



**HEARTLAND  
ALLIANCE**  
GLOBAL INITIATIVE FOR  
SEXUALITY AND HUMAN RIGHTS

## **The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Nepal**

Submitted to the Human Rights Committee on Relevant Issues Prior to Reporting (LOIPR) by:

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## I. Introduction

The American University International Human Rights Law Clinic (“Clinic”),<sup>1</sup> on behalf of Global Initiative for Sexuality and Human Rights and the Blue Diamond Society, produced this list identifying ongoing human rights violations against sexual minorities in Nepal. This collaborative report seeks to: (1) highlight human rights violations against lesbian, gay, bisexual, transgender, and intersex persons (LGBTI) in Nepal, (2) assess the government of Nepal’s compliance with the International Covenant on Civil and Political Rights (ICCPR), and (3) provide recommendations to safeguard and promote the rights of sexual minorities in Nepal.

Nepal ratified the ICCPR on May 14, 1991<sup>2</sup> and the state underwent its last universal periodic review in January 2011. The Human Rights Committee will evaluate this report and consider Nepal’s compliance with the ICCPR in March 2014. This list of issues submitted by non-governmental organizations (NGOs) may serve as an additional source of information for United Nations committee members.

## II. Background Summary

As a country transitioning from a monarchy to a republic, Nepal has taken noteworthy steps towards creating a fair and equitable society that respects and promotes its residents’ human rights. The government of Nepal recognized the importance of protecting human rights and their symbiotic relationship with political stability when in 2006 it introduced the Comprehensive Peace Agreement (CPA), a joint agreement between the government of Nepal and the Unified Communist Party of Nepal (Maoist) that urged, among other things, a political system “that complies with universally accepted fundamental human rights.”<sup>3</sup> The state’s commitment to human rights then garnered international attention in 2007 when Nepal’s Supreme Court issued a landmark decision in *Pant v. Nepal*, which acknowledged that LGBTI individuals should benefit from the same legal rights as other citizens of Nepal.<sup>4</sup> This judicial affirmation called on the Nepalese government to devise new laws and amend existing laws to ensure that LGBTI individuals’ rights would be respected, for instance by issuing citizenship certificates to transgender individuals that reflect their self-identified gender identity.<sup>5</sup> The *Pant v. Nepal* decision also affirmed the state’s position as a regional and international model for promoting the fundamental rights of LGBTI individuals.

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<sup>1</sup> Wassila Nabourema & Meagan Hu (IHRLC), under the supervision of Professor Amy Myers, drafted this report with the assistance of Stefano Fabeni of Global Initiative for Sexuality and Human Rights.

<sup>2</sup> UNITED NATIONS TREATY COLLECTIONS, *Chapter 4: International Covenant on Civil and Political Rights*, available at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).

<sup>3</sup> Richard H. Langan II, et. al., *UNDP Nepal: Outcome Evaluation of UNDP Nepal Access to Justice and Human Rights 2001-2010*, (Nov. 29, 2010), at 1, 15.

<sup>4</sup> *Pant v. Nepal*, Writ No. 917 of the Year 2064 BS (2007 AD), available at <http://www.gaylawnet.com/laws/cases/PantvNepal.pdf>.

<sup>5</sup> Michael Bochenek & Kyle Knight, *Nepal's Third Gender and the Recognition of Gender Identity*, 26 EMORY INT’L L. REV., 12 (2012); see also HUM. RTS. WATCH, *World Report 2013: Nepal*, available at <http://www.hrw.org/world-report/2013/country-chapters/nepal?page=2> (citing the 2007 Supreme Court decision that allows individuals to identify as male, female or “third gender”).

Despite this considerable legal advancement, ongoing human rights violations against on grounds of sexual orientation and gender identity compromise progress towards building a just and equitable society. Furthermore, political instability in Nepal, coupled with the the delay in drafting and enacting a new constitution, have posed obstacles to effective implementation of the Supreme Court’s recommendations that would protect LGBTI individuals and help to erode social prejudices against them.<sup>6</sup> The government’s prolonged inefficacy undermines the ability of LGBTI individuals to enjoy the rights to which they are entitled under the ICCPR, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and several other international conventions to which the state is also a party, including the Convention against Torture and other Cruel and Inhumane Treatment (CAT).<sup>7</sup> Moreover, obstacles to the full realization of sexual and gender minorities’ rights are at odds with the state’s own commitment to its “*Three Year Interim Plan*,”<sup>8</sup> where the government promised to:

Improve the human rights situation of the people and communities at risk and those made to be at risk by putting into practice the commitments made in the national and international levels by the State, for alleviating poverty and ending all forms of social and economic discriminations, deviations, crimes, exploitation and misbehavior and to institutionalize a well developed human rights culture, by controlling violation of human rights in all sectors.<sup>9</sup>

The issues identified below all interfere with the ability of LGBTI individuals to enjoy fundamental rights to which they are entitled under several international human rights conventions that Nepal has ratified. Among the rights that are consistently being violated and require immediate action to protect individuals, regardless of their sexual orientation and gender identity, are the right to be free of discrimination, the right to liberty and security of the person, the right to health care, and the right to education.

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<sup>6</sup> See *Pant v. Nepal*, Writ No. 917 (mandating that the government scrap all laws that discriminated on the basis of sexual orientation and gender identity, that they study and implement a same-sex marriage policy, and that citizens be allowed to self-identify as a third gender on all official documents and registers); *Access to Security, Justice & Rule of Law in Nepal: An Assessment Report*, 1, 5 (Oct. 2011) available at <http://www.esp-nepal.org.np/document/downloads/Access%20to%20Security%20Justice%20Rule%20of%20Law%20in%20Nepal.pdf> (arguing that Nepal’s judiciary continues to face problems of inefficiency, case backlogs, and enforcement of court decisions, and a general lack of interest in protecting judicial integrity); See also Ananta Raj Luitel, *Lack of Judges in Apex Court Puts Legal Profession in Jeopardy*, HIMALAYAN TIMES (Feb. 2, 2013, 11:13 PM), <http://www.thehimalayantimes.com/fullNews.php?headline=Lack+of+judges+in+apex+court+puts+legal+profession+in+jeopardy&NewsID=364758> (reporting that the recent retirement of seven ad hoc judges has left six judges sitting on the bench in the Supreme Court, leaving a backlog of 15,000 cases that continues to grow); see also, AL JAZEERA, *Nepal Parties Agree on New Interim PM* (Feb. 19, 2013, 11:29 AM), <http://www.aljazeera.com/news/asia/2013/02/20132196114628235.html> (reporting that Nepal formed an interim government headed by the Supreme Court’s chief justice and agreed to hold elections in June to try and resolve the political vacuum that has existed since Parliament was dissolved in May 2012).

<sup>7</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; see also Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 UNTS 85 [hereinafter CAT].

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

<sup>9</sup> *Id.*

### III. Suggested List of Issues

LGBTI individuals, civil society organizations, and human rights advocates continue to report violations of several provisions found in international conventions to which Nepal is a party, including the ICCPR.

1. *Discrimination on the basis of sexual orientation and/or gender identity hinders access to health care.*

One of the most pervasive human rights violations against LGBTI individuals in Nepal is the state's interference with individuals' right to health on account of sexual orientation or gender identity. This interference can take several forms. Individuals in Nepal often face discrimination in state-funded health care facilities simply because of their sexual orientation or gender identity. In a report detailing human rights violations against individuals on grounds of sexual orientation or gender identity, one victim explained the plight of many transgender individuals: "Health professionals ask how we should treat you since you are not male or female? They don't know us. They don't want to treat us."<sup>10</sup> Individuals also endure discrimination from both state actors and private citizens based on the fact or perception that they are sex workers and/or HIV-positive. For instance, activists reported that transgender individuals are denied access to public health care facilities because they are often perceived to be sex workers and/or HIV-positive, although sex workers and HIV-positive individuals are still entitled to healthcare regardless of their health status. Furthermore, fear of discrimination also prevents other LGBTI individuals from seeking medical treatment.<sup>11</sup> The United Nations Special Rapporteur on the Right to Health, Anand Grover, explained that because of untrained health care professionals' attitudes towards sexual minorities, "The fear of judgment and punishment can deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services,"<sup>12</sup> effectively interfering with their right to health.

In addition, there have also been reports that privately owned mass-transportation carriers often deny transgender individuals access to transportation.<sup>13</sup> As a result, many LGBTI people are unable to reach health care centers that will provide HIV services and other care, including treatment, testing, and counseling, which are all important aspects of the right to health. To make things worse, some of these individuals who are denied treatment are in need of life-saving, urgent care.

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<sup>10</sup> Singh et al., *Human Rights Violations Among Sexual and Gender Minorities in Kathmandu, Nepal: A Qualitative Investigation*, BMC INT'L HEALTH & HUM RTS., 12:7 (May 16, 2012), available at <http://www.biomedcentral.com/1472-698X/12/7>.

<sup>11</sup> *Id.*; see also e-mail Communication with Kyle Knight, Fellow, Williams Institute (Apr. 20, 2013, on file with authors) (discussing how fear of discrimination and stigmatization deter some LGBTI individuals from seeking medical help).

<sup>12</sup> See United Nations General Assembly (A/HRC/14/20), *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Human Rights Council Fourteenth session Agenda item 3 (Apr. 2010), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf><http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>. (discussing the impact of laws criminalizing consensual same sex conduct on sexual minorities' right to the highest attainable standard of health).

<sup>13</sup> Telephone interview with Kyle Knight, a journalist and a Fellow with the Williams Institute (Mar. 14, 2013). While these public transportation services are run by private citizens, the government of Nepal is in charge of issuing operating licenses, but still fails to protect LGBTI individuals from these type of discrimination.

Compounding the difficulty in accessing health care services is the government's undue delay in renewing the 2012-13 operating license of Blue Diamond Society (BDS), Nepal's largest NGO that provides services including health care to hundreds of LGBTI individuals. As the leading NGO advocating for the human rights of sexual and gender minorities in Nepal, BDS provides services to more than 300,000 individuals from its offices, which are situated in forty cities throughout Nepal.<sup>14</sup> Some of the programs that BDS runs focus on HIV/AIDS prevention, care and support, legal counseling and job training, as well as documenting the human rights violations against people based on their sexual orientation or gender identity.<sup>15</sup> BDS's various services and programs aim to fill the void caused by the lack of adequate state services for sexual and gender minorities.

Specifically, Kathmandu's erstwhile Chief District Officer (CDO), Chudamani Sharma, who has been very hostile towards sexual and gender minorities, has been holding up the renewal of BDS's operating license.<sup>16</sup> This delay is threatening the organization's operations, putting at risk individuals like many LGBTI people that rely exclusively on BDS's services. And despite BDS's prominence in Nepal, it has been unable to effectively challenge the decision denying its operating license due to the far-reaching powers of CDOs who often abuse their authority.<sup>17</sup>

The delay in renewing BDS's license stands to precipitate a major HIV/AIDS crisis in Nepal. Without the license, BDS, which has been at the forefront of combating HIV/AIDS among men who have sex with men (MSM)<sup>18</sup> and transgender populations in Nepal, will be unable to provide the resources and services necessary to prevent and treat HIV/AIDS.<sup>19</sup> Moreover, because of the government's prolonged delay in renewing the organization's operating license (despite successful audits by international donors), many of these programs have been indefinitely suspended due to lack of funding (while the operating license is suspended, all accounts at BDS are frozen by the government).<sup>20</sup> For instance, several LGBTI activists reported a shortage of prophylactics and lubricants, which could lead to the spread of HIV and other sexually transmitted infections (STI).<sup>21</sup> While condoms are commercially available in Nepal, their quality and price vary greatly. Lubricant is infrequently available and often prohibitively expensive, leading some people to use harmful alternatives.<sup>22</sup> Most LGBTI individuals who seek BDS's health services do so because of persistent discrimination in public

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> E-mail from Sunil Babu Pant, Director, Blue Diamond Society to authors (Apr. 13, 2013, 11:43 PM EST) (on file with authors).

<sup>17</sup> *Torture of Juveniles in Nepal: A Serious Challenge to Justice System*, ADVOCACY FORUM, (June 2010), available at [http://www.advocacyforum.org/downloads/pdf/publications/Torture-of-juveniles-in-Nepal\\_26\\_June\\_2010.pdf](http://www.advocacyforum.org/downloads/pdf/publications/Torture-of-juveniles-in-Nepal_26_June_2010.pdf). – The report was pointed out during a telephone interview with Kyle Knight, Fellow, Williams Institute (Mar. 14, 2013). A follow-up email conversation on April 30, 2013 with BDS's technical advisor, Saurav Thapa, also revealed that the former CDO refused to forward the organization's file to court for processing, thereby further delaying an appeal that would challenge the CDO decision to withhold BDS's license.

<sup>18</sup> The phrase "men who have sex with men" is used in the context of studying the spread of HIV/AIDS among men who have sex with other men, regardless of their sexual or gender identity. See *Policy Brief: HIV and Sex Between Men*, UNAIDS, available at [http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/briefingnote/2006/20060801\\_policy\\_brief\\_msm\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/briefingnote/2006/20060801_policy_brief_msm_en.pdf).

<sup>19</sup> *Nepal: Climate of Fear Imperils LGBT People*, HUM. RTS. WATCH (Apr. 1, 2013), <http://www.hrw.org/news/2013/04/01/nepal-climate-fear-imperils-lgbt-people>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Lack of "Lube" Hurts HIV Prevention*, PLUSNEWS (Feb. 21, 2013), <http://www.plusnews.org/Report/97517/Lack-of-lube-hurts-HIV-prevention>.

health care centers and from the public, as discussed above.<sup>23</sup> With BDS's current difficulties in getting its license renewed, these individuals are effectively unable to access these crucial social and health services.

Back in 2011, when BDS also faced a government suspension of its funds, there were reports that some of its employees who had previously been sex workers turned back to sex work to survive because they were without a source of income while BDS's accounts were frozen.<sup>24</sup> Currently, BDS employs an estimated 450 part-time employees throughout Nepal.<sup>25</sup> With the current delay in getting its license renewed and the attendant inability to access operating funds, some of its employees and the at-risk populations they serve, including MSM and transgender individuals, may again feel forced to turn to sex work. Sex work becomes especially high-risk in a situation such as this because not only is there a shortage of condoms and lubricant to facilitate safe sex, but sex workers are vulnerable to abusive interactions with clients.<sup>26</sup> Tragically, some of these employees are engaging in risky behaviors "without the basic tools for protection that they have been trained to promote."<sup>27</sup>

Moreover, prejudice and lack of tolerance towards individuals because of their sexual orientation and gender identity from both private citizens and state actors also threaten to interfere with their right to health and serve to erode HIV treatment literacy that organizations like BDS are striving to achieve.<sup>28</sup> For instance, in 2007, BDS reported that one of their HIV/AIDS programs that was partly funded by music entertainer Elton John and served at risk groups, including LGBTI people in the far west region of Nepal, came under attack from both Nepal's public officials and local NGOs. The groups believed that such programs would further "encourage homosexual activities and pollute society."<sup>29</sup> The interruption of HIV prevention campaigns and outreach could potentially threaten years of successful campaigns to encourage safe sex, thereby endangering the lives of LGBTI individuals, including sex workers.<sup>30</sup> BDS's director, Sunil Pant, described the importance of the HIV/AIDS programs that BDS provide to LGBTI people, explaining that, "There is an increasing number of gays, transgender, and males with HIV in the far west [of the country?]. [But] since the outpost started, we have sent more than 15 people living with HIV to Kathmandu for further support, treatment, and hospice facility."<sup>31</sup> Furthermore, the delay in renewing BDS's operating license interferes with an LGBTI person's fundamental right to health and, ultimately, the right to self-determination as enshrined in article 1 of the ICCPR. For some of these individuals, BDS represents a lifeline, a safe place where they can access critical medical treatment, counseling, or work opportunities.<sup>32</sup> Without BDS's continued support, many LGBTI individuals who already do not enjoy sufficient access to justice and public services would be effectively without a safe haven and without advocates to help safeguard and promote their rights.

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<sup>23</sup> *Id.*

<sup>24</sup> <http://www.worldpolicy.org/blog/2011/10/05/bureaucracy-nepal-leads-hiv-deaths>.

<sup>25</sup> *Id.*

<sup>26</sup> Email Communication with Kyle Knight, April 27, 2013 (on file with authors).

<sup>27</sup> *Id.*

<sup>30</sup> Interview with Saurav J. Thapa, Technical Advisor, Blue Diamond Society, in Washington, D.C. (Mar. 21, 2013).

<sup>31</sup> *Ignorance Halts Nepalese HIV/AIDS Programe Funded by Elton John*, TOWLEROAD, (Apr. 2007), available at <http://www.towleroad.com/2007/07/ignorance-halts.html#ixzz2RrnFO5qM>.

<sup>32</sup> *Id.*

Denying an individual equal access to healthcare or deterring her from seeking health care based on the person's sexual orientation or gender identity constitutes discrimination and a clear violation of both the ICCPR and the ICESCR. In its General Comment No. 14 on the right to health enshrined in the ICESCR, the UN Committee concluded that the right to the highest attainable standard of physical and mental health ("right to health") is "closely related and dependent upon the realization of other human rights."<sup>33</sup> The Committee explained that discrimination in access to healthcare based on sexual orientation or gender identity has far-reaching consequences, as it interferes with affected individuals' other economic, social and cultural rights, which in turn prevent them from properly exercising their right to health.<sup>34</sup>

Therefore, the full realization of an individual's right to life as provided by the ICCPR cannot be achieved when that person is denied the right to the highest attainable standard of health as provided by the ICESCR. The denial of adequate healthcare to individuals based on their sexual orientation, gender identity and/or perceived HIV/AIDS status interferes with their right to life and right to be free from discrimination under articles 6(1) and 2(1) of the ICCPR, respectively.<sup>35</sup> It also interferes with their right to health under article 12 of the ICESCR, which places a higher burden on states to provide accessible health facilities, goods, and services to individuals living with HIV/AIDS.<sup>36</sup> Furthermore, such discriminatory treatment towards individuals based on their sexual orientation, gender identity, and/or perceived HIV/AIDS status is inconsistent with Nepal's current interim constitution, which also provides for individuals' fundamental right to health care.<sup>37</sup>

### *Recommended questions*

- a. Recent human rights reports suggest that Nepal is nearing a health crisis related to HIV/AIDS among populations at risk including LGBTI individuals and sex workers. What concrete measures is the government of Nepal taking to ensure that all individuals (regardless of their sexual orientation or gender identity) enjoy equal access to the highest attainable standard of physical and mental health?
- b. Please comment on whether legal measures exist to prohibit the discriminatory denial of health care services to individuals based on their real or perceived HIV status or occupation as a sex worker.

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<sup>33</sup> U.N. Hum. Rts. Comm., *General Comment No. 14 on Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights*, ¶¶ 12(b), 18, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

<sup>34</sup> *Id.*

<sup>35</sup> ICCPR, *supra* note 7, art. 6(1) ("Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."); ICCPR, *supra* note 7, art. 2(1) ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.")

<sup>36</sup> U.N. Hum. Rts. Comm., *supra* note 33.

<sup>37</sup> Interim Constitution of Nepal (ICN) Part 3, Art. 16 (2007) [Nepal], 15 January 2007, available at: <http://www.unhcr.org/refworld/docid/46badd3b2.html> (providing that "every person shall have the right to live in clean environment. Every citizen shall have the right to get basic health service free of cost from the State as provided for in the law").

c. Please describe any measures that have been taken to protect civil society organizations, specifically those serving at-risk populations, including sexual and gender minorities? How does the government of Nepal plan to improve its relationship and collaboration with civil society organizations and ensure that these organizations are able to carry out their mandates without undue influence?

d. What are the concrete measures that the government of Nepal is taking to train and educate health care providers serving vulnerable groups like LGBTI people to ensure that individuals are not deterred from seeking health care for fear of discrimination on grounds of sexual orientation or gender identity?

2. *Some members of the Nepali security forces and other public officials continue to harass, mistreat, and detain individuals and the people working to protect them based on the individual's sexual orientation and/or gender identity*

Due to deep-seated prejudice, the perceived social vulnerability of individuals because of their sexual orientation and gender identity, and their rights movement, and a weak understanding of sexual and gender diversity, state agents continue to discriminate against, harass, and arbitrarily detain individuals on grounds of their sexual orientation and gender identity without cause. Laws that provide law enforcement officers with significant discretion and include vague definitions of prohibited conduct permit such abuse. Nepal's Arms and Ammunition Act of 1963 and the Public Offences Act of 1970 (POA) grant almost absolute powers to Chief District Officers (CDOs), allowing them to sentence detainees to prison terms without the requisite due process.<sup>38</sup> The apparent power that CDOs wield and their attendant lack of accountability allow them to persecute vulnerable minorities like LGBTI individuals. While in office, Chudamani Sharma, Kathmandu's former CDO, led the charge in mobilizing police forces to crack down on transgender individuals.<sup>39</sup> Even though Mr. Sharma is no longer in office, the quasi-judicial powers of CDOs remain a great concern for LGBTI individuals who are often the target of CDOs' arbitrary use of both Nepal's Arms and Ammunition Act and the POA.

Recent human rights reports show that Nepalese security forces have arrested several transgender individuals under the POA.<sup>40</sup> The POA is overly broad and, because it does not define what constitutes "public offense," security officers unfairly use it to target, among others, people based on their sexual orientation and gender identity. A human rights lawyer in Nepal described the POA as "originally created by autocratic leaders to suppress political opponents, and now . . . used whenever the police need an excuse for arbitrary arrests, including those they accuse of being hooligans."<sup>41</sup> Individuals charged under the POA risk up to twenty-five days in

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<sup>38</sup> See *Torture of Juveniles in Nepal: A Serious Challenge to Justice System*, ADVOCACY FORUM, (June 2010), available at [http://www.advocacyforum.org/downloads/pdf/publications/Torture-of-juveniles-in-Nepal\\_26\\_June\\_2010.pdf](http://www.advocacyforum.org/downloads/pdf/publications/Torture-of-juveniles-in-Nepal_26_June_2010.pdf) (describing the quasi-judicial powers of CDOs in Nepal).

<sup>39</sup> E-mail from Sunil Babu Pant, Director, Blue Diamond Society to authors (Apr. 13, 2013, 11:43 PM EST) (on file with authors).

<sup>40</sup> Some Public (Crime and Punishment) Act, 2027 (1970), NEPAL LAW COMMISSION, available at [http://www.ncf.org.np/upload/files/182\\_en\\_some-public-crime-and-punishment-act-2027-english.pdf](http://www.ncf.org.np/upload/files/182_en_some-public-crime-and-punishment-act-2027-english.pdf).

<sup>41</sup> See AGENCE FRANCE-PRESSE, *Nepal Police Accused of Long-Hair Crackdown*, (Mar. 5, 2013 1:29 PM), <http://www.ndtv.com/article/world/nepal-police-accused-of-long-hair-crackdown-338422> (describing how Nepalese police forces use the POA to arbitrarily arrest minorities such as transgender people).

detention and fines of up to US\$300.<sup>42</sup> BDS has documented dozens of arbitrary arrests under the POA over the course of two months in February and March of 2013 and found that collectively, these victims paid nearly US\$6,500 in bail to secure their releases.<sup>43</sup> Moreover, many LGBTI individuals who are detained cannot afford bail money and are forced to remain in jail pending their trials.<sup>44</sup> This recurring pattern of arbitrary arrests and police violence is of particular concern for métis (“men by birth who identify as feminine, and might in different cultural circumstances be called transgender women”).<sup>45</sup> Back in 2006, Human Rights Watch reported a series of arbitrary arrests and police abuses against métis.<sup>46</sup> More recently in 2013, Nepalese police forces, under the command of the CDOs, are again using the POA’s broad language to arbitrarily arrest individuals they perceive to be men who have long hair, including métis.<sup>47</sup>

Responding to the use of POAs to arrest individuals with long hair, the Supreme Court of Nepal recently reaffirmed individuals’ rights to privacy and security of the person by ordering law enforcement forces to stop harassing and arresting individuals based on their “personal interest or appearance.”<sup>48</sup> While this decision, if implemented, may provide reprieve for individuals who have been unfairly profiled and targeted under the POA, the ruling does not repeal the POA, nor does it remove the threats that LGBTI individuals could still be targeted and prosecuted under the POA.

Concerns over the harassment and detention of individuals based on their sexual orientation and gender identity in Nepal reached such an alarming level that on April 2, 2013, the United Nations Human Rights Commissioner Navi Pillay sent a letter to Madhav Prasad Ghimire, Nepal’s Minister for Foreign Affairs, expressing concern over allegations that in recent weeks, some fifty LGBTI activists and transgender persons had been detained by police under the POA. Pillay described in her letter that these detained individuals complained of “verbal abuse, severe beatings and indiscriminate body searches” at the hands of police.<sup>49</sup> She urged the Nepalese government to take steps necessary to end this treatment towards LGBTI individuals and to ensure that LGBTI civil society organizations like BDS are not subjected to unnecessary delay in renewing their operating licenses.<sup>50</sup>

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<sup>42</sup> *Nepal: Climate of Fear*, *supra* note 19.

<sup>43</sup> *See id.* In February 2013, Human Rights Watch reported that Nepal police arrested four transgender women under the POA. One of the victim Jamki S. was harassed by police officers in detention, and one officer went as far saying that: “he wished he could charge all *chakkas* [a derogatory term for “transgender woman” in Nepali] an even higher bail amount because he thinks we are all prostitutes and corrupt.” Similarly, in March 2013 another transgender woman Jyoti P was also detained by Nepal police under the POA. Jyoti P reported that her parents who do not accept her as a transgender were forced to pay her bail to secure her release.

<sup>44</sup> BDS reported paying the bail for many transgender people; however, the increasing numbers of arrests has become prohibitively expensive, forcing the organization to use its limited resources to other urgent needs such as health care.

<sup>45</sup> *See Scott Long, Letter to Nepal Minister of Justice and Home Affairs*, HUM. RTS. WATCH, (Jan. 12, 2006) <http://www.hrw.org/news/2006/01/11/letter-nepals-minister-justice-and-minister-home-affairs> (describing a list of arbitrary arrests and police violence against métis based solely on their appearances and not on specific criminal charges).

<sup>46</sup> *Id.*

<sup>47</sup> *Nepal Police Accused of Long-Hair Crackdown*, (Mar. 5, 2013), *supra* note 41.

<sup>48</sup> SC Verdict Lifts Taboo on Long Hair, Ear Jewellery, THE HIMALAYAN, (Apr. 8, 2013 2:44 PM) <http://www.thehimalayantimes.com/fullNews.php?headline=SC+verdict+lifts+taboo+on+long+hair%26sbquo%3B+ear+jewellery&NewsID=372083>.

<sup>49</sup> Letter from Navanethem Pillay, High Commissioner for Human Rights, United Nations, to H.E. Mr. Madhav Prasad Ghimire, Rt. Honourable Minister for Foreign Affairs in Nepal (Mar. 22, 2013).

<sup>50</sup> *Id.*

Moreover, there is insufficient investigation or prosecution of these violations. The state's Attorney General, who is the chief public prosecutor in the country, has the authority "to initiate proceedings in any case of the government in any court or judicial authority,"<sup>51</sup> including decisions to investigate, prosecute or drop cases of abuses against LGBTI individuals. However, the Attorney General is an appointed official, which means that with every change of government, there is a new Attorney General.<sup>52</sup> For an underrepresented group like the LGBTI population, which lacks stable political influence, the continued change of Attorneys General and other high-level officials means that reports of violence and abuses against individuals based on their sexual orientation or gender identity are not prosecuted with sufficient strength or frequency.<sup>53</sup> For instance, in December 2012, BDS requested that the Inspector General of Nepal's police force investigate incidents of threats and intimidation against its staff members. However, to date, there has been no investigation, therefore adding to the climate of fear among LGBTI activists and their communities.<sup>54</sup>

The targeted use of the POA against individuals based on their sexual orientation or gender identity violates several rights guaranteed under the ICCPR, including the right to due process as provided by article 9, the right to equality under the law as provided under articles 2(1) and 26, as well as article 17, which protects individuals' freedom from arbitrary interference with privacy, family, and home. States' obligations to protect individuals from discrimination based on sexual orientation was affirmed in *Toonen v. Australia*,<sup>55</sup> where the Human Rights Committee interpreted both articles 2(1) and 26 of ICCPR to include sexual orientation as a protected ground.<sup>56</sup> In addition, while article 17 of the ICCPR guarantees individuals' right to privacy, the Human Rights Committee further explained in its General Comment 16 that even if provided by law, any state's interference with individuals' right to privacy "should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances."<sup>57</sup> Thus, criminalizing private same-sex sexual relations between consenting adults is never justified for reasons of protecting public health or morals.<sup>58</sup> In other words, the government of Nepal's use of the POA to target sexual and gender minorities based solely on their appearance, and in the absence of any specific criminal act, violates their fundamental rights as provided by the ICCPR. The practice of gender stereotyping has been found in violation of article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.<sup>59</sup>

### *Recommended questions*

- a. What sort of training and guidance do police officers and CDOs receive with regard to investigating, arresting, and or prosecuting LGBTI individuals for offenses

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<sup>51</sup> See Langan, *supra* note 3, at 1, 2.

<sup>52</sup> See *id.*

<sup>53</sup> See *id.* at 8, 9.

<sup>54</sup> *Nepal: Climate of Fear*, *supra* note 19.

<sup>55</sup> *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

<sup>56</sup> *Id.*

<sup>57</sup> U.N. Hum. Rts. Comm., *General Comment No. 16 Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, ¶ 14, U.N. Doc. HRI/GEN/1/Rev.1 (1994).

<sup>58</sup> *Id.*

<sup>59</sup> See Committee on the Elimination of Discrimination against Women, *Communication No. 18/2008, Vertido v. The Philippines*, 12-30 July 2010, <http://opcedaw.files.wordpress.com/2012/02/vertido-v-the-philippines.pdf>

allegedly committed under the Arms and Ammunition Act and the Public Offense Act and to ensure that individuals are not targeted merely on grounds of sexual orientation and gender identity?

b. Please respond to allegations that CDOs have been abusing their power by unnecessarily delaying the license renewal of NGOs serving sexual and gender minorities, and by mobilizing police officers to crack down on transgender individuals under the guise of having committed an offense under the Public Offense Act. What measures is the government taking to hold public officials accountable for their acts, and prevent them from interfering with the fundamental rights of minorities?

c. Would the government of Nepal consider repealing, or at least amending the Public Offense Act to prevent interpretations of the law that could lead to the persecution of individuals on grounds of sexual orientation or gender identity?

d. Nepal's efforts towards strengthening the state's judicial system are noteworthy; however, there are still reports that violence and crimes committed against individuals on grounds of sexual orientation or gender identity are not investigated or prosecuted consistently. In what way does Nepal plan to reform and support the judicial system to provide remedies to sexual minorities whose rights have been violated and ensure that judicial decisions are enforced?

### 3. *Transgender individuals in Nepal continue to face obstacles in obtaining government-issued identification documents acknowledging their gender identity*

In Nepal, citizenship certificates are the most important documents recognizing citizens as persons before the law. Without citizenship certificates, individuals are “blocked from government jobs and pensions, driver’s licenses and passports, as well as government-run programmes like secondary school exams and health services. Bank accounts, land inheritance, and the right to vote are also out of reach.”<sup>60</sup>

Since the Supreme Court’s decision in *Pant v. Nepal* was handed down, only a few individuals identifying as third gender have been able to obtain citizenship certificates that acknowledge their self-identified gender identity, thereby recognizing them as persons before the law.<sup>61</sup> Several transgender individuals have been unable to receive appropriate citizenship certificates when they applied for them because district officials have interpreted the instructions received as not requiring the issuance of new documents to replace ones that individuals had

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<sup>60</sup> See *Nepal: Undocumented Residents Excluded from State Services*, IRIN, (May 12, 2012)

<http://www.irinnews.org/Report/95469/NEPAL-Undocumented-residents-excluded-from-state-services> (describing the plights of individuals who do not have citizenship certificates in Nepal).

<sup>61</sup> Blue Diamond Society, *Shadow Report Submitted for the 49th CEDAW Session: Discrimination and Violence Against Lesbian and Bisexual Women and Transgender People in Nepal* (on file with authors); see also E-mail from Kyle Knight, Fellow, Williams Institute, to authors (Apr. 19, 2013, 7:37 AM EST) (on file with authors) (acknowledging that approximately fifty individuals have been issued citizenships certificates, an insignificant number considering the transgender population in Nepal). See also Immigration and Refugee Board of Canada, *Nepal: Treatment of Sexual Minorities, Including Legislation, State Protection, and Support Services*, (Jan. 20, 2012), available at <http://www.refworld.org/docid/4f30ec042.html>.

already received.<sup>62</sup> Sunil Pant, BDS's director, attributes these bureaucratic obstacles to "homophobia and transphobia coming out in a soft way" among Nepal's bureaucracy.<sup>63</sup> While Nepal's Ministry of Home Affairs has just begun instructing each of Nepal's administrative districts to issue citizenship certificates reflecting individuals' self-identified gender, progress remains piecemeal.

The government's apparent unwillingness to allow individuals to obtain proper identification documents deprives them of the tools necessary to fully participate in public life in Nepal. For instance, some transgender youth have reported that they are unable to take the national exam necessary for entrance into higher education because they lack government-issued identification cards that correctly reflect their gender identity.<sup>64</sup> The issue arises when students show up at exam halls and present to proctors identification cards that list the gender they were assigned at birth. When their birth gender does not match their appearance, expression, or identity, transgender students run the risk of being accused of fraud and, as a result, some drop out of school to avoid accusations of fraud.<sup>65</sup> One student who went through this experience explained, "It is hard for us to get admitted to school because our names are like boys but our photographs are like girls."<sup>66</sup> Similarly, transgender individuals who have already been issued citizenship certificates also run the risk of being accused of fraud when their physical appearances do not match their identity documents. For transgender people living in Nepal, obtaining citizenship certificates that reflect their correct gender is of utmost importance, especially because, "[w]hen an individual's cultural legibility is not affirmed by their identity papers, even everyday quotidian transactions become moments of vulnerability."<sup>67</sup>

The obstacles that transgender Nepalese people continue to face in acquiring necessary identification documents, in accordance with the decision in *Pant v. Nepal*, therefore constitute discriminatory treatment in violation of articles 2(1) and 26 of the ICCPR, which guarantee the rights to be free from all forms of discrimination and equality before the law, respectively. In addition, because of the widespread use of identification documents and their necessity in conducting daily activities in Nepal, as discussed above, the difficulties that individuals face in obtaining proper citizenship certificates also expose them to unlawful searches because in an effort to confirm their identities, third gender individuals are often forced to reveal their gender identity before public and private actors<sup>68</sup>, in direct violation of their right to privacy as provided under article 17 of the ICCPR. The denial of certificates that reflect individuals' gender identity results in severe limitations on their ability to participate in public life and advocate for themselves.

### *Recommended questions*

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<sup>62</sup> *Nepal Pioneers a Third Gender on Official Documents, but Concerns Persist*, 429 MAGAZINE, (Mar. 6, 2013) <http://dot429.com/articles/1599-nepal-pioneers-a-third-gender-on-official-documents-but-concerns-persist>.

<sup>63</sup> *Id.*

<sup>64</sup> Singh et al., *supra* note 10.

<sup>65</sup> E-mail from Kyle Knight, Fellow, Williams Institute, to authors (Apr. 19, 2013, 7:37 AM EST) (on file with authors).

<sup>66</sup> Singh et al., *supra* note 10.

<sup>67</sup> See Paisley Currah & Tara Mulqueen, *Securitizing Gender: Identity, Biometrics, and Transgender Bodies at the Airport*, 78 Social Research, 557, 561 (2011).

<sup>68</sup> See *id.* (discussing the challenges faced by transgender individuals in establishing their gender identity at security checkpoints).

a. Please indicate any monitoring or training measures that have been adopted to ensure that district officials are fully cooperating with official instructions to issue identity documents to people who identify as a third gender.

#### 4. *Deficiencies in certain Nepalese laws expose LGBTI individuals to unequal legal status*

Individuals in Nepal continue to face discriminatory treatment based on their sexual orientation and gender identity because of certain deficiencies in the law. For instance, although they are often particularly vulnerable to sexual abuse, transgender people who experience rape or sexual violence have been unable to seek legal redress for the crimes they endured because Nepalese law defines rape victims narrowly to only include women.<sup>69</sup> Another legal gap in protection for individuals on grounds of their sexual orientation and gender identity exists in the Nepalese Civil and Criminal Code (“Muluki Ain”), which still refers to marriage as between only a man and a woman despite the fact that the Supreme Court in *Pant v. Nepal* called on the Nepalese government to study and put into practice a same-sex marriage policy.<sup>70</sup> Moreover, while the Nepalese Civil Code does not expressly prohibit homosexual behavior, it does criminalize “unnatural sex”<sup>71</sup> without defining what constitutes “unnatural sex.” As a result, there is a real threat that Nepalese authorities can use ambiguous language in the law to “justify arrests of men suspected of having sex with men and of transgender people,”<sup>72</sup> which would violate the right to privacy and the right to non-discrimination based on sexual orientation and gender identity upheld in *Toonen v. Australia* and other subsequent decisions by the Human Right Committee.<sup>73</sup>

In an even more worrying development, Nepal recently considered a proposal that would explicitly criminalize “unnatural intercourse,” which may be intended to mean same-sex sexual activity.<sup>74</sup> The proposal came from two drafting committees working for the Ministry of Law Justice and Parliamentary Affairs to revise Nepal’s Civil and Criminal Codes.<sup>75</sup> Both committees were headed by Supreme Court judges and worked behind closed doors, failing to consult with other stakeholders in the drafting process.<sup>76</sup> Although these draft bills never reached parliament, the discriminatory amendments that they contain are still a concern that will face a new

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<sup>69</sup> Blue Diamond Society, *Annual Report of Human Rights Activities and Violation 201*.

<sup>70</sup> Muluki Ain of 1854 (Gen. Code), NEPAL LAW COMMISSION, available at <http://www.lawcommission.gov.np/en/documents/prevaling-laws/func-startdown/605/>.

<sup>71</sup> See Scot Long, *Nepalese Supreme Court’s Proposed Ban: Letter to the Ministry of Home Affairs*, HUM. RTS. WATCH, (Jul.23, 2004) <http://www.hrw.org/news/2004/07/22/nepalese-supreme-court-s-proposed-ban> (discussing the ambiguous language contained in paragraphs 1 and 4 of Part 14, Chapter 16 of Nepal’s Code of 1963 (Muluki Ain) penalizing “unnatural sex”).

<sup>72</sup> *Id.*

<sup>73</sup> See *Young v. Australia*, Communication No. 941/2000, U.N. Doc. CCPR/C/78/D/941/2000 (2003) (upholding states’ obligations to protect individuals from discrimination based on sexual orientation).

<sup>74</sup> *New Law Threatens to Crush Nepal’s Gays*, TIMES OF INDIA, (June 9, 2011 5:36 PM) [http://articles.timesofindia.indiatimes.com/2011-06-09/south-asia/29638154\\_1\\_sunil-babu-pant-gay-rights-gay-bar](http://articles.timesofindia.indiatimes.com/2011-06-09/south-asia/29638154_1_sunil-babu-pant-gay-rights-gay-bar). Currently, there is no express prohibition on adult, consensual homosexual conduct. However, Nepal’s Criminal and Civil Codes prohibit “unnatural intercourse.” It is unclear what in fact constitutes “unnatural intercourse” under the law. See Manav Kapur, *Constitutions, Gay Rights, and Asian Cultures: A Comparison of Singapore, India, and Nepal’s Experiences with Sodomy Law* (on file with authors).

<sup>75</sup> E-mail from Sunil Babu Pant, Director, Blue Diamond Society to authors (Apr. 13, 2013, 11:43 PM EST) (on file with authors).

<sup>76</sup> *Id.*

parliament once it is elected. Sunil Pant, BDS's director and former member of Nepal's Parliament, explains, "If these bills become law, they will undermine the growth of the gay rights movement in Nepal and criminalize gays,"<sup>77</sup> and nothing prevents the drafters of these regressive bills from proposing them again once a new parliament is established. To backtrack on the legal status of same-sex sexual activity would in effect criminalize LGBTI people and compound the legal protection gaps and attendant discriminatory treatment that the mentioned individuals in Nepal currently face, in violation of their right to non-discrimination enshrined in articles 2(1) and 26 of the ICCPR, as well as the violation of their rights to privacy as provided by article 17 of the ICCPR.

Discrimination on grounds of sexual orientation and gender identity is not only committed by state officials, but private citizens also mistreat individuals with impunity because of persistent prejudicial views regarding homosexuality and gender identity and the failure of Nepal's legal system to protect sexual and gender minorities. For instance, Nepal currently lacks hate crime legislation or anti-discrimination laws to protect sexual and gender minorities from violence, harassment, or discrimination based on sexual orientation or gender identity. For transgender individuals, especially transgender youth, the legal system's failure to effectively protect them has tragic consequences and puts them at risk of social exclusion and marginalization. One transgender woman explained, "My parents know I am transgender but they do not accept me. I live on the streets or with friends . . . ."<sup>78</sup> The Special Rapporteur on the right to health also described in his report the impact of stigmatization on vulnerable groups like LGBTI youth, explaining that the "rates of suicide attempts amongst youth who engage in consensual same-sex conduct have been variously reported as between three and seven times higher than for youth who identify as heterosexual . . . ."<sup>79</sup>

The non-discrimination principle enshrined in article 2(1) of the ICCPR covers both state and private discriminatory practices. In fact, General Comment 31 to this article explains that state parties to the ICCPR are responsible for actions of private parties that violate the rights provided under the ICCPR, especially when the state has failed to take measures to protect individuals from these violations.<sup>80</sup>

### *Recommended questions*

- a. What specific measures does the government of Nepal intend to take to guarantee the legal status and equal protection under the law to individuals regardless of their sexual orientation or gender identity?
  - i. In particular, what will the government do to fulfill the Supreme Court's ruling that the country must provide for same-sex marriage? What will the government do to protect survivors of sexual assault?
  
- b. Nepalese laws do not specifically criminalize homosexual behavior or consensual same-sex conduct; however, Nepal's Muluku Ain criminalizes "unnatural sex" without

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<sup>77</sup> *Id.*

<sup>78</sup> *Nepal: Climate of Fear*, *supra* note 19.

<sup>79</sup> *See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, *supra* note 12.

<sup>80</sup> U.N. Hum. Rts. Comm., *General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (Mar. 29, 2014).

defining it, which could be interpreted to persecute individuals on the grounds of sexual orientation or gender identity. In addition, Nepal has recently considered the possibility of formally criminalizing private, consensual same sex behavior, which would violate several fundamental rights of sexual minorities. How does Nepal plan to safeguard the right to privacy of sexual minorities, and would the government of Nepal consider officially decriminalizing consensual same sex behavior between adults?

##### 5. *Harassment targeting transgender youth limits their ability to participate in public life*

The discriminatory treatment that individuals in Nepal continue to face on grounds of their sexual orientation and gender identity comes from not only inadequate implementation of and deficiencies in Nepal's laws, but more fundamentally from deep-seated prejudice towards LGBTI individuals that still exists in significant segments of Nepalese society. For instance, many transgender youth continue to endure discrimination and bullying from their peers, educators, and school officials. Unfortunately, Nepal does not have any domestic legislation to protect vulnerable youth like LGBTI adolescents from discriminatory treatment like harassment and/or abuse from their peers and school officials. In addition, school officials and administrators are often not trained to understand issues facing sexual minorities and gender identities and are therefore incapable of maintaining a healthy and safe school environment conducive to learning for all children, including transgender youth. Because of these deficiencies, many transgender youth feel they have no other alternative than to drop out of school. Indeed, human rights activists confirm that many transgender youth have been dropping out of school in recent years because of an increase in bullying incidents and the Nepalese government's failure to address these dangerous trends.<sup>81</sup> Without an education, these youth lose connections to their communities, are less able to find employment, and are less able to advocate for themselves and participate in public life.

Nepal's 2010 National Youth Policy acknowledged the need to protect youths belonging to minority and marginalized groups and the necessity of designing national policies that will "ensure the active participation of the youths in each and every process of state functionality."<sup>82</sup> To that end, Nepal's National Youth Policy explicitly defines youths to include "women, men and third gender of 16-40 age group."<sup>83</sup> Thus, the state's failure to protect transgender youth from bullying, harassment and discrimination, coupled with obstacles that transgender Nepalese continue to face in acquiring necessary identification documents, is at odds with the commitments set forth in the state's National Youth Policy.

The different obstacles that transgender youth face in accessing education and the absence of special legislation to protect them violates their right to education as provided by article 13 of the ICESCR, article 24 of ICCPR, and also Nepal's own interim constitution, which provides, "Every citizen shall have the right to free education from the State up to secondary

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<sup>81</sup> Interview with Saurav J. Thapa, Technical Advisor, Blue Diamond Society, in Washington, D.C. (Mar. 21, 2013).

<sup>82</sup> 2010 Nepal National Youth Policy, *available at*

<http://www.moys.gov.np/uploads/moys%20doc/7National%20youth%20policy.pdf>.

<sup>83</sup> *Id.*

level as provided for in the law.<sup>84</sup> Furthermore, article 24 of the ICCPR provides protection for every child without discrimination based on her status as a minor.<sup>85</sup> In General Comment 17 on article 24, the Human Rights Committee has acknowledged the inherent vulnerability of children and explicitly stated that state parties to the Convention should adopt special measures to protect children separate from the provisions outlined in articles 2 and 26 of ICCPR, which ensure that each individual enjoys all the rights that the ICCPR guarantees.<sup>86</sup>

### *Recommended questions*

- a. While acknowledging the positive steps the government has undertaken to protect the right of sexual and gender minorities, what additional specific measures has the government of Nepal taken to protect children from violence, harassment, and abuses in school based on their sexual orientation or gender identity?

## **IV. Recommendations**

The government of Nepal's efforts to promote the human rights of individuals regardless of their sexual orientation and gender identity has made the state a worthy example in Asia and around the world.<sup>87</sup> However, continued human rights violations against LGBTI people only serve to jeopardize this progress. LGBTI individuals' fundamental human rights continue to be threatened unless the government of Nepal takes immediate action to comply with both its international and domestic law obligations. Therefore, the government of Nepal should:

1. Take effective measures to end all forms of discrimination against LGBTI individuals by both private citizens and state agents. This could be done by:
  - a. Adopting anti-discrimination legislation that would explicitly prohibit discrimination based on sexual orientation and gender identity.
  - b. Issuing citizenship certificates to individuals in line with the current policy allowing them to self-identify as male, female, or other, to better enable them to participate in the social, political, and economic life of Nepal.

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<sup>84</sup> Interim Constitution of Nepal Part 3, Art 17 (2007). *See also* ICESCR, *supra* note 7, art. 13 (“The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups, and further the activities of the United Nations for the maintenance of peace.”).

<sup>85</sup> ICCPR, *supra* note 7, art. 24 (“1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.”)

<sup>86</sup> U.N. Hum. Rts. Comm., *General Comment No. 16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (Art. 17)*, (Apr. 7, 1989).

<sup>87</sup> International Gay and Lesbian Human Rights Commission (IGLHRC), *Nepalese National Human Rights Work Plan for 2011-14 Includes LGBTI Rights*, (Jan. 19, 2011), available at <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1317.html>.

- c. Promoting the rights of LGBTI individuals and encourage understanding and tolerance among the public through an explicit commitment to include LGBTI people in all of the government's development programs, including those using international funds, and target LGBTI individuals in all programs meant to provide economic empowerment.
2. Investigate threats and violence against individuals on grounds of their sexual orientation and gender identity and the activists who serve them and effectively prosecute perpetrators to ensure that LGBTI individuals enjoy sufficient access to justice and to restore their trust in the judicial system. This could be achieved by:
  - a. Creating a special commission to investigate and prosecute reports of abuses against individuals based on their sexual orientation and gender identity.
  - b. Amend rape laws to also include non-female adult victims
3. Protect and support civil society organizations servicing underrepresented groups like LGBTI people by collaborating with these organizations to establish an equal, fair, and inclusive society and by preventing the government's unnecessary interference in the operation of these organizations, including but not limited to unnecessary delays in renewing service providers' operating licenses.
4. Train educators and school officials on the rights of sexual minorities and sexual orientation and gender identity issues to help strengthen LGBTI individuals' access to education. This also requires the state to take specific measures to create a school environment that is safe and conducive to learning for all minor children.

## **V. Conclusion**

Nepal set out ambitious plans towards achieving a stable, fair, and democratic state that will respect and protect the rights of all its citizens. However, several years after the landmark decision in *Pant v. Nepal*, the state's professed commitment towards safeguarding the rights of sexual and gender minorities is at odds with the ongoing violence and abuses that are still occurring against individuals on grounds of their sexual orientation and gender identity and the advocates who serve them. The upcoming periodic review of Nepal provides a perfect opportunity for the state to take immediate steps to address the serious human rights violations discussed above and to reaffirm its commitment to safeguarding the rights of sexual minorities by complying with the provisions of the international conventions to which it is party.