

**Universal Periodic Review of Nepal
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Joint Stakeholder Submission

Report submitted by:

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The Blue Diamond Society (BDS) is a sexual and gender minorities' rights organization in Nepal. It was established in 2001 for advancing the rights of LGBTIQ people. Blue Diamond Society has been working in 7 provinces of Nepal 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.

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Asia Pacific Transgender Network (APTN) is a regional organization that is working towards the advancement of human rights and bodily autonomy of transgender and gender diverse people in the Asia Pacific region.

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Federation of Sexual and Gender Minorities, Nepal (FSGMN), founded in May 2007, is the first and the only network of lesbian, gay, bisexual, transgender and Intersex (LGBTI) organizations in Nepal, with 37 affiliated community based organizations (CBOs) and 53 offices in 32 districts.

This report has been prepared by Blue Diamond Society (BDS) in collaboration with Federation of Sexual and Gender Minorities of Nepal (FSGMN) and Asia Pacific Transgender Network (APTN). This report draws data from consultations held with the LGBTI community and other relevant stakeholders at the provincial level and from BDS and APTN's community-based survey on trans-responsive healthcare in Nepal. The key priority issues and status of previous UPR recommendations implementation have been closely studied.

This submission highlights the discriminations faced by the transgender and gender diverse populations of Nepal in relations to legal gender recognition and access to healthcare, education and employment. It outlines the need of implementation of the landmark ruling by the Supreme Court in *Sunil Babu Pant and Others v. Government of Nepal and Others* case that called the legislative branch to repeal all discriminatory laws on the basis of sexual orientation, gender identity and expression and sex characteristics (SOGIESC) in 2007; Supreme Court decision on "legal gender recognition with self determination in 2017; Nepal's constitutional provision for sexual and gender minorities in article 12 (right to citizenship), article 18 (right to equality), and article 42 (right to social justice); Nepal's international human rights obligation at UN level; ICCPR and ICESCR along with previous UPR recommendation. The submission also provide key recommendations to accelerate progress on the implementation of constitutional and international human rights obligations with respect to legal gender recognition, right to health, and right to non-discrimination and equality.

Key words: legal gender recognition; access to health for transgender and gender diverse people; non-discrimination and equality for transgender and gender diverse people in education and employment sector

General Context:

1. The Supreme Court ruling of 2007 is the most prominent political victory to date for the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people in Nepal. In 2007, four LGBT civil society organizations were successful in a petition against the government in *Sunil Babu Pant and Others v. Government of Nepal and Others* case, resulting in the verdict calling on the government to scrap laws that discriminate on the basis of SOGI, to recognize a gender minorities people legally and to establish a committee to explore the legalization of same-sex marriage.ⁱ
2. Supreme court of ruling of 2017 is another landmark verdict regarding citizenship rights for transgender people which order Nepal government to develop policy to change name also and to provide citizenship to those who already have wrong ID in 2017 as per self-determination. Anik Ranamagar; Transgender Activist from western region of Nepal, Pinky Gurung, President of Blue diamond Society and Mr. Sunil Babu Pant; Former CA Member/ Founder President of BDS had filed the petition.
3. In 2015, Nepal became one of the few countries in the world that address discrimination against LGBT people in the constitution. Nepal added anti-discrimination laws for the sexual and gender minorities, and has granted them equal rights through its constitution in 2015. Article 12 of the constitution states that citizens will be allowed to choose their preferred gender identity on their citizenship document. The choices available are male, female or other. Article 18 states that gender and sexual minorities will not be discriminated against by the State and by the judiciary in the application of laws. It further adds that the government may make special provisions through laws to protect, empower and advance the rights of gender and sexual minorities and other marginalized and minority groups. Article 42 lists gender and sexual minorities among the groups that have a right to participate in state mechanisms and public services to promote inclusion.
4. Since the 2007 Supreme Court ruling and the inclusion of non-discrimination clauses in the constitution in 2015, Nepal has made several strides in the policy and programmatic areas to grant rights to the gender minorities. For example, inclusion of transgender and gender diverse people in the recent federal census, issuance of new passport with “other” gender category, and inclusion of “other” gender category in the civil services application forms.ⁱⁱ The Ministry of Women, Children and Senior Citizens (MOWCSC) has carried out several sensitisation sessions on the unique issues of LGBT people. Government has carried out consultations with the LGBT community to develop a 5-year Human Rights Action plan. Further, the most recent Reproductive Health Act 2018 calls for non-discrimination on the basis of sexual and gender identity in relation to provision of healthcare services.ⁱⁱⁱ
5. However, despite these small victories, the government has been unable to fully implement the constitutional provisions to provide protection and guarantees of non-discrimination and equality to its LGBTI citizens. LGBTI persons continue to be subjected to discrimination, hate, social

stigma, and harassment;^{iv} only a few victims of discrimination go to the court; LGBTI persons remain ostracized; discrimination against the community in their own families, schools, employment, and public services remains widespread.^v In 2013, a sample study showed that LGBTI persons experience discrimination, harassment, and abuse in public life settings such as denials of health care, experience abuse by law enforcement and harassment on public transportation.^{vi} Due to social stigma associated with sexual orientation, many LGBTI persons remain closeted and have become a victim of hate.^{vii} Given the situation, many trans and LGBTI persons, for fear of being socially excluded, they cannot reveal their sexual orientation and gender identity.^{viii} Further, due to lack of inclusion in the current legislative and policy framework, many LGBTI people fall out of the existing social protection mechanisms. The impact of these marginalisations were more vivid than ever during the COVID-19 pandemic which had a catastrophic impact on the livelihood of many trans people who were employed in informal work such as entertainment sector, sex work, and other forms of street work.

Legal Gender Recognition

Barriers in the current legislative framework

6. In 2017, in one of the landmark decisions in *Sunil Babu Pant and Others v. Government of Nepal and Others* case, the Supreme Court of Nepal issued a mandamus order to the Nepalese government to issue citizenship certificates with “others” in the Gender category on a “self-feeling” basis without any technical obstacles. The Supreme Court recognized that the right of the petitioners to receive the citizenship certificate with “other” as their gender identity is found secured by Article 12 of the constitution.
7. Despite this landmark decision and the legal and constitutional assurance by the Supreme Court, citizenship certificates are not easily acquired by those who are applying for the first time as well as by those who want to obtain a new one by amending their name and gender marker. Government authorities often ask for medical proof to access citizenship certificates. Transgender and gender diverse (trans) people can change gender markers to “other” category, but name change provision is not available.
8. Further, in 2019 a repressive development was the introduction of a clause in the Citizenship Amended Bill by the Parliamentary State Affairs and Good Governance Committee that required the need for medical proof to amend citizenship certificates,^{ix} contrary to the Supreme Court decision, the constitutional provisions, and the international human rights treaties that Nepal is party to. In June 2020, the bill was endorsed by the Nepal Parliamentary panel amid the protests by human rights defenders.^x
9. Without citizenship certificates that affirm and legally recognize their gender identity, trans people are not able to access public services and participate in other social transactions that require legal identity documents. This was more evident than ever during the COVID-19 relief efforts implemented by local governments. Legal identity documents were a prerequisite to receive relief packages which made it challenging for trans people to have access to basic survival relief packages during the pandemic.

Barriers to Trans-responsive Healthcare

Discrimination and lack of confidentiality in healthcare settings

10. The Government of Nepal has recognized that ensuring citizen's good health is the responsibility of the state. The Ministry of Health and Population (MoHP) uses the guidelines provided in the Constitution on Nepal to make health-related policies. A 2008 Supreme Court ruling and the Public Health Act of 2008 prohibits discrimination against patients due to their sexual or gender identity.^{xi} Further, the Medical Code and Ethics and the Public Health Act of 2008 states that all medical records, history, diagnosis, treatment received by the patient must be kept between the medical professionals and the patient and makes revealing patient's information a crime under Schedule-1 Section 14.
11. While the current legal and policy framework guarantees right to non-discrimination for all, the repeated discriminatory behavior of healthcare providers against trans people and intrusive questionnaires have led to high distrust against the health professionals and fear of safety and security among these population groups. In a formal setting like hospital, safeguarding rights of trans individuals and creating safe-space and ensuring their privacy and confidentiality are prioritized by a very few. According to our community-based survey, fear of discrimination and safety and security in healthcare settings is one of the leading barriers to healthcare access for trans people. Some trans survey respondents reported that they did not reveal their gender identity to the health professionals due to the fear of gender identity-based discriminations.
12. Trans sex workers and trans people living with HIV face double burden of stigma and discrimination due to their profession and health status and have reported delaying care or refraining from visiting formal healthcare settings. Our community-based survey revealed that trans people living with HIV are reluctant to seek ART services from public clinics or hospitals due to the fear of discriminations and safety and security even though these services are provided for free. Trans sex workers and trans people living with HIV who responded to our surveys revealed that they prefer seeking healthcare services from NGOs or community-based organizations over other services providers. Discrimination and lack of protocols around safety and security of key populations serve as a huge barrier to access to healthcare services, including HIV prevention and treatment services, even when they are available and are affordable.

Administrative Barriers to Healthcare Access for Transgender and Gender Diverse People

13. High out-of-pocket expenditure remains another major barrier to healthcare access for financially vulnerable people including trans people. Nepal legislated a new public health insurance plan in the Fiscal Year 2016-2017; however data from the Health Insurance Board (HIB) shows that the program is yet to cover 38 districts out of 77. Further, under the health insurance policy each household has to pay a premium of Rs 2,500 annually to cover for a health cost of up to Rs. 50,000,^{xiii} an exorbitant price tag for many financially vulnerable people. Many people who work in the formal sector have health insurance that is provided by their employer, but they do not cover several specific health needs of key populations such as trans people.

14. In the Fiscal Year (FY) 2017/2018, 1.9% of the total Gross Domestic Product (GDP) was spent on the health sector. However, the World Health Organization (WHO) recommends 5% of budget from the GDP should be allocated to provide health services to its citizens. Similarly, per international recommendations low-income countries like Nepal must spend USD 86 per capita to guarantee universal access to primary care services, but in the FY 2017/2018, Nepal only spent USD 17.7 per capita in real terms.^{xiii} The effects of meagre spending on the health sector are evident from the low life expectancy of 70.64 years in 2017^{xiv} and inability of government-funded hospitals to self-sustain due to financial precarity.^{xv} The situation looks worse when access to health care is taken into account. For instance, only about 62% of households have access to health facilities within a half-hour drive.^{xvi}
15. Our community-based survey revealed that a significant number of trans people in Nepal experience financial precarity. Lack of financial stability is another major barrier in accessing health services. Health facilities are often located in semi-urban and urban areas, forcing trans people living in rural areas to undertake long travels from their villages to access health facilities which further adds to the upfront costs of medicines and doctor's consultation fee. Ineffectiveness of the national health insurance plan launched by the Government of Nepal in the FY 2016/2017 in reaching the trans community resulted in another impediment to access needed health care and treatment.

Lack of Gender-affirmative Care

16. Focus on gender-affirmative care such as hormone treatment and gender-affirmative surgeries are lacking in the current health policy and programmatic frameworks. As a result, these services are not available in formal health facilities, forcing trans people to avail hormone treatments from unregulated sources which often takes a toll on their health. During COVID-19, most community-based organisations were forced to shut down temporarily in line with the lockdown measures, which further restricted trans people's access to hormonal treatment and other gender-affirming care services.
17. Our study reveals that trans people start seeking hormone treatment at a young age and often administer them using the advice of their peers without any consultation or supervision of health professionals. Instances of trans people suffering from side effects from incorrect dosage of hormones are frequent and well-known among the community. Service gaps for gender-affirmative care remain highly prevalent and lack of trained medical professionals who are sensitive to trans people's needs remains a major barrier in terms of access to gender-affirmative care.

Non-discrimination and Equal Opportunities for Education and Employment for LGBT People

Barriers in the current legislative, policy and administrative framework

18. Article 42 of the Nepalese constitution guarantees social justice and inclusion, yet currently there are no policies and programs to fulfill the promise of non-discrimination and equal opportunities in the education and employment sectors for trans people in the country.
19. The 2007 *Sunil Babu Pant and Others v. Government of Nepal and Others* decision of the Supreme Court also affirmed the State's position as a regional and international model for promoting the fundamental rights of trans individuals. While Nepal has made great strides in terms of legal gender recognition and affirmation of human rights of trans persons, much needs to be done to fully achieve the rights granted by the country's Constitution. Several laws and guidelines that were formulated before the new constitution still need to be revised to ensure consistency with the Constitution and the 2007 Supreme Court ruling.
20. No affirmative action has been taken to address the disproportionate rates of illiteracy and unemployment among trans people. Job quotas for other marginalized populations and women is a very progressive step taken by the Nepalese government, however, no such affirmative action has been taken to address the inequalities and discriminations trans people routinely experience in both formal and informal workplace settings, during the recruitment process and in education settings.
21. In the absence of clear laws and administrative regulations, transphobic bullying, violence, abuse, and discriminatory practices within the education system (including denial of admission into college and universities) are prevalent.^{xvii}
22. Literacy rates consequently remain low among LGBTI+ populations in general and among transgender people in particular. A research conducted in 2017 revealed that 9.9% of the transgender persons surveyed in selected districts in Kathmandu valley^{xviii} were illiterate while 51.7% of the survey respondents had received secondary level or higher education.

Stigma and Discrimination Against LGBT People At Workplace and During Recruitment

23. Discrimination is common in the workplace based on perceived gender identity and HIV status and occurs during recruitment and employment.^{xix} Many trans persons are not able to find jobs due to the social stigma and personal bias of employers, while some are not able to apply for jobs in the formal sector due to the lack of legal identity documents.^{xx}
24. Many trans persons may not have the required skills, received the relevant educational qualifications, or had employment opportunities to hold professional/skilled employment in the formal sector. This may stem from discrimination they have faced periodically and in the long term in education settings, which in turn has affected how they are able to access employment opportunities.^{xxi} They are forced to work in the informal, low-income sector such as performance arts, entertainment, or sex work. A research on employment trends among trans persons in selected districts in Kathmandu valley indicates that in 2017, 84.1 percent of the trans respondents relied on sex work as their main income source.^{xxii}
25. While currently, there are no laws in the books that specifically deal with sex work and no laws exist that makes sex work legal or illegal as sex work itself is not specifically criminalized under any law.^{xxiii} Interestingly, in 2002, the Supreme Court recognized that sex work is a profession or

an occupation irrespective of whether sex work is legal or illegal.^{xxiv} Yet trans sex workers face routine harassment, abuse and arrests by the law enforcement authorities citing obscenity and disturbing the peace which is punishable under the Public Offences and Penalties Act of 1970.^{xxv} Many transgender persons, who have been arrested for being involved in sex work have reported abuse and violence at the hands of the police during the detention.^{xxvi}

Implementation of previous UPR recommendations in relation to Sexual Orientation and Gender Identity issues.

26. Several recommendations were made by reviewing member states in the 1st and 2nd UPR of Nepal that addressed the multifaceted discriminations faced by LGBTI+ people and the gaps and barriers in the legal and policy frameworks to provide them protection. In the second UPR cycle of (2015), Nepal received 195 recommendations from 73 countries, of which 152 recommendations were accepted by Nepal and 43 recommendations were noted. Among accepted and noted, 4 recommendations from 7 countries were related to SOGI issues. Nepal had categorized these 152 recommendations under 18 headings to make further strategic movements. Sexual Orientation and Gender Identity (SOGI) related recommendations were categorized under the cluster of "*Women, children, Senior Citizens and SOGI*". The Ministry of Women, Children and Senior Citizens was appointed as the focal ministry to implement the SOGI related recommendations.

Recommendations from 2nd UPR of Nepal	Recommending State	Response	Implementation
121.16 Take the necessary steps to ensure that the new constitution is implemented while protecting human rights and thus ensuring its provisions on gender equality, lesbian, gay, bisexual and transgender persons, and minorities	Sweden	Supported	It is not implemented. There were 17 fundamental laws approved. However, with the exception of Reproductive Health Act 2018, sexual & gender minorities are not included in those fundamental rights law.
122.42 Establish specific mechanisms for the investigation and punishment of possible cases of discrimination against lesbian, gay, bisexual, transgender and intersex persons, particularly with regard to issues in relation to the administration	Spain	Supported	Not implemented. No such mechanism has been established.

<p>122.43 Strengthen the protection of lesbian, gay, bisexual, transgender and intersex people and work towards the full implementation of the current laws</p>	<p>Israel</p>	<p>Supported</p>	<p>Not implemented. Civil and criminal codes continue to have various discriminatory provisions. For example, same sex marriage is not legal. Laws against rape use a heteronormative man-on-woman approach and do not recognize other forms of sexual assaults and rape. “Unnatural sex” is still included in the Criminal Code, making same-sex couples vulnerable to legal harassment.</p>
<p>123.30 Take measures to implement the Supreme Court's decision concerning same sex marriage</p>	<p>Brazil</p>	<p>Noted</p>	<p>No measures have been taken by the government for same sex marriage. A high level expert committee was established to share legal recommendations, however no progress has been made on that front.</p>

Recommendations for Action

1. Remove “unnatural sex” from the criminal code and annul legal and policy provisions that are used to arrest, punish or discriminate on the basis of sexual orientation, gender identity, gender expression or sex characteristics (SOGIESC), including laws that directly or indirectly criminalize LGBTI+ people, such as the Public Offences and Penalties Act of 1970.
2. Amend the Constitutional definition of "minorities" to include LGBT people
3. Repeal all laws and provisions in civil and criminal codes that discriminate on the basis of SOGIESC, and establish special mechanisms to address violence against LGBT people.
4. Take legal, policy and administrative measures to combat prejudice, social stigma, violence and stereotyping of LGBT people.
5. Reinforce and expand social protection systems to ensure that LGBT people have access to a universal basic income, paid leave, food, safe shelters and caregiving services. Such social protection systems should be expanded to include information employment sector and sex work.

For Legal Gender Recognition

1. Take all necessary legislative, administrative, and other measures to fully recognise each person's self-defined gender identity, with no medical requirements or discrimination on any grounds. Ensure that legal gender recognition is based on self-determination, and repeal any provisions requiring medical proof and surgery for recognition of one's gender identity in the Citizenship Amendment bill.
2. Recognise and respect trans people's choice as to whether their legal identity is male, female, other or a third option (including terms that reflect the cultural diversity of the country).
3. Immediately implement the 2017 Supreme Court decision that called for equality before law and social inclusion for all citizens, including sexual and gender minorities.
4. Provide awareness programs for public officials and local representatives on sexual orientation and identity issues to address stigma.

To Improve Access to Trans-responsive Healthcare

1. Ensure an enabling legal and policy environment that prioritizes the health needs of trans persons as part of health service provision, including for HIV and STIs prevention and treatment and gender-affirmative care, and includes strengthening capacities of service providers to ensure confidentiality, empathy, and respect in healthcare settings.
2. Integrate rights-based service provision into health service provider curricula, and train and sensitize health care providers to ensure trans-friendly health services at primary, secondary and tertiary level health care facilities.
3. Ensure adequate health budget allocations to minimize out-of-pocket health expenditures and provide subsidised health insurance to financially vulnerable populations including trans people.
4. Ensure uninterrupted access to sexual health services and gender-affirmative care during COVID-19; take action to facilitate self-care, such as making STI tests available over the counter; and refrain from establishing COVID-19-prevention strategies that are not grounded in evidence and could cause greater harm.

To Ensure Non-discrimination in Education Settings and Equal Opportunities for Employment for LGBTI+ People

1. Adopt laws and regulations that respect, protect, fulfil and promote the right to decent work and rights at work of LGBT people in Nepal and ensure that these legislative and regulatory measures

extend to informal and digital economies as well.

2. Institute monitoring and redress mechanisms to address and effectively remedy the various forms of discriminations faced by LGBT people at formal and informal and offline and digital workplaces.
3. Ensure that trans identities are recognized in administrative documents in education settings to eliminate administrative barriers.
4. Prioritize the inclusion of rights-based, evidence-based and scientifically accurate comprehensive sexuality education in school curricula and out-of-school education programs that urgently address stigma, stereotyping and discrimination on the basis of sexual orientation and gender identity and expression.

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^{iv} The Rising Nepal, available at <http://www.therisingnepal.org.np/index/news/23500>

^v Global Press Journal. See at <https://globalpressjournal.com/asia/nepal/wanted-male-female-transgender-people-nepal-suffer-hiring-bias-despite-law/>

^{vi} UNDP & Williams Institute (2014): Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach. Visit at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Nepal-Survey-Oct-2014.pdf>

^{vii} The Kathmandu Post, March 6, 2020. <https://kathmandupost.com/life--style/2019/05/03/nepals-indecision-on-same-sex-marriage-leaves-couples-in-limbo>

^{viii} The Rising Nepal, available at <http://www.therisingnepal.org.np/index/news/23500>

^{ix} *The Kathmandu Post*. March 17, 2019. Retrieved from <https://kathmandupost.com/national/2019/03/17/nepal-governments-proposed-amendment-to-the-citizenship-act-could-affect-the-future-rights-of-sexual-minorities>

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^{xvii} UNDP, USAID. *Being LGBT in Asia: Nepal Country Report*. Bangkok. 2014.

https://www.undp.org/content/dam/rbap/docs/Research%20%20Publications/hiv_aids/rbap-hhd-2014-blia-nepal-country-report.pdf

^{xviii} Done in Kathmandu, Bhaktapur, and Lalitpur districts.

^{xix} UNDP, USAID. *Being LGBT in Asia: Nepal Country Report*. Bangkok. 2014.

https://www.undp.org/content/dam/rbap/docs/Research%20%20Publications/hiv_aids/rbap-hhd-2014-blia-nepal-country-report.pdf

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^{xxi} Seira Tamang, *Patriarchy and the production of homo-erotic behavior in Nepal*, *Studies in Nepali History and Society*, 2003, http://martinchautari.org.np/files/2_%20Seira%20Tamang.pdf

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^{xxiii} Ibid.

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^{xxvi} National Human Rights Commission of Nepal. 2012. *Report to the regional national human rights institutions project on inclusion, the right to health and sexual orientation and gender identity*. Presented at the National Partnership Dialogue. 5 October 2012. http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Report%20to%20NHRIs-Rights%20to%20Health%20%20Sexual-Gender%20Idt-LGBTI-Issue-09-07-2014.pdf