



UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

Nepal

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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Sexual Orientation and Gender Identity research – sogi.ihrp@gmail.com
International Human Rights Program
University of Toronto

This document was prepared by law students and highlights information about publicly-accessible country conditions available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto, Faculty of Law cannot provide such advice or assistance.

Table of Contents

Introduction	1
Legislation	1
Jurisprudence	4
Governmental Reports	5
Non-Governmental Reports	8
Media	12
Scholarship	16

I. Introduction

This Country Report on the conditions faced by LGBT persons in Nepal is intended to provide a comprehensive and up-to-date survey of relevant legislation, case law, scholarship, and documentation from governmental agencies, nongovernmental organizations, and the media. Due to language and translation-related issues, however, it is necessarily confined to materials available in English.

This report reveals a society in transition. Nepal is legislatively en route to greater acceptance of LGBT persons, but prejudice against homosexuality remains deeply entrenched in public opinion and in institutional actors, such as the police force.

Nepal is currently in the middle of a prolonged process of constitutional reform (See below: Australian Government Refugee Review Tribunal, *Country Advice on Nepal – Homosexuals and State Protection*), and is operating under an interim constitution. In 2007, the Supreme Court struck down legislation criminalizing “unnatural sex” and directed the government to end discrimination based on sexual orientation and gender identity (See below: International Gay and Lesbian Commission, *IGLHRC and Lambda Legal Consulting with Nepali Government on LGBTI Rights Protections*). However, much of the legislation has not yet been updated to comply with the Supreme Court’s ruling. While the discriminatory laws remain on the books, they are not enforced (See below: International Lesbian and Gay Association, *Nepal Law*).

Despite this positive trajectory, NGO and Media Reports make it clear that a great deal of work remains to be done. NGOs have documented extensive discrimination, harassment, violence, police brutality, and detention without cause directed against LGBT people in Nepal. In fact, the overwhelming majority of human rights violations reported by these NGOs were perpetrated by government officials, notably police officers. All of these problems appear to be especially prevalent for “third gender” (i.e., transgender, called “metis” in Nepal) individuals. Furthermore, in May 2011 the Supreme Court broke from its progressive trend and dismissed an appeal by a lesbian woman who had been expelled from the Nepalese army because of her sexual orientation (See below: United States Department of State, *2010 Country Report on Human Rights Practices (Nepal)*; Tara Bhattarai, “Nepal Plans to Legalize Same-Sex Marriage, Discrimination Persists”), which may indicate a back peddling of the court’s earlier advances.

II. Legislation

Most Nepali legislation can be accessed on the official government website:

<http://www.lawcommission.gov.np/>

- **All statutes are in Nepali**
- **Some English translations are available**

To access the original Nepali text of the Nepal *Interim Constitution*, 2007:

http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=2&func=fileinfo&id=129&lang=en

To access the English translation of the Nepal *Interim Constitution*, 2007:

http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf

- **No anti-discrimination provision for LGBTI persons**
- **No acknowledgement of 3rd gender**
- **The *Human Rights Commission Act* supplements the *Interim Constitution***

1. *Nepal Interim Constitution (2007)*, Part 3 Fundamental Rights, Section 13(2) Right to Equality, online [English translation]: http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf

- **“No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction or any of these.”**

There are no specific provisions relating to same-sex relationships or sexual orientation. In Part 3, s. 13.2, discrimination is prohibited on several grounds, of which sexual orientation is not included. However, a 2007 Supreme Court decision declaring all LGBTIs as ‘natural persons’ in Nepal has effectively read sexual orientation and gender identity into the anti-discrimination provision (See below: Blue Diamond Society, *Supreme Court Decision – Summary Note*; Association for Women’s Rights in Development, *Nepal looks set to officially recognize third gender*).

2. *Human Rights Commission Act, 2053 (1997)*, Chapter 3, s. 9, online:

<http://www.hurights.or.jp/archives/database/nhri-law-nepal.html>

- (1) **“It shall be the primary responsibility of the Commission to protect and promote human rights,”**
- (2) **“In order to perform the responsibility mentioned in sub-section (1), the Commission may carry out the following functions:**
 - (m) **carry out such activities, as it may deem necessary and appropriate for the enforcement, promotion and protection of human rights.”**

This Act is extremely general and is thought to encompass all grounds of discrimination not explicitly mentioned in the constitution, including sexual orientation and gender identity. Areas of concern are not specified in the Act.

3. *Marriage Registration Act 2028 (1971)*, *Official Translation*, Chapter 2(5), online:

<http://www.jafbase.fr/docAsie/Nepal/marriage-registration.pdf>

- **Chapter 2(5): “The male and female, who are interested to conclude a marriage under this Act, shall submit an application at least fifteen days earlier, in a prescribed format before the Marriage Registration Officer.”**

While there are no laws explicitly prohibiting same-sex marriage, Nepal has not legally recognized it either. The *Marriage Registration Act* only speaks to male-female relationships. Same-sex marriage ceremonies have occurred in Nepal but the legality of those unions under the current *Act* remains unknown and this question appears to have been left for the upcoming constitution to answer (See below: Utpal Parashar, “US couple has Nepal’s first lesbian wedding”).

4. “Muluki Ain,” *Nepal Country Code 1963/2001, Article 16*, online: <http://www.gaylawnet.com/laws/np.htm>

- **Part 4, Article 16 Rape of Animals/Sodomy:**
 - (1) **No person should have sexual intercourse with four-legged animals or perform, or cause to be performed, any other unnatural sexual act.**
 - (4) **Any person who performs, or causes (permits) to be performed, an unnatural sexual act, shall be punished with a term of imprisonment of one year or a fine of 5,000 rupees.**
 - (5) **The offence shall become statute-barred in one-year if no complaint is submitted.**

Article 16 explicitly criminalizes bestiality while ambiguously punishing “unnatural sexual acts,” which most have taken to include homosexual sex (See below: Utpal Parashar, “‘Biased’ winds of change in Nepal”). However, in 2007 the Supreme Court issued a directive to the legislative body to repeal or amend this provision, as it conflicts with the Constitution (See below: Blue Diamond Society, *Supreme Court Decision – Summary Note*; Association for Women’s Rights in Development, *Nepal looks set to officially recognize third gender*). Though this section has not yet been repealed or amended, most interpret the decision to be the decriminalization of consensual sex between same-sex couples, and generally, the decriminalization of homosexuality altogether (See below: . International Gay & Lesbian Human Rights Commission, *IGLHRC and Lambda Legal Consulting with Nepali Government on LGBTI Rights Protections*).

5. Future Developments (See the “Media Reports” section below)

- **Recognition of third gender**
- **Identifying discrimination based on sexuality and gender**
- **Recognition of same-sex marriages**

The new constitution and *Criminal Code (Country Code)* have been in development for the last five years. There have been conflicting reports about what will be included in the legislation. It was reported in January 2011 that the criminal law amendments would not erase all traces of anti-homosexual provisions altogether, but rather attempt to further define “natural and unnatural sex” (See below: Utpal Parashar, “‘Biased’ winds of change in Nepal”). However, other reports have indicated that drafts of the constitution have proposed “citizenship rights for third gender individuals” and “bans on discrimination based on sexual orientation and gender identity” (See below: Association for Women’s Rights in Development, *Nepal looks set to officially recognize third gender*). There were two delays in the adoption of the new constitution due to the failure of various political parties to reach a deal, and some fear that the November 2011 date will also pass by without official recognition of change (See below: *The Advocate*, “Nepal Constitution aims high”).

III. Jurisprudence

Immigration and Refugee Board

1. *Schatens v. Canada (Minister of Citizenship and Immigration)*, [2005] I.A.D.D. No. 330.

Claim denied

- **This is the only reported Canadian case that could be found of a Nepali claimant claiming on the basis of sexual orientation**
- **Schatens appealed the earlier decision of the Board to reject a claim for permanent residence status to Rabindra Kumar YADAV, whom he claimed was his conjugal partner**

- **At issue in this case was whether section 4 of the Regulations applied and thereby excluded the applicant from consideration as the appellant's conjugal partner and thereby as a member of the appellant's family class.**
- **The appeal was dismissed on the basis that it was not proven on a balance of probabilities that the two men were in a properly reciprocal conjugal relationship.**

Though the claim was denied, it was decided on the basis of the quality of the appellant's relationship with the applicant. It was not denied on the basis of conditions faced by LGBT persons in Nepal. At paragraph 8, the IRB Appeal Panel states, "As same sex relationships are not allowed in Nepal, they were and continue to be very secretive about their relationship. The applicant's parents, relatives and friends think of the appellant as a family friend and are not aware that the relationship is also sexual. The appellant is cautious about letting others know about the relationship because of work related concerns."

Note: Nepal decriminalized homosexuality in 2007, so this case may be outdated (it was decided in 2005). However, it still goes to show the culture and attitudes of the country, and can perhaps be used as a precedent in that way.

2. *E.Y.W. (Re)* [2000] C.R.D.D. No. 116. (Indian Claimant)

Claim allowed

- **This case may be of interest because India is also a dominantly Hindu country and is arguably comparable to Nepal to some extent, perhaps even with respect to attitudes towards homosexuality.**
- **At para. 33 the panel found that "it is patently obvious [that India] has denied the fundamental human rights of sexual minorities in a blatantly discriminatory way" and that the fear of the applicant is well-founded.**

The applicant in this case was seeking refugee status in Canada as a result of his fear of persecution in India due to his homosexuality. At issue in this case was whether the claimant had a well-founded fear of persecution should he return to India.

IV. Governmental Reports

Canada

1. Immigration and Refugee Board of Canada, *Responses to Information Requests* (16 February 2009) online: http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452226&l=e

- **On 28 May 2008 Nepal was declared a republic and the monarchy was formally abolished.**
- **Much of the Nepali population is politically underrepresented and excluded from access to justice and other public services due to poverty or discrimination, including discrimination based on sexual orientation.**
- **The Prime Minister and Maoist senior ministers are reportedly unable to control incidents of intimidation, threats and extortion by party workers.**
- **The Young Communist League has a policing function and is regularly accused of beatings, kidnappings, extortion and murder.**

In Nepal, the peace process following the declaration of a republic has failed to address concerns relating to underrepresentation and exclusion of much of the population from access to justice and public services.

This is due to poverty and/or discrimination, including on the basis of sexual orientation. Numerous strikes and protests have resulted from this failure.

Australia

2. Australian Government Refugee Review Tribunal, *Country Advice on Nepal – Homosexuals and State Protection*, (4 May 2011), online: www.mrt-rrt.gov.au/ArticleDocuments/97/NPL38649.pdf.aspx

- **Nepal is currently in the middle of constitutional reform, with the new Constitution due in November of 2011.**

United Kingdom

3. UK, Home Office, *Country of Origin Information Key Documents: Nepal* (4 April 2007) online: <http://webarchive.nationalarchives.gov.uk/20110220105210/http://rds.homeoffice.gov.uk/rds/country-reports-nepal.html>

- **This source contains links to a variety of articles pertaining to country conditions in Nepal**

4. United Kingdom Home Office, *Country of Origin Information Key Documents: Nepal* (13 May 2008) online: http://webarchive.nationalarchives.gov.uk/20110220105210/http://rds.homeoffice.gov.uk/rds/country_reports.html#countries

- **This source contains links to a variety of articles pertaining to country conditions in Nepal**

United States of America

5. United States Department of State, *2010 Country Report on Human Rights Practices (Nepal)*, (8 April 2011) online: <http://www.state.gov/documents/organization/160061.pdf>

- **No laws specifically criminalising homosexuality in Nepal.**
- **However, harassment and abuse of homosexual persons was common by both government authorities (especially police) and citizens, according to the Blue Diamond Society.**
- **NGOs report that police harassment of sexual minorities occurs in rural areas of the country, especially in the Terai.**
- **The first gay pride parade was held in Nepal on 17 August 2011.**
- **Between 2007 and 2008 the Supreme Court made a series of rulings directing the government to enact laws protecting LGBTI persons' fundamental rights, enabling third gender citizenship and amending all sexually discriminatory laws.**
- **Many mainstream political parties included pro-LGBTI legislation in their party manifestos and LGBTI activists continued to press for protections for sexual minorities in the new constitution.**
- **In May 2011 the Supreme Court dismissed an appeal by Sergeant Bhakti Shah who had been dismissed by the Nepalese Army for being a lesbian while serving as an instructor in the military academy in 2007.**

Despite there being no laws specifically criminalising homosexuality in Nepal, harassment and abuse of homosexual persons by government authorities and civilians remains common. This is common in rural areas, especially in the Terai. The Supreme Court issued a number of rulings between 2007 and 2008 directing the government to legislate to protect a variety of LGBTI rights and eliminate sexually

discriminatory laws. Further, many mainstream political parties have included pro-LGBTI legislation in their manifestos. The first gay pride parade was held in Nepal on 17 August 2011. However, in May 2011, the Supreme Court dismissed an appeal by Sergeant Bhakti Shah against her dismissal from the Nepalese Army for being a lesbian.

United Nations High Commissioner for Human Rights

6. United Nations High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation and the Activities of Her Office, Including Technical Cooperation, in Nepal, A/HRC/16/23*, (16 February 2011), online: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/107/67/PDF/G1110767.pdf?OpenElement>

- **Nepal's progress on human rights issues has been impeded by the political deadlock in finalising the new constitution.**
- **There is a prevalence of impunity whereby perpetrators of serious crimes are not held accountable, thereby eroding public faith in the rule of law institutions and emboldening those who engage in criminal activity and violence.**
- **The legal framework for prosecuting serious human rights violations and abuses is inadequate. Torture, enforced disappearances and crimes against humanity are still not criminalized under Nepalese law.**
- **There are considerable gaps in the enforcement and implementation of anti-discrimination laws. Caste and ethnicity based discrimination is broadly recognised as one of the root causes of the conflict. It persists throughout Nepali society, especially in less developed and more remote areas.**
- **Sexual and gender based violence is also prevalent. Although there is greater public focus on these issues, factors including religious and cultural customs, discriminatory legal provisions and patriarchal institutional approaches to women's status inhibit access to justice.**
- **Lack of access to justice is often caused by State failure to treat criminal cases in the manner prescribed by law and the propensity to resort to mediation processed outside the criminal justice system. This results in widespread impunity for perpetrators of discriminatory acts.**
- **There is a paucity of prosecution of discriminatory acts in Nepal, despite the prevalence of caste, gender and sexuality based discrimination.**
- **Police usually require victims to provide direct testimony before they will consider registering a case rather than registering upon prima facie evidence a crime has been committed. With respect to gender based violence, there are many examples of the police delaying the registration process.**
- **Where investigations or prosecutions are undertaken in discrimination cases, the justice system is slow and ineffective. This may be due to technical problems such as the lack of training in dealing with victims provided to police officers.**
- **In the rare instances of a conviction, perpetrators rarely serve a custodial sentence, largely due to the failure of the police to circulate arrest warrants or act proactively in locating the perpetrators.**

Nepal's progress on human rights is being impeded by the political deadlock in finalising its new constitution. Currently a culture of impunity is eroding public faith in rule of law institutions and emboldening perpetrators. Further, Nepalese law has still not criminalized many of the worst human rights abuses including torture, forced disappearances and crimes against humanity. There are also a number of structural problems in prosecuting persons for violation of anti-discrimination laws, including failure to arrest and charge, failure to prosecute and common reliance on mediation rather than the

criminal law apparatus for dealing with crimes of discrimination. The criminal justice system is slow and ineffective which may be due to systemic factors such as the lack of training provided to police officers. In the rare case of a criminal conviction, perpetrators rarely serve a custodial sentence, largely because of police failure to circulate arrest warrants or act proactively in locating

V. Non-Governmental Reports

International Gay and Lesbian Human Rights Commission (IGLHRC)

Website: <http://www.iglhrc.org/cgi-bin/iowa/region/144.html>

The IGLHRC's website includes a variety of articles and media reports describing conditions for LGBT people in Nepal both before and after the landmark 2007 Supreme Court ruling. These materials clearly illustrate that, while the situation for LGBT Nepali citizens has indeed improved in the aftermath of this ruling, the discrimination, harassment, and abuse of LGBT people remains rampant and goes unpunished.

Human Rights Violations

1. International Gay & Lesbian Human Rights Commission, *Lesbian Traffic Police Officer Acquitted of Abduction, Sexual Charges*, (1 June 2011), online: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/1407.html>

- **This article, published four years after the Supreme Court ruling, discusses the recent acquittal of a lesbian traffic policewoman who had been arrested 1 ½ years earlier on groundless charges of abduction and sexual abuse of a woman—her long-term girlfriend.**

2. International Gay & Lesbian Human Rights Commission, *Nepal: Maoists Released Two 'Lesbian Suspects' After a Month-long Detention*, (10 April 2007), online: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/416.html>

- **This brief article provides a horrifying synopsis of the story of two young women who were held incommunicado for a month at a Maoist camp “on suspicion of being lesbians” and for no other reason.**
- **This article pre-dates the landmark 2007 Supreme Court decision.**

3. International Gay & Lesbian Human Rights Commission, *Nepal: 13-year old Transgender Child Found Dead; Allegations of Anti-Trans Murder Raised*, (3 April 2006), online: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/258.html>

- **This article reports on the tragic death of a transgendered Nepalese child believed to have been murdered by her father because of her gender identity.**

4. International Gay & Lesbian Human Rights Commission, *Nepal: IGLHRC Condemns Violence and Arbitrary Arrests*, (12 August 2004), online: <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/538.html>

- **This is one of several articles collected on this website to detail police brutality toward GLBT people prior to the 2007 Supreme Court ruling.**
- **In this case, 39 “Metis” (transgendered persons) were arbitrarily detained in 2004 on charges of “spreading perversion.”**

While these reports all date from before the groundbreaking 2007 ruling, it is important to note that they describe truly appalling—and still quite recent—conditions in an institutional culture which one might imagine could be slow to change. (Corroboration of this view is found in the Blue Diamond Society’s report of more recent human rights violations committed by police officers, described below.)

Signs of Progress

5. International Gay & Lesbian Human Rights Commission, *IGLHRC and Lambda Legal Consulting with Nepali Government on LGBTI Rights Protections* (21 December 2009), online: <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1053.html>

- **Prior to 2007 the LGBTI community was commonly subjected to police abuse**
- **2007 Supreme Court of Nepal ruling requiring Nepal’s Parliament to end all forms of legal discrimination against the LGBTI community**
- **Government responded by establishing an eight member study and drafting committee which will consider how other countries have extended full rights to LGBTI citizens**
- **IGLHRC and Lambda Legal worked with the committee to include protections for LGBTI people in Nepalese laws**
- **Committee will present its recommendations to the Nepali Parliament in 2010**
- **Nepal still a very conservative country**

The International Gay & Lesbian Human Rights Commission (‘IGLHRC’) and Lambda Legal are working with a Nepali government drafting committee to include protections for LGBTI people in the Nepali legal system. The establishment of the committee follows a 2007 Supreme Court ruling that directed the Nepali Parliament to end all forms of legal discrimination against the LGBTI community. The Court’s decision came at a time when Nepal was drafting a new constitution.

6. International Gay & Lesbian Human Rights Commission, *Nepal Census Recognizes ‘Third Gender’*, (31 May 2011), online: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/1408.html>

- **This CNN article describes Nepal’s groundbreaking inclusion in its most recent census of a “third gender” category (recognizing individuals who do not identify as either male or female within the standard gender binary).**
- **This category is also recognized on Nepal’s national identification cards.**

7. International Gay & Lesbian Human Rights Commission, *Nepalese National Human Rights Work Plan for 2011-14 Includes LGBTI Rights*, (19 January 2011), online: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1317.html>

- **This article outlines the three-year human rights work plan published by the Nepalese government for the years 2011-14.**
- **This is the plan that was drafted with the assistance of the IGLHRC and Lambda Legal, mentioned above.**
- **Unfortunately a copy of the plan itself could not be located in English.**

8. International Gay & Lesbian Human Rights Commission, *Nepal to host first gay pride march: Lawmaker*, (27 July 2010), online: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/partners/1191.html>

- This article describes Nepali GLBT leaders' plans for Nepal's first-ever pride parade, which was held at the August 25 festival of Gai Jatra (see Blue Diamond Society website, below).
- This event was spearheaded by Sunil Pant, Nepal's first openly gay parliamentarian and one of Asia's foremost GLBT rights activists.

International Lesbian and Gay Association

Website: www.ilga.org

9. International Gay and Lesbian Association, *Nepal Law*, online:

<http://ilga.org/ilga/en/countries/NEPAL/Law>

- There are over 25 LGBT CSOs operating in Nepal today, led by the Blue Diamond Society (see below).
- The Blue Diamond Society and other GLBT NGOs recently worked with the Nepal Tourism Board to organize a gay and lesbian tourism symposium, held on February 26 (more information available at: <http://www.passportmagazine.com/blog/archives/403-Nepal-Hosts-Symposium-to-Attract-LGBT-Visitors.html>).
- Legislation on sexual orientation is currently in a state of transition in Nepal, with judicial directives to legislature, as well as existing yet unenforced provisions, leading to much ambiguity.
- Much of the legislation has not yet been updated to fit recent jurisprudence supporting the recognition of sexual orientations, while discriminatory laws remain on the books, but often without application.

Clicking on Nepal in the interactive map leads to a useful guide to the current state of affairs in Nepal with regards to GLBT rights and legislation.

Human Rights Watch

Website: www.hrw.org

The Human Rights Watch reports on conditions for LGBT people in Nepal all date from before the 2007 court decision. However, the extensive and egregious nature of the human rights violations that they describe would suggest that the institutional culture in Nepal was so deeply prejudiced against LGBT people that these problems are almost certain to remain today. (Again, see the Blue Diamond Society report below for corroboration of this view.)

10. Human Rights Watch, *Nepal: Maoists Should End Anti-Gay Violence: Kidnapping Contradicts Promise 'Not to Punish Homosexuals,'* (16 April 2007), online:

<http://www.hrw.org/news/2007/04/15/nepal-maoists-should-end-anti-gay-violence>

- This article provides more thorough coverage of the unlawful month-long detention of two young women in a Maoist camp described above (see "Maoists Released Two 'Lesbian Suspects' After a Month-long Detention").

11. Human Rights Watch, *Nepal: 'Sexual Cleansing' Drive Continues. New Arrests of Transgender People, HIV Workers,* (18 March 2006), online: <http://www.hrw.org/news/2006/03/16/nepal-sexual-cleansing-drive-continues>

- **This report gives an overview of the frequent arrests of and police brutality toward both transgender people (“metis”) and HIV outreach workers before the 2007 Supreme Court decision.**
- **These actions were often carried out in the name of upholding moral values.**

12. Human Rights Watch, *Letter to Nepal's Minister of Justice and Minister of Home Affairs*, (11 January 2006), online: <http://www.hrw.org/news/2006/01/11/letter-nepals-minister-justice-and-minister-home-affairs>

- **This letter expresses grave concerns to the Minister of Justice and Minister of Home Affairs about the “pattern of arbitrary arrest and police violence against metis” as of 2006, and includes several detailed descriptions of this police behavior.**
- **Examples include: police officers attempting to solicit sex from metis individuals and then beating them when they refused to comply, threatening to prosecute metis individuals for the “public offense” of simply walking outside at night, and detaining metis without charge.**

13. Human Rights Watch, *Nepal: Police Attack Transgender People. Pattern of Police Abuse Highlights Broader Threat to Civil Society*, (19 April 2005), online: <http://www.hrw.org/news/2005/04/17/nepal-police-attack-transgender-people>

- **This report describes a particularly egregious 2005 attack on metis people, in which police brutalized 18 metis en route to a festival on the Nepalese New Year’s Eve.**
- **This attack took place in full view of numerous other police and military personnel.**

Blue Diamond Society

Website: <http://www.bds.org.np/index.html>

The Blue Diamond Society (BDS), Nepal’s first and most influential LGBT rights organization was founded in 2001 by Sunil Pant, the only openly gay member of Nepal’s Constituent Assembly. BDS includes over 20 smaller organizations and 120,000 members, and has established LGBT support networks in over 30 Nepalese districts.

BDS emphasizes that Nepal remains “a conservative country which still disapproves” of LGBT people and lifestyles in many contexts. Since its inception ten years ago, this group has documented extensive human rights abuse directed at LGBT people, which have included “arbitrary arrests, attempted murder, rape, blackmail, and all varieties of physical and verbal abuse and discrimination in the workplace, school medical facilities and elsewhere” (<http://www.bds.org.np/aboutus.html>).

As a result, the BDS website includes both coverage of positive developments for the LGBT community since the 2007 ruling (e.g., “Nepal Hosted Asia’s First Public Lesbian Wedding”: http://www.bds.org.np/lesbian_wedding.html) and materials that emphasize the need for further progress to address the remaining problems and challenges. Of particular note is a detailed report entitled “Documentation of Human Rights Abuse and Media Report: A Review” (See <http://www.bds.org.np/download.html>), which includes descriptions of several incidents of discrimination, violence, police brutality and discrimination directed at LGBT people that occurred *after* the December 2007 Supreme Court decision, for example:

- **December 2007: A metis individual was harassed by two strangers, who later filed a groundless complaint with the local police. She was then detained without charge for two days and denied access to drinking water.**
- **January 2008: Four metis were beaten and detained by police without cause after having been victimized by men who had attempted to solicit sex from them and then become angry**

and broke windows when the metis refused. When called to the scene the police arrested the metis, who had done nothing illegal.

- **February 2008: Ten police officers harassed staff members of a local CSO who were celebrating a transgendered colleague's birthday. The following day, the staff members attempted to file a complaint, but the police inspector refused to do so.**
- **February 2008: Four metis were badly beaten by police officers outside a bar.**
- **May 2010: A transgendered woman was raped by a security guard who escaped prosecution by fleeing the district.**

Please see the attached document for English translations of two Blue Diamond Society informational pamphlets.

14. Blue Diamond Society, *Supreme Court Decision – Summary Note*, (21 December 2007), online: <http://www.bds.org.np/decision.html>

- **An English summary of the landmark 2007 Supreme Court decision which declared all LGBTIs “natural persons” and read sexual orientation in as a prohibited ground of discrimination.**
- **The Supreme Court also holds that “third sex” individuals are natural persons.**

Association for Women's Rights in Development

Website: <http://awid.org>

15. Association for Women's Rights in Development, *Nepal looks set to officially recognize third gender*, (9 September 2011), online: <http://awid.org/News-Analysis/Friday-Files/Nepal-Looks-Set-to-Officially-Recognize-Third-Gender>

- **A 2007 Supreme Court decision declaring all LGBTIs as ‘natural persons’ in Nepal has effectively read sexual orientation into the anti-discrimination provision.**
- **Other reports have indicated that drafts of the new constitution have proposed “citizenship rights for third gender individuals” and “bans on discrimination based on sexual orientation and gender identity.”**

VI. Media

1. “Nepal OKs same-sex union,” *The Times of India* (19 November 2008), online: http://articles.timesofindia.indiatimes.com/2008-11-19/rest-of-world/27934456_1_sexual-minorities-nepali-citizens-apex-court

- **The Supreme Court recognized sexual minorities as entitled to all the rights and remedies enjoyed by all other Nepali citizens**

2. “Nepal gets its first gay representative in parliament,” *The Times of India* (1 May 2008), online: http://articles.timesofindia.indiatimes.com/2008-05-01/rest-of-world/27768195_1_sunil-babu-pant-constituent-assembly-gay-rights

- **Sunil Babu Pant, a LGBT rights activist, will be first gay man to serve in parliament**
- **Chosen by a communist party to represent it in the constituent assembly**

“We hope it will improve the lives of a people who are the most repressed in Nepal, disowned both by

society and their own families," said a party representative. Pant, a computer engineer from Belarus, founded the Blue Diamond Society in 2002. It is now one of the best known gay rights groups in South Asia, known for: fighting for molested and detained gays, spreading awareness about HIV/AIDS, running a hospice for terminally ill gay patients and providing training and jobs to members of the LGBT community.

3. "Nepal first in South Asia to recognize LGBT: Sanghera," *The Kathmandu Post* (7 July 2011), online: <http://www.ekantipur.com/2011/07/07/top-story/nepal-first-in-south-asia-to-recognise-lgbt-sanghera/336975.html>

- **OHCHR-Nepal Representative Jyoti Sanghera: "Lesbian women have been subjected to 'corrective rapes' and gay men denigrated in other horrific ways."**

Despite continuing persecution, Sanghera says Nepal is the only South Asian country recognizing equal rights for LGBTI persons.

4. Kyle Knight, "Separate and unequal," *The Kathmandu Post* (31 August 2011), online: <http://www.ekantipur.com/the-kathmandu-post/2011/08/31/oped/separate-and-unequal/225780.html>

- **Nepal's 2011 census was the world's first to include a gender category other than male or female: third gender (*tesro lingi*)**

However, problems persist in data collection – some suspect discrimination and fraud on the part of census enumerators, and many fear disclosing their third gender status .

5. Gopal Sharma, "Nepal shelter for ostracized gays a sign of change," *Reuters Life* (24 June 2011), online: <http://www.reuters.com/article/2011/06/24/us-nepal-gays-idUSTRE75NORL20110624>

- **Nepal opens first shelter for LGBT people and people with HIV/AIDS who have been abused or abandoned by their families**
- **Many families will sever all ties to a child if he or she comes out**
- **Some landlords will refuse to rent their property to an openly gay person**

Activists say it is a sign of growing understanding of LGBT rights.

6. Binaj Gurubacharya, "Nepal Gay Rights Rally Draws Hundreds," *The Huffington Post* (14 August 2011) online: http://www.huffingtonpost.com/2011/08/14/nepal-gay-rights-rally_n_926395.html

- **An estimated 500 LGBT people and supporters marched without incident**
- **First LGBT march outside the capital city**

The rally attendees demanded equal rights under the new constitution in the process of being drafted.

7. Utpal Parashar, "US couple has Nepal's first lesbian wedding," *Hindustan Times* (20 June 2011), online: <http://www.hindustantimes.com/US-couple-has-Nepal-s-first-lesbian-wedding/Article1-711653.aspx>

- **First lesbian wedding held in Nepal**

An American couple living in Nepal decided to have their wedding ceremony in Nepal to support the LGBT community and promote tourism.

8. "New law threatens to crush Nepal's gays," *The Times of India* (9 June 2011), online: http://articles.timesofindia.indiatimes.com/2011-06-09/south-asia/29638154_1_sunil-babu-pant-gay-rights-gay-bar

- **Proposed civil and criminal code provisions discriminate against LGBT people**

Marriage would be defined as only between a man and woman, and sodomy would remain a punishable offence as an "unnatural sex act."

9. Tara Bhattarai, "Nepal Plans to Legalize Same-Sex Marriage, Discrimination Persists," *Global Press Institute* (22 February 2011), online: <http://www.globalpressinstitute.org/global-news/asia/nepal/nepal-plans-legalize-same-sex-marriage-discrimination-persists#ixzz1chhJvkst>

- **Bhakti Shah, a lesbian woman, was tortured and expelled from the army because of her sexual orientation**
- **Charged with defaming the army for establishing a lesbian relationship**

She says she was kept in a dark, cold dungeon for two months and mentally tortured. Lesbians working in the police department and with the army say they are routinely discharged and even jailed for revealing their sexual preferences.

10. Pranab Kharel, "Military justice: Apex court orders review of system," *The Kathmandu Post* (1 July 2011), online: <http://www.ekantipur.com/the-kathmandu-post/2011/06/30/top-story/military-justice-apex-court-orders-review-of-system/223458.html>

- **Minor Supreme Court victory for lesbian woman fired from the Army**

Shah appealed to the Supreme Court, arguing that the military court could not ensure a fair trial in her case. The court agreed and directed the government to form a taskforce to review and recommend changes to the entire military justice system. However, the Supreme Court dismissed Shah's appeal on its merits in the end (See above: United States Department of State, *2010 Country Report on Human Rights Practices (Nepal)*).

11. Bimal Gautam, "Lesbian traffic woman acquitted of abduction, sexual charges," *Republica* (1 June 2011), online: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=31873

- **Lesbian traffic policewoman, Rubina Hussein, acquitted**
- **Had been charged with abduction and sexual abuse of her live-in girlfriend**

Court held the charges were "false, biased and baseless." Hussein credited the support she received from the Blue Diamond Society and its Chairman Sunil Babu Panta. Hussein termed the verdict a milestone in gender rights movement.

12. Sudeshna Sarkar, "Anti-gay bias evicts dying AIDS patients in Nepal," *Thaindian News* (21 March 2008), online: http://www.thaindian.com/newsportal/south-asia/anti-gay-bias-evicts-dying-aids-patients-in-nepal_10029692.html

- **Twelve men with AIDS thrown out of AIDS care center because of anti-gay bias**
- **Regional officials had argued against AIDS awareness initiatives as tantamount to "polluting" society and that gays were "perverts"**

The men were from the Terai plains along the India-Nepal border, where the incidence of HIV/AIDS is high. Four of them were terminally ill and unable to walk.

13. "Police detain 20 LGBT people for indecent behavior," *MSN News*, (26 October 2011), online: <http://news.in.msn.com/international/article.aspx?cp-documentid=5545677>

- **20 LGBT people were detained by police**
- **Charged with involvement in sexual activities in public places**
- **30 other detentions of LGBT people in the week prior**

Police said, "They were found searching clients for commercial sex, involving sexual activities in public places and some were even following tourists and looting their belongings." They were given a class on "decent social behavior" and handed over the next day to the Blue Diamond Society.

14. Shirish B. Pradhan, "Third gender denied passport in Nepal" *MSN News* (24 July 2011), online: <http://news.in.msn.com/international/article.aspx?cp-documentid=5313870>

- **Third gender applicant denied a passport**
- **First such attempt by a third gender person**

Nepal refused to issue a smart passport to a third gender person saying there is no provision to provide such a document. This was the first time a third gender person had applied for a passport mentioning sexual orientation.

15. Andrew Buncombe, "Himalayan kingdom throws open its doors to gay tourists," *The Independent* (10 January 2011), online: <http://www.independent.co.uk/news/world/asia/himalayan-kingdom-throws-open-its-doors-to-gay-tourists-2180300.html>

- **Plan to attract up to 200,000 "pink tourists"**

Gay MP Sunil Babu Pant leads effort to make Nepal a destination for gay tourism.

16. Alok Thapa, "Homosexuality in Nepali films," *Republica* (20 September 2011), online: http://www.myrepublica.com/portal/index.php?action=news_details&news_id=36252

- **Films feature "realistic" LGBT character depictions**

Growing consciousness about LGBT issues has given rise to a surge of films that portray homosexuality in a "realistic" rather than "stereotypical" light.

17. Utpal Parashar, "'Biased' winds of change in Nepal," *Hindustan Times* (31 January 2011), online: <http://www.hindustantimes.com/Biased-winds-of-change-in-Nepal/Article1-656613.aspx>

- **The new Constitution and Criminal Code (Country Code) have been in development for the last five years.**
- **There has been conflicting information about what will be included in the legislation, as it was reported in January 2011 that the criminal law amendments would not erase all traces of anti-homosexual provisions altogether, but rather attempt to further define "natural and unnatural sex."**

18. "Nepal Constitution aims high," *The Advocate*, (August 2011), online: http://www.advocate.com/Print_Issue/Advance/Nepal_Constitution_Aims_High/

- **Many expect that in the new constitution marriage will be redefined to include other forms beyond heterosexual unions.**
- **There were two delays in the adoption of the new Constitution due to failure of various political parties to reach a deal, and some fear that the November 2011 date will also pass by without official recognition of change.**

19. Fred Kuhr and Rachel Dowd, "Global pride warriors: in the spirit of widespread change, meet four international gay rights activists from Nepal, Russia, Nigeria, and Chile." *The Advocate* (17 June 2008), online: <http://www.advocate.com/article.aspx?id=22556>

- **The Blue Diamond Society has created service centers in six cities, and network associations in fifteen cities. These locations are intended to support and mobilize sexual minorities in the country. Over 60,000 individuals have had direct contact with these centers and associations.**
- **Metis (people traditionally recognized as third genders) and other sexual minorities are excluded because people believe they have no capacity to contribute to society**

This article introduces the reader to four of the world's most prominent gay rights activists. The article profiles Sunil Pat and chronicles the recent legislative victories. However, in his interview, Sunil Pat discusses how the social climate of Nepal has yet to catch up to the liberalization of the country's laws.

V. Scholarship

1. La O, Maria De. "Nepal good for gays? With LGBT rights about to be enshrined in its new constitution, with its legal recognition of a 'third gender' and with same-sex unions on the horizon, this tiny country between India and China just might be the most welcoming LGBT travel destination in Asia." *Curve* Jan.-Feb. 2011: 66-68, online: <http://www.mydigitalpublication.com/publication/?i=56811&p=68>

- **With the recent LGBT civil rights legislation in Nepal, the country is on the way to become a gay tourism destination**
- **In addition to prohibiting discrimination against LGBT people and recognizing a "third gender," the legalization of same-sex marriage is imminent**
- **Sunil Pant – a plaintiff in the cases that brought an end to legislative discrimination against LGBT people in Nepal – was recently elected to parliament and is now the first openly gay member of parliament in South Asia**

This article summarizes the recent legislative changes in Nepal that are aimed at putting an end to discrimination against members of the LGBT community. The author of the article is a filmmaker who is looking to include a segment about these changing dynamics in her next film about Mount Everest. The article talks more about the proliferating gay tourism industry in Nepal rather than the actual situation in Nepal for local LGBT people.

2. Wickeri, Elisabeth, "No Justice, No Peace: Conflict, Socio-Economic Rights, and the New Constitution in Nepal," *Drexel Law Review*, Volume 2, Number 2, Spring 2010, 427, online: <http://www.earlemacklaw.drexel.edu/lawreview/Articles/Authors/Authors-Spring-2010/>

- **Despite tremendous legal progress, Nepal has a long way to go before the rights of minorities enshrined in the country's new legislation are actually protected**
- **The political volatility and poverty in Nepal will make the implementation and enforcement of new laws very difficult**
- **Marginalized minority groups now have a vehicle to bring action against oppressors and fight discrimination**

This publication discusses the events leading up to the formation of Nepal's new constitution and highlights the implications the new constitution will have for the Nepalese people.

3. Rabin Pathak et al, "Gender Identity: Challenges to Accessing Social and Health Care Services for Lesbians in Nepal" Global Journal of Health Science, Volume 2, Number 2, (October 2010), online: <http://www.ccsenet.org/journal/index.php/gjhs/article/view/6667/5903>

- **Lesbians often face discrimination and harassment in public institutions**
- **Since the legal changes in 2007 and 2008, some of the participants in the study found it easier to come out in Nepal**
- **Study participants were consistently verbally abused in public places**
- **None of the participants reported discrimination in religious institutions; on the contrary, it was in temples and other religious buildings that they often felt the safest**
- **The participants often found it difficult to make appointments with doctors once they had come out as being lesbian**
- **Most of the participants suffered from depression and psychological problems that seemed to stem from the oppression they faced throughout their life**

This study analyzes the difficulties lesbians face in accessing health and social services in Nepal. It is important to note that only fifteen women participated in the study, although the analysis of each participant was very thorough.

4. Pratima Narayan, "Somewhere over the Rainbow: International Human Rights Protections for Sexual Minorities in the New Millennium", 24 B.U. Int'l L.J 321 (2006), online: <http://www.bu.edu/law/central/jd/organizations/journals/international/volume24n2/documents/313-348.pdf>

- **In 2005, Human Rights Watch accused the Nepalese police of mistreating 39 members of the Blue Diamond Society in Nepal. Such mistreatment is apparently systemic within the Nepalese police department.**

This piece first traces the history of LGBT oppression in a variety of international communities before outlining how international bodies like the UN can act to protect LGBT rights in the future. Specifically, the piece focuses on major international agreements (such as the Universal Declaration of Human Rights) that will be most helpful in this cause. Finally, the piece contrasts how nations with formal LGBT legal protections differ from those that do not have such protections.

End of report