

National Human Rights Commission of Nepal

**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





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This Report was prepared for the Regional National Human Rights Institutions Project on Inclusion, the Right to Health, and Sexual Orientation and Gender Identity (SOGI), implemented by the International Development Law Organization (IDLO) and the United Nations Development Program (UNDP) in partnership with the Asia Pacific Forum and SAARCLAW (the Regional NHRI SOGI Project). The Project was designed to build an understanding of the response of National Human Rights Institutions (NHRIs) in South Asia and Southeast Asia to SOGI-related human rights issues.

The Project advocates for greater employment of the Yogyakarta Principles; builds upon the outcomes of the South Asia Roundtable Dialogue: Legal and Policy Barriers to the HIV Response (Kathmandu, 2011); and supports the commitments of the Economic and Social Commission for Asia and the Pacific (ESCAP) under Resolutions 66/10 and 67/9.

The Project is a direct response to the recommendations of the Report of the Asia Pacific Forum (APF) Advisory Council of Jurists: Human Rights, Sexual Orientation and Gender Identity, 2010 (ACJ Report). Specifically, the ACJ Report recommends that NHRIs:

- undertake an internal dialogue on issues relating to the human rights of people of diverse SOGI and build the capacity of the institution to understand the issues and to react appropriately;
- build relationships with people of diverse SOGI, including civil society organizations, in order to inform the work of the NHRI; and
- research, identify and document human rights violations against people of diverse SOGI, and the impact of discriminatory laws and practices.

In participating in the Regional NHRI SOGI Project, the National Human Rights Commission of Nepal took part in two dialogues with representatives of the SOGI community with a view to building NHRC representatives' sensitivity to, and understanding of the rights and specific vulnerabilities of people of diverse SOGI; as well as a series of internal meetings and research activities.

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February 2013

FOREWORD

The National Human Right Commission of Nepal (NHRC) is the constitutional, independent and autonomous human rights institution established for promotion and protection of human rights in Nepal. The role of the NHRC is to ensure the respect, protection and promotion as well as effective implementation of human rights; and it has taken a special interest in the rights of LGBTI people.

I would like to express my sincere thanks to the report writing team for their efforts in carrying out the research and in preparing the report. Likewise, I am thankful to the United Nations Development Programme and the International Development Law Organization for supporting this report. I believe this report will be an important instrument to facilitate all stakeholders, both from the government sector as well as from civil society, to play their respective roles in ensuring rights of LGBTI people.

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1. INTRODUCTION

1.1 Introduction of the National Human Rights Commission (NHRC)

The National Human Rights Commission of Nepal (NHRC) is the National Institution of Human Rights (NHRI) in Nepal. It was established in 2000 as a statutory body and elevated to a constitutional body by the Interim Constitution of Nepal, 2007. The NHRC is an independent and autonomous body that complies with the Paris Principles of independence and autonomy of NHRIs. Since inception, NHRC has been accredited with A-status by the International Coordinating Committee of NHRIS (ICC). Article 132 of the Interim Constitution of Nepal vests primary responsibility on the Commission to protect and promote the human rights of Nepalese people. In order to perform this responsibility, the Commission can conduct inquiries and investigations on its own or upon a petition or complaint is filed on the violation of human rights and abetment thereon, and carelessness and negligence in the prevention of violations of the human rights by any person, organization or authority concerned. The Commission can visit and observe any authority, prison and detention centers or any organization or agency under the Government of Nepal (GoN) and can submit necessary recommendations to GoN on the reformation to be made on the functions, procedures and physical facilities which may be made necessary for such an organization for the protection of human rights. According to the Article 132 of the Interim Constitution of Nepal, the NHRC has the following Mandates and Powers:

- Receiving complaints and conducting inquiries or investigations upon them;
- Making recommendations for prosecution or departmental action against the perpetrators and compensation to victims or their kin;
- Conducting rescue, research and seizure operations at suspicious places, if so required;
- Monitoring the implementation of international human rights treaties and the human rights situation;
- Reviewing law and policies relating to human rights, and making recommendations for reforms;
- Working with NGOs and civil society for the promotion of human rights;
- Making the name human rights violators public, if so required; and
- Entering into any official house or premises without prior information, if so required.

1.2. Scope of International Human Rights Instruments in Nepal

Nepal has become state party to 22 international human rights related conventions which include 7 core conventions. Nepal treaty law defines that all those conventions ratified by Nepal are equal to the statutory law. Some efforts were made to internalize treaty provisions. In the recent years, the Government, Parliament and Judiciary appear to be active in internalizing the provisions set forth in the international human rights instruments. Over the years, the higher judiciary has been playing active role basically towards eliminating discrimination. At times, the Supreme Court has issued directives to the government for the amendment of law relating to discrimination by fulfilling international standards. Despite this, the efforts in internalizing international human rights instruments need to reinforce from all the branches of the state.

The main human rights treaties ratified by Nepal have been mentioned hereunder:

Core Conventions ratified by Nepal

- Covenant on Civil and Political Rights, 1966 (ICCPR)
- Covenant on Economic Social and Cultural Rights, 1966 (ESCR)
- Convention on the Rights of the Child, 1989 (CRC)

- Convention on Elimination of All Forms of Racial Discrimination, 1965 (CERD)
- Convention on Elimination of All forms of Discrimination Against Women, 1979 (CEDAW)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT)
- Convention on the Rights of Persons with Disabilities, 2006 (CRPD)

Conventions Ratified by Nepal

- Slavery Convention, 1926
- Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery, 1956
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- Convention for the Suppression of the traffic in person & the exploitation of the Prostitution of Others, 1949
- Convention on the Political Rights of women, 1962
- International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973
- International Convention against Apartheid in Sports, 1985
- First Optional Protocol on the ICCPR, 1966(Petition)
- First Optional Protocol on the ICCPR, 1989 (abolition of capital punishment /death penalty)
- Optional Protocol to the Convention on Elimination of All forms of Discrimination Against Women, 2000
- Optional Protocol to the Convention on the Rights of the Child, 2000 (involvement of Child in Armed Conflict)
- Optional Protocol to the Convention on the Rights of the Child, 2005 (Child Pornography)
- Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006
- Protocol Amending the Slavery Convention, 1953
- Nepal has ratified four Geneva Conventions which are related armed conflict
- Nepal has also ratified eleven ILO related Conventions

1.3 Introduction of the Report

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people constitute a vulnerable group and continue to be victims of human rights violations including deprivation of right to identity and dignity. Those female who are emotionally, physically and psychologically attracted with another female is known as Lesbian or female homosexual. Those male who are emotionally, physically and psychologically attracted with another male is known as gay or male homosexual. The person who is emotionally, physically and psychologically attracted with both sexes is known as Bi sexual. These people are discriminated and stigmatized because of their sexual orientation. Transgender people as those females or males of any age who are unhappy living in the gender identity ascribed to them at birth. They have perhaps assumed an alternative gender identity. They are discriminated and stigmatized because of their gender identity. Intersex people are those who have both sexual organs and are also discriminated and stigmatized.

LGBTI people have the same human rights as all individuals, including the right to non-discrimination in the enjoyment of these rights. This principle is enshrined in numerous international human rights instruments including Universal Declaration of Human Rights 1948, providing for a wide scope in its application.

Sexual and Gender Minorities Community (LGBTI) is one of the minority communities of Nepal. Since the LGBTI people are being discriminated in different ways it has been taken as one of the vulnerable groups of the society. The community began to have organizational set up since 2001 under an NGO called Blue Diamond Society Nepal (BDS) and concern of their rights have been raised as one of the priority issues of human rights. While the NHRC Nepal is responsible to ensure overall issues human rights; it has taken the rights of LGBTI people for the respect, protection, promotion and fulfillment by implementing its plans, policies and activities.

Violation of Rights of the LGBTI people starts from within walls of their home which later spreads in society and the state as well. The most important rights of dignity and recognition of theirs have been denied by the society and the state in the first place. The landmark decision of the Supreme Court of Nepal in 2007 about the rights of LGBTI community has contributed to draw the attention of the state towards their rights.

NHRC has been continuously monitoring and investigating the human rights violation cases against LGBTI people. Several programs of capacity development, advocacy and awareness rising about the rights of LGBTI people have been organized by the NHRC. In order to perform these tasks, the Commission has assigned separate focal person within the Commission. Similarly, the NHRC has incorporated the issue in its Strategic Plan for the protection and promotion of the rights of sexual and gender minority community. In this concern, this report has been prepared by the Commission based on its activities in particular.

1.4 Objectives of the report

The main objective of the report is to elevate the human rights issues of the LGBTI people in larger scale for better protection of their forsaken rights. The specific objectives of the reports are,

- To analyze the human rights situation of the LGBTI people in Nepal.
- To highlight the activities of NHRC and its efforts for the protection and promotion of the human rights of LGBTI.
- To make recommendations in order to make state and concerned stakeholders responsible for the protection and promotion the rights of LGBTI people in Nepal.

1.5 Methodology of the report

The report is primarily based on both primary and secondary information. Most facts were collected through monitoring and investigation of NHRC Nepal. The documents collected by the NHRC during the complaint handling were also studied. Several published and unpublished reports of the NHRC and other human rights organizations have been studied during the report preparation. During the study, various plans and policies of NHRC Nepal and Government of Nepal including National Human Rights Action Plan were reviewed. The facts have been analyzed on the basis of international human rights instruments, national laws and policies. In addition, initiations taken for protection and promotion of the rights of LGBTI people by the Supreme Court of Nepal, GoN and Civil Society Organizations were also described as best practices for protection and promotion of rights of LGBTI People in Nepal.

2. SITUATION OF LGBTI'S HUMAN RIGHTS AND NHRC EFFORTS

2.1 General Context of Human Rights of LGBTI People in Nepal

The constitution and laws in Nepal have enshrined civil and political rights that include the right to equality followed by various rights and freedoms. Right to equality and non-discrimination is the fundamental right under the constitution. Discrimination on the basis of religion, caste, sex, language, nationality, origin, beliefs are not permitted. Despite such Constitutional provisions, the sizeable number of people that belongs to sexual minorities (LGBTI); dalit; persons with disabilities; women; and population of interior part have experienced their exclusion from mainstream development processes.

There is widespread intolerance of LGBTI persons throughout the Nepalese Society on the basis that they do not conform to set notions of male or female gender identity and are resulted to range of human rights violations including harassment, physical violence, sexual assaults, physical and psychological threats as well as exclusion from their own family and society. Such violence is very common in society and occurring when a person's sexuality of gender identity has become known or suspected. Due to fear of such problems, many people having LGBTI persons are compelled to hide their own sexual orientation.

In the recent years, the Judiciary and the GoN appear to be active in internalizing the human rights issues of LGBTI citizens. At times, the Supreme Court has issued the directives to the government for the enactment of law to ensure equal rights of the LGBTI people including same sex marriage. Formation of legislation regarding same sex marriage is underway as per the order issued by the Supreme Court on 18 November 2008. In another order of June 2013, the Apex Court has ordered the government to alter passports so that transgender no longer have to describe themselves as male or female.

The GoN has implemented the Guidelines to provide citizenship certificate to the LGBTI citizens by respecting their identity. Amendment in Citizenship Regulation and commitment of government for enforcement of law and policies for the protection and promotion of human rights of sex and gender minorities have created positive environment to ensure enjoyment of all human rights for the LGBTI people. In addition, incorporation of LGBTI issues in the major human rights policies like National Human Rights Action Plan (NHRAP) and Action Plan for implementation of Universal Periodic Review are significant steps taken by the Nepal Government for the protection and empowerment of LGBTI Community. However, there are so many things to be done by the government in order to fulfill its obligation for the respect, protection, promotion and fulfillment of the rights of the sex and gender minorities.

The civil society organizations mainly the Blue Diamond Society have played vital role to protect and promote the rights of LGBTI people. Such organizations are found working continuously for the protection and promotion of the rights of LGBTI people through advocacy, lobbying and empowerment. Representation of LGBTI human rights defenders in the then Constitutional Assembly is another achievement for the LGBTI rights movement in Nepal.

The efforts made by different agencies including as mentioned above has contributed to improve the human rights situation of LGBTI people. However, as LGBTI communities are still facing discrimination and are deprived of their rights, there are so many areas for intervention in order to ensure equality and their human rights protection.

2.2 Role of NHRC in LGBTI Rights

The National Human Rights Commission has initiated several investigations and monitoring on LGBTI related cases. Several correspondences have been made to the Nepal Government, Nepal Police and local administration to address LGBTI's rights violation issues. Various programs related to promotion and capacity development in LGBTI's human rights issues have been conducted in coordination with civil society

organizations. In this particular chapter, the role of the National Human Rights Commission in LGBTI's human rights has been described in brief.

2.2.1 The Strategic Plan

NHRC has implemented the three years strategic plan 2011-2014 which was developed as a tool to perform its work in a systematic, organized, programmed and planned way. The Strategic plan has defined the core values of the Commission as diversity, impartiality, integrity, independence, autonomy, equality and equity. The plan also described the NHRC's operational values as accessibility, accountability, participation, social inclusion and transparency. Section 7 of the strategic plan have the provisions about Promotion and protection of collective/ groups' rights/ minority rights which include the rights of LGBTI people. The following statement of the plan mentions about LGBTI's rights issue as minority group of the society.

The rights of minorities based on ethnicity, culture, religion, language, origin, sex and caste is an important human rights issue. Respect of their rights would help ensure equality and equity among them. The NHRC primarily plans to monitor and advocate on the rights of minorities, rights of people with disabilities and SOGI groups (section 7).

As mentioned in the strategic plan, the Commission has been execute Annual Work Plans every year. These plans also have the programs related for the protection and promotion of rights of the LGBTI people.

2.2.2 LGBTI Focal Point

In 2005, NHRC-Nepal assigned a focal point for lesbian, gay, bisexual, transgender and intersex (LGBTI) issues within the Investigation and Monitoring Division. The focal person is responsible for complaint handling, investigation, monitoring, reporting, lobbying and advocacy on human rights issues of LGBTI people. In addition, collective rights division is another responsible unit for advocacy and campaigning on the emerging issues of LGBTI people.

2.2.3 Complaint Handling

Complaints handling is a core function of NHRC Nepal to ensure the protection of human rights. According to the article 132 of the Interim Constitution of Nepal, 2007 and National Human Rights Commission Act, 2012, NHRC can receive and investigate the complaints. According to the Human Rights Commission Act and National Human Rights Commission (Complaint, Action and Determination of Compensation) Rule, 2013, NHRC can receive complaints from the victims and any other sources including on the basis of cognizance. The Constitution and the law mentioned above have provided broad mandates and powers including powers equal to that of courts to the Commission while exercising investigation activities. The Commission has managed accessible complaints procedures including 24 hour hotline service and online complaint form facility.

After the establishment, the Commission has received more than ten thousand cases of human rights violations. Most cases are related to the conflict related human rights violation cases including enforced disappearances, killings, torture and forceful displacement. However, very few complaints about LGBTI human rights issue have been registered at the NHRC. The commission has received seven complaints about the human rights violation of the LGBTI people. These complaints are related to various human rights issues including discrimination, torture, inhuman and degrading treatment and illegal detention. Some complaints are also related to right to association and citizenship provision.

NHRC has conducted thorough investigation on such cases with due priority. In this regard, it has issued order to the Nepal Police to investigate and prosecute the security personnel involved in torture, inhuman and degrading treatment. The Commission has encouraged the BDS community and respective organizations to lodge the complaint in case of the occurrence of any human rights violation. It has amended the format of

the complaint form to make LGBTI friendly by adding space for “other” sex. As a result, registrations of the number of complaints have been increasing in recent days. Some of the examples of initiatives of the NHRC in LGBTI related human rights cases have been mentioned as follows:

- The complaint about denial of renewal the mandate of the Blue Diamond Society Nepal by the Chief District Officer’s Office Kathmandu was registered at NHRC in 2013. After its investigation the Commission issued the letter to the Ministry of Home Affairs and Chief District Officer’s Office, Kathmandu asking to renew the mandate of the Organization without delay. After the letter issued by the Commission, organization has been renewed and has been in operation as usual.
- Having obtained the complaint and credible evidences including medical examination report of the victims during the investigation, the Commission issued letter to the Human Rights Cell of Nepal Police to investigate the complaints and take action against the accused involved in torture and harassment perpetrated on the LGBTI people in Kathmandu in 2013. In the response, the information about departmental action from Nepal Police against the perpetrators has been received and the cases are still under investigation.

At the time of preparing this report, three LGBTI cases registered at the NHRC were under investigation. All three cases were lodged in early 2013 which pertained to alleged torture inflicted on transgender people by the police following their arrest on charges of sex work. The NHRC sent a letter to the police expressing its concern over the incident. Similarly, in September 2012, the NHRC, in collaboration with Nepal Police Human Rights Cell, Blue Diamond Society and other NGOs, intervened in an alleged case of torture against a woman with diverse SOGI. The NHRC and partners mediated a consensus between the woman and her husband and supported the woman to move to a safe house.

On 18 March 2007, 26 people from the LGBTI community were arrested and kept in detention. Blue Diamond Society made an application to the NHRC through regular processes. Approximately three quarters of the community members made statement before the Complaints Handling Officer at the NHRC. The NHRC immediately appointed a high level team to monitor the situation, including the LGBTI focal point and two Directors of the NHRC.

2.2.4 Monitoring of Human Rights Situation of LGBTI

Human rights monitoring is incredibly effective tool for the protection of human rights. The NHRC has been monitoring various issues of human rights throughout the country. The issue of rights of LGBTI people is one of the major issues of the human rights surfaced through the monitoring conducted by the NHRC. Basically, the monitoring process is focused on three parts. Firstly, the Commission is continuously carrying out monitoring on the government plan, policies and regulations related to LGBTI people. The following activities have been accomplished for this purpose:

a) Monitoring of National Human Rights Action Plan of Nepal Government, 2067-2070 (NHRAP):

The United Nations convention on human rights held in Vienna in 1993 called on member nations to promote a culture that respects human rights and it appealed for national plans be formed and implemented effectively to protect and promote such rights. The National Human Rights Action Plan (NHRAP) reaffirms the government’s commitment on existing human rights policy initiatives and highlights new priority areas in order to fulfill its commitment on human rights.

Recently the three years terms of third National Human Rights Action Plan (2067-2070) lunched by the Nepal Government has been completed and process of enactment of new action plan is under way. National Human Rights Commission is monitoring the implementation of NHRAP. The NHRAP 2067-2070 had the following activities with regard to the LGBTI rights:

- Provide scholarship to the children from sex and gender minorities community

- Conduct workshop in ten different districts of Nepal to ensure identity and recognition of sex and gender minorities
- Launch the income generation/skill development and awareness program to the sex and gender minorities in order to make them self-dependent.
- Prepare database of sex and gender minorities who were abandoned from home, and initiate to provide them shelter, food, education, health and employment including the establishment of rehabilitation center.
- Create awareness and deliver punishment to the perpetrators by establishing human rights cells in all police offices in order to eliminate harassment and ill treatment to the sex and gender minorities

From the monitoring of NHRC, the overall implementation of NHRAP is very poor as almost all implementing agencies were found to be unaware about the enactment of the NHRAP.

As the three year term of the NHRAP completed in mid of the July 2013, NHRC is closely working with the Government of Nepal in order to formulate new NHRAP. In this regard, rights of LGBTI people have been recommended as one of important issues to be addressed by the upcoming NHRAP of the GoN.

b) Detention Monitoring

Detention monitoring is one of the highly prioritized mandates of the Commission. Several human rights problems of the LGBTI detainees have been found while monitoring the detention centers across the country especially in the police custodies. Most LGBTI people were found arrested in allegation of involvement in sex work which is prohibited by Nepalese law. The main problems reported to NHRC monitoring team have been identified as discriminatory behavior from the security personnel. Several complaints have been reported about illegal detention, torture and ill treatment. In most cases, the victims complained that Police used filthy names to call them and behaved with them in discriminated manner.

The other main problem raised by the LGBTI detainee is the discrimination in Quasi-Judicial proceedings. It is mentioned that the Chief District's Office use to ask them larger amount of money for bail in comparison to that of detainees of other gender in the similar cases. In addition, the common trend of using nick name has created another problem to claim refund of the bail due to the nick name contradicting with the real name of the detainees.

Detention facility is another major problem in all the detention centers. Most of custodies of the Nepal police have only two different cells for male and female detainees and there is no different cell for LGBTI detainees. In such situation, the detention authorities have the problems of keeping them either in male or in female cells as per their natural sex. In some cases, the detention authorities also complain that the male and female detainees as well as LGBTI detainees are used to deny living together in the same cell.

2.2.5. Advocacy

Advocacy is one of the effective methods for the implementation of human rights provisions. NHRC has been advocating at local, national and regional level for advocacy on various issues of human rights. LGBTI rights have been taken as one of the issues of human rights for advocacy and lobbying. Several interaction programs were organized with different stakeholders on the issues. Such programs have helped to identify the protection issues and increase sensitization at different levels.

Human rights issues of LGBTI people have been incorporated in almost human rights capacity development programs organized by the Commission. The issue of discrimination, abuses and violations are linked with international instruments. Joint programs with Blue Diamond Society have been organized in different phases of time. The protection issue of LGBTI people has been raised in the meeting with government agencies including security agencies. In addition, human rights concerns of LGBTI people have been incorporated in the various reports published by the National Human Rights Commission.

As the Election Commission has mentioned the provisions only for male and female gender during electoral system, in July 2012, the NHRC received a letter from the BDS that requested to ensure recognizing LGBTI identity gender preference during the election process. Considering these issues as genuine human rights problems, the Commission wrote a letter to the Election Commission urging for the fulfillment of these demands. Likewise, in another request from BDS regarding allocation of special budget in the government fund for income generation and capacity building for empowerment and livelihood of LGBTI citizens, the Commission issued a letter to the Ministry of Finance urging the allocation of budget for this purpose.

2.2.6 Monitoring of Universal Periodic Review (UPR) Recommendations about LGBTI Rights

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 193 UN Member States once every four and half years. The UPR is a significant innovation of the United Nations Human Rights Council which provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges for the enjoyment of human rights.

As the UPR is equally applicable to each and every member state of the UN, Nepal was duly reviewed in the first UPR cycle on the 25th January 2011 during the 10th Session of the Human Rights Council. The report prepared by the National Human Rights Institutions led by the NHRC Nepal had submitted earlier in July 2010 which has also included the human rights problems of gender minorities.

During the review, fifty five states had provided 135 recommendations to address various issues of human rights of which Nepal accepted 120 recommendations. The recommendations regarding LGBTI rights have been mentioned below:

106.5 Enact legislation to ensure members of the lesbian, gay bisexual, transgender and intersex (LGBTI) community citizenship rights, consistent with the equal rights enumerated in the Nepali Supreme Court's 2008 decision.

The Nepal Government has prepared action plan to implement all the recommendations made by the UPR. The action plan regarding the above mentioned recommendation mentions the following actions to implement the recommendation:

- Adopt required measures for the implementation of programs contained in the Human Rights Action Plan
- Formulate LGBTI policies
- Facilitate to formulate and enact laws relating to LGBTI
- Ensure adoption of measure ensuring enforcement of Supreme Court decision on citizenship rights LGBTI people.

Monitoring the implementation of UPR recommendations of the UPR is one of the priority issues of the NHRC. The Commission has prepared the UPR Implementation Mid-term Report in August 2012. The implementation status of the LGBTI rights has been found in progress during the monitoring. Amendment of Citizenship Regulation, enactment of the guidelines to provide citizenship to the LGBTI citizens and commitment to incorporate the human rights issues of LGBTI people in its National Human Rights Action Plan are positive indicators to fulfill the obligations. However, discrete policy and law relating to LGBTI rights are yet to be formulated.

2.2.7 Contribution in the Same Sex Marriage Committee

The Supreme Court of Nepal had ordered the Government to form a Committee Comprising Government Officials, NHRC Official, Lawyers and Civil Society to formulate laws that recognize same-sex marriages, ending all types of discriminations against gays and lesbians in 2007 during the hearing of the case of Sunil

Babu Pant v. Government of Nepal. The committee was directed to undertake a study on the issues of same sex marriage as well as the legal provisions of other countries. Through its decision the Apex court also directed the Government of Nepal to make legal provisions after considering the recommendations of the Same Sex Marriage Committee. The Same Sex Marriage Committee was formed as per the decision of the Apex Court. The Committee comprised seven members as mentioned below:

- Representative of the NHRC-1 person
- Specialist medical doctor as designated by the Ministry of Health-1 person
- Representative of the Ministry of Law, Justice and Parliamentary Affairs-1 person
- Sociologist as designated by the Government of Nepal-1 person
- Representative of Nepal Police (a specialist on the issue)- 1 person
- Representative of Ministry of Population and Environment-1 person
- Advocate Hari Phuyal-1 person

The team together with the NHRC Officer as the representative had contributed to prepare the report by analyzing the applicable international human rights standards of human rights. It is learnt that the Committee has prepared the final report however until the date of this report; the Same Sex Marriage Committee has not yet submitted its final report.

2.2.8 Coordination and Collaboration with Civil Society

Promotion of human rights is one of the core mandates of the NHRC Nepal. The provision of the Interim Constitution mentions that NHRC should *Work jointly and in a coordinated manner with civil society to enhance awareness of human rights, (Article 132, 2, d)*. In this regard, the NHRC has been working closely with civil society organizations for the promotion of human rights in the country. The following main activities were conducted in coordination with civil society especially with Blue Diamond Society for the protection and promotion of human rights of the LGBTI people:

a) Meeting with Blue Diamond Society

A number of formal and informal meetings between the NHRC and LGBTI human rights defenders have been conducted in different levels in various phases of time. Such meetings have helped to resolve human rights issues of LGBTI people through rapid actions, formation of policies and interventions. For instance, a meeting between Blue Diamond Society and NHRC Officials was held from 24-25 February, 2012 in Lalitpur. NHRC Officials (34 persons) from Central Office and almost all regional offices and members of Blue Diamond Society (BDS) including LGBTI human Rights defenders participated in the meeting. Series of discussions regarding LGBTI rights including implementation of Yogyakarta Principles and SOGI-related rights issues in Nepal were discussed during the meeting. The achievements of the meeting have been mentioned as follows:

- Initiation of an internship for a representative of the LGBTI community at the office of the NHRC;
- Enhance coordination for complaint registration regarding violation of human rights of the LGBTI community;
- Amendment in the Complaint Form of the NHRC by incorporating 'other' in sex category. In the past, the form had only the space/column for 'male' and 'female';
- Enhance familiarization of the LGBTI human rights defenders about mandate, powers and activities of the NHRC
- Sanitization about the issues and rights of the LGBTI Community;

- Endeavor to encourage LGBTI participation in all advocacy programs, workshops, seminars and conferences organized by the NHRC offices across the country;
- Coordination in monitoring including information sharing especially in detention monitoring

The above mentioned achievement helped to build coordination between NHRC and human right defenders to address the human rights issues of LGBTI people.

b) Human Rights Internship Program

NHRC have been providing internship programs for young people in its offices. The internship policy has special provisions to provide priority to the people from marginalized and vulnerable groups including Dalit, Janajati, Madheshi, Women and Minorities. In this regard an LGBTI human rights activist accomplished internship in human rights at NHRC head Office in 2012 in coordination with BDS. Such programs can help to empower the members of vulnerable and marginalized group of the society. The Commission has planned to continue such programs in the future as well.

3. CONCLUSIONS AND RECOMMENDATIONS

3.1 Conclusions

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people constitute a vulnerable group and continue to be the victims of human rights violations including deprivation of the right to identity and dignity. LGBTI people have the same human rights as all individuals, including the right to non-discrimination in the enjoyment of these rights. However, people of Sexual and Gender Minorities Community are being discriminated in different ways. Violation of Rights of the LGBTI people starts from their own family, which spread in society and state as well. The most important rights of dignity and reorganization have been denied from the society and the state.

NHRC has been continuously monitoring and investigating the human rights violation cases against LGBTI people. Several programs of capacity development, advocacy and awareness about the rights of LGBTI people have been accomplished by the NHRC. It has incorporated the issue of LGBTI people in its Strategic Plan for the protection and promotion of the rights of sexual and gender minority community.

The major human rights violations are discrimination, sexual harassment, abuses, enforced marriage, and freedom of movement. In addition, torture, illegal detention, inhuman behavior and degrading treatment by police are found as a common human rights violation against the community members.

The efforts made by the NHRC Nepal and Civil Society Organization, the level of realization in the identity and dignity of the community have been increasing gradually. The intervention made by the Commission in order to prevent torture, inhuman, degrading treatment and formation implementation SOGI friendly human rights policy has created conducive environment for the protection and promotion of their rights.

The decision of the Supreme Court of Nepal in 2007, regarding the rights of LGBTI people has turned out to be a milestone in the formation of the policy in terms of same sex marriage. Likewise, recent amendment in the existing citizenship related rules and formulation of guidelines in order to provide citizenship with identity to sexual orientation and gender have made significant impact for the protection, identity and dignity of sexual and gender minority community.

Despite several efforts made by the NHRC Nepal, Judiciary, Civil Society Organizations, international organizations, Sexual Gender Minority Community are still in vulnerable situation.

3.2 Recommendations

The recommendations have been made below with a view to ensure human rights of Sexual Orientation and Gender minorities. It has to be made clear to all that the most sought after improvement in this is not a responsibility of any individual, though leading role has to be played by the government. Based on this assumption, recommendations have been made below.

- Rights to identity and dignity of the LGBTI community might be ensured by enactment and implementation of legal provisions. Easy access in citizenship certificate is highly important issue to be addressed.
- All the recommendations and directions made by the NHRC and order of the Supreme Court ought to be implemented properly without delay.
- All kinds of discriminations; torture, inhuman, and degrading treatment might be addressed and perpetrators involved in such acts should be penalized.
- Incorporation of LGBTI's human rights issue in National Human Rights Action Plan of the Nepal Government and its effective implementation.
- More advocacy, lobbying and awareness rising about the rights of LGBTI right sought to be launched in cooperation with the government, judiciary, National Human Rights Institutions and Civil Society Organizations.
- Right to participate of the LGBTI people in policy formation and its implementation is essential.
- LGBTI's rights should be incorporated in the Constitution and law as a minority group of the society.

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