft a bill on legalizing same-sex marriage. Following this case, the Government reviewed existing legislation and found over a hundred Acts that needed to be revised to prevent discrimination against SOGIESC people. In 2015, a government-appointed committee released a report recommending legalizing same-sex marriage.⁴¹ However, it has not been materialized yet.

In 2011, Nepal made a historic move by introducing a third gender option on the federal census.⁴² It became the first country to acknowledge genders other than the binary heteronormative genders on an official document. In 2021, the Central Bureau of Statistics (CBS) officially recognized a "third gender" option, in addition to male and female. It was regarded as the world's first national census

⁴⁰ *Supra Note 12*.

⁴¹ Adheep Pokhrel, et al. v. Ministry of Home Affairs, Department of Immigration, Kalikasthan, et al. 079-WO-0198, (Nep. 2079) Supreme Court, Nepal.; *Nepal: Court Orders Recognition of Same Sex Spouse*, HRW (May 2, 2023, 9:12 PM) <https://www.hrw.org/news/2023/05/02/nepal-court-orders-recognition-same-sex-spouse>.; *Recommendations*, HRW, (May 3, 2023 8:45 PM) https://www.hrw.org/sites/default/files/media_2023/05/Same%20sex%20marriage%20recommendations%20-%20English.pdf.

⁴² Kyle Knight & Michael Bochenek, "Establishing a Third Gender Category in Nepal: Process and Prognosis", 26 EMORY INT'L L. REV., 11 (2012).

to include a category other than male or female, allowing the Government to gather information on the number of "third gender" Nepalis.⁴³ The LGBT and intersex communities in Nepal voiced concern about including LGBTI++ as a third gender. An activist group said that sexual orientation, gender identity, and sex characteristics were all being merged into one. On July 4, 2021, a writ petition was filed against the CBS et al., claiming "tokenistic inclusion" in the census and requesting meaningful inclusion, which acknowledges the variety of SOGIESC. On July 9, 2021, the Supreme Court issued a show cause order to the CBS and Election Commission of Nepal.⁴⁴ There has not been any substantial development in the case and is currently in a stagnant state awaiting the next hearing.

In 2015, the Government began issuing passports recognizing the third gender following the ruling in the Dilu Buduja vs. Office of the Prime Minister and others.⁴⁵ The case revolves around Dilu Buduja, a Nepali citizen who was issued citizenship as a third gender by the District Administration Office in Myagdi. However, the Ministry of Foreign Affairs refused to accept the passport application, stating that they did not issue passports to individuals of a third gender. Nevertheless, the Supreme Court emphasized the need to grant identification of the third gender on passports, highlighting the importance of equal rights and non-discrimination. It also stressed the international standards for passport issuance and called for the amendment of existing regulations to accommodate gender identity for third-gender persons.⁴⁶ In 2019, the Election Commission of Nepal included a third gender category on the voter rolls, and similarly, immigration forms included the same⁴⁷

2.3 Analysis of Work Done So Far

The Government and policymakers tend to have limited knowledge and confusion about intersex variation. They do not entirely understand the concept of sex characteristics and therefore amalgamate intersex with transgender or third gender or even confuse intersex with transgender identities. Policymakers continuously fail to comprehend that transgender relates to an individual's gender identity not aligning with their assigned sex, while intersex refers to individuals born with physical or genetic characteristics that do not fit the traditional binary definition of "male" or "female". Intersex variations can manifest in various ways, including differences in reproductive organs, chromosomes, or hormone levels. As a result, there have been scant attempts to formulate laws and policies

⁴³ Ankit Khadgi, *The inclusivity problem with Nepal's census*, THE KATHMANDU POST, (May 18 2021, 4:30 PM), <https://kathmandupost.com/art-culture/2021/05/18/the-inclusivity-problem-with-nepal-s-census>.

⁴⁴ Rukshana Kapali & Esan Regmi v. Central Statistic Department, (Nep. 2078) C.N. 077-WO-1243, Supreme Court, Nepal.

⁴⁵ Dilu Buduja et al V. Office of the Prime Minister et al, NKP 2070, D.N. 9048.

⁴⁶ Ibid.

⁴⁷ Deepesh Shrestha & Jahnvi Upreti, *Understanding the plight of prides: mainstreamed or marginalized?* FWLD, (Nov. 21, 2022, 7:55 PM), <https://fwld.org/blog/understanding-the-plight-of-prides-mainstreamed-or-marginalized/>.

aimed at safeguarding the rights of intersex individuals. Instead, the Government always groups their identity, needs, and concerns together as “third gender” or “others.” Using the labels “third gender” and “other” is insufficient in respectfully acknowledging the gender identity of transgender, non-binary persons, or intersex. Although Nepal acknowledges gender diversity beyond the male-female binary, describing someone as “other” or “third gender” fails to accurately reflect the gender identity of individuals who do not identify as exclusively male or female.⁴⁸ Using the term “other” in the census has resulted in no real data on intersex individuals. The activists claim that the 2011 census did not effectively support the community due to the vague category of “other” as a gender option. Limiting gender identity options to just “other” for SOGIESC and intersex people can hinder their ability to exercise democracy. It can also cause embarrassment for those whose identities are not acknowledged by these systems.

48 Esan Regmi & Ruksana Kapali, *Joint statement on the occasion of International Day against Queerphobia (IDaQu)*, CHANGE FOR CHANGE, NEPAL. (May, 2017) https://nepalcf.org/wp-content/uploads/May-17-Statement_English.pdf.



Campaign for Change (CIC) is the first and only organization led by intersex people registered in 2017 in Nepal, to address the plight of the intersex community in Nepal.

It brings the needs of intersex people to national, regional, and international attention and strives to create a safe and enabling environment for the intersex community. We lobby and advocate with the government and different institutions along with communities to get the situation of intersex people recognized in order to establish our human rights so we can live an equal life of dignity and respect. We are a pioneering organization that recognizes the need to establish the rights of the intersex community through capacitating and enhancing skills, building knowledge, and raising awareness of the intersex community so we use our agency to address the existing inequalities and bring the change.

Our Vision and Mission

Vision

We envision a just, equal, and enabling society where the rights of intersex people are accepted, ensured, and realized and where intersex people are safe, treated with respect and dignity, and have access to essential services, resources, and opportunities and live a life free from stigma and discrimination.

Mission

We are committed to building a strong and resilient intersex community by creating systemic changes to end stigmatisation and discrimination so that the human rights and bodily autonomy of intersex people are respected. We will dedicate our efforts to shift the prevalent focus of pathologising and unnecessary "sex normalising" surgeries to acceptance for intersex people.

Goal

Improve the well-being, safety and autonomy of intersex people and ensure their rights are respected and equality is achieved. We will create a safe and enabling environment for intersex people and ensure their rights are respected and equality is achieved. We will create a safe and enabling environment for intersex people and ensure their rights are respected and equality is achieved.



3. Analysis of Rights of Intersex People

- 3.1 Protecting Intersex People's Bodily Integrity
- 3.2 Protecting Intersex People from Discrimination in All Areas
- 3.3. Health
- 3.4. Education
- 3.5. Hate Crime and Hate Speech
- 3.6. Gender Marker Registration at Birth
- 3.7. Legal Gender Recognition
- 3.8. Access to Justice and Redress
- 3.9. Inclusion in Emergency Policy Response
- 3.10. Social Security

This section examines legal measures and directives adopted by the Government of Nepal as well as the Supreme Court's role in protecting the right of intersex persons. This section has critically assessed comprehensive legal measures concerning intersex persons from an inclusion and human rights standpoint.

3.1 Protecting Intersex People's Bodily Integrity

Section 233 of the Muluki (National) Criminal Code, 2074 prohibits medical experimentation through surgery and drugs on the human body without consent. Furthermore, in the case of children, the law seeks consent from the parents or guardians of the child. Thus, the code does not restrict reassignment or other sex surgeries amongst children that happens with the consent of parents or guardian. The Act Relating to Children 2075 prohibits medical experiments on children under Section 66 (2) (q). Despite this, no legal provisions in the Act protect children from coercive medical interventions such as genital mutilation surgery. The law does not recognize the vulnerability of intersex children to non-consensual medical intervention of intersex people. Moreover, no laws explicitly prohibit unnecessary harmful practices or other medical procedures on intersex children before they become adults.

In Nepal, there is an abundance of medical interventions on intersex persons, which includes procedures like removing the partial clitoris and administering hormones. This practice is carried out in public and private hospitals, such as Kanti Government Children's Hospital, Bir Hospital, Om Hospital, Dhulikhel Hospital, BP Smriti Hospital, and BP Koirala Institute of Health Sciences. Additionally, intersex children are sent to India for such procedures, indicating the need for protection against such violations beyond national borders.⁴⁹

In response to these violations, the Committee on the Rights of Child recognized and expressed concerns about instances in Nepal where intersex children are subjected to surgeries and other needless medical procedures before they are of the age to provide informed consent.⁵⁰ Additionally, the committee recommended Nepal to inquire into cases where intersex children have undergone surgical or other medical procedures without their informed consent. It also urged Nepal to establish legal measures to enable victims of such treatment to receive compensation or other forms of redress. Similarly, the CEDAW committee recommended that Nepal implement laws that unequivocally forbid unnecessary

⁴⁹ Esan Regmi & Parsu Ram Rai, *Harmful Practice and Violence against Intersex Children and Adolescents in Nepal*, SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES, (2018), <https://intersex.shadowreport.org/public/2018-SR-Violence-Women-Nepal-NGO-Intersex-IGM.pdf>.

⁵⁰ CRC/C/NPL/CO/3-5, *Concluding observations on the combined third to fifth periodic reports of Nepal*, COMMITTEE ON THE RIGHTS OF THE CHILD, UNITED NATIONS, PARA 41 (c), (July 8, 2016, 9:40 PM) <https://icj2.wpunepowered.com/wp-content/uploads/2017/12/Concluding-Observations-CRC-Nepal-2016-eng.pdf>.

medical intervention on intersex children before they reach the age of consent.⁵¹ It also recommended that medical and psychological professionals receive training regarding intersex persons' rights.

The Amendment Bill to the Citizenship Act, 2063 contains a provision that if a person wishes to change their gender identity in the citizenship, they must provide a doctor's report.⁵² Such provision depicts how the Government is coercing medical intervention on people wishing to change their gender identity in citizenship. This is flagrant defiance of CEDAW and the CRC committee's recommendation.

Chapter 18 of the Muluki (National) Criminal Code, 2074, deals with rape. Section 219 has defined rape as "where a man has sexual intercourse with a woman without her consent or with a girl child below eighteen years of age even with her consent, the man shall be considered to commit rape on such woman or girl child."⁵³ The provision of rape also includes that if the penis is inserted into the anus, mouth, or vagina, or if any object other than that penis is inserted into the vagina without the consent of a woman or girl will also be deemed rape. Under this definition, rape can only be committed against a woman. It fails to recognize that rape can happen against persons with different sexual identities, including intersex people. The definition is not gender neutral as the law does not protect people with various sexual identities other than females against rape. This increases the vulnerability of intersex people. Thus, the lack of law protecting intersex people from rape also prevents them from accessing justice.

3.2 Protecting Intersex People from Discrimination in All Areas

The Constitution of Nepal has guaranteed the right to equality to all Nepali citizens. The right to equality is founded on two core principles: equality before the law and equal protection under the law. No citizen is superior or inferior. "Equality before the law" means that every individual, regardless of their background, identity, or status, is subject to the same laws and legal procedures. It ensures that all individuals are treated equally in the eyes of the law, without any discrimination or favoritism. This implies that the state cannot discriminate against anybody, directly or indirectly, based on the circumstances listed above. Similarly, "equal protection under the law" deals with the prohibition of discriminatory laws

⁵¹ CEDAW/C/NPL/CO/6, *Concluding observations on the sixth periodic report of Nepal*, COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, UNITED NATIONS, (14 Nov. 2018, 5:00 PM), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/378/89/PDF/N1837889.pdf?OpenElement>.

⁵² The Citizenship Amendment Bill, 2075, § 8(b)(3) (Nepal).

⁵³ The Muluki (National) Criminal Code, 2018, § 219 (Nepal).

and policies that treat groups unequally. Hence, the state cannot discriminate against citizens based on their origin, religion, race, caste, sex, or other protected characteristics while applying the law or creating laws. It promotes the idea that all are equal and that men, women, and persons with diverse sexual and gender identities should not be treated differently.

The right to equality encompasses constructive approaches to making special provisions by law. This indicates that equality is not confined to the right to formal equality but opens the scope for "substantive equality." Article 18, Clause 3 has a restrictive phrase that states that special arrangements may be created to protect, empower, or develop socially and culturally backward women, including sexual and gender minorities. It has created a broader opportunity/scope for creating the necessary substantive equality arrangements for the progression and empowerment of intersex people in Nepal. On such a pretext, the Government of Nepal has the mandate to introduce laws, policies, and programs for gender and sexual minorities, including intersex people.

The Muluki Criminal Code Section 160 has embraced the spirit of the Constitution and criminalized discriminatory treatment against any citizen on the grounds of origin, religion, color, caste, race, sex, physical condition, language or region, or ideology. This section also provides for punishment of imprisonment for a term not exceeding three years or a fine up to thirty thousand rupees or both for those guilty of discrimination on the grounds of sex.⁵⁴

Even though the Constitution of Nepal has stipulated that no one should discriminate against anyone on the basis of sex. It does not have any concrete substantiation regarding what the term entails. Traditionally, it is understood as male and female. No case has been instituted in the Court to interpret the term "sex" yet. However, since the Supreme Court, in case Sunil Babu Pant,⁵⁵ has recognized LGBTI++ people as natural persons and opined that they should not be subjected to any form of discrimination.⁵⁶ It can be construed that the term sex in the Constitution includes intersex as well.

3.2.1 Discrimination and Employment Rights

Under Article 18 Clause 4, the Nepalese Constitution prohibits gender discrimination in wages and social security for the same work. However, it does not include discrimination based on sex in terms of employment and social security. The Constitution of Nepal nonetheless provides every citizen the right to employment and choose employment.⁵⁷ This provision applies to every intersex citizen of the country as well. Moreover, the Labor Act 2017 does not include specific provisions aimed at safeguarding SOGIESC people, including intersex

⁵⁴ The Muluki (National) Criminal Code, 2018, §160 (2) (Nepal).

⁵⁵ *Supra Note 41.*

⁵⁶ *Ibid.*

⁵⁷ The Constitution of Nepal, 2015, art. 33 § (1) & § (2).

individuals, in the workplace. While the Act acknowledges the need for a safe working environment and implementation of safety and health measures, it does not encompass provisions that address the issues.⁵⁸

3.2.2 Inconsistent Inheritance Rights

Article 18, Clause 5 of the Constitution allows all children to enjoy equal rights in ancestral property regardless of gender. This section utilizes the word "offspring" rather than "son or daughter," indicating that it intends to encompass those with diverse gender identities beyond the traditional binary categorization who do not fall into the standard notion of male or female. Broadly, this provision is an opportunity for intersex people to claim their property right and fundamental rights. Nevertheless, Section 205 under the Code has defined a "coparcener" as the husband, wife, father, mother, son, and daughter. This provision explicitly states son and daughter, which excludes intersex children. Even though the Constitution uses the gender-neutral term in the provision relating to inheritance, intersex persons cannot realize this right due to the exclusion in Section 205 of the Civil Code. Nonetheless, this provision contradicts the Right to Equality ensured by the Constitution of Nepal as a fundamental right and is discriminatory towards intersex persons.

3.2.3 Discriminatory Family and Marriage Rights

Muluki Civil Code, 2074 is a general law that encompasses individuals' civil and family rights. It contains several provisions that affect the basic rights of intersex persons. Section 67 of the code has narrowly defined marriage and only recognizes marriage between a man and a woman who completed the age of twenty years. The definition does not provide the scope to conclude marriage between any other sex or gender identity. However, the Code has not criminalized same-sex marriage or marriage solemnized between people of different sex or gender identities. It does not legally recognize marital relationships between persons of gender or sex other than cisgender heterosexual men and women. This ultimately affects other rights associated with marriage, such as marriage registration, divorce, claim over property, maintenance, alimony, and other similar rights on the grounds of marriage.

Numerous activists within the SOGIESC community are worried about the implications of not being able to get married, which means they miss out on the legal benefits that married couples are entitled to. For example, as a result, SOGIESC couples find it almost impossible to pass on citizenship to their children. Additionally, these couples cannot jointly sell or transfer property, open joint bank accounts, receive property rights upon their partner's death, or enjoy other benefits exclusively reserved for married individuals. Furthermore, Section 71 (2) (b) of the National Civil Code, 2017 stipulates that "no one shall

⁵⁸ The Labor Act, 2018, § 69 (Nepal).

conclude, or cause to be concluded, marriage with a man or a woman who has already been proved to have no sexual organ, to be impotent or to have no reproductive capability.” Further, Clause 3 of the same section has provisioned for claiming reasonable compensation from the person who concludes marriage by misrepresentation. This provision poses a threat to intersex people for being accused of misrepresentation if his/her partner may have ill intentions even if the marriage was consensual with full knowledge of the person's sex characteristics. This provision will always put an intersex person in a vulnerable position within a marital relationship.

In 2007, the case of Sunil Babu Pant vs. the Government of Nepal⁵⁹ the Supreme Court opened the discourse of same-sex marriage. The Court ordered that the Government create a committee to research same-sex marriage laws in other countries and that the new legislation does not discriminate against sexual minorities regarding marriage.⁶⁰ In 2015, a committee formed to study same-sex marriage presented to the Prime Minister's Office an 85-page report proposing its legalization. However, the suggestion was never enacted into law.⁶¹

Similarly, in Rajani Shahi v. National Women's Commission⁶², the Supreme Court acknowledged a lesbian couple's relationship in 2012. The Court granted Rajani Shahi the right to live with her lover Prem Kumari Nepali rather than her husband. According to the verdict, "Individuals can choose their ways of living either separately or in partnership with homosexuals or heterosexuals – with or without solemnizing marriage." Although in the prevailing laws and tradition, "marriage" denotes a legal bond between heterosexuals, one male and one female, the legal provisions on homosexual relations are either inadequate or mute by now."⁶³

In Suman Pant v Ministry of Home Affairs, the Court delivered its decision on October 23, 2017.⁶⁴ It stated that a foreign national who files a valid marriage license with a Nepali resident is entitled to acquire a "Non-Tourist Visa" as a dependent under Rule 8 (1)(h) of the Immigration Rules. Furthermore, the Supreme Court determined that the Immigration Rules do not require a foreign person seeking a Non-Tourist Visa to be of the same or opposite gender. It also found that Pant, as a member of a "gender and sexual minority," is entitled under Nepal's Constitution to the basic right to live a life of dignity free of discrimination. Foreign same-sex spouses of Nepali nationals can now apply for a Non-Tourist Visa as a dependent.⁶⁵

⁵⁹ *Supra* Note 55.

⁶⁰ *Ibid.*

⁶¹ Ankit Khadgi, *Nepal might have made progress when it comes to queer rights, but it still has long way to go*, The Kathmandu post, (May. 17, 2020), <https://tkpo.st/2AAIm1S>.

⁶² Rajani Shahi v. The National Women Commission, 069-WH-0030, Nep. 2069-07-14.

⁶³ *Ibid.*

⁶⁴ Suman Pant v. Department of Immigration, Ministry of Home Affairs, NKP 2074, D.N. 9921.

⁶⁵ *Ibid.*

Although these judicial pronouncements have not made huge impacts on the overall marriage issue of intersex people, it remains a judicial precedent and open avenues to advocate for the right to marriage for intersex persons as well. Moreover, the law lacks clarity regarding the adoption rights of an intersex person. Section 169 under the Muluki (National) Civil Code, 2017 reads that a person who accepts another person's son or daughter as an adopted son or daughter is an adopted son or daughter. This provision appears gender-neutral and, when read in isolation, provides scope for an intersex person to adopt. However, Section 172 of the same code only allows a couple with no child up to 10 years of marriage, unmarried, widow, judicially separated, divorcee man and woman, having completed 45 years and with no child. This provision bars an intersex person from adopting a child.

Section 12 under the Public Health Service Act 2075 requires all healthcare workers to treat all health service seekers equally and respectfully. It prohibits any healthcare institution or worker from discriminating against service seekers based on sexual or gender identity.⁶⁶ However, intersex persons continue to be ill-treated in hospitals.⁶⁷ Implementing these laws in the context of realizing the rights of intersex persons is frail.

3.2.5 Discrimination Against Children

The Act Relating to Children, 2075 forbids discrimination against children based on gender or any other reasons under Section 5. Section 7 Clause 3 of the same Act safeguards children from abandonment. Similarly, Clause 5 of the section thereof ensures that every child has the right to protection against gender-based maltreatment, sexual harassment, and exploitation by family members, guardians, teachers, or any other person. Although several legislations have provisioned anti-discrimination laws to protect gender and sexual minority people, including intersex persons, the practice conflicts with the law. The Committee on the Rights of the Child has recognized sexual orientation and gender identity as a basis for discrimination and has denounced the same in its concluding observations.⁶⁸

Article 39 of the Constitution of Nepal guarantees the right to health to all citizens

⁶⁶ Public Health Service Act, 2015, §12 (3) (Nepal).

⁶⁷ Prapoosa K.C., *Analysis of Nepali Legislation from Human Rights Perspective of Intersex People*, CAMPAIGN FOR CHANGE. <https://nepalcf.org/analysis-of-nepali-legislations-from-human-rights-perspective-of-intersex-people/>.

⁶⁸ CRC/C/NPL/CO/3-5, *Concluding observations on the combined third to fifth periodic reports of Nepal*, COMMITTEE ON THE RIGHTS OF THE CHILD, UNITED NATIONS, PARA 41-42, (8 July, 2016, 8:30 PM) <https://icj2.wpenginepowered.com/wp-content/uploads/2017/12/Concluding-Observations-CRC-Nepal-2016-eng.pdf>.

3.3 Health

of Nepal, which includes the entitlement to free basic healthcare services from the Government and the right to access emergency medical services without any barriers. Despite constitutional guarantees, intersex people are fraught with challenges when seeking health care services. This is due to the healthcare professionals' insufficient knowledge and understanding of individuals with intersex traits and their unique needs. A report on Human Rights Violations Among Sexual and Gender Minorities in Kathmandu revealed that doctors do not know how to treat intersex people. They ask, "How should we treat you since you are neither male nor female?"⁶⁹ The report also states that some doctors do not want to treat people with different gender identities and sex characteristics. Moreover, there are multiple instances of doctors performing surgeries on intersex persons that are not medically required. A report by B. Thapa suggests that government hospitals in Nepal are openly performing sex reassigning surgeries on intersex individuals. There also has been an instance of death because of one such surgery.⁷⁰ A report by Prapoosa K.C. reveals an experience of an intersex person being sexually harassed by a health professional.⁷¹ These instances, inadequately-educated staff, unwelcoming behavior, and discrimination towards intersex people have made them reluctant to seek health services.⁷²

The Constitution of Nepal has ensured rights to safe motherhood and reproductive health under Article 38. Nevertheless, the right is focused on women and does not extend this right to any other sex or gender. Hence, the Safe Motherhood and Reproductive Health Act 2075 does not surpass the country's supreme law and only concentrates on women's reproductive issues. It fails to capture the issues faced by women with intersex characteristics. The law remains silent on the maternity rights of people with gender and sexual identities.

The Child Rights Committee recognized that health and psychological professionals are not adequately trained. It also acknowledged the need to educate them on the various forms of sexual, biological, and physical diversity as well as the negative effects of unnecessary medical interventions on intersex children.⁷³ An interview with a gynecologist revealed that sexual anomalies are part of medical school courses. However, no other trainings are oriented on various aspects of intersex issues given to health professionals and doctors in Nepal.⁷⁴ Nepal lacks hospitals that cater to the needs of intersex persons. Despite the general lack of inclusion, the Family Planning Association of Nepal has established a hormonal clinic for

⁶⁹ Sonal Singh, Sunil Babu Pant, Suben Dhakal, Subash Pokhrel & Luke C Mullany, *Human rights violations among sexual and gender minorities in Kathmandu, Nepal: a qualitative investigation*, 12 BMC INT'L HEALTH & HUM RTS., 7 (2012).

⁷⁰ Sanju Gurung, *Nepal, the Beacon of LGBTQ+ Rights in Asia? Not Quite*, THE DIPLOMAT (Feb. 10, 2021, 5 PM) <https://thediplomat.com/2021/02/nepal-the-beacon-of-lgbtq-rights-in-asia-not-quite/>.

⁷¹ *Supra* Note 32.

⁷² *Ibid.*

⁷³ Bhumika Shrestha, et al, *Challenges in equal learning opportunities and building awareness on equality and non-discrimination of LGBTIQ children in Nepal*, 1 NATL. JOURNAL ON CHILDREN & SOCIETY, NATIONAL CHILD RIGHTS COUNCIL, 18-31, (2021).

⁷⁴ Interview with Dr. Swaraj Rajbhandari, Senior Gynaecologist, Senior Consultant, (Feb. 11, 2023) Nidan Hospital, Kathmandu.

sexual and gender minorities for the first time in Nepal.⁷⁵ However, there are questions on whether it addresses the special concerns of intersex persons as these hormone therapies aim at changing hormones into heteronormative male and female chromosomes.⁷⁶

3.4 Education

The Constitution of Nepal under Article 31 guarantees the right to free and compulsory education up to the basic level to every citizen as a fundamental right. The 2018 Act Relating to Compulsory and Free Education provides further detail, stating that all citizens must have equal access to quality education and that discrimination on any basis cannot prevent anyone from obtaining an education. Nevertheless, it is still difficult for intersex children to access education in Nepal. Despite these laws in place, the practice does not support the concept of inclusive education that encompasses gender and sexual minorities. The education system and institutions fail to create a safe and conducive environment for intersex people.

The previous National Plan of Action for Children (2005-2015) and the 2012 National Policy do not contain explicit provisions on SOGIESC or intersex children as a group requiring special attention or protection, nor were they listed in Article 48 of the 2018 Act Relating to Children as children with special needs. Consequently, SOGIESC children are often overlooked and unable to fully exercise their rights, including access to education.⁷⁷

The Ministry of Education, Science, and Technology has been implementing the School Sector Development Plan (2016-2023) to promote inclusivity and equity in education.⁷⁸ However, these plan fails to include intersex and sexual and gender minority children.

The policymakers are ambivalent regarding the inclusion of sexual and gender minorities, including intersex individuals, in the curriculum and training manuals. There have been limited efforts to include information on sexual minorities and limited information provided is usually inaccurate. To instantiate, the social studies books of class 12, developed by the Nepal Government, include a chapter on “Gender Questions” that contains misleading information about

⁷⁵ *Hormonal Clinic to come into operation soon*, NEPALNEWS PVT LTD, (Jun. 19 2022, 11:31 AM) <https://nepalnews.com/s/health/hormonal-clinic-to-come-into-operation-soon>.

⁷⁶ Prapoosa K.C., *Analysis of Nepali Legislation from Human Rights Perspective of Intersex People*, CAMPAIGN FOR CHANGE. <https://nepalcfp.org/analysis-of-nepali-legislations-from-human-rights-perspective-of-intersex-people/>.

⁷⁷ Ibid.

⁷⁸ *School Sector Development Plan, 2016-2023*, MINISTRY OF EDUCATION, GOVERNMENT OF NEPAL, (2016), www.globalpartnership.org/node/document/download?file=document/file/2019-05-nepal-education-sector-plan.pdf.

intersex individuals.⁷⁹ The chapter refers to intersex people as a “biologically third gender” and stresses that they are distinct from both males and females.⁸⁰ The development center of the Government is confined to knowledge of heterosexuals, homosexuals, and bisexuals and has omitted intersex.

Nevertheless, few provincial governments, such as the Gandaki province, have taken steps to promote inclusive education. Gandaki Province Education Policy, 2078,⁸¹ includes a strategy to promote positive discrimination for individuals and communities historically deprived of education, including sexual minorities.⁸²

UNESCO, in 2016, reported that students seen as not conforming to traditional gender roles were at risk of experiencing violence, discrimination, and mistreatment in school premises, classrooms, during travel to and from school, or online. It may involve physical, sexual, emotional, or psychological abuse and harassment. Consequently, intersex children are more likely to drop out of school. Fair and equal educational opportunities for all children can be adversely impacted through prejudices contained in curriculum, textbooks, teaching techniques, and teachers’ attitudes. Intersex children face many limitations in school, and the school environment does not offer adequate support for their success.

3.5 Hate Crime and Hate Speech

Article 17 (2) (4) of the Constitution bars making any statement or act that incites violence, communal hatred, or any act contrary to public morality. No specific laws dealing with hate speech against SOGIESC and intersex people. While there is no publicly available data or specific examples of hate crimes or hate speech directed towards intersex individuals,⁸³ there have been ample examples of atrocities committed against SOGIESC people, especially transgenders. From February to March 2013, BDS recorded scores of arbitrary arrests under the

⁷⁹ Curriculum Development Centre, *Book on Social Studies, Class 12*, MINISTRY OF EDUCATION, GOVERNMENT OF NEPAL, 200. <http://103.140.1.64/cdc/elibrary/pages/download.php?direct=1&noattach=true&ref=9690&ext=pdf&k=>

⁸⁰ Ibid.

⁸¹ *Education Policy 2078 B.S. Page 8*, MINISTRY OF EDUCATION, CULTURE, SCIENCE-TECHNOLOGY AND SOCIAL DEVELOPMENT, GANDAKI PRADESH, (5 July, 2078, Nepal), https://oca.gandaki.gov.np/images/news/16447388388788_%E0%A4%97%E0%A4%A3%E0%A5%8D%E0%A4%A1%E0%A4%95%E0%A5%80%20%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%A6%E0%A5%87%E0%A4%B6%20%E0%A4%B6%E0%A4%BF%E0%A4%95%E0%A5%8D%E0%A4%B7%E0%A4%BE%20%E0%A4%A8%E0%A5%80%E0%A4%A4%E0%A4%BF,%20%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AE-58219.pdf

⁸² *Education Policy 2078 B.S. Page 16*, Ministry of Education, Culture, Science-Technology and Social Development, Gandaki Pradesh, (5 July, 2078, Nepal), https://oca.gandaki.gov.np/images/news/16447388388788_%E0%A4%97%E0%A4%A3%E0%A5%8D%E0%A4%A1%E0%A4%95%E0%A5%80%20%E0%A4%AA%E0%A5%8D%E0%A4%B0%E0%A4%A6%E0%A5%87%E0%A4%B6%20%E0%A4%B6%E0%A4%BF%E0%A4%95%E0%A5%8D%E0%A4%B7%E0%A4%BE%20%E0%A4%A8%E0%A5%80%E0%A4%A4%E0%A4%BF,%20%E0%A5%A8%E0%A5%A6%E0%A5%AD%E0%A5%AE-58219.pdf

⁸³ *Supra* Note 14.

1970 Some Public (Crime and Punishment) Act and discovered that these victims spent approximately 6,500 USD lump sum for their bail.⁸⁴

Furthermore, many SOGIESC detainees could not pay for bail and were compelled to stay in jail until their hearings. This persistent series of arbitrary arrests and police abuse especially concerns for métis, who are “men by birth who identify as feminine and may be referred to as transsexual women in different cultural contexts.”⁸⁵ The harassment and imprisonment of people based on their gender identity in Nepal became alarming. Navi Pillay, the United Nations Human Rights Commissioner, wrote a letter on April 2, 2013, to Madhav Prasad Ghimire, Nepal’s then Minister of Foreign Affairs.⁸⁶ He expressed concern about reports that approximately fifty SOGIESC activists and transgender individuals had been arrested by Police under the Some Public (Crime and Punishment) Act. The letter described how these detained individuals reported experiencing “verbal abuse, a severe beating, and indiscriminate body searches” by the police.⁸⁷

Similarly, chief district officers (CDOs) abusing the Some Public (Crime and Punishment) Act ordered Nepal Police to arbitrarily apprehend males with long hair, including métis.⁸⁸ In response, the Supreme Court ordered police to stop harassing and arresting people based on their appearances, reaffirming their right to privacy and security. However, the Some Public (Crime and Punishment) Act has been repealed.

Despite improvements in safety for SOGIESC people and a decrease in incidents of police violence, they are still subjected to harassment, physical assaults, and in some cases, even murder.⁸⁹ Many people mistakenly believe that being intersex results from hormonal imbalances or sins from a past life. As a result, parents, relatives, teachers, and families often view non-heteronormative behavior or physicality in intersex children as abnormal. This leads to discrimination against intersex children, including bullying, harassment, and public shaming. Disparaging terms are often used to refer to intersex individuals. Unfortunately, these issues are highly stigmatized and not openly discussed.

⁸⁴ *The Violation of the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Nepal*, HEARTLAND ALLIANCE FOR HUMAN NEEDS & HUMAN RIGHTS - GLOBAL INITIATIVE FOR SEXUALITY AND HUMAN RIGHTS, BLUE DIAMOND SOCIETY, (Jun. 2013), https://www2.ohchr.org/english/bodies/hrc/docs/ngos/GlobalInitiativeForSexualityAndHumanRights_Nepal108.pdf.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ *Nepal Police Accused of Long-Hair Crackdown*, NDTV, AGENCE FRANCE-PRESSE (Mar. 5 2013, 1:29 PM) <http://www.ndtv.com/article/world/nepal-police-accused-of-long-hair-crackdown-338422>.

⁸⁹ Tsering D Gurung, *Death of a transgender woman raises alarm among Kathmandu's trans community*, THE KATHMANDU POST, (Mar. 11 2019, 4:56 PM), <https://kathmandupost.com/national/2019/03/11/death-of-a-transgender-woman-raises-alarm-among-kathmandus-trans-community>.

3.6 Gender Marker Registration at Birth

The 2019 National ID and Civil Registration Act deals with laws related to vital registration (birth, death, marriage, divorce, and migration) and the national ID of every citizen. According to the Act, information regarding every newborn child to the local registrar's office must be submitted within 35 days.⁹⁰ This requirement can be fulfilled by filling out a prescribed form in Annex 10 of the Act. The form requires information on sex with limited options of male, female, and "other" in case intersex traits are identified. However, the term "other" in this context connotes gender and sexual minorities, including LGBTI++. Using the term "other" as a blanket label for the LGBTI++ community presents its own issues, as discussed earlier. Additionally, including the "other" category in the selection of sex options appears to conflate the concepts of sex characteristics, gender, and sexual orientation. Therefore, the term "other" is not relevant here.

In the case of intersex individuals, some infants may have genitalia that are ambiguous or both male and female characteristics visible at birth. As a result, they may be assigned as "others." Alternatively, parents may assign them a male or female gender, often driven by their preferences and concerns about social stigma and rejection. At times, the assignment of gender is based on the appearance of a child's genitalia. However, intersex traits may only become apparent during puberty, leading the individual to develop a different gender identity than the one assigned to them during birth. In these cases, their self-perceived gender identity may align with being male, female, or non-binary. Thus, forcing them to contain themselves in an "other" category or not being able to change their name, sex, or gender identity is a violation of the right to self-determination of one's gender identity.

Section 25 of the National ID and Civil Registration Act only allows minor corrections like spelling mistakes or numerical errors of age, name, or caste of the child within a year of issuance of birth registration certificate, but not the sex and gender identity. The concerned person may submit an application to the respective Local Registrar's Office in the prescribed format to amend their age, name, or caste. On receiving the application, Local Registrar can inquire and may correct thereof in the registration book and the certificate without any charge. After the correction, it must be notified to the Department of National Identity and Civil Registration. The one-year timeframe for correcting age, name, and caste is insufficient. It is not possible for a child to definitively establish gender identity within the first year of their life. This is difficult since children's understanding of gender, especially when not conforming to the traditional binary male or female, develops over time. As a result, the implication of this provision is massive for intersex and transgender people in multiple ways. For instance, a birth certificate is required to enroll in school, and all education certificates are issued with a name and gender marker consistent with the birth certificate.

⁹⁰ National ID and Civil Registration Act, 2019, §19 (Nepal).

Further, to obtain a citizenship certificate, it is mandatory to provide birth and educational certificates. Devoid of provisions that allow amending name and gender in the certificate has an impact on an individual's ability to obtain citizenship in accordance with their gender identity. Additionally, there are no provisions to amend the name and gender marker in official documents and certificates such as driving licenses and land ownership certificates.

The 2020 Right to Safe Motherhood and Reproductive Health Regulation provides a birth certificate format under Annex 3.⁹¹ The certificate has provided a sex option "unidentified" for children with ambiguous genitalia despite having a recognized term "intersex" for such individuals.⁹² The usage of such a term violates one's self-esteem and dignity.

3.7 Legal Gender Recognition

The "identity" of an individual is related to their right to citizenship. In Nepal, citizenship is categorized by descent, birth, naturalized (marital), non-residential and honorary. Concerning the many categories of Citizenship listed above, the Nepalese Constitution appears to have adopted the word "Gender Neutral" in most circumstances to cover persons of gender identities without using the terms male, female, or son and daughter. To get Nepali citizenship, for example, the phrases "eligible person," "minor," "person without father's identity," and "containing gender identity" are employed. The Nepalese Constitution appears to have safeguarded the ability of persons with various gender identities to obtain citizenship.

However, the Constitution appears to have limited the issue of obtaining citizenship documents based on "gender identity." Article 12 of the Constitution does not give everyone the right to gain citizenship based on their "gender identity." In accordance with the constitutional provision, only a person who obtains citizenship via descent can get a certificate of Nepalese citizenship with their "gender identity" from the mother or father's name. This implies that a person who obtains naturalized citizenship, birth citizenship, non-resident citizenship, or honorary citizenship does not appear to be able to get citizenship with "gender identity." However, the Constitution's provisions relating to citizenship refer to sex. Therefore, the Constitution does not secure the right of intersex people, and this provision is discriminatory, curtailing the identity rights of intersex people.

Nepal's 2006 Citizenship Act contains no provision for acquiring citizenship with a preferred gender identity. The acquisition of Nepali citizenship by descent is conditional on the existence of both the father and mother of the child, which

⁹¹ The Right to Safe Motherhood and Reproductive Health Regulation 2020, Annex 3. (Nepal)

⁹² Ibid.

excludes children of LGBTI++ people. However, the Supreme Court has played a pivotal role in securing sexual and gender minorities' right to recognition in legal documents and certificates. In the case of *Sunil Babu Pant v. Government of Nepal*, the Court directed the state to recognize every individual with their own gender identity and sexual orientation.⁹³ As a result of this decision, a circular was issued to confer citizenship to sexual and gender minorities- mentioning their gender as “other” instead of male or female.⁹⁴ However, after the direction to include “other” on the legal documents in 2013, no further progressive documents have been formulated for intersex people.

Moreover, the term “intersex” is related to the variation of sex characters, not gender identity, so some intersex people may identify themselves as cisgender male, cisgender female, or non-binary. Instead, they are forced to mark themselves as “other” in the citizenship category of gender. Further, the right to amend citizenship based on gender identity still has not been included in the ambit of citizenship laws. The 2006 Citizenship Act allows for amending minor changes like spelling errors in name, age, and address but not gender identity in the citizenship. This is contrary to Malta’s 2015 Gender Identity, Gender Expression, and Sex Characteristics Act, as it allows change in name with the change in gender marker to reflect a person’s self-determined gender identity with self-declaration. Furthermore, the Citizenship Amendment Bill 2075 suggests that the LGBTI++ community can obtain citizenship under the “other” category if they provide medical proof of having undergone a sex change.⁹⁵ However, this provision is only feasible for those who can afford being forced into the expensive surgery and potentially dangerous procedure. The choice to undergo such surgery should be personal rather than obligatory by the Government as a prerequisite for recognition. Gender identity recognition should be granted unconditionally.

3.8 Access to Justice and Redress

The right to equality and non-discrimination against sexual minorities combined provide an underpinning for access to justice. The Constitution of Nepal embraces these rights and envisions equality for all, including equality in seeking justice. To guarantee that justice is available to all, the Constitution includes the right to receive legal assistance as a fundamental right in Article 20 (10). The concept of legal aid is based on the belief that everyone has an inherent right to obtain unbiased treatment under the law. Moreover, Article 51 (k) under the directive principle of the Constitution ensures that the delivery of justice is prompt, effective, accessible, affordable, fair, efficient, and transparent to the public. However, provisions related to access to justice in the Constitution

⁹³ *Supra* Note 58.

⁹⁴ Circular by the Ministry of Home Affairs, *Registration no. 180/2069/70*, (Jan. 20, 2013).

⁹⁵ The Citizenship Amendment Bill, 2075, § 8 (b) (3).

and 1997 Legal Aid Act are gender-neutral, and there is no specific mention of intersex people.

Nevertheless, the right to equality under the constitution provides scope for affirmative action to improve intersex people's access to justice. Despite this, the lack of legal provisions for intersex persons sometimes prevents intersex people from seeking justice when it comes to marriage, rape, hate speech, and unnatural sex. However, public interest litigation (PIL) can provide a potential avenue for justice. PIL allows individuals or organizations to bring legal action to address a social issue or injustice on behalf of a group or community. PIL can be useful for marginalized groups who may not have the resources or capacity to pursue justice through traditional legal means. By leveraging PIL, intersex people can potentially overcome legal barriers to justice and secure their rights to equality and non-discrimination.

3.9 Inclusion in Emergency Policy Response

Approximately 8-10 percent of the population in Nepal is believed to be comprised of individuals who identify as SOGIESC. However, there is no data on intersex persons. Therefore, no emergency response policy or plans cater specifically to gender minorities, including intersex. There is a lack of awareness and comprehension regarding the obstacles that PoMSOGIESC encounters. The legal obligation set out in the Constitution requires all levels of government to establish a Disaster Risk Management (DRM) at national and subnational levels.⁹⁶ The institutional structure, including the Council, executive committees, experts committees, Provision on Provincial Disaster Management Committee, and Provincial Disaster Management Executive Committee, District and Local Disaster Management Committee is flawed. These institutions have a positional nominations from different leaders and organizations who are men and lack representation of SOGIESC respectively. Further, the vision, mission, goals, objectives, and set of policies for achieving the objectives, policy implementation, and coordinating, monitoring, and evaluation given in the national policy for disaster risk reduction, 2018 is gender neutral. The gender-neutral provisions run a high risk of exclusion.

The Government of Nepal has created a long-term strategic plan called the Disaster Risk Reduction National Strategic Plan of Action (2018-2030), which aims to build a more secure and resilient nation against disaster risks while ensuring sustainable development. The strategic plan includes thirteen guiding principles; some expressly consider gender, while others are gender-neutral. Priority actions and strategies give appropriate attention to gender and excluded groups, including gender-disaggregated data and gender-excluded group

⁹⁶ The Constitution of Nepal, 2015, Schedule 9 (9). (Nepal)

considerations in vulnerability and hazard assessments. However, the other priority actions and strategies related to communication, coordination, capacity development, collaboration, partnership, and promoting public investment are gender-neutral.

As a result, every crisis makes SOGIESC, including intersex people, vulnerable as policy responses do not consider their needs. For instance, the COVID-19 pandemic created obstacles for intersex and transgender people to access health services. Moreover, the pandemic worsened mental health issues for such people, as they were required to remain confined at home with family members who were unaware of or did not accept their identities.⁹⁷ SOGIESC people are one of the vulnerable clusters that require special support and assistance during a crisis such as a pandemic. However, the Government of Nepal did not consider the special needs of SOGIESC. The Government quarantine centers were not equipped enough to accommodate SOGIESC people. Likewise, many LGBTI++ migrant workers were repatriated from various migrant destination countries and did not have anywhere to go.⁹⁸ They were undergoing a financial crisis as COVID prevented them from working. However, the Government did not take any active actions to alleviate their suffering.

3.10 Social Security

The Constitution of Nepal secures the right to social security as a fundamental right under Article 42. It enlists the citizens who are entitled to social security. The list includes indigent citizens, incapacitated and helpless citizens, helpless single women, citizens with disabilities, children, and citizens belonging to tribes on the verge of extinction. The Constitution does not recognize the right to social security of gender and social security. Embodying the constitutional provisions of social security, the Social Act has replicated the list of citizens entitled to social security under the Act. The list includes indigent, senior citizens, citizens with disabilities, single women, and helpless citizens. Despite the vulnerabilities, societal exclusion, and insecurities, sexual and gender minorities, including intersex people, are not incorporated in the list.

Similarly, Public Health Service Act, 2075, under Section 47, has provisioned the need for special social health security and programs for women, Dalits, adolescents, martyrs, and other targeted groups. However, the list does not incorporate the special needs of gender and sexual minorities. These Acts have only embraced Article 42 and completely ignored the Social Justice and Inclusion

⁹⁷ Anam Abbas, *UN Women supports efforts to improve LGBTIQ rights in Nepal*, UN WOMEN, (Jan. 27, 2021, 4:29 PM), <https://asiapacific.unwomen.org/en/news-and-events/stories/2020/12/rights-and-representation-of-lgbtqi-community>.

⁹⁸ *Study on Covid-19 Impact on Gender and Sexual Minorities*, MITINI NEPAL, <https://mitininepal.org.np/wp-content/uploads/2021/09/Case-Study-on-Covid-19-Impact-Mitini-Nepal-English.pdf>

policies under 51 J (12) of the Constitution of Nepal contains a provision to provide social security to indigent people of all sexes. It reads, "To accord priority to the indigent persons within all sexes, regions, and communities while providing social security and social justice." This provision implies that intersex people are also entitled to social security. However, these Acts fail to embrace this provision and, thus, deny the right to social security to intersex people.

3.11 Data Collection: Addressing Research Gap

There is a huge gap in data on intersex persons. The lack of data has remained a significant roadblock in advocating for the specific needs of intersex persons. Accurate data plays a crucial role in shaping policies. It is vital to have comprehensive data regarding the breakdown of individuals' sex, gender, or sexuality. Their statistics aid in determining the formulation of plans, policies, appropriate budget allocation, and ensuring proportional representation participation. However, using the term "other" in the census has resulted in no real data on intersex people. The activists claim that the 2011 census did not effectively support the community due to the vague category of "other" in the gender option. Limiting gender identity options to just "other" for SOGIESC and intersex people can hinder their ability to exercise their democracy. It can also cause embarrassment for those whose identities are not acknowledged by these systems.

The National Census 2021 also included women, men, and "other gender" in the gender classification. The three census forms collected data on many questions, including gender classification. In contrast, the house and household listing form only mentions women and men, except for the question regarding the number of family members who often reside in the family. The PoMSOGIESC rights activist have denounced the census format claiming that the CBS has attempted to bring in misleading statistics on "other" gender encompassing sex characteristics and sexual orientation under the ambit of "other gender." Sex characteristics are based on sex and reproductive organs. In contrast, gender identity is based on self-perceived gender identity, and sexual orientation, depending on the gender to which one feels sexually or romantically attracted, are three different concepts. Therefore, segregated data for each group is needed. In this regard, Rajesh Dhital, Director of the Establishment Census and Survey Section of the CBS, stated that Nepal Statistics Office is planning and will conduct a detailed LGBTI++ survey in the near future with the collaboration of LGBTI++ communities.⁹⁹

The limited awareness regarding traits of intersex people and the stigmatization have prevented many intersex individuals from coming together and making

⁹⁹ Interview with Rajesh Dhital, Director of Establishment Census and Survey Section, Central Bureau of Statistics, (March 3, 2023), Kathmandu.

their voices heard. This has also contributed to sparse data on intersex persons. The dearth of research on intersex people has resulted in a general lack of understanding and awareness about them. This perpetuates discrimination and marginalization and leads to misconceptions, stereotypes, and stigmatization of intersex individuals. Secondly, inadequate healthcare services resulting from the absence of specialized research on intersex people. It creates missed opportunities for medical advancements, such as improved diagnostic techniques, better treatment protocols, and increased understanding of intersex variations. By addressing the research deficit, Nepal can promote inclusivity, human rights, and social justice. This requires collaboration and active participation from researchers, healthcare professionals, intersex organizations, policymakers, and intersex individuals themselves.

4. Recommendations, Scope & Strategies for Implementation

4.1 Recommendations

Recommendation 1: Ensure intersex people responsive laws in consonance with international human rights instruments such as the Universal Periodic Review (UPR), CEDAW, Convention on the Rights of the Child (CRC), and Human Rights Committee (HRC), along with the demand of intersex people.

Recommendation 2: Ensure intersex people's responsive regulations and policies in consonance with international human rights instruments such as UPR, CEDAW, CRC, and HRC respective legislations, along with the demand of intersex people.

Recommendation 3: Ensure access to inclusive services for intersex people

4.2 Scope

Implementing the recommendation provided can make a significant impact on the lives of intersex people, and it has a greater social impact through strengthening system building, civil society engagement, and “agency” of the intersex people. By addressing gaps in the various legislations, policies support intersex people to ensure their access to services. This will give opportunities to intersex people to access basic services such as education, health, social services, employment, and other social protection programs that are provided by all tiers of government in Nepal.

This will all give scope to execute the constitutional spirit of Nepal to establish an egalitarian society ending all kinds of discrimination based on the principle and approach of inclusive governance, proportional participation in state mechanisms, and substantive equality with affirmative action/corrective measures. This will also provide support to dignified lives and identities of the individuals, which intersex people are entitled to get under Nepal’s constitution.

4.3 Strategies

Strategies

A) Government

Strategy 1: Amendment of various legislations at national, province level, and local level to be in consonance with international human rights instruments such as the UPR, CEDAW, CRC, and HRC) to ensure the right of intersex people.

Strategy 2: Amendment of respective regulations, policies, circulars, and standards.

Strategy 3: Make the Government accountable to ensure the services.

B) Civil Society

Strategy 1: Create awareness of the rights of intersex people.

Strategy 2: Critical engagement of policymakers and executers.

Strategy 3: Advocacy for law and amendment of various laws to be in consonance with international human rights instruments such as the UPR, CEDAW, CRC, and HRC.

Strategy 4: Collectivizing, as it is a key strategy for promoting the collective voices of intersex people.

C) Individual Level

Strategy 1: Strengthen the “agency” of intersex people.

4.3 Implementations

The following steps must be taken to ensure legislation and policies are responsive towards intersex people. The policies should recognize and addresses legal barriers that intersex people face in their daily live. The following recommendations can be implemented to achieve the same.

A) Government of Nepal
<p>Recommendation 1: Ensure that intersex people responsive laws are in consonance with international human rights instruments such as the UPR, CEDAW, CRC, and HRC. It should also take into account the demands of intersex people</p>
<p>Strategy 1: Amendment of various legislations at national, province level, and local levels are in consonance with international human rights instruments such as the UPR, CEDAW, CRC, and HRC to ensure the right of intersex people.</p>
<p>Actor: The Government of Nepal through its departments, namely, the Ministry of Law, Justice, and Parliamentary Affairs. These departments can lead the process of consultation with other relevant ministries such as the Ministry of Foreign Affairs, Ministry of Women, Children and Senior Citizen, Ministry of Home Affairs, Ministry of Health and Populations, etc.</p>

Step 1: Government**Flowchart**

- Review all respective legislations (a list of legislations that need to be reviewed is provided in **Appendix 1**).
- Prepare an amendment proposal.
- Organize a consultation among respective ministries
- Draft the amendment bill.
- Organize a consultation with intersex people and other civil society stakeholders on the draft amendment proposal.
- Finalize the amendment bill incorporating the inputs/ feedback received from the consultation.
- Get approval for the amendment bill from the ministerial-level decision.

- Submit to the Council of Ministers' office for approval for submission in the Parliament.
- Get approval from the Council of Ministers.
- Submit in the Parliament.

Step 2: Parliament (Must follow parliamentary, only key steps are provided)

- Get principal agreement from the House.
- Submit amendment proposal if necessary, by a Member of Parliament (to address any issue that is missed in the bill).
- Discuss in the respective thematic committee.
- Organize a public consultation that includes the intersex people.
- Endorse by the Parliament.

Recommendation 2: Ensure Intersex people responsive regulations and policies are in consonance with international human rights instruments such as the UPR, CEDAW, CRC, and HRC, respective legislations and the demands of intersex people.

Strategy 2: Amendment of respective regulations, policies, circulars, and standards.

<p>Actor: The Government of Nepal through its departments, namely, the Ministry of Law, Justice and Parliamentary Affairs, Ministry of Foreign Affairs, Ministry of Women, Children and Senior Citizen, Ministry of Home Affairs, Ministry of Health and Populations, etc.</p>
<p>Flow Chart</p> <ul style="list-style-type: none"> • Review all respective regulations, policies, circulars, and standards a (list of key relevant regulations and policies that need to be reviewed is provided in Appendix 1). • Prepare draft amendment proposal. • Undertake consultation with intersex people and other civil society stakeholders on the draft amendment proposal. • Finalize the amendment proposal incorporating the inputs/feedback received from the consultation. • Submit to the respective thematic ministry for the approval. • Get approval from the Ministry. • Submit to the Council of Ministers’ office for the approval. • Get approval from the Council of Ministers. <p>Note: not all policies, regulations, or circulars require approval from the Council of Ministers.</p>
<p>Recommendation 3: Ensure access to inclusive services for intersex people.</p>
<p>Strategy 3: Make the Government accountable to ensure the services.</p>
<p>Actors: Provincial government and its departments, namely Social Development Ministry and social unit of local government in coordination of health, education, and other service-related units such as ward office for birth registration.</p>
<p>Flow Chart</p> <ul style="list-style-type: none"> • Mapping the existing services at the local level and identifying the gap. • Develop an action plan to address the gaps.

- Allocate the resources in collaboration with the provincial and federal government and national and international organizations working at the local level.

B) Civil Society Organizations/Networks

Strategy 1: Create awareness about rights of intersex people.

Actors: Key organization of intersex people and networks.

Flowchart

- Develop a Civil Society awareness package targeting Government officials, larger civil society organizations, common citizens, and intersex people.
- Raise awareness regarding intersex people and their basic human rights through civil society organizations. These efforts should be targeted to both broader human rights organizations/networks. This would start with like-minded human rights organizations.
- Utilize various digital platforms with innovative ideas to reach common people to further enhance mass awareness.
- Engage with intersex people to build their “agency” through capacity-building programs like trainings, workshops, conferences, policy dialogue, media mobilization, etc.
- Develop comprehensive, exclusive training packages for medical professionals.
- Organize awareness programs for medical professionals.

Strategy 2: Critical engagement of policymakers and executers.

Actors: Key organization of Intersex people and networks.

Flow Chart

- Engage with policymakers and executers, particularly with the Ministry of Women, children, and senior citizens, the Ministry of Law, Justice, and Parliamentary Affairs, the Ministry of home affairs, ministry of foreign affairs at the federal level with technical support from experts and civil society organizations working for intersex people rights, particularly in both executive and parliamentary process to ensure the inclusive and responsive laws and policies.
- Engage with the social development ministry of the province and engage with the local government's mayor/ deputy mayor social development unit with technical support from experts to ensure access to inclusive services.
- Engage with the National Human Rights Commission. Additionally, working with the National Women's Commission is also key to mainstreaming and promoting intersex people's human rights and monitoring the violation of the human rights of intersex people.

Strategy 3: Advocacy for law and amendment of various laws in consonance with international human rights instruments such as the UPR, CEDAW, CRC, and HRC

Actors: Key organizations of intersex people and networks.

Flowchart

- Review policies.
- Create evidence-based data collection, both quantitative and qualitative, chosen based the available resources.
- Prepare the policy brief or position paper based on the legal analysis.
- Advocate at the federal level with the Ministry of Women, Children & Senior Citizens and Ministry of Law, Justice and Parliamentary Affairs to draft the bill for ensuring the rights of intersex people.

- Adopt the Monitoring & Evaluation plan to track the milestone and ensure the evidence-based advocacy work is effective and efficient.
- Develop a coherent advocacy plan of action with clear goals, objectives, defined strategies, and actions to address the policy/legal gaps.

Strategy 4: Collectivizing, as it is a key strategy for promoting the collective voices of intersex people

Actors: Key organizations of intersex people and networks

Flowchart

- Build a network of civil society organizations that are working on the rights of intersex people and interest groups with a clear common agenda and goal.
- Build and expand their alliances with other social and human rights networks and alliances to enhance collective efforts for promoting the intersex people movement. Hence, it is pertinent to organize individual or group meetings with respective networks & various alliances. This will help enhance their capacity to engage with the respective ministries and the Government to advocate for rights of intersex people, address the legal barriers faced by them and ensure that their legal rights are preserved.

C) Intersex People at an individual level

Strategy: Strengthen the “agency” of intersex people.

Actor: Individuals including intersex people and citizens.

Flow chart

- Oppose discrimination on any grounds by anyone.
- Respect human dignity and values.
- Be empathetic.
- Be non-threatened to intersex people.
- Be part of the equality movement.
- Raise voices for social justice at an individual level.
- Strengthen agency.



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5. Way Forward

Nepal is known for being one of the most progressive countries with respect to safeguarding the rights of those who identify as PoMSOGIESC. In 2007, the Supreme Court of Nepal issued a verdict recognizing the rights of these individuals and urging the Government to provide citizenship and passport under the term “other.” This landmark judgment recognized various genders apart from heteronormative binary gender. However, it clubbed all the non-heteronormative genders and sexualities under one box. As a result, no specific laws, policies, or programs address the individual concerns of intersex people. Moreover, intersex people and their issues are under shadow and rarely make it to the forefront, even within the activism of LGBTQI++ rights. Notwithstanding the endeavors to pass laws regarding the same, the Supreme Court decree on same-sex marriage has also not materialized.

Article 18 of the Constitution of Nepal prohibits gender-based discrimination and guarantees the right to equality. The Constitution also includes measures for affirmative action and proportional representation for gender and sexual minorities in politics and development under Article 42. However, these constitutional assurances have failed to translate in the form of federal laws. Consequently, intersex people are unable to realize their fundamental rights concerning health, education, equality, and the right against discrimination. The federal laws have also not incorporated the CEDAW and CRC committees’ recommendations on the bodily integrity of intersex people.

Despite the progressive constitutional provisions, policymakers and legislators have largely overlooked the fundamental rights of intersex people, placing the intersex community in a very concerning situation in Nepal. They are not adequately protected from human rights violations that are committed against them. Sexual and gender minorities are still struggling to get citizenship and passports as per their gender. Moreover, they are deprived of affirmative action and representation in socio-political affairs, as they are not represented in the federal or provincial parliament or the local government.

It is also important to note that the notion of gender equality is highly dominant towards the upliftment of women and girls. Gender-based discrimination is considerably associated with women and girls and not with sexual and gender minorities. As a result, the policies often fail to take into account the needs of other sexual and gender minorities. The policies and programmatic actions that address gender equality must include sexual and gender minorities for their upliftment. However, due to the lack of data on intersex populations, evidence-based advocacy for their rights and special needs is challenging. The census of 2021 has also failed to include segregated data, as all intersex people are grouped under the term “other,” which does not fit right with their self-determined gender identity.

The first and foremost step to address the problems faced by the intersex community is the recognition of intersex people. Nepali society fails to extend recognition or simply denies the legitimacy of the sexual and gender minority

communities. However, recognition is not only a hurdle. The lack of proper education on gender and sex is another major factor that must be addressed with joint collaboration between government authorities and non-governmental actors. Policymakers and legislators should be the priority groups to educate and make aware of the general ideas on gender and sexual minorities, policy gaps, and, most importantly, the urgency of participation and representation of people belonging to such gender and sexual minorities, including intersex people. Direct engagement in policy formation would be a notable strategy towards recognizing intersex people in the state.



References

Reports

1. Intersex Asia annual report, 2019, available at- https://intersexasia.org/docs/report/IAAR_2019.pdf
2. Intersex Genital Mutilations Human Rights Violations Of Children With Variations Of Reproductive Anatomy, 2018, available at- <2018-CEDAW-Nepal-NGO-Intersex-IGM.pdf>
3. Kyle, Knight, LGBT Global Development Partnership BRIDGES TO JUSTICE: CASE STUDY OF LGBTI RIGHTS IN NEPAL available at:- <Bridge to Justice.pdf>
4. Mahato, Roshan, "The Movement for Human Rights for Sexual and Gender Minorities in Nepal: The Beginning, 2001-2015" (2017). International Development, Community and Environment (IDCE). 148. https://commons.clarku.edu/idce_masters_papers/148
5. Mark Liechty, "Carnal Economies: the Commodification of Food and Sex in Kathmandu," Cultural Anthropology, Volume 20, Issue 1, 2005
6. Regmi, Esan (2016). Stories of Intersex People from Nepal. Kathmandu available at- <Intersex-Stories-in-Nepal.pdf>
7. The Dawn of a National Intersex Movement: The First National Intersex Workshop in Nepal – APCOM, available at- The Dawn of a National Intersex Movement_ The First National Intersex Workshop in Nepal - APCOM.pdf

Journals

1. Gyana Chhetri DJSA (2017) 11, 96–114, Perception about the third gender in Nepal, available at- <Perception about the third gender in Nepal.pdf>

Supreme court decision

1. Rukshana Kapali and Esan Regmi vs. Central Statistic Department, writ number: 077-WO-1234
2. Rukshana Kapali and Esan Regmi v. GoN, writ number: 077-WO-0695
3. Suman Pant vs. Council of Ministers, NKP 2074, No. 12, Decision No. 9921
4. Sunil Babu Pant vs. Government of Nepal, NKP 2065, Decision No. 7958
5. Sunil Babu Pant vs. Government of Nepal, NKP 2074 Decision No. 9875
6. Repository of petitions: <https://minchyaameyju.wordpress.com/writ-petitions/>

News writing

1. The Himalayan Times, Published: 10:20 am July 2, 2020, Govt urged to protect rights, interests of LGBTI people, available at- <https://thehimalayantimes.com/kathmandu/government-urged-to-protect-rights-interests-of-lgbti-people>
2. The Human Rights Watch, Published: 8:00 pm EDT April 19, 2005, Nepal Police attack transgender people, available at- <https://www.hrw.org/news/2005/04/19/nepal-police-attack-transgender-people>

Concluding observation

1. CEDAW concluding observations to Nepal, October 28, 2018, available at- <https://intersexrights.org/un/cedaw-c-npl-co-6/>
2. CRC concluding observations to Nepal, July 8, 2016, available at- <https://intersexrights.org/wp-content/uploads/2020/07/G1614742-1.pdf>
3. CRC concluding observations to Nepal, June 3, 2016, available at- <https://intersexrights.org/un/crc-npl-co-3-5/>

Websites

1. <https://bds.org.np/>
2. <https://isna.org/faq/history/>
3. <https://mitininepal.org.np/>
4. <https://nepalcfc.org/>
5. <https://nepalcfc.org/intersex-rights-movement-in-nepal/>

Intersex Asia

WE DEFEND **Intersex**
HUMAN RIGHTS IN ASIA



Intersex Asia Timeline

Intersex movement in Asia started in the 1990s from Japan, develops internationally since 2008 from Taiwan.

Appendix

Appendix I

The Constitution of Nepal	<ol style="list-style-type: none"> 1) Article 34 Right to Labor 2) Article 10: Not to deprive of Citizenship, 3) Article 12: Right to Citizenship 3) Article 16: Right to Live with Dignity, 4) Article 17 (f): Right to Freedom to Practice any Profession, 5) Article 18: Right to equality, 6) Article 24 (4): Right against Discrimination at the Workplace 7) Article 29 Right against Exploitation 8) Right to Participate in State Mechanism
Legislation	<ol style="list-style-type: none"> 1) Public Health Service Act, 2074 (2017) 2) Right to Safe Motherhood and Reproductive Health Act 2075 (2018) 3) The Social Security Act, 2075 (2018), 4) The Labor Act, 2075 (2018) 5) Crime Victim Protection Act, 2075 (2018) 6) Muluki Civil Code, 2074 7) Muluki Criminal Code, 2074 8) National ID and Civil Registration Act, 2019 9) The Citizenship Act, 2063
Directives	<ol style="list-style-type: none"> 1) Directive about a child whose sex can be determined as neither male nor female during the time of birth (dated September 20, 2007)

Appendix II: Interviewee Details

Date	Name	Designation	Institution	Topic of Discussion
10 th February 2023	Sarita KC		Mitini Nepal	Advent of LGBTI++ movement and judicial proceedings
11 th February 2023	Dr. Sworaj Rajbhandhari	Senior Gynaecologist	Senior Consultant, Nidan Hospital	Medical guidelines and services available for intersex people.
19 th February 2023	Kamala Parajuli	Chair	National Women Commission	Inclusivity of intersex issues in plans and policies
22 nd February 2023	Dr. Kiran Rupakheti	Joint Secretary	Social Nepal Planning Commission	Policies concerning intersex people
3 rd March 2023	Rajesh Dhital	Director	Establishment Census and Survey Section, Central Bureau of Statistics	Census and data-related issues of intersex people
20 th March 2023	Esan Regmi	Intersex Activist	Campaign for Change	Status of Intersex people in society and the legal and practical hurdles they face

Appendix III: Interviewee Notes

Sarita KC, Mitini Nepal, 10th February 2023, LGBTI++ activist (Advent of LGBTI++ movement and their issues)

Time: 30 mins

- The LGBTI++ movement began with Sunil Babu Pant filing a writ petition to recognize the LGBTI++ people as natural persons and established the concept of the third gender in Nepal
- Even though we have come a long way and are recognized by the constitution of Nepal, the Government has not considered our specific needs and demands.
- LGBTI++ are still facing discrimination on various fronts, and the Government plans and policies are not inclusive enough to address issues.
- We have recently voiced our concerns regarding the census as well. The census data does not accurately represent each of the categories in LGBTI++.
- The lack of data has been a hurdle in advocating for our rights. Every time we ask for our rights as LGBTI++ people, government stakeholders ask for data.
- We have not been able to marry the person of our choice because same-sex marriage is still not legalized in Nepal despite Supreme Court's verdict on the same.
- We have also filed a case in the Supreme Court to amend Section 67 of the Civil Code and provisions related to marriage to allow same-sex marriage. Similarly, we have asked to amend rape laws to make them gender-neutral.

Swaraj Rajbhandari, Senior Gynaecologist, 11th February 2023 (medical guidelines and services available for intersex people):

Time: 30 mins

How do intersex persons perceived and treated by Health professionals?

- There are 40 different variations of intersex traits. The patients who seek medical consultation only visit us if their menstrual cycle has not begun, even in late adolescence, or if they cannot conceive. Medical professionals view them as sexual anomalies; each patient has unique problems and is treated accordingly. Most of them do not realize they are intersex until they come for medical check-ups.

How common is intersex genital mutilation in childhood? Do health professionals encourage this?

- There is no medical ethics guideline or policy to regulate sex reassignment surgeries. Therefore, if parents request the doctors,

there have been instances of them performing such surgeries on children. However, that should not be the case. Sex reassignment surgeries should not be performed on children until they are of the consenting age.

Are health professionals and service providers training to recognize and deal with intersex persons or issues?

- Intersex issues are taught as part of the course syllabus in medical schools. It was previously studied as hermaphroditism. However, in recent days it has been called a disorder of sex development (DSD). We studied sexual anomalies such as Turner syndrome and so on. However, I am unaware of any training given to medical professionals specifically on this issue.

**Kamala Parajuli, National Women Commission, 19th February 2023
(Inclusivity of intersex issues in plans and policies)**

Time: 30 mins

Can you please provide an overview of the National Women's Commission's plans and policies concerning the inclusivity of intersex issues?

- National Women Commission (NWC) has no dedicated plan or policies for intersex people. However, broadly, NWC has prioritized addressing gender and sexual minorities in its strategic plan of action, i.e., same-sex marriage, identity, and so forth. We also have designated members to look after the issues related to gender and sexual minorities and other disadvantaged groups.

How does the National Women's Commission ensure that intersex individuals are adequately represented and their specific needs are addressed in its plans and policies?

- Currently, we do not have any such specific intervention plan and strategies.

What strategies does the National Women Commission employ to ensure effective implementation and monitoring of inclusivity measures for intersex issues in its plans and policies?

- As mentioned above, we do not have such strategies but believe in diversity. If issues come, we certainly will work on them, collaborate and coordinate with the organizations and individuals working on the issues.

In what ways does the National Women's Commission work towards eliminating discrimination and stigma faced by intersex individuals in society, and how are these efforts reflected in its plans and policies?

- Yet such issues have not been reported since I became NWC's chair. So, a deeper level of understanding is required among us.

Looking ahead, what are the future goals and priorities of the National Women's Commission in promoting the inclusivity of intersex issues in its plans and policies?

- I need to further take forward this issue to the team. As inclusion and gender equality are one of key principles we adhere to, we must address the issues of intersex people. We are open to civil society organizations' engagement in the coming days.

Rajesh Dhital, 3rd March (Census and Data related issues of Intersex people)

Time: 30 mins

What is the data on intersex people in Nepal? How are they included in the Census?

- Regarding your queries about the intersex people in Nepal, according to the latest census, National Statistics Office (NSO) didn't collect separate data on intersex people. We have around 3000 people under the heading "Other Sex," according to National Population and Housing Census, 2021. In this heading "Other Sex," Lesbian Gay, Bisexual, Transgender, and Intersex (LGBTI) are included. NSO didn't collect disaggregated (separate) information on LGBTI.

What is the framework of the Census that includes LGBTI++?

- In the census listing form, a particular question on sex was asked. Specifically, among the total household members, No. of male, No. of female, and No. of other sex were asked.
- The Constitution of Nepal, the statistics act 2015, the national census conducting manual, and the national census and management directive are the legal basis for conducting the census. LGBTI is an issue of identification. LGBTI communities and the nation need data on LGBTI for making policies, laws, and welfare programs. Though vital, NSO could not collect detailed information on LGBTI due to constraints like cost, time, respondent burden, etc.

- Hopefully, LGBTI communities find well from the latest census report because LGBTI communities have been involved since the beginning of the census process.

How is the statistics department planning to collect the data on LGBTI++ communities?

- Regarding the survey on LGBTI, NSO is planning and will conduct a detailed LGBTI survey in the near future with the collaboration of LGBTI communities.

**Dr. Kiran Rupakhete, 22nd February 2023 Joint Secretary, National Planning Commission (Policies concerning intersex people)
Conversation over phone call**

- National Planning Commission (NPC) has not formulated any policies targeted to LGBTI++ as such. Hence, there is nothing on board for intersex persons as well. However, NPC has recently initiated a study on the status of LGBTI in Nepal. The study is ongoing.

Esan Regmi, Intersex activist,

- I have been advocating for intersex people's rights since 2011. I joined BDS in 2011. However, I did not meet other intersex persons within the organization. Blue Diamond Society included the term intersex in the broader term LGBTI, but intersex people's issues were not mainstreamed in their strategies and programs. Therefore, I began to share my experiences, through which I connected with other intersex individuals. In 2015, I participated in the first intersex pre-conference event in Taiwan, where I could connect with six other intersex activists from different parts of Asia who came together to discuss their issues. There had not been any advocacy specifically related to Intersex people from 2011 to 2016. I realized the need for exclusive intervention in order to make intersex people's voices perceptible. Hence, I formed Campaign for Change (CFC), the first and only organization led by intersex people established in 2017. It was established to bring the needs of intersex people to national, regional, and international attention. It strived to create a safe and enabling environment for the intersex community. They worked to establish the rights of the intersex community by capacitating and enhancing skills, building knowledge, and raising awareness of the intersex community

- The challenge for intersex people is that many intersex people are still in the closet. They fear societal stigma and ostracization from society. This is one of the reasons that the data relating to intersex is also unavailable. The Census format has compounded the problem by putting intersex in the same bracket as gender and sexual orientation. There is a lack of mass awareness regarding intersex identity. Intersex is often misconstrued as the third gender or transgender. There are over 40 intersex variations. Intersex is a sex characteristic and is different from gender and sexual orientation.
- We have been facing problems leading a normal life like any other person. We are denied the right to marry. Some provisions relating to marriage under the civil code pose a threat of misrepresentation and fraud That needs to be amended. We are denied the right to identify with the preferred gender marker.

Intersex Asia is an autonomous regional network of intersex-led organizations and individuals from Asian countries that work to support, educate, and advocate for the rights and lives of intersex individuals as well as raise awareness on human rights violations and discrimination faced by intersex communities. It envisions a world where the beauty of intersex people is celebrated, intersex persons can love themselves, and intersex people grow together as a community. It seeks to create a space for intersex people where they can come forward and act as a stakeholder of the global intersex rights movement.

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