

Blue Diamond Society

Discrimination and violence against Intersex Women in
Nepal

Shadow Report

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

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January — 2018

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Executive Summary

The present report is prepared and submitted by Blue Diamond Society, an LGBTI 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 intersex women Nepal. At that, we are making focus on the following problems: (1) negative stereotypes and violence against intersex women; (2) violations of Intersex women' family rights, particularly, lack of any legal recognition of gender identity and force genital mutilation without their consent no access to proper birth ; 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 Intersex women 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 21st 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. 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 Intersex came to existence in the end of 2004 along with Intersex women) coming out and working for their dignity and rights including with SOGI (sexual orientation and gender identity) members . 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 Intersex identity and sexuality leads to violence in their lives in multiple ways. .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, hospital and the public sphere.

1. Negative stereotypes and violence against INTERSEX WOMEN 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.

Intersex are the most marginalized within the LGBTI movement globally. We do not talk much on the issues of Intersex health and rights often. LGBTI community members experience stigma, discrimination and victimization across the course of their lives. In context of Intersex women, 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 intersex.

Even current situation of health sector contains many barriers that prevents 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 intersex 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 physical variation on secret for fear of shame and stigmatized.

Many times, intersex women have reported suppressing their identities, or disclosing in non-explicit ways, because of the fears of loss of family and brutal consequences leading to 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 intersex women issues.

The nature of the violence faced by Intersex women starts from family where the site of violence for most women, since it is where control is exerted over Intersex 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 and physical variation secret, for fear of shame and stigma. The violence that they faced led them to experience guilt, shame, fear, anxiety, depression, and suicidal ideation.

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 intersex women 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. 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 Intersex Women to adopt children. 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 has 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 intersex women. As a result, intersex women persons are deprived enjoying political rights.

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 Intersex women 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 Intersex Woman?
2. Please provide statistic on sexual and reproductive, as well as mental health of Intersex woman. 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, normalizing sex corrective measure and domestic violence against Intersex women prevention mechanisms and data on reported cases, prosecutions and convictions of perpetrators.

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 intersex women, the definition should be elaborated further to explicitly include intersex women 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 intersex 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.
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 intersex community and full-fledged implementation of the inclusive policy.
6. Government should take initiation and conduct more programs to address the issues related to reproductive and mental health as well as violence towards intersex women individuals.

Annex 1 – Cases of discrimination and violence against Intersex women persons in Nepal

Story 1: China Chaudhary

My name China Chaudhary. I was born in the year of 1984 AD. I was born and was raised as a daughter. My body appeared wholly female. However, when I was 12 years old, my physical growth was not like other girls and due to this difference, I was forced to leave home and my parents were not at all happy. I began to work in the homes of other people to make a living. After some time working there I broke my leg. As a result I was fi red instead of being provided with treatment and had nobody to look after me. I returned home at this point, but I did not receive any care, support or treatment from my family who did not seem bothered with me. With the little money I had earned from my job I got treatment, but I was so sad at this point and experiencing a lot of problems.

On the one hand I was temporarily disabled by my injury and in the other I had no one who cared for me or who could provide me with food. So I lived by borrowing food from others. When I eventually healed, I again started working and to lead my life. However, while I dressed and lived like a women I did not develop breasts and most people called me different disparaging names such as Hijada, Chhaka and so on. I also had to face a lot of such humiliation in the workplace as well. Through work I had collected enough money to go for a health checkup. It was at this point that the doctor told me that I did not have a uterus. 10 Stories of Intersex People from Nepal I was incredibly upset by this but I had nobody close to confide and share my feelings with.

Nearly everybody I knew discriminated against me in some way. I felt incredibly alone and isolated. Slowly I have stated to understand myself, and while I was experiencing difficulties in my life, I came to know about the Blue Diamond Society (BDS). I went to their centre where I was given the opportunity to work there. This was an incredible relief as I have made many friends there and they are quite supportive. I still work with BDS and we work together as a family.

Story 2: Bimala Shrestha

My name is Bimala, and I was born in the district of Panchthar, Mamuma VDC in Ward number 5. I was raised as a daughter but my genitals were different. I was enrolled in school but I always got sick and because of this my studies couldn't continue. Later though I was 15 years old, my physical growth was not the same as other girls and I had no menstruation. People used to give me bad names like chhakka and hijra and thought I was infertile. My group of friends eventually got married but I had never felt strongly about marriage and the thought of marrying never came into my mind.

Because of this I was humiliated and looked upon differently. Though it was stressful, I never fought with them and I never really spent time with the group. I used to think that it was only me that was different in this world and I used to feel that I was all alone. I used to listen to the radio, and once while listening I heard a programme on LGBTI issues.

I began listening to the programme more often and it was this way I learned about my physical changes, being intersex and other LGBTI issues. I was interested to know more and as a result I travelled to the BDS office in Damak with the support of one of my friends. It was here that I met Chanchala, the district coordinator of BDS branch and shared my story.

Story 3: Archana Pokhrel

I was born in 1984 AD in Udaypur District of Tavasrima, Nepal. When I was born, my body had sex characteristics that they could not distinguish as male or female. My parents had a daughter already and due to our patriarchal society there was a desire to have a son. As a result my family used to call me as 'son' but my name is Archana (a feminine name). At this time my father was a teacher in the local school so I had no difficulties in attending school, and at the same time, I did not feel that I was different. However, later when we migrated to Sunari, I had grown a little, I was about 13 years old and I was not developing physically like other girls my age. At this point my mother, father and other relatives began to worry about me. As days continued to pass, things became more difficult for me, though my name was feminine I was called 'son', but when I went to school I wore a skirt and shirt.

When I was in Class 11 I came first in my class and got a scholarship. But from this point the situation began to worsen as I had to wear feminine dress which did not suit me as I looked female but my body had not developed, but the uniform was compulsory in the college. My uncle was a professor in the college and one day he approached the administration on my behalf and from that way onwards I was able to wear the male uniform and began to come to school. But on campus, my classmates refused to stay with me as they were not sure about my gender. 16 Stories of Intersex People from Nepal I used to think about myself a lot and got extremely stressed. My family used to worry about me too and I used to cry often. For this reason, I could not study well. Then my mother's uncle, a doctor from India came to visit. I told him about my physical features and it was him who told me about being intersex. I started crying then, to finally know about it. My mother comforted it.

Gradually I returned to and continued my studies and then I went to Biratnagar to pursue my Undergraduate degree. Here there was freedom for me to choose the uniform and so I had no difficulties. I took a keen interest in my studies and did well. For my Master's degree, I came to Kathmandu where I stayed at the college accommodation and faced discrimination from my peers. My parents supported me until my Master's level but afterwards my father passed away from a heart attack.

At this point all the familial responsibilities fell on me and even before the 13 Day Hindu period of mourning was complete my sister had already married. It was difficult to manage these new responsibilities and I started looking for a job but found it very difficult to find one. Eventually I got a job in a Cooperative. Before being introduced to BDS and meeting other intersex people, I used to think that I was alone but now I have made a network of intersex friends who I can work together with. I think we should have our own separate intersex organization and work together accordingly.

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Annex 2 – Information about submitting organization

Blue Diamond Society (<http://www.bds.org.np>) is a Nepali non-governmental LGBTI 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.