

RECOMMENDATIONS FOR THE UPR SESSION OF NEPAL

by Esan Regmi

The recent CRC 72 Committee welcomes the positive steps taken by the State party towards the recognition of LGBTI rights, including the reference to of “gender and sexual minority” in the discrimination grounds prohibited under article 18 of the new Constitution (right to equality) and the recent addition to identity documents of a third gender category recognizing genders other than “male” and “female.” However, the committee remains concerned about intersex issues in Nepal.

As one of the most progressive countries in South Asia, Nepal should be acknowledged for taking positive steps towards the recognition of LGBTI rights. Besides asking the government to end all discrimination against the community, the apex court has also given its approval to enact the same-sex marriage law. In addition, Nepal has just endorsed the constituent assembly with more than two third majorities. The phrase 'gender and sexual minority' are mentioned in article 18 (right to equality) and in article 42 (social justice). The phrase 'gender identity' is mentioned in article 12 (citizenship ID).

While these changes represent positive measures towards improving the human rights condition of LGBTI persons, there still remains scope for improvement in the protection of LGBTI persons from discrimination and gendered violence. There are reports of ongoing discrimination against LGBTI persons including by State entities. Furthermore, the gendered definitions of marriage and family have resulted in a denial of civil rights for persons in same-sex relationships and indirect discrimination by the State. We strongly encourage the United Nation Human Rights Council to recommend that Nepal enact comprehensive anti-discrimination legislation that prohibits 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.

CRC and CEDAW

Intersex people belong to the most marginalised communities in Nepal. They're marginalised also within the LGBTI community. In the public and in government bodies the near total lack of awareness of intersex as a natural variation persists, leading to severe stigma and discrimination. Intersex people are generally misrepresented as transgender [chhakka, hijara]. The societal ignorance and stereotypes are compounded by religious prejudice framing intersex as a result of karmic debt caused by sins in a previous life, and as a bad omen. CEDAW is currently investigating harmful practices on intersex children in Nepal as a part of the upcoming review (71st Session), and already included harmful practices on intersex children in the LOI. However, so far no answers to the LOI were published by the Government.

Recommendation:

Implement recommendations of CRC and CEDAW Report;

CITIZENSHIP

Nepal's Supreme Court has issued a series of directives asking the government to end all discrimination against the LGBTI community. The government now allows members of "third gender" communities to access citizenship ID cards and passports, but this provision is limited in scope and protection. The "ID card" provision is discriminatory in nature because it only applies to individuals who are applying for the Citizenship ID for the first time. Older generations of transgender people who had no choice in the past but to accept a citizenship ID that did not match their true gender are excluded from accessing the rights provided by this new provision.

In addition, the present draft constitution has a provision that requires that an individual's "mother" and "father" be Nepalese citizens in order to acquire citizenship by descent. This proposed provision is both discriminatory and regressive in nature. This provision's use of gendered definitions of family coupled with the requirement that both parents be Nepalese citizens may result in a further increase in the number stateless individuals. Around 23.65% of the population aged 16 and above (or 4.3 million individuals) currently lack a citizenship certificate in Nepal.

This provision is in direct contradiction to Nepal's international human rights obligations. Article 15 of the Universal Declaration on Human Rights affirms that "everyone has the right to a nationality" and that "no one should be arbitrarily deprived of his nationality". Nepal is a State party to several international human rights treaties that require that all children have the right to a nationality, and that this right should be enjoyed without discrimination, including on the basis of gender, race, ethnicity or national origin and implemented with the child's best interests as the primary consideration. In March 2014, the Human Rights Committee noted with regret that "the current legislation does not provide for the granting of nationality to children born in the territory who would otherwise be stateless" and recommended that "the State party should ensure that citizenship provisions of the new Constitution guarantee the equal right of women to acquire, transfer and retain citizenship."

Recommendations:

Recognize sexual and gender identity in all official documents.

Enact legislation to ensure members of Intersex community have access to citizenship rights, consistent with the equal rights enumerated in the Nepali Supreme Court's 2008 decision.

EDUCATION

As noted in the National Report submitted by the government of Nepal for the 2011 Universal Periodic Review, "the prevalent education policy aims at democratic, inclusive and egalitarian quality education for all." While the government has taken many steps to ensure inclusiveness and gender mainstreaming in education for specific marginalized populations, these measures are limited in scope. The School Sector Reform Plan (SSRP), considered the overarching policy document governing the Nepal school education system includes specific mentions of minority groups such as Dalits, religious minorities, and ethnic minorities, but it does not explicitly mention LGBTI people nor does it address issues related to sexual orientation or gender identity. The inclusion of Intersex issues within such frameworks is essential in fostering a safe and an accepting place for Intersex students. Homophobic attitudes among education officials, teachers, and students exacerbate hostility towards Intersex students making them more vulnerable to discrimination, harassment, and violence.

Recommendations:

The Ministry of Education should ensure that school curricula is inclusive of Intersex issues and that national educational initiatives address the specific needs of I students.

The government should develop mechanisms that address hate and bias-motivated acts within schools