

**Blue Diamond Society**

Discrimination and violence against lesbian and bisexual  
women and transgender persons in Nepal

**Shadow Report**

Submitted to the Committee on the Elimination of Discrimination against Women  
(CEDAW) for consideration at the 71<sup>st</sup> Pre-sessional Working Group, 2018

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## Executive Summary

The present report is prepared and submitted by Blue Diamond Society, an LGBT non-governmental organization based in Nepal, with the support from the International, Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).

The report describes the situation of lesbian and bisexual women and transgender persons (hereinafter – LBT persons) in Nepal. At that, we are making focus on the following problems: (1) negative stereotypes and violence against LBT persons; (2) violations of LBT persons’ family rights, particularly, lack of any legal recognition of same-sex relations and no access to proper birth registration for children born in same-sex families; and (3) discrimination in the field of health, education, employment, food and other social benefits.

At the end of the report, we are suggesting particular questions to be included into the List of Issues for the government of Nepal, as well as some recommendations that would improve the lives of LBT persons in the country.

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## **I. Description of the problems**

### **Introduction:**

Nepal is the first country in south Asia which recognizes transgender identities. In 2007 December 21<sup>st</sup> supreme court of Nepal gave a verdict in favor of community members. On the bases of the verdict the Nepal government has made significant steps towards ensuring equality for lesbian, gay, bisexual, transgender and intersex people. The government has already started issuing citizenship card as other and foreign ministry has already decided to issue machine readable passport mentioning “X” to the community. But same-sex marriage is yet to be legalized. New constitution of Nepal has also ensure the rights of sexual and gender minorities in Nepal but the provisions of different articles are yet to be reflected in different polices for proper implementation.

The LGBTI movement in Nepal started in 2001 and at the same time, the history of Lesbian came to existence in the end of 2002 along with LBT (lesbian, bisexual women and transgender persons) coming out and working for their dignity and rights including with SOGI (sexual orientation and gender identity) members and there has been positive verdict of LBT issues from the Supreme Court in Nepal like Rajini Shahi and Prem Kumari of 2013, and various cases have been documented well. At the same time, gender and sexual minority’ are mentioned in article 18 (right to equality) and in article 42 (social justice) of the Constitution. The phrase ‘gender identity’ is mentioned in article 12 (citizenship ID) of the Constitution.

Despite all these legal achievements, lack of acceptance of lesbian women’s sexuality leads to violence in their lives in multiple ways. While it began with protesting against the violence faced by the members of the community and about the HIV/AIDS epidemic, it is now increasingly working on asserting and celebrating multiple identities. Instead of responding to isolated instances of violence, the movement is currently examining the structural institutionalization and legitimization of violence in the culture of family, religion, school, workplace, and the public sphere.

### **1. Negative stereotypes and violence against LBT persons (article 5 of the CEDAW Convention; General recommendation No. 35 on gender-based violence against women):**

Gender imbalances or inequality is an issue that has been debated for many decades, yet many women are victims of gender inequalities in family, society and so on. We assume a society be peaceful, united and tied by good norms, values and traditions, but there exist biased attitudes in many fields that need to be changed for betterment. Thousand of activists have been fighting against such inequalities, but only envious of them feel the success due to lack of information and decision making.

Lesbians are marginalized within the gay movement globally. We do not talk much on the issues of lesbian’s health and rights often. We always try to interconnect the issues with feminist movements in many countries. There is not different opinion both movement are interconnected

but it is not fair enough to analyze the issues through feminist window only because lesbian and bisexual women and trans persons are more discriminated than heterosexual women.

LGBTI community members experience stigma, discrimination and victimization across the course of their lives. In context of LBT, most of them are still hidden and are in closet. They are a marginalized group within the marginalized community. This is the group suppressed by patriarchal system, and to break the closet is a nightmare. Lack of proper and adequate information on LGBTI identity can lead to an unhealthy and stressful livelihood for many LGBTI people, especially among those who stay in the closet and are not open about their SOGI identity which is more in practice among lesbian and bisexual women in Nepal.

Even current situation of health sector contains many barriers that prevent target group from fully accessing and utilizing health services, geography, one's social, cultural/religious and economic status, discrimination by health service providers, inadequate flow of information, believes in traditional healing methods and ineffective health programs and services.

Nepal still lacks adequate mental health professionals; psychiatrists who provide services. The nature of the violence faced by lesbian women starts from family since it is where control is exerted over a woman's sexuality, mobility, and access to resources. Families often keep the sexual orientation secret for fear of shame and stigmatized.

Many times, lesbian women have reported suppressing their identities, or disclosing in non-explicit ways, because of the fears of loss of family and brutal consequences. Therefore, when they get rid of these situations, they undergo different stigma and discriminations. To cope with such situation, it has been found that LBT often use alcohol and cigarettes that put them into risk for reproductive cancers and cardiovascular diseases. LBT people appear to experience anxiety disorders, depression, and an elevated risk for suicidal ideation when they fail to meet the expectations of rigid hetero-normative society.

In order to deal with the situation, even health service providers are not aware about the issues and there is no or have rarely discussion on the topic on bigger forum. In addition, government has not taking any initiation in order to aware people on LBT issues.

The nature of the violence faced by lesbian women starts from family. Family was the site of violence for most women, since it is where control is exerted over a woman's sexuality, mobility, and access to resources. The extent of control ranged from silence to punishment, with emotional violence being the result of the family's non-acceptance of the woman's sexuality and the attempt to control her. Families often kept the sexual orientation secret, for fear of shame and stigma. Lesbian women reported suppressing their identities, or disclosing in non-explicit ways, because of the fears of loss of family and violent consequences. The violence that they faced led them to experience guilt, shame, fear, anxiety, depression, and suicidal ideation. In 2012, three UN Special Rapporteurs issued a joint communication on a case where women and LGBTI human rights defenders faced intimidation and threats against, as a result of their support of a victim of domestic violence, following her self-identification as a lesbian (see case 4 in annex 1).

Women also faced economic constraints when they had to leave their homes and/or lose their jobs. To minimize the effect organizations working for the rights and health of sexual and gender minorities are supporting the group to protect and promote the right to health. Perhaps, because of the lack of social acceptance, including family acceptance, the lack of awareness on health issues, unfavorable environment in health institutions, and the lack of positive attitude of health service providers, very few members do visit hospital for any health issues. On the other hand, government does not have specific policy or strategy for LBT persons to provide easy access to the health centers.

## **2. Right to family (article 16 of the CEDAW Convention):**

Marriage is considered to be a milestone in life for most people and it is the foundation for creating and defining a family in Nepal. But same-sex marriage is yet to be legalized in Nepal though the legal situation for sexual and gender minorities in Nepal is very progressive comparing to other South Asian countries. As a result, same-sex couples do not have legal recognition for their relationship and do not have the right to have family as well. Under adoption law, it says that a woman can adopt a child if she is unmarried until the age of 45 and not having access to marriage, women are not eligible to adopt a kid. It also says that if a couple wants to adopt a child, it should consist of a male and a female, and only in this case the couple can adopt a kid. Therefore, it prevents lesbian couple to adopt children and live a family life. There are some rainbow families with kids, but now they are facing problem of birth registration and giving property rights to their kids.

The problem has been recognized by the UN Committee on the Rights of the Child already. In 2016, having the combined third to fifth periodic reports of Nepal considered, the CRC Committee expressed its specific concerns on “the hindrances experienced by many children to obtaining Nepalese nationality,” including the fact that “acquisition of Nepalese citizenship by descent is conditional on evidence that both the father and mother of the child are Nepalese citizens” that “excludes children of same-sex parents.” (CRC/C/NPL/CO/3-5, para. 26(a)). The CRC Committee then recommended that the government of Nepal amend its legislation by, inter alia, “making citizenship by descent accessible through proof of citizenship of one of the parents, regardless of the parent’s sex” (CRC/C/NPL/CO/3-5, para. 27(b)). However, no significant actions have been made by the government so far.

## **3. Right to health, education, employment, food and other social benefits (articles 2, 10, 11, 12 & 13):**

Referencing the constitution, article 18 “right to equality,” Nepal as a country has recognized the existence of sexual minorities and is considered to be progressive, in comparison to many other countries, in terms of having laws to protect the group from discrimination. Article 42 “Right to social justice” of the Constitution ensures the right to special opportunity and facilities in the areas of education, health, housing, employment, food and social security, for their protection, progress, empowerment and development. Though these rights have been ensured by constitution but has not been reflected in laws and policies of the country as a result after many attempts as well community members are failed to grab the opportunity.

The definition of minorities does not specify LBT. As a result, LBT persons are deprived of enjoying political rights. Badri Pun, a transgender person who had registered his nomination as a candidate of local level election did not get the opportunity due to his other gender citizenship.

## **II. Questions and Recommendations:**

Taking into account all the above-mentioned problems, we would like to formulate a number of questions to be included into the List of Issues, as well as recommendations to the government of Nepal that would improve the situation of lesbian and bisexual women, as well as transgender persons in the country.

### **Questions/Issues:**

1. What measures, including legislative and policy, have been organized and implemented by Nepal in order to ensure effective implementation of the constitutional provisions guaranteeing equality and access to social benefits to lesbian and bisexual women and transgender people?
2. Please provide statistic on sexual and reproductive, as well as mental health of lesbian and bisexual women and transgender persons. How their specific needs are addressed by health institutions in the country? Are there any relevant trainings or educational materials for medical students and health professionals?
3. Please provide information on the incidence of hate crimes and domestic violence against lesbian and bisexual women and transgender persons, prevention mechanisms and data on reported cases, prosecutions and convictions of perpetrators.
4. Is Nepal considering legislative changes aimed at legal recognition of same-sex family relations? What steps have been done by Nepal to implement recommendation of the UN Committee on the Rights of the Child regarding birth registration and citizenship of children born in same-sex families?

### **Recommendations:**

1. Nepal should be acknowledged for taking positive steps towards the recognition of LGBTI rights in the recent Constitution. Further, as the definition of 'minorities' does not specify LBT persons, the definition should be elaborated further to explicitly include LBT persons. The phrase 'gender and sexual minority' are mentioned in article 18 (right to equality) and in article 42 (social justice) of the Constitution. The phrase 'gender identity' is mentioned in article 12 (citizenship ID). These ensured rights should be reflected in countries' laws and policies.
2. Nepal should enact comprehensive anti-discrimination legislation that would prohibit discrimination on the basis of sexual orientation or gender identity in the areas of health, employment, education, political activities, and the provision of accommodation, goods and services.
3. Nepal should provide citizenship to children born or adopted by LBT persons, as well as social security to single women. For such purpose, coordination needs to be done with the National Women Commission, Federal and provincial parliaments and other human rights organizations.

4. Nepal should take all necessary measures, including legislative, to recognize family rights of same-sex couples.

5. Nepal government's social equality policy states that no one will be left behind by 2030. Hence the State has to take steps to ensure reservation for the LBT community and full-fledged implementation of the inclusive policy.

6. Government should take initiation and conduct more programs to address the issues related to mental health and violence towards LBT individuals.

## ***Annex 1 – Cases of discrimination and violence against LBT persons in Nepal***

### **Case 1:**

Manish Yadav, a transman, was expelled from Maoist army together with his wife in 2006. Since then they started living together. After 11 years of relationship their families were looking for baby, and even both of them realized that now they are capable enough to raise a kid. They had a dream of a family with a kid. They got to know about “test tube baby”. Then both of them planned for a baby and visited a hospital in Biratnagar and had a “test tube baby”.

On 10 May 2017, the wife gave birth to a girl child. Now both of them are very happy. But when Manish visited a local authority for the girl’s birth registration, the officer said him to bring his citizenship card as per his gender identity together with the citizenship card of his wife and marriage certificate which they do not have. As a result, he was unable to have his child birth registration.

### **Case 2:**

Neelam, a lesbian woman from Kathmandu, has been living with her family members. Once she was found together with her female partner, her family members become aware of her sexual orientation. Her family members tried very hard to convince her to change, threatened her and emotionally blackmailed her. As a result, she got into mental stress. She stopped visiting her girlfriend together with other friends too. She had to go through different problems due to the pressure from her family. Later on, she decided to leave the country, and now she is living outside of Nepal. But yet her family has not stopped pressuring her in different issues.

### **Case 3:**

Gita was living with her trans partner. Both of them were very happy in their relationship, but slowly, she started to realize that her partner had adopted all the behavior from patriarchal society. She started feeling uncomfortable. She had a discussion regarding his behavior many times, but he never ever tried to change on it. Slowly, he started suppressing her, physically and mentally harassed her, and got into physical violence as well. But she never tried to report the case anywhere, since her relationship was not accepted by her family. Due to continuous suppression and physical violence, she started taking cigarettes, drinking alcohol and weed just to get relief from the situation. Now she is scared to go to hospital for any treatment. She also has reproductive health problem. Last time she visited a private clinic in Chabahil area and shared that she is not married but sexually active. Then the health care provider asked her many personal questions, and she got stressed more. Since then, she always avoids visiting doctors and medical personals thinking that she might get same replication.

### **Case 4:**

Intimidation of and threats against women human rights defenders: members of leading women’s rights organization WOREC Nepal and LGBTI rights organization Mitini Nepal have been subjected to threats and intimidation, as a result of their support of Ms X, a victim of domestic violence, following her self-identification as a lesbian. On 28 August 2012, police reportedly surrounded the offices of Mitini Nepal in Lazimpat, Kathmandu. After their withdrawal, several plain-clothes individuals remained, to allegedly monitor the organization’s activities. President of Mitini Nepal, Ms. Laxmi Ghalan, has reportedly received a number of threatening phone calls. On 30 August 2012, a group of individuals, claiming to be relatives of X, raided the offices of WOREC in Balkumari, Lalitpur. The group was accompanied by seven police officers, who did not enter the offices. Also on 30 August, four police officers visited the offices of Mitini Nepal, accompanied by relatives of X, and accused staff of hiding X.

## References:

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4. <http://www.bds.org.np/>
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## ***Annex 2 – Information about submitting organization***

**Blue Diamond Society** (<http://www.bds.org.np>) is a Nepali non-governmental LGBT organization that was established in 2001. The BDS work in Kathmandu with local communities and on a national level with the mission to improve the sexual health, human rights and well-being of sexual and gender minorities in Nepal. BDS is the only organization of this kind and our key activities include health promotion for sexual minorities, psycho-social counselling, raising awareness of HIV/AIDS, promoting human rights and sexual health, documenting human right violations, legal counselling and litigation services to the victims and families, legal and constitutional campaign, lobbying for policy change, advocacy and media campaign, and income generation activities to poor LGBTI persons.