



Submission to the United Nations Human Rights Council for the Universal Periodic Review of Nepal (37th Session)

Joint Submission by

Esan Regmi
Campaign For Change
Email: esanregmi@gmail.com
Tel: +977-9861336738

Sulakshana Rana
GESI Activist
Email: sulak.rana@gmail.com
Tel: +977-9851096689

Who we are

Campaign for Change (CfC) founded in 11 May 2017, is a nonprofit, non-governmental organization, working to improve the situation of marginalized sexual minorities especially Intersex individuals in Nepal. CfC adopts a holistic approach and aims to promote physical, mental, social well-being of intersex people. CfC's purpose is to represent interests of Intersex people, collect data and evidence to report on human rights violation and provide legal support and redress. Apart from working to improve access to education, health, employment, equal and active participation of intersex people, CfC also works to raise awareness and end Intersex Genital Mutilation (IGM) practices and other human rights violations perpetrated on Intersex people.

Scope of the Submission

This submission focuses on four priority areas. The report provides a brief background on the provisions guaranteed by the new constitution of Nepal to people belonging to sexual and gender minority and sheds light on Intersex Human Rights in Nepal, followed by highlights of four priority areas with recommendations.

Background

Nepal is progressive in recognizing the rights of LGBTI (Lesbian, Gay, Bisexual, Transgender, Intersex) community. Nepal's constitution is the first in Asia to explicitly include rights and protection to LGBTI people. The constitution has recognized LGBTI as sexual and gender minority and guaranteed the fundamental rights under the article 12 (citizenship), article 18 (right to equality) and article 42 (social justice). Also, the Supreme Court of Nepal has made landmark decisions in regard to sexual and gender minority community. In 2007, the Supreme Court came up with a groundbreaking decision to recognize sexual and gender minorities' equal rights, including equal recognition under the law and ordered the Nepal Government to end all forms of discrimination against third gender individuals by formulating appropriate laws and amending existing laws to ensure their rights. Similarly, the apex court has provided approval for the same-sex marriage law.

In Nepal, homosexuality has been decriminalized. Nepal has introduced "other" category in citizenship and passport, and has recognized sexual and gender minorities in the voter rolls as well as in federal census. Similarly, the new constitution has guaranteed the right to equality for all citizens and contains special provisions for the protection, empowerment and advancement of gender and sexual minorities. While recently, Nepal has approved renewal of mandate of independent expert on Sexual Orientation and Gender Identity (SOGI) at United Nations Human Rights Council. Despite the progress, the community has a long way to go in term of realizing their rights fully and effectively.

Despite the progressive measures taken by the state to guarantee rights and ensure safety of LGBTI people, the unique concerns of Intersex people is still mixed into the narrative of LGBT issue, and the state fails to recognize and acknowledge that intersex is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definition of male or female and owing to this difference, concerns of Intersex people are unique and so are their rights and demands.

Issues of Intersex People

Not all intersex people like being clubbed into one category as they feel their life experiences have a varying degrees of differences from other sexual minority group, though their experiences of facing discrimination, isolation, , shaming and bully due to gender non conformity might be comparable.

Under the current legal situation, intersex people in Nepal are not adequately protected from human rights violations that are committed against them. The law fails to address their particular needs and concerns

Intersex people are repeatedly confused/misunderstood with trans identities. They face stigmatization and multiple forms of discrimination in all spheres of life. Safety and identity concerns still abound and the community still lives in fear.

The “Stories of Intersex People in Nepal” a compilation of 9 case studies, highlights list of human rights violations against intersex people that include expulsion, abandonment, violence, discrimination, bullying, and feeling of worthlessness.

Key Priority Areas

This submission seeks to highlight human rights violation against Intersex People and examine (i) implementation of recommendations of Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) regarding IGM and harmful discriminatory practices (ii) Intersex genital mutilation in Nepal (iii) Citizenship (iv) Violence and discrimination against intersex people

The priority issues presented is based on desk review and close consultation with intersex people in Nepal.

Priority Issue 1: Implementation of CRC and CEDAW Recommendations

In 2016, the CRC concluding observations to Nepal explicitly criticized IGM (Intersex Genital Mutilation) on intersex children in Nepal and issued multiple recommendations, addressing inter alia “high level of stigma and discrimination faced by intersex children” and “medically unnecessary surgeries and other procedures on intersex children [...] and the lack of redress and compensation in such cases” ” (CRC/C/NPL/CO/3-5, paras 38, 41-42).

Likewise, the CRC has already explicitly condemned medical genital mutilation, bullying that prevents intersex children from attending school in Nepal as harmful practices.

Similarly, in the CEDAW List of Issues (LOI) and question in relation to the sixth periodic report of Nepal – the committee raised question on “measures taken to address the forced genital mutilation of and discrimination against intersex persons, including reported cases of abuse, infanticide and forced marriage” (see CEDAW/C/NPL/Q/6, para 8 (d)). CEDAW is currently investigating harmful practices on intersex children in Nepal as a part of the upcoming review (71st Session); so far the government has not published any answers to the LOI.

Concluding observations of CEDAW on the sixth periodic report of Nepal provided recommendation to “Adopt legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent and train medical and psychological professionals on the rights of intersex persons” and “Ensure that victims of harmful practices can file complaints without fear of retribution or stigmatization and that they have access to effective remedies and victim support, such as legal, social, medical and psychological assistance and shelters” (see CEDAW/C/NPL/CO/6/ para 19 (d) (e)).

Despite this, Nepal’s failure to act on these recommendation points to the lack of interest to understand the issue and continued apathy towards this serious human rights violation

Recommendation:

1. Implement the recommendations of CRC and CEDAW

Priority Issue 2: Intersex Genital Mutilation

In the vernacular, Intersex persons are known as hermaphrodites and medically as persons with “Disorder” or “Differences of Sex Development (DSD)”. Intersex people are born with variation of reproductive anatomy, or “atypical” reproductive organ, including atypical genitals, atypical sex hormone producing organs, and atypical response to sex hormones, atypical genetic makeup, and atypical secondary sex markers.

Intersex is a natural biological variation but people see it as something to be **fixed**. With new technologies, the underlying intersex traits can be diagnosed prenatally via prenatal genetic screening. It can be detected at birth or identified later at puberty or even later at life, for example, when attempting to conceive a child.

In developed countries, due to access to pediatric health care, it is estimated that 1 to 2 in 1000 newborns are at risk of being submitted to medical IGM i.e. non-consensual, unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical treatments that would not be considered for “normal” children, practiced without evidence of benefit for the children concerned, but justified by societal and cultural norms and beliefs, and often directly financed by the state via the public health system or taken care in private hospitals.

In regions without access to pediatric health care, there are reports of infanticide of intersex children, of abandonment, of expulsion from family, of bullying thereby restricting the person from attending school, of isolation and at times even murder.

The practice of medically defining and framing healthy intersex children as suffering a form of disability that needs to be cured from surgical intervention is endorsed by many players like governing state bodies, public and private health care providers, national and international medical bodies and individual doctors. This practice can be deemed discriminatory and based on racist eugenics.

In recent years, UN Treaty Monitoring Bodies have responded to testimonies by survivors of such practices (IGM) provided by individuals and institutions in countries around the world.

They have cited Treaty Articles on non-discrimination and protection from torture and experimentation, and on liberty and security, privacy, and equality before law, issuing multiple recommendations in relations to such interventions.

The advocacy to stop Intersex Genital Mutilation is based on the premises of violation of human rights and discriminatory practice.

Recommendations

1. Stop IGM / corrective surgical intervention on intersex child, for such intrusion is known to cause severe, lifelong physical and psychological pain and suffering.

Priority Issue 3: Citizenship

The new constitution has guaranteed right to person belonging to sexual and gender minority, who is eligible to obtain citizenship as per the prevailing law, to get citizenship with “other” category in gender column based on his/her identity under the Article 12.

The Supreme Court’s landmark decision of 2017 recognised the identity of sexual and gender minority community. Also the Supreme Court issued Mandamus order in the name of Nepal Government to provide citizenship to “other” as a gender category.

The Supreme Court has also accepted that to deny citizenship based on identified gender/sex is a denial to recognise the existence of this community, therefore the applicant should get citizenship certificate based on their gender identity. Nepal has introduced “other” category in citizenship and passport and recognized sexual and gender minorities in the voter rolls and in federal census.

Despite the constitutional guarantee of the right to receive accurate citizenship under Article 12, Intersex people continue to face great challenges in obtaining citizenship based on their identified sex/gender. Further, the new citizenship amendment bill has made it mandatory to have medical evidence for their identified gender to obtain citizenship.

Also the bill has obligatory provision for intersex people to get citizenship in “O” gender marker/category. But Intersex people may have any gender identity and sexual orientation so they should not be forced to take the citizenship in “O” category.

Many a time’s children who undergo sex corrective surgery feel trapped inside a wrong body as they start understanding their sexual preferences and inclinations. Therefore, it might be apt to say Intersex people have diverse sex characteristics. Therefore, right to citizenship is still problematic and Intersex people face lot of bureaucratic challenges in obtaining their citizenship. Moreover, lack of awareness on the Intersex issue among people is the biggest impediment in obtaining the citizenship as lot of paper work and approval from various places is time consuming, tiresome and unnecessary.

Recommendation

1. Ensure that intersex people obtain identity documents including citizenship certificates that correspond with the sex/gender identity of their choosing, solely based on their self-

declaration without requiring medical evidence as in the case of binary people that fall under gender binary

Priority Issue 4: Violence and discrimination against intersex people

Violence and discrimination faced by Intersex people is not recorded as there is an acute dearth of data, research and scholarship on Intersex human rights in Nepal. Birth registration of Intersex child is not recorded, therefore record of sex normalizing surgeries performed in hospitals is almost impossible to obtain. Problems and challenges faced by Intersex people are further accentuated in the absence of data.

Our society has a binary understanding of sex and gender and whoever fails to conform to this dichotomy needs to be “fixed”. Intersex people experience violence and discrimination from the time they are born and the pattern of such experiences continues throughout. Some of them face expulsion and abandonment from their family; their right and access to education gets curtailed due to bullying and violence, and at times they are murdered just for being born as Intersex.

Social, political and religious institutions still harbour homophobic attitude. Moreover, awareness on Intersex issue is almost negligent. This makes Intersex people further vulnerable and pushes them towards the fringes thus exacerbating the discrimination, exclusion, harassment and violence they face.

In a situation where people belonging to different sexual orientation and gender identity are all clubbed together it becomes difficult to highlight unique needs and challenges of one category in that group. Intersex people face this problem and most of the time their identity is misinterpreted as transgender. They face marginalization within LGBT community.

They face religious prejudice and persecution as they are considered bad omen and their birth a result of karmic debt of a sin committed in some previous life.

Recommendations

1. Increase awareness of Intersex issue
2. Collect Data on Intersex people / Census should have intersex category
3. Discourage and prevent prejudices and stereotypes
4. Create a safe and enabling environment for Intersex people
5. Promote notion of gender and sex as non- binary notion