

**ANALYSIS OF NEPALI LEGISLATIONS FROM HUMAN RIGHTS PERSPECTIVE OF  
INTERSEX PEOPLE**

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## **TERMINOLOGIES**

### **Gender**

refers to people's internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours into male and female roles which vary across history, societies, cultures, and classes. Gender is hence strongly linked to society's expectations and is not exclusively a biological matter.

### **Gender Expression**

refers to people's manifestation of their gender identity, and the one that is perceived by others. Typically, people seek to make their gender expression or presentation match their gender identity, irrespective of the sex that they were assigned at birth.

### **Gender Identity**

refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and/ or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech, and mannerisms.

### **Gender Variant**

refers to persons whose gender expression differs from stereotypical expectations and to varying degrees does not conform to gender-based norms and expectations of society.

### **Intersex**

refers to persons who cannot be classified as male or female with regard to their chromosomal, gonadal, or anatomical sex. The latter becomes evident, for example, in secondary sex characteristics such as muscle mass, hair distribution, and stature, or primary sex characteristics such as the inner and outer genitalia and/or the chromosomal and hormonal structure.

### **LGBTIQ**

refers to Lesbian, Gay, Bisexual, Trans, Intersex, and Queer. Although all of the different sub-groups within "LGBTIQ" are often organised together, there are specific needs and concerns related to each community within the acronym.

### **Sex**

refers to the biological term designating a certain combination of gonads, chromosomes, external organs, secondary sex characteristics, and hormonal balances. Common terms are 'male', 'female', and 'intersex'.

### **Sex Characteristics**

refer to the chromosomal, gonadal, and anatomical features of a person, which include primary sex characteristics such as reproductive organs and genitalia and/or chromosomal structures and hormones and secondary sex characteristics such as muscle mass, hair distribution, breasts, and stature.

## **Transgender**

refers to an inclusive umbrella term referring to those people whose gender identity and/or gender expression differs from the sex they were assigned at birth. Trans does not refer to sexual orientation and trans people may have any sexual orientation.

## **Transition**

refers to a complex, multi-step process that can take years in which a trans person aligns their anatomy and/or their gender expression with their gender identity. They go from living and identifying as one gender to living and identifying as another.

## **SOGISIEC**

An acronym for sexual orientation, gender identity, gender expression, and sex characteristics.

## **NON-BINARY**

An adjective describing people whose gender identity falls outside the male-female binary. Non-binary is an umbrella term that encompasses a wide variety of gender experiences, including people with a specific gender identity other than man or woman, people who identify as two or more genders (bigender or pan/polygender), and people who don't identify with any gender (agender).

## **HETEROSEXISM/HETERONORMATIVITY**

Viewing heterosexuality as superior; assuming all people are heterosexual.

## **TABLE OF CONTENT**

- I. INTRODUCTION
  - A. SEXUAL AND GENDER MINORITIES OF NEPAL
  - B. THE 'T' IN LGBTQIA++- INTERSEX PEOPLE
  - C. SITUATION OF INTERSEX PEOPLE IN NEPAL
- II. METHODOLOGY
- III. LEGAL FRAMEWORK FOR INTERSEX COMMUNITY
  - A. INTERNATIONAL OBLIGATIONS
  - B. CONSTITUTIONAL FRAMEWORK OF NEPAL
- IV. ANALYSIS OF NEPALI LEGISLATIONS FROM AN INTERSEX HUMAN RIGHTS PERSPECTIVE
  - A. LEGAL RECOGNITION
  - B. CHILD PROTECTION MEASURES
  - C. INCLUSIVE EDUCATION
  - D. HEALTH

E. MARRIAGE AND FAMILY RIGHTS

F. SOCIAL SECURITY

G. EMPLOYMENT

V. CONCLUSION AND RECOMMENDATIONS

A. CONCLUSION

B. RECOMMENDATIONS

## I. INTRODUCTION

### A. SEXUAL AND GENDER MINORITIES OF NEPAL

Nepal's Ministry of Home Affairs Directive on Other Gender, 2069 B.S.<sup>1</sup> defines sexual and gender minorities as 'people who are lesbian, gay, bisexual, transgender and intersex'.<sup>2</sup> It defines *other* as 'sexual and gender minorities who are not male or female'.<sup>3</sup>

Gender minorities are 'individuals whose gender identity (man, women, other) or expression (masculine, feminine, other) is different from their sex (male, female) assigned at birth'.<sup>4</sup> Sexual minorities are 'individuals who identify as gay, lesbian, or bisexual, or who are attracted to or have sexual contact with people of the same gender'.<sup>5</sup>

There is no universally accepted English language word, phrase, or acronym for people whose biological sex, sexuality, gender identity, and/or gender expression depart from majority norms. These phrases are meant to include lesbians, gay men, bisexuals and transgender people (LGBT); intersex people; gender non-conforming people; and people involved in same-sex relations who may not see themselves as lesbian, gay or bisexual, possibly preferring another word to self-identify (such as polyamorous, queer or two-spirited) or possibly preferring no label at all.<sup>6</sup> The concept of sexual and gender minorities includes considerable diversity as well as a multiplicity of identities and behaviours.<sup>7</sup> Out of these diverse people, this report specifically deals with people with intersex traits. However, many issues come in intersection with all of sexual and gender minorities.

The Census of 2011 of Nepal identified only 1,500 individuals as 'third gender'.<sup>8</sup> The then census used the wording 'third gender' to identify sexual minorities. Many sexual minority activists report that these numbers were extremely less than the reality pertaining to the lack

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<sup>1</sup> Queer Youth Group and Campaign for Change, Ministry of Home Affairs directive on others gender : Violation of human rights, 2021, pg. 39, available at <https://nepalcfp.org/othergender-complaint/>, accessed on 13 June 2022.

<sup>2</sup> Nepal's Ministry of Home Affairs Directive on Other Gender, 2069 B.S., Rule 2(3).

<sup>3</sup> Ibid., Rule 2(4).

<sup>4</sup> Centers for Disease Control and Prevention, *Terminology*, available at <https://www.cdc.gov/healthyouth/terminology/sexual-and-gender-identity-terms.htm>, accessed on 17 June 2022.

<sup>5</sup> Ibid.

<sup>6</sup> Jeffrey O'Malley et al. *Sexual and gender minorities and the Sustainable Development Goals*, United Nations Development Programme, 2018, pg. 27, available at [https://www.undp.org/sites/g/files/zskgke326/files/publications/SDGs\\_SexualAndGenderMinorities.pdf](https://www.undp.org/sites/g/files/zskgke326/files/publications/SDGs_SexualAndGenderMinorities.pdf)

<sup>7</sup> Ibid, pg. 28.

<sup>8</sup> The Kathmandu Post, The inclusivity problem with Nepal's census, 18 May 2021, available at <https://kathmandupost.com/art-culture/2021/05/18/the-inclusivity-problem-with-nepal-s-census>

of social acceptance and recognition in Nepali society.<sup>9</sup> On 2021, Nepal Government used ‘other’ as a reference to sexual minorities while collecting data for the census which received wide international acclamation.<sup>10</sup> The use of the terminology ‘other’ and the limited use of ‘other’ in census questions<sup>11</sup> drew huge criticism and backlash from the entire community. Esan Regmi, an activist and a intersex man and Rukshana Kapali, an activist and a transgender woman filed a writ petition at the Supreme Court of Nepal questioning the lack of inclusiveness in all of the questions of the census.<sup>12</sup> Their writ petition asks for the removal of the word ‘other’ and inclusion of other categories representing the sexual and gender minorities as well as collecting disaggregated data of SOGIESC.. The writ petition is pending at the Supreme Court even after the completion of collecting data for census.

The Government of Nepal published a Preliminary Report of the Census 2021 which included the total population of the country as 2,91,92,480 including 1,42,91,311 males and 1,49,01,169 females.<sup>13</sup> Despite a section of ‘other’ with options of ‘male’ and ‘female’ in the question of gender in the Census Questionnaire,<sup>14</sup> The Preliminary Report does not include any data on the ‘other’ section, i.e., data ‘other’ population. The report claims the total population of Nepal to include- a total of male and female population<sup>15</sup> - which ignores the existence of sexual minorities within the population of Nepal. Esan Regmi, a intersex man and an activist shares that in the consultation with LGBTQIA++ population regarding census, the concerned ministries and stakeholders failed to include intersex people within the discussion. He explains the need of disaggregated data on basis of ‘sex’ and ‘gender’

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<sup>9</sup> Ibid.

<sup>10</sup> ABC News, Nepal census will add 3rd gender, recognizing LGBT minority, available at <https://abcnews.go.com/International/wireStory/nepal-count-lgbt-population-census-1st-time-68793726>, accessed on 17 June 2022.

<sup>11</sup> Kathmandu Post, Main census questionnaire does not recognise queer people, 16 November 2021, available at <https://kathmandupost.com/national/2021/11/16/main-census-questionnaire-does-not-recognise-queer-people>, accessed on 16 June 2022.

<sup>12</sup> *Rukshana Kapali v. Central Bureau of Statistics*, Writ no. 077-WO-1243.

<sup>13</sup> Government of Nepal, National Planning Commission, Central Bureau of Statistics, Preliminary Report of National Population 2021, 27 January 2022, pg. 8, available at <https://censusnepal.cbs.gov.np/Home/Details?tpid=5&dcid=3479c092-7749-4ba6-9369-45486cd67f30&tfsid=17> accessed on 04 June 2022.

<sup>14</sup> Nepal Government, Nepal Gazette, available at <https://drive.google.com/file/d/1oQnF7unyQY2smlPEToBWCB-NO8HdzPIR/view>

<sup>15</sup> Government of Nepal, National Planning Commission, Central Bureau of Statistics, Preliminary Report of National Population 2021, 27 January 2022, pg. 8, available at <https://censusnepal.cbs.gov.np/Home/Details?tpid=5&dcid=3479c092-7749-4ba6-9369-45486cd67f30&tfsid=17> accessed on 04 June 2022.

separately like the census of Kenya<sup>16</sup>. He explains, identifying people of intersex variation in Nepal as a part of the census is a preliminary step to formulating intersex friendly policies.<sup>17</sup>

## **B. THE “I” IN LGBTQIA++ - INTERSEX PEOPLE**

Intersex is included under the LGBTQIA+ umbrella. The alliance of these populations arose from a shared experience of discrimination based on harmful assumptions about gender and biology.

All people, regardless of their sex characteristics, have a sexual orientation and a gender identity. In other words, sexual orientation, gender identity, and sex characteristics are distinct concepts. Sexual orientation refers to how a person characterizes their emotional and physical attraction to the same and/or other genders. Gender identity refers to a person's inner sense of being a girl/woman/female, boy/man/male, or something else.

People with intersex variations are born with sex characteristics including genitals, gonads, and chromosome patterns, that do not fit typical binary notions of male or female bodies.<sup>18</sup>

Intersex is a general term used to refer to individuals born with, or who develop naturally in puberty, biological sex characteristics which are not typically male or female. It is an umbrella term for people born with variations of sex characteristics, chromosomes, and/or hormones which may not correspond with societal and medical expectations.<sup>19</sup> Some chromosomal intersex variations may not be physically apparent at all.<sup>20</sup> Being intersex relates to biological sex characteristics, and is distinct from a person's sexual orientation or gender identity. An intersex person may be straight, gay, lesbian, bisexual, or asexual, and may identify as female, male, both, or neither.<sup>21</sup>

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<sup>16</sup> Republic of Kenya, 2019 Kenya Population and Housing Census, 2019, pg. 3, available at <https://housingfinanceafrica.org/app/uploads/VOLUME-II-KPHC-2019.pdf>

<sup>17</sup> *In Conversation with Esan Regmi, an intersex man and an activist. Conversation on August 2, 2022.*

<sup>18</sup> Free & Equal, United Nations campaign for LGBTI equality, Intersex factsheet, available at: <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>

<sup>19</sup> Office of the High Commissioner for Human Rights, African Commission on Human and Peoples' Rights, Council of Europe Office of the Commissioner for Human Rights, Inter-American Commission on Human Rights, et al. (24 October 2016).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

There are over 30 medical terms for specific combinations of intersex traits<sup>22</sup>. Every intersex person is different.<sup>23</sup> Experts estimate between 0.5 percent and 1.7 percent of the population is born with intersex traits.<sup>24</sup>

Intersex activism diverges in important ways from feminist, queer, lesbian and gay, and trans activism. There is a pressing need for research that highlights the experiences, understandings, and views of intersex people.

### C. SITUATION OF INTERSEX PEOPLE IN NEPAL

There is no specific data on the number of intersex people in Nepal. The situation of intersex people was elaborately discussed during the first 1<sup>st</sup> Intersex National Meeting held in Nepal on 8<sup>th</sup> and 9<sup>th</sup> February 2016 where intersex people gathered to share their stories and experiences in Nepal.<sup>25</sup> The compilation of stories included key challenges faced by intersex people in Nepal which included lack of access to proper health care services including reproductive health, lack of research and movement focusing on Intersex people within the LGBTI Movement, lack of marriage and inheritance rights, difficulty in amending names and gender in national certificates, increasing growth of surgeries for intersex genital mutilation, etc.<sup>26</sup> Some of the stories shared by the participants included dropping out of school due to the lack of supportive school environment,<sup>27</sup> contradiction of gender in legal documents and physical attributions,<sup>28</sup> isolation,<sup>29</sup> and lack of family support.<sup>30</sup>

Intersex people face marginalization within the LGBTQIA++ movement in Nepal.<sup>31</sup> Intersex people are generally misunderstood as transgender and third gender. The societal

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<sup>22</sup> Some of the examples include: 46, XX salt-wasting Congenital Adrenal Hyperplasia (SWCAH); Androgen Insensitivity Syndrome (AIS); 46, XY partial gonadal dysgenesis; Hypospadias and Epispadias, etc.

<sup>23</sup> InterACT, Advocate for intersex Youth, *Intersex definitions*, available at <https://interactadvocates.org/intersex-definitions/>

<sup>24</sup> Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work: A learning guide, 2022, pg. 4, accessed from [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_846108.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_846108.pdf)

<sup>25</sup> Regmi, Esan, *Stories of Intersex People from Nepal*, 2016, available at <https://intersexday.org/wp-content/uploads/2016/10/Intersex-Stories-in-Nepal.pdf>

<sup>26</sup> Ibid, pg. 5.

<sup>27</sup> Ibid, pg. 21-22.

<sup>28</sup> Ibid, pg. 19.

<sup>29</sup> Ibid, pg. 18.

<sup>30</sup> Ibid, pg. 9.

<sup>31</sup> At a panel discussion during the 1st National Intersex Workshop, “Basudev Bajgain of the National Human Rights Commission of Nepal spoke about how the intersex community [...] are facing discrimination even within the LGBTI community. [...]”, see <http://stop.genitalmutilation.org/post/Intersex-Genital-Mutilations-in-Nepal-Pt-1>



ignorance and stereotypes are compounded by religious prejudice framing intersex as a result of karmic debt caused by sins in a previous life, and as a bad omen.<sup>32</sup> The NGO Report to the 6th Report of Nepal on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) titled *Intersex Genital Mutilations Human Rights Violations Of Children With Variations Of Reproductive Anatomy* presented evidences of Intersex Genital Mutilation occurring in various children clinics and hospitals of Nepal.<sup>33</sup>

The Human Rights Treaty bodies such as CEDAW Committee CEDAW committee expressed its concerns about ‘Discrimination against intersex persons, namely, abuse, reported infanticide, forced marriage and the conduct of medically unnecessary procedures on Nepali intersex infants and children on the territory of the State party or abroad before they reach an age at which they are able to provide their free, prior and informed consent.’<sup>34</sup>

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<sup>32</sup> Intersex Genital Mutilations Human Rights Violations of Children With Variations Of Reproductive Anatomy, NGO Report to the 6th Report of Nepal on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2018, pg. 11.

<sup>33</sup> Ibid, pg. 13.

<sup>34</sup> Committee on the Elimination of Discrimination against Women, CEDAW/C/NPL/CO/6, 2018, pg. 6.

## II. METHODOLOGY

This study is based on a descriptive and empirical research design. The report concerns extensive desk reviews of literatures concerning rights and issues of sexual and gender minorities. In the first stage literatures on sexual and gender minorities was reviewed. Research on Intersex people was given utmost priority. It was further explored from the human rights perspective of people with intersex traits. The normative base of the literature review is international human rights law. The constitutional and legal provisions of Nepal in this area are examined from a protectionist perspective of intersex people. During the course of writing this report, 2 intersex and 1 parent of intersex child were interviewed. Their experiences give a holistic perspective on the situation of intersex people of Nepal. However, their experiences cannot be generalised.

The review includes a detailed study of international and national legislation on intersex people. This research reviews holistically general legislations pertaining to the existence of Nepali citizens. It seeks to draw a comparison of national and international laws and practices in the protection of the rights of intersex people.

This is first-of-its-kind research in Nepal. This research hopes to set a ground for further research in this area. The objectives of this research are to i) aware the readers about the existence of intersex people and their issues; ii) identify legal gaps in the existing legislation to protect the human rights of intersex people.

This research although traces upon diverse issues of people with intersex variations, highlights the issues of intersex people. Pertaining to time constraints and difficulties due to the pandemic, this research is limited to theoretical study only.

### III. LEGAL FRAMEWORK FOR INTERSEX POPULATION

#### A. INTERNATIONAL OBLIGATIONS

Nepal is obligated to protect intersex people through ratification of various international treaties.

##### a. Human Rights Treaties

Nepal is a party to six out of the nine core human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR)<sup>35</sup>, The Convention On The Rights Of The Child (CRC)<sup>36</sup>, The Convention on The Elimination Of All Forms Of Discrimination Against Women (CEDAW)<sup>37</sup> and The Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>38</sup> and The Four Geneva Conventions<sup>39</sup>. Under Nepal Treaty Act 1990, Nepal, as a state party to the ratified treaties is obligated to implement the treaties as any statutory law of Nepal.<sup>40</sup>

Even though there are currently no specific provisions for intersex persons, rights contained in international human rights treaties apply to all people and thus to intersex persons. Such an interpretation was also confirmed by the UN Committee on Economic, Social and Cultural Rights where it considered that “other status” also includes “gender identity ... among the prohibited grounds of discrimination”<sup>41</sup>.

At the core of the international human rights law framework are the principles of equality and human dignity. The 1948 Universal Declaration of Human Rights enshrined in its preamble the ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family’ as the ‘foundation of freedom, justice and peace in the world’. All human rights instruments are to be read and interpreted in light of these underlying principles.

Intrinsically linked to these principles, the principle of non-discrimination is embodied in the Charter of the United Nations; the Universal Declaration of Human Rights; and all the core human

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<sup>35</sup> ICCPR ratified by Nepal in 1991.

<sup>36</sup> CRC ratified by Nepal in 1990

<sup>37</sup> CEDAW ratified by Nepal in 1991

<sup>38</sup> CAT ratified by Nepal in 1991.

<sup>39</sup> Four Geneva Conventions were ratified by Nepal in 1964.

<sup>40</sup> Treaty Act of Nepal, 1990, Section 9(1).

<sup>41</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20.

rights treaties.<sup>42</sup> The specific grounds for discrimination referred to in these instruments are not exhaustive.<sup>43</sup>

Sexual orientation and gender identity – like disability, age and health status – have progressively been added to the list of prohibited grounds by treaty bodies, charged with the interpretation of these instruments. In the general comments,<sup>44</sup> the Committee on Economic, Social and Cultural Rights (CESCR)<sup>45</sup>; the Committee on the Rights of the Child (CRC)<sup>46</sup>; the Committee Against Torture (CAT)<sup>47</sup>; and the Committee on the Elimination of Discrimination against Women (CEDAW)<sup>48</sup> explicitly included the prohibited grounds of sexual orientation and gender identity in the implementation and interpretation of the treaty they are respectively tasked to monitor.

## **b. Yogyakarta Principles**

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<sup>42</sup> Universal Declaration of Human Rights (Art 1); International Covenant on Civil and Political Rights (Art 26); International Covenant on Economic, Social and Cultural Rights (Art 2); Convention on the Elimination of all Forms of Discrimination against Women (Art 1); International Convention on the Elimination of all Forms of Racial Discrimination (Art 1.1); Convention on the Rights of the Child (Art 2); and Convention on the Rights of Persons with Disabilities (Art 2).

<sup>43</sup> UNHRC, 'Report of the Office of the United Nations High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity' (2015) UN Doc A/HRC/29/23; UNHRC, 'Report of the Office of the United Nations High Commissioner for Human Rights on discrimination and violence against individuals based on their sexual orientation and gender identity' (2011) UN Doc A/HRC/19/41.

<sup>44</sup> General comments are defined as 'a treaty body's interpretation of the content of human rights provisions, on thematic issues or its methods of work. General comments often seek to clarify the reporting duties of state parties with respect to certain provisions and suggest approaches to implementing treaty provisions. Also called "general recommendation" (CERD & CEDAW)'.

<sup>45</sup> CESCR, 'General Comment n 22: Right to sexual and reproductive health' (Art 12) (2016) UN Doc E/C.12/GC/22, para 9. CESCR, 'General Comment n 20: Non-discrimination in economic, social and cultural Rights (Art 2, para 2)' (2009) UN Doc E/C.12/GC/20, para 32. CESCR, 'General Comment n 19: Right to Social Security (Art 9)' (2008) UN Doc E/C.12/GC/19, para 29. CESCR, 'General Comment n 15: Right to Water (Arts 11 and 12)' (2002) UN Doc, E/C.12/2002/11, para 13. CESCR, 'General Comment n 14: Right to the highest attainable standard of health (Art 12)' (2000) UN Doc E/C.12/2000/4, para 18. CESCR, 'General Comment n 18: Right to Work (Art 6)' (2006) UN Doc E/C.12/GC/18, para 12.

<sup>46</sup> CRC, 'General Comment n 13: Right of the child to freedom from all forms of violence' (2011) UN doc CRC/C/GC/13, para 72. CRC, 'General Comment n 4: Adolescent health and development in the context of the Convention on the Rights of the Child' (2003) UN Doc CRC/GC/2003/4. CRC, 'General Comment n 3: HIV/AIDS and the rights of the child' (2003) UN Doc CRC/GC/2003/1.

<sup>47</sup> CAT, 'General Comment n 3 (Art 14)' (2012) UN Doc CAT/C/GC/3, para 8.

<sup>48</sup> CEDAW, 'General Recommendation n 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (2010) UN Doc CEDAW/C/GC/28, para 18. CEDAW, 'General recommendation n 27 on older women and protection of their human rights' (2010) UN Doc CEDAW/C/2010/47/GC.1, para 13.

The Yogyakarta Principles are a first of kind set of principles on the application of international human rights law in relation to sexual orientation and gender identity developed in Yogyakarta, Indonesia at Gadjah Mada University from 6 to 9 November 2006.<sup>49</sup>

The Yogyakarta Principles ensure the right to universal enjoyment of human rights, non-discrimination, and recognition before the law.<sup>50</sup> It stresses that forced medical procedures, like sterilization or sex reassignment surgery, cannot be required for legal recognition.<sup>51</sup> It stresses on Rights to human and personal security.<sup>52</sup> The Principle highlights the principle of non-discrimination in the enjoyment of economic, social, and cultural rights with includes housing, employment, social security, education as well as sexual and reproductive health rights that include the right to informed consent<sup>53</sup> and sex reassignment therapy.<sup>54</sup>

### **c. Yogyakarta Principles plus 10**

The YP plus 10 was adopted on 10 November 2017 to supplement the Yogyakarta Principles. The YP plus 10 document emerged from the intersection of the developments in international human rights law with the emerging understanding of violations suffered by persons on grounds of sexual orientation and gender identity and the recognition of the distinct and intersectional grounds of gender expression and sex characteristics.<sup>55</sup> This supplemental document highlights the assurance of state protection to everyone from violence *regardless of sexual orientation, gender identity, gender expression, or sex characteristics from violence, discrimination, and other harm*.<sup>56</sup> It expresses stern responsibility of the State to ensure the right to legal recognition,<sup>57</sup> bodily integrity, and mental integrity,<sup>58</sup> right against criminalization,<sup>59</sup> among others.

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<sup>49</sup> About Yogyakarta Principles, available at <https://yogyakartaprinciples.org/principles-en/about-the-yogyakarta-principles/>

<sup>50</sup> Yogyakarta Principles, Principle 1-3.

<sup>51</sup> Ibid, Principle 3.

<sup>52</sup> Ibid, Principle 4-11.

<sup>53</sup> Ibid, Principle 18.

<sup>54</sup> Ibid, Principle 12-18.

<sup>55</sup> About Yogyakarta Principles Plus 10, available at <https://yogyakartaprinciples.org/principles-en/yp10/>

<sup>56</sup> Ibid, Principle 30.

<sup>57</sup> Ibid, Principle 31.

<sup>58</sup> Ibid, Principle 32.

<sup>59</sup> Ibid, Principle 33.

## **B. CONSTITUTIONAL FRAMEWORK**

There are no national legislations for people with intersex variations specifically in Nepal. However, the Constitution of Nepal attributes to progressive standards for the protection of sexual and gender minorities. Other legislations are widely discussed in the next chapter below.

Article 12 states that citizens will be allowed to choose their preferred gender identity on their citizenship document.<sup>60</sup>

Article 18 states that gender and sexual minorities will not be discriminated against by the state and by the judiciary in the application of laws. It further adds that the government may make special provisions through laws to protect, empower and advance the rights of gender and sexual minorities and other marginalized and minority groups.<sup>61</sup>

Article 42 lists gender and sexual minorities among the groups that have a right to participate in state mechanisms and public services to promote inclusion.<sup>62</sup> Further national frameworks are discussed extensively in the next chapter below.

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<sup>60</sup> Constitution of Nepal, 2072, art. 12.

<sup>61</sup> *Ibid.*, art. 18.

<sup>62</sup> *Ibid.*, art. 42.

## IV. ANALYSIS OF NEPALI LEGISLATIONS FROM HUMAN RIGHTS PERSPECTIVE OF INTERSEX PEOPLE

### A. LEGAL RECOGNITION

Legal gender recognition involves laws, policies or administrative procedures and processes which set out how gender-diverse people can change their sex/gender marker and names on official identity documents.<sup>63</sup>

The Constitution of Nepal ensures every citizen's right to obtain a citizenship.<sup>64</sup> The constitution has ensured citizenship with *identity of descent and gender*, recognizing the right to obtain citizenship with gender identity.<sup>65</sup> However, the enabling act on the issues of citizenship, The Citizenship Act of 2006 A.D. (2063 B.S.) has no provision for obtaining the citizenship certificate recognizing gender identity. The wordings in the Act are gender binary such as 'son-daughter' and 'mother-father'<sup>66</sup>. The acquisition of Nepalese citizenship by descent is conditional on the existence of both the father and mother of the child<sup>67</sup> which "excludes children of LGBTQIA++ people.

Recently, the House of Parliament passed a Bill on the amendment of the The Citizenship Act of 2006 A.D.<sup>68</sup> While amending the legislation to include sexual and gender minorities were in talks, the bill was tabled without any proposal for amendment of legislation that would provide intersex people with rights to easily include their gender identity or change their names and gender identity in the citizenship. The parliament bypassed this issue.

Although Parliament has played a lethargic role, the Supreme Court has played a pivotal role in securing sexual and gender minorities right to recognition in legal documents and certificates. The Supreme Court in the case of *Sunil Babu Pant v. Government of Nepal*<sup>69</sup>, directed the state to recognize every individual with their own gender identity and sexual orientation. As a result of

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<sup>63</sup> The International Lesbian, Gay, Bisexual, Trans and Intersex Association, Trans Legal Mapping Report, September 2020, pg. 8, available at [https://ilga.org/downloads/ILGA\\_World\\_Trans\\_Legal\\_Mapping\\_Report\\_2019\\_EN.pdf](https://ilga.org/downloads/ILGA_World_Trans_Legal_Mapping_Report_2019_EN.pdf)

<sup>64</sup> Constitution of Nepal, 2072, art. 10.

<sup>65</sup> Constitution of Nepal, 2072, art. 12.

<sup>66</sup> The Citizenship Act of 2006 A.D. (2063 B.S.)

<sup>67</sup> Constitution of Nepal, 2072, Chapter 2.

<sup>68</sup> The Kathmandu Post, Everything you need to know about new amendment to the Citizenship Act, 25 July 2022, available at <https://kathmandupost.com/national/2022/07/25/everything-you-need-to-know-about-new-amendment-to-the-citizenship-act>

<sup>69</sup> Supreme Court of Nepal, *Sunil Babu Pant v. Government of Nepal*, NKP 2065, Decision No: 7958, Decision date: 2064-09-06.

this decision, a circular<sup>70</sup> was issued to confer citizenship certificates to sexual minorities and gender minorities- mentioning their gender as 'Other' instead of male or female. Till date, Nepali people are provided with three options in the section of 'gender'- male, female and other. The inclusion of the word 'other' in other governmental forms for citizenship, such as the recommendation from the ward office (sifaris), local investigation (*sarjamin muchulka*), confirmation (*sanakhat*)<sup>71</sup> is a progressive testament shown by the Nepal Government. However, after the regulation to add an 'other' section on legal documents on 2013 A.D., no further progressive documents have been framed for the intersex people. On the contrary, many sexual and gender minorities question the 'other' identification, which according to them, further stigmatizes individuals.<sup>72</sup> Intersex is related to variation of sex characteristic and not gender identity, so there are some intersex people who identify themselves as cis gender. However, they are forced to mark themselves as 'other' in the citizenship and passport's category of gender. *Nabin Chaudhary*<sup>73</sup>, an intersex individual says that he does not identify with the 'other' marker in the citizenship and identifies himself as a 'male'. Having been born with the social identification as a girl, Nabin shares he changed his name from a 'girl's name' to his while he was studying in Grade 7. Because of his name, he initially got citizenship as a 'male'. However, because of the LGBTQIA++ movement, he shares that he believed that belonged to an 'other' category in the citizenship. So, with the flow in the movement, he too changed his citizenship into 'other'. He shares how because of his lack of awareness and knowledge of his sex traits; he was unable to make a decision then.

The right to amend one's citizenship on the basis of gender identity is still missing from the realm of citizenship protection. The Citizenship Act of Nepal stipulates the possibility of amending the citizenship only in the name, age, address or nominal particulars of the citizenship.<sup>74</sup> Many intersex people compliant of being asked to show 'sex reassignment surgeries' while processing their citizenship into include their preferred name and gender identity.

The Birth, Death and Other Personal Events (Registration) Regulation, 2034 B.S.(1977 A.D.)<sup>75</sup> and the Safe Motherhood and Reproductive Rights Act, 2018<sup>76</sup> necessitates providing the

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<sup>70</sup> Circular by the Ministry of Home Affairs, Registration No. 180/2069/70, issued on January 20, 2013.

<sup>71</sup> Nepali Citizenship Regulation, 2063, pg. 14-17.

<sup>72</sup> Safe Motherhood and Reproductive Rights Act, 2074, Section 9.

<sup>73</sup> *In conversation with Nabin Chaudhary, a man with intersex variation. Conversation on August 1, 2022.*

<sup>74</sup> Nepal Citizenship Act, 2063, Section 17.

<sup>75</sup> The Birth, Death and Other Personal Events (Registration) Regulation, 2034 B.S.(1977 A.D.), Section 5.

<sup>76</sup> Safe Motherhood and Reproductive Rights Act, 2018, Section 9.



information of birth to the local authorities within a stipulated time. The regulation provides a 'birth information form'<sup>77</sup> which includes 'other' as a gender option along with male and female. There is no legislation that compulsorizes the need of including the word 'other' in the said birth information form. Within 35 days of the birth, the identification required must be on the basis of the child's sex traits. During birth, the child can either have 'male' 'female' or 'intersex' traits visibly seen. However, infliction of 'other' by the birth information form- already tries to put the child into a complex bracket of gender and sexual minorities which is inherently unfair to the child. Under social pressure, lack of knowledge and fear of stigma and discrimination, parents tend to give a gender- either male or female to their child. On contrary to this trend, Safe Motherhood and Reproductive Rights Regulation,2077 issues a format for 'birth certificate' to be provided by hospitals which include the option of 'male/female/*undetermined*'.<sup>78</sup> No legislation defines or complusorizes the need of including 'undetermined'. There are two different rules that highlight two different identities- 'other' or 'undetermined' in the birth forms- which is confusing and illegal as no law compels to do so. Considering all the problematic situation for intersex child, the Committee on Rights of Child expressed its concerns on the challenges faced by intersex children in accessing identity documents that correspond with the sex/gender identity of their choosing. The Committee recommended Nepal government to ensure that intersex children have access to identity documents that correspond with the sex/gender identity of their choosing.<sup>79</sup> However, Nepal has heeded no effort till date.

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<sup>77</sup> The Birth, Death and Other Personal Events (Registration) Regulation, 2034 B.S.(1977 A.D., Annex 2.

<sup>78</sup> Safe Motherhood and Reproductive Rights Regulation, 2077, Annex 2, pg. 12. .

<sup>79</sup> Ibid.

## **CASE STUDY OF A PARENT OF AN INTERSEX CHILD- HIS FIGHT FOR HIS CHILD'S BIRTH CERTIFICATE<sup>80</sup>**

Madan Kurmi, a parent of a child with intersex variation, shares his struggle for getting a birth certificate of his child. Madan Kurmi says he as a parent knew of the bodily difference of his child but never felt that that was in any way 'abnormal' or 'different'. He took it as a blessing of the god. When he went to the local village development committee to get the birth certificate of his child in 2064 B.S., his application was rejected by the committee. Madan didn't give up there. He filed an application at the District Development Committee of his district then. Madan didn't receive any information about his application for 4 months. During this time, the media highlighted this issue which got the attention of the Blue Diamond Society. Blue Diamond Society called Madan and his child at Kathmandu to understand Madan's issue. By taking a loan of NRS. 2500, Madan came to Kathmandu with the hope of getting his child a birth certificate. Madan filed a petition at the then Local Development Ministry asking the government to order local bodies to give his child a birth certificate. On June 23, 2007 Madan received a decision from the then Cabinet of Ministers ordering the local authorities of his village to give Madan's child a birth certificate. With the letter at hand, Madan then received a birth certificate from the local authorities of his place- identifying his child as 'both male and female'. During the conversation, Madan shares that although his struggle for his child's birth certificate was a success- he fears the struggles he is yet to face for getting his child's citizenship in Nepal.

Worldwide, countries like Denmark allow the change of gender without the need for medical evidence of surgeries and the process is an administrative process rather than lengthy legal or judicial process. It even allows the people to receive a passport with the gender marker 'X'<sup>81</sup> like other countries such as Canada<sup>82</sup> for people who do not want to be included as male, female or others. Another worthy example of legal recognition is Malta, where gender marker changes and name change is possible '*in order to reflect that person's self- determined gender identity*' with

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<sup>80</sup> *As in Conversation with Madan Kurmi, a parent of an intersex child. Conversation on August 2, 2022.*

<sup>81</sup> The International Lesbian, Gay, Bisexual, Trans and Intersex Association, Trans Legal Mapping Report, September 2020, pg. 129, available at [https://ilga.org/downloads/ILGA\\_World\\_Trans\\_Legal\\_Mapping\\_Report\\_2019\\_EN.pdf](https://ilga.org/downloads/ILGA_World_Trans_Legal_Mapping_Report_2019_EN.pdf) ; Denmark, *Law 752/2014. Motion to Amend the Act on the (Danish) Civil Registration System.*

<sup>82</sup> Government of Canada: <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/gender-x-documents.html>

self-declaration only.<sup>83</sup> Srilanka, a South Asian country allows name change and gender marker change but only limited to transgender people.<sup>84</sup> It is interesting to note how a province of Canada, Newfoundland and Labrador allows ‘X’ markers on birth certificates for people 16 years and older.<sup>85</sup>

All in all, when the world is evolving to various contexts of gender marker change and name change- Nepal is still struggling to give recognition as ‘others’. Nepal is yet to critically analyse the jurisprudence and viability of ‘others’ considering the diversification.

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<sup>83</sup> Ibid, pg. 146; Malta, *Gender Identity, Gender Expression, and Sex Characteristics Act 2015*.

<sup>84</sup> Ibid, pg. 103.

<sup>85</sup> CBC News, X marks the spot: Gemma Hickey breaks new ground with gender-neutral birth certificate”, 14 December 2017:

<https://www.cbc.ca/news/canada/newfoundland-labrador/gemma-hickey-secures-gender-neutral-birth-certificate-1.4448562>

## **B. CHILD PROTECTION MEASURES**

There is a need to take measures to protect the bodily autonomy of intersex children and adults and their rights to health and to physical and mental integrity so that they live free from violence and harmful medical practices. The United Nations Human Rights Council stresses that ‘Medically unnecessary surgeries, hormonal treatments and other invasive or irreversible non-vital medical procedures without their free, prior, full and informed consent are harmful to the full enjoyment of the human rights of intersex persons.’<sup>86</sup>

Nepal’s reformed and new legislation for children- The Act Relating to Children 2075,<sup>87</sup> although progresses in protection of children, does not mention the special needs of intersex children, at all. However, it does guarantee the protection of children against medical experiments. The Act stipulates the use of children for medical experiments as an offence<sup>88</sup> with a punishment up to 75,000 and imprisonment up to three years.<sup>89</sup> Yet, there are no legal regimes to protect children from harmful practices including their non-consensual surgeries.

The use of neutral language is a necessity to include child born with intersex variations conforming children into protections provided by Nepalese legislation. The terminologies such as ‘child’ is used in the legislation prohibiting child marriage,<sup>90</sup> prohibition on abandoning a child,<sup>91</sup> prohibition against child sexual abuse,<sup>92</sup> prohibition on kidnapping a child.<sup>93</sup> However, other legislations narrow down the concept of gender to a boy and a girl, prohibiting the access of these laws to the intersex children. For instance, the law on prohibition of rape includes statutory rape<sup>94</sup> as when a man has sexual intercourse with a girl child below eighteen years of age even with her consent.<sup>95</sup> This legislation does not include any children other than ‘girls’. The range for punishment for statutory rape in Nepal further denotes only ‘girl’ as to be a victim.<sup>96</sup> Likewise, the legislation prohibiting statutory rape states that the consent given by either ‘boy or

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<sup>86</sup> UNITED NATIONS HUMAN RIGHTS COUNCIL, 48th session Joint Statement on the Human Rights of Intersex Persons, <https://www.bmeia.gv.at/oev-genf/speeches/alle/2021/10/united-nations-human-rights-council-48th-session-joint-statement-on-the-human-rights-of-intersex-persons/>

<sup>87</sup> The Act Relating to Children 2075.

<sup>88</sup> The Act Relating to Children 2075, Section 66(2)(q).

<sup>89</sup> The Act Relating to Children 2075, Section 72(3)9(b).

<sup>90</sup> The National Penal (Code) Act, 2074, Section 173.

<sup>91</sup> The National Penal (Code) Act, 2074, Section 184.

<sup>92</sup> The National Penal (Code) Act, 2074, Section 225.

<sup>93</sup> The National Penal (Code) Act, 2074, Section 211.

<sup>94</sup> Statutory rape means sexual intercourse with a minor.

<sup>95</sup> The National Penal (Code) Act, 2074, Section 219.

<sup>96</sup> The National Penal (Code) Act, 2074, Section 219 (3)(a). For instance, Imprisonment for a term of sixteen to twenty years, if she is a girl child below ten years of age.

girl child’ shall not be considered consent.<sup>97</sup> The lack of gender neutrality in laws against rape has always garnered criticism from both international<sup>98</sup> and the national community.<sup>99</sup> It is critical to note here that intersex people have variations in their sex characteristics which in many cases cannot be put into the bracket of a ‘girl’. For example, if a child looks like a girl physically but biologically has both male and female reproductive organs- the person has intersex traits. The legislation does not include any whatsoever indication of these intersex children.

The Act relating to Children, 2018 prohibits discrimination on child on the basis of sex or any other such grounds.<sup>100</sup> It protects children from abandonment.<sup>101</sup> The Act entitles children with disabilities, at risk with ‘special protection stipulated by the State for their assured future.’<sup>102</sup> The Act states that every child should have protection against ‘gender based [...] abuse, sexual abuse and exploitation by her/his father, mother, other family member or guardian, teacher and other persons’<sup>103</sup>. However, the lack of awareness on children with intersex variations is rampant, resulting in discrimination, stigmatization, violence isolation, and bullying. The CRC Committee drew concern on the Nepal’s ‘lack of awareness of issues related to intersex children in the country and the high levels of stigma and discrimination faced by intersex children’<sup>104</sup> and recommended conducting awareness campaigns to combat discrimination against intersex children.<sup>105</sup> However, despite these recommendations, Nepal Government is yet to act on these recommendations till date.

The Criminal Code prohibits carrying out experimentation on the human body without consent.<sup>106</sup> It prohibits conducting medical experiments through surgery, and drugs on the

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<sup>97</sup> The National Penal (Code) Act, 2074, Section 226. Note: The official Nepali language of the Code mentions- ‘girl and boy child’ whereas the English translation includes- ‘child’.

<sup>98</sup> Amnesty International, *Nepal: Overly restrictive statute of limitations on rape and other sexual violence must be removed*, 26 May 2022, available at <https://www.amnesty.org/en/latest/news/2022/05/nepal-overly-restrictive-statute-of-limitations-on-rape-and-other-sexual-violence-must-be-removed/>, accessed on 21 June 2022.

<sup>99</sup> The Kathmandu Post, Ordinance amends law on rape but fails to recognise rape of boy child and sexual minorities, 11 December 2020, available at <https://kathmandupost.com/national/2020/12/11/ordinance-amends-law-on-rape-but-fails-to-recognise-rape-of-boy-child-and-sexual-minorities>, accessed on 21 June 2022.

<sup>100</sup> The Act relating to Children, 2018, Section 5.

<sup>101</sup> The Act relating to Children, 2018, Section 7(3).

<sup>102</sup> The Act relating to Children, 2018, Section 7(4).

<sup>103</sup> The Act relating to Children, 2018, Section 7(5).

<sup>104</sup> Committee on the Rights of the child, Concluding observations on the combined third to fifth periodic reports of Nepal, CRC/C/NPL/CO/3-5, 8 July 2016, pg. 10.

<sup>105</sup> Ibid, pg. 11.

<sup>106</sup> The National Penal (Code) Act, 2074, Section 233.

human body without consent. However, in the case of children, the law seeks consent from ‘his or her father, mother or guardian.’<sup>107</sup>

No legislation bans sex reassignment surgeries or other sex surgeries amongst children that happen with the consent of parents or guardian. The law is not able to protect these children who they are prone to Intersex Genital Mutilation under the knowledge and consent of their parents/guardians.<sup>108</sup> There are no laws that explicitly prohibit the performance of unnecessary harmful medical practice or other medical procedures on intersex children before they reach the legal age of consent. There are no requirements in law to train medical and psychological professionals on the rights of intersex persons. Despite the act prioritising the child’s best interest and establishing the duty of all to immediately help children whose lives is at risk,<sup>109</sup> the government has failed to ascertain the conditions of intersex children.

Although there are no government-based data on unnecessary harmful medical practice of intersex people, researches<sup>110</sup> evidence various surgeries with to intersex children including *hypospadias*, *cognital adrenal hyperplasia (CAH)*, *Androgen insensitivity syndrome (AIS)* etc. carried out by renowned government hospitals of Nepal. In a research conducted by Nepali doctors, the children considered for hypospadias surgeries were from the age group of 18 months to 10 years<sup>111</sup> and clearly were unable to give consent. The Nepal government, however, shows no concern over this alarming issue.

Under this subject, The Committee on the Rights of Child acknowledged and drew its concerns over cases of medically unnecessary surgeries and other procedures in Nepal on intersex children before they are able to provide their informed consent.<sup>112</sup> It recommended Nepal to ensure that ‘no child is subjected to unnecessary medical or surgical treatment; guarantee bodily integrity, autonomy and self- determination to the children concerned; and

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<sup>107</sup> Ibid.

<sup>108</sup> Intersex Genital Mutilations Human Rights Violations Of Children With Variations Of Reproductive Anatomy, NGO Report to the 6th Report of Nepal on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2018, pg. 13.

<sup>109</sup> The Act relating to Children, 2075 B.S. (2018 A.D.), Section 16.

<sup>110</sup> Thapa B, Pun M., Snodgrass Tubularized Incised Plate Urethroplasty for Distal and Midpenile Hypospadias, Journal of Nepal Paediatric Society, 2014, pg. 29- 33. ‘ A total of 46 male children 18 months to 10 years old with penile hypospadias were included in this study from January 2011 to January 2013 in Kanti Children’s Hospital and BP Smriti Hospital.’

<sup>111</sup> Thapa B, Pun M., Snodgrass Tubularized Incised Plate Urethroplasty for Distal and Midpenile Hypospadias, Journal of Nepal Paediatric Society, 2014, pg. 29.

<sup>112</sup> Committee on the Rights of the child, Concluding observations on the combined third to fifth periodic reports of Nepal, CRC/C/NPL/CO/3-5, 8 July 2016, pg. 10.

provide families with intersex children with adequate counselling and support<sup>113</sup>. It further recommended Nepal to undertake investigations of incidents of surgical and other medical treatment of intersex children without informed consent and adopt legal provisions in order to provide redress to the victims of such treatment, including reparation and/or adequate compensation.<sup>114</sup>

*Madan Kurmi, a parent of an intersex child shares an experience when he came from Kalaiya, he was sent to a hospital for a check-up of his child. He shares, 'they took my child for examination at 2 pm in the day and brought the child to me at 8 pm. I was scared to death. The doctors didn't tell me anything about what they did to my child for 6 hours. They asked me to get my child's chromosomal test done.'*<sup>115</sup>

The Committee<sup>116</sup> along with agencies such as Human Rights Watch<sup>117</sup> have held that these non-consensual medical procedures of children entail irreversible consequences and can cause severe physical and psychological suffering. Likewise, the CEDAW Committee, recommended Nepal 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.<sup>118</sup>

On September 2015, Twelve United Nations agencies release a joint statement calling on States to act urgently to end “unnecessary surgery and treatment on intersex children without their consent.”<sup>119</sup>

Worldwide, Malta is the first country in the world to legally ban non-consensual medically unnecessary surgeries on intersex children.<sup>120</sup> Various international committees and movements have condoned medical interventions that alter the sex characteristics of infants and children without personal consent.<sup>121</sup> Likewise, India, a fellow neighbour of Nepal and a South Asian

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> *As in conversation with Madan Kurmi, parent of an intersex child. Conversation on 2 August 2022.*

<sup>116</sup> Ibid, pg. 10.

<sup>117</sup> Human Rights Watch, “I Want to Be Like Nature Made Me” Medically Unnecessary Surgeries on Intersex Children in the US, 25 July, 2017, available at <https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>, accessed on 2 June 2022.

<sup>118</sup> Committee on the Elimination of Discrimination against Women, CEDAW/C/NPL/CO/6, 2018, pg. 6.

<sup>119</sup> Office of the High Commissioner for Human Rights, joint statement, “United Nations entities call on States to act urgently to end violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) adults, adolescents and children,” September 2015, [http://www.ohchr.org/Documents/Issues/Discrimination/Joint\\_LGBTI\\_Statement\\_ENG.PDF](http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF)

<sup>120</sup> Government of Malta, “Gender Identity, Gender Expression and Sex Characteristics Act,” April 2015, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26805&l=1>

<sup>121</sup> “Darlington Statement: Joint consensus statement from the intersex community retreat in Darlington,” March 2017, <https://oii.org.au/wp-content/uploads/key/Darlington-Statement.pdf>; OII Europe, “The 1st European Intersex

country, on 13 January 2021, the Delhi Commission for Protection of Child Rights opined 'Government of Delhi should declare a ban on medically unnecessary, sex-selective surgeries on intersex infants and children except in cases of life-threatening situations',<sup>122</sup> recognizing India's SC judgement on *National Legal Services Authority vs Union Of India & Others*<sup>123</sup> which held that 'no one shall be forced to undergo medical procedures, including sex reassignment surgeries, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity'. Likewise in the case of *S.Amutha vs C.Manivanna Bhupathy*<sup>124</sup>, the consent of the parent cannot be considered the consent of the child. The court further directed the Tamil government to ban surgeries on intersex infants and children.<sup>125</sup>

The lack of recognition of intersex children and their issues by the Government of Nepal is a blatant human rights violation by the State. Nepal must act with urgency to identify, acknowledge, adopt legislations and resolve the issues of intersex children.

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Community Event—Vienna Statement,” March 31, 2017, <https://oieurope.org/statement-1st-european-intersex-community-event-vienna-30st-31st-march-2017/>; The European Union Agency for Fundamental Rights, “The Fundamental Rights Situation of Intersex People,” April 2015, <http://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>; United Nations World Health Organization, et. al., “Eliminating Forced, Coercive and Otherwise Involuntary Sterilisation—An Interagency Statement,” *World Health Organisation*, May 2014.

<sup>122</sup> The hindu, ‘Ban sex-selective surgeries on intersex infants and children’, 14 January 2021, available at <https://www.thehindu.com/news/cities/Delhi/ban-sex-selective-surgeries-on-intersex-infants-and-children/article33571716.ece>, accessed on 8 June, 2022.

<sup>123</sup> *National Legal Services Authority vs Union of India & Others*, AIR 2014 SC 1863, Decision on 15.04.2014.

<sup>124</sup> *S.Amutha vs C.Manivanna Bhupathy*, Madras High Court, delivered on 6 September 2019, available at <https://indiankanon.org/doc/100627802/>

<sup>125</sup> Ipeaders, Adoption rights of same-sex couples, 7 October 2021, available at [https://blog.ipeaders.in/adoption-rights-of-same-sex-couples/#Impediments to adoption by same-sex couples](https://blog.ipeaders.in/adoption-rights-of-same-sex-couples/#Impediments%20to%20adoption%20by%20same-sex%20couples), accessed on 8 June 2022.



### **C. EDUCATION**

The Constitution of Nepal ensures the right to free and compulsory education as a human right.<sup>126</sup> However, people with intersex traits have many challenges in accessing the right to education. Nepal's Act Relating to Compulsory and Free Education, 2075 (2018) elaborates on every citizen having equal access to quality education, and no one shall be discriminated against on any ground to get an education.<sup>127</sup> However, it fails to promote inclusive education which includes gender and sexual minorities. There is no legislation in Nepal that states about educating people about intersex people or creating educational institutions which are safe and hospitable to intersex people.

In Nepal, there are diverse views on the recognition of sexual and gender minorities including intersex, in curriculum and training manuals. The curriculum of Nepal, although progressing to include some information about sexual minorities, is not inclusive and provides sectional or wrong information. For instance, Social Studies Book of Class 12 developed by Nepal Government, includes a chapter on 'Gender Questions'. This chapter includes illusional and wrong information on intersex people. The Chapter calls intersex people as 'biologically third gender' and 'different from male and female'.<sup>128</sup> Likewise, Curriculum Development Centre, Nepal Government includes a brief sub-chapter about sexual orientation in its textbook Health and Physical Education Book of Grade-7.<sup>129</sup> However, the information about sexual orientation is limited to heterosexual, homosexual, and bisexual only<sup>130</sup> - which further stigmatizes intersex people. There are other textbooks at the primary level such as Social Studies and Health Education which include issues such as dowry and menstruation but do not include sex education within their curriculum.<sup>131</sup> There has been constant pressure by sexual and gender

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<sup>126</sup> Constitution of Nepal, 2072, Article 31.

<sup>127</sup> Act Relating to Compulsory and Free Education, 2075 (2018), Section 3.

<sup>128</sup> Nepal Government, Ministry of Education, Curriculum Development Centre, Book on Social Studies, Class 12, pg. 200, available at <http://103.140.1.64/cdc/elibrary/pages/download.php?direct=1&noattach=true&ref=9690&text=pdf&k=>

<sup>129</sup> Nepal Government, Ministry of Education, Curriculum Development Centre, Health and Physical Education Book of Grade-7, pg. 35, available at [http://www.riviera.edu.np/downloads/Grade\\_7\\_Book\\_Health\\_and\\_Physical\\_Education.pdf](http://www.riviera.edu.np/downloads/Grade_7_Book_Health_and_Physical_Education.pdf)

<sup>130</sup> Ibid.

<sup>131</sup> Kantipur, पाठ्यपुस्तकमा यौनिक तथा लैंगिक अल्पसंख्यक, 25 February, 2020, available at <https://ekantipur.com/opinion/2020/02/25/158259632962314214.html> ,

minorities to include their issues and information in the curriculum.<sup>132</sup> Tribhuvan University (TU) has included LGBT issues in its master's level curriculum for its gender and feminist studies program in the subjects of Sociology and Anthropology,<sup>133</sup> however, the issues of intersex are missing at large.

Another example of a lack of inclusive education is the Trainers Guide on Comprehensive Sexuality Education.<sup>134</sup> In 2014, the National Center for Educational Development under the Ministry of Education, Science and Technology developed a Trainers Guide on Comprehensive Sexuality Education. However, no pointers in the trainer's guide highlighted the issues of sexual minorities including the intersex. The entire Guide included no expert from the sexual minority community. The Trainers Guide used wordings such as 'the sexual relationship should be such as in line with our cultural values',<sup>135</sup> and examples explaining the hetero normative relationship between a girl and a boy.<sup>136</sup> This exemplifies the lack of inclusivity where a major organization for curriculum development formulates a trainer's guide on sexuality education without addressing the issues of sexual minorities including intersex communities, with hetero normative examples and standards. Likewise, recently medical students protested the content of their curriculum as 'outdated and regressive' where sodomy and tribadism were stated as unnatural sexual offences.<sup>137</sup>

Despite these loopholes, provincial governments like Gandaki Province are acting progressively to bring forth inclusive education. Recently, Gandaki Pradesh promulgated the Gandaki Pradesh Education Policy, 2078 which encapsulated one of the strategies to endorse positive discrimination to people and communities who have been deprived of education<sup>138</sup> including sexual minorities.<sup>139</sup> Under the policy, The Gandaki Province plans to provide scholarships, and subsidised loans to minority groups for promoting business and technical

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<sup>132</sup> पाठ्यपुस्तकमा यौनिक तथा लैंगिक अल्पसंख्यकको सवाल समेटियोस्, 12 April, 2022, available at <https://annapurnapost.com/news/book-3-200648>

<sup>133</sup> Being LGBT in Asia: Nepal Country Report, A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society, UNDP, et.al, 2014, pg. 44.

<sup>134</sup> Ministry of Education, Science and Technology, National Center for Educational Development, Trainers Guide on Comprehensive Sexuality Education, 2014 B.S., available at <https://nepal.unfpa.org/sites/default/files/pub-pdf/Facilitators%27%20Guide.pdf>

<sup>135</sup> Ibid, pg. 1, 33.

<sup>136</sup> Ibid, pg. 47-48.

<sup>137</sup> The Kathmandu Post, Medical curriculum has outdated information on queer people, available at <https://kathmandupost.com/health/2022/01/26/medical-curriculum-has-outdated-information-on-queer-people>

<sup>138</sup> Gandaki Pradesh, Gandaki Pradesh Education Policy 2078 B.S., Strategy number 11.8, pg. 8, available at <https://www.mosd.gandaki.gov.np/public/uploads/Publication/गण्डकी%20प्रदेश%20शिक्षा%20नीति.%20२०७८-१९१७९.pdf>

<sup>139</sup> Gandaki Pradesh, Gandaki Pradesh Education Policy 2078 B.S., Strategy number 11.8 (11.8.1), pg.16.

training.<sup>140</sup> On one hand, when the central government is unable to articulate inclusive education policies, provincial governments like Gandaki Province have been formulating progressive policies.

The lack of inclusive education material results in lack of awareness/education about intersex people. This results in an unfriendly school environment, bullying, teasing. *Esan Regmi, an intersex man shares the challenges faced by intersex children when having to i) use segregated toilets on the basis of gender, ii) dress according to gender like pants for boys and skirts for girls, iii) sit with gender segregated bench rows,<sup>141</sup> iv) deal with insensitive and unaware behaviour of teachers.<sup>142</sup> Madan Kurmi, a parent of an intersex child shares how he had to change 3 schools of his intersex child because of the constant bullying the child had to face in the school by peers and authorities.<sup>143</sup> He shares an incident where the school authorities, after knowing of the child's identity, did not give any school dress to the child during the new session. On confronting the school authorities, the principal adamantly denied admission to his child. He then complained about this incident to CDO, the then concerned Ministry in Kathmandu. Till date, he is yet to receive an answer from them regarding this discrimination. He had to change his child's school then. Many intersex children experience bullying in their school because of which they cannot concentrate on their education and are even forced to drop out. Some intersex people are treated as a fake student when their documents don't match with their appearance or gender identity.<sup>144</sup> Likewise, Nepal has no legal provisions on amendment of names and gender in their educational certificate even if with hardship, their citizenships are amended. Many intersex people are facing challenges to amend their educational certificates.*

Worldwide, Malta's Ministry of Education and Employment developed a policy for schools to accommodate trans, gender variant, and intersex students.<sup>145</sup> Likewise, recently, the U.S Department of Education, Office for Civil Rights recently developed a handout on 'How can school supports intersex students?'.<sup>146</sup> These policies highlight many issues faced by intersex students including bullying, unease with gendered uniforms, toilets and other gendered spaces, minority stress, and social isolation, decreased attention during school time, and failure to learn

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<sup>140</sup> Gandaki Pradesh, Gandaki Pradesh Education Policy 2078 B.S., Strategy number 11.9 (11.9.3), pg.17.

<sup>141</sup> Usually in classrooms, children are made to sit as boys in a row and girls in a different row.

<sup>142</sup> *As in conversation with Esan Regmi, an intersex man and an activist. Conversation on August 3, 2022.*

<sup>143</sup> *As in conversation with Madan Kurmi, a parent of an intersex child. Conversation on August 2, 2022.*

<sup>144</sup> *As in conversation with Esan Regmi, an intersex man and an activist. Conversation on August 3, 2022.*

<sup>145</sup> Malta, Ministry of Education and Employment, Policy for Trans, Gender Variant and Intersex Students in Schools, June 2015, available at <https://tgeu.org/wp-content/uploads/2015/06/Malta-Education-Policy.pdf>.

<sup>146</sup> The U.S Department of Education, Office for Civil Rights, *How can schools supports intersex students?*, October 2021, available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>

due to lack of safety in school, health needs, and lack of support services.<sup>147</sup> It simultaneously addresses the needs which includes inclusive policies and regulations , counselling when identity affirmation is proving difficult, privacy and confidentiality, possibility of amendments of gendered characteristics in documentation of child's file, gender neutral practices, among others.<sup>148</sup>

Nepal needs to advance inclusive education policies to ensure participation of intersex people in educational institutions and to well inform and aware the community about the issues of intersex people.

#### **D. HEALTH**

The constitution of Nepal ensures the right relating to health to every citizen of the country which constitutes the right to free basic health services from the State and not to be deprived of emergency services.<sup>149</sup> Likewise, under the Public Health Service Act, 2075 all health workers are obliged to behave equally and respectfully to all the service recipients.<sup>150</sup> It further prohibits any health institution or health worker to discriminate service recipients on the basis of 'his or her origin...sexual or gender identity'.<sup>151</sup> Despite these assurances, intersex people find extreme difficulty in accessing medical services. One of the foremost reasons for this is medical personnel's lack of understanding about people with intersex traits. Till date, there are doctors who perform medically unnecessary surgeries of intersex people.<sup>152</sup> In the world, when hospitals are pledging against intersex surgeries,<sup>153</sup> Nepali government hospitals proudly announce surgeries of issues of people with intersex traits.<sup>154</sup> However, the government fails to follow up on the condition of these patients who might face repercussions of the surgery. This shrinks the

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<sup>147</sup> Malta, Ministry of Education and Employment, Policy for Trans, Gender Variant and Intersex Students in Schools, June 2015, pg. 12; The U.S Department of Education, Office for Civil Rights, *How can schools supports intersex students?*, October 2021, pg. 2.

<sup>148</sup> Ibid.

<sup>149</sup> Constitution of Nepal, art. 35.

<sup>150</sup> Public Health Service Act, 2075, Section 12.

<sup>151</sup> Ibid, Section 12(3).

<sup>152</sup> Thapa B, Pun M., Snodgrass Tubularized Incised Plate Urethroplasty for Distal and Midpenile Hypospadias, Journal of Nepal Paediatric Society, 2014, pg. 29- 33. ' A total of 46 male children 18 months to 10 years age with penile hypospadias were included in this study from January 2011 to January 2013 in Kanti Children's Hospital and BP Smriti Hospital.'

<sup>153</sup> CNN, Major children's hospital apologizes for performing cosmetic genital surgeries on intersex infants, 30 July 2020, available at <https://edition.cnn.com/2020/07/29/health/intersex-surgeries-chicago-hospital/index.html>, accessed on 8 June 2022; Human Rights Watch, US Hospital to Stop Harmful Intersex Surgeries on Children, 29 October, 2020, available at <https://www.hrw.org/news/2020/10/29/us-hospital-stop-harmful-intersex-surgeries-children>

<sup>154</sup> Kanti Childrens' Hospital, Paediatric Surgery, available at <https://web.archive.org/web/20190911064615/http://kantichildrenhospital.gov.np:80/paediatric-surgery/>

trust of intersex people towards hospitals and medical services of Nepal. *Nabin Chaudhary*<sup>155</sup> shares his horrific instance with a medical professional. *Despite physical attributes like that of a woman, the doctor asked him to open his shirt and started feeling his chest. With a physical attribute of a woman, Nabin shares the experience was dreadful.*

The Child Rights Committee acknowledging the lack of trainings of medical professionals, recognized the need of training and educating medical and psychological professionals on the range of sexual, and related biological and physical, diversity and on the consequences of unnecessary surgical and other medical interventions for intersex children.<sup>156</sup>

The lack of resources is another reason for inaccessibility of proper health care to intersex people. Till date, Nepal does not have hospitals or clinics solely dedicated to the needs of intersex people. At the time of writing this report, Family Planning Association of Nepal was under the process of establishing a ‘Hormonal Clinic’ for sexual and gender minorities.<sup>157</sup> *However, Esan Regmi shares that intersex people were not/are not till date consulted for the purpose of this clinic. He opines that ‘hormone therapy’ by the hormonal clinic tends to ‘stigmatizes’ the intersex population who have diverse chromosomes and hormones- as these therapies aim at changing the hormones into the so-called ‘normal’ hetero normative narrative of X and Y chromosomes of male and female.*

Other health issues which must have been general issues, the laws have made those an inclusive issue of the female body. The Safe Motherhood and Reproductive Health Rights Act, 2018 of Nepal, the issue of reproductive health morbidity<sup>158</sup> as much as is an issue of woman- is also an issue of people with intersex traits. However, the law is narrowly focused on women whereby enshrining right to nutritious food to ‘woman’ with reproductive health morbidity<sup>159</sup> and right to obtain reproductive health morbidity care<sup>160</sup> to women under the law. The entire law is based on hetero normative gender binary notion where right of reproductive health,<sup>161</sup> right of

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<sup>155</sup> As in Conversation with Nabin Chaudhary, a man with intersex traits. Conversation on 2 August 2022.

<sup>156</sup> Committee on the Rights of the child, Concluding observations on the combined third to fifth periodic reports of Nepal, CRC/C/NPL/CO/3-5, 8 July 2016, pg. 10.

<sup>157</sup> Sunrise Khabar, नेपालमा पहिलो पटक हर्मोनल क्लीनिक संचालनमा ल्याईने, available at <https://sunrisekhabar.com/en/news-details/51916/2022-06-19>

<sup>158</sup> The Safe Motherhood and Reproductive Health Rights Act, 2018, Section 2(p). "Reproductive Health Morbidity" means any health condition adversely impacting the reproductive system as a result of reproduction, pregnancy, abortion, labor and sexual behavior, and also refers to uterine prolapse, obstetric fistula, infertility, cervical cancer as well as any other similar health conditions that affects the reproductive functioning.

<sup>159</sup> The Safe Motherhood and Reproductive Health Rights Act, 2018, Section 3(6).

<sup>160</sup> The Safe Motherhood and Reproductive Health Rights Act, 2018, Section 20.

<sup>161</sup> The Safe Motherhood and Reproductive Health Rights Act, 2018, Section 3.

safe motherhood and newborn,<sup>162</sup> and right of safe abortion<sup>163</sup> solely guaranteed to women excluding intersex people with varying sex characteristics.

### **E. SOCIAL SECURITY**

The Constitution of Nepal recognizes the right to social security as a fundamental right.<sup>164</sup> It lists ‘indigent citizens, incapacitated and helpless citizens, helpless single women, citizens with disabilities, children, citizens who cannot take care of themselves, and citizens belonging to the tribes on the verge of extinction’ as stakeholders for the right to social security and excludes gender and sexual minorities like intersex. Likewise, the Social Security Act of 2075, lists Nepali citizens who are entitled to social security, such as senior citizens, indigent, incapacitated and helpless people, citizens with disabilities, single women, children and citizens unable to take care of themselves<sup>165</sup>- but excludes sexual and gender minorities including intersex people.

The Public Health Service Act stipulates the need for special social health security and programs for women, Dalits, martyrs, adolescents, and other targeted groups<sup>166</sup> but does not explicitly consider or mention the special needs of gender and sexual minorities.

Despite the lack of national recognition of the needs of social security to intersex people, the CEDAW Committee recommended Nepal government to provide targeted financial support and legal aid in commonly spoken languages for people, including intersex people.<sup>167</sup>

However, ignorance on issues of intersex people has led to a lack of laws and policies on social security.

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<sup>162</sup> The Safe Motherhood and Reproductive Health Rights Act, 2018, Chapter 3.

<sup>163</sup> The Safe Motherhood and Reproductive Health Rights Act, 2018, Chapter 4.

<sup>164</sup> Constitution of Nepal, Article 42.

<sup>165</sup> The Social Security Act, 2075 (2018), Section 3.

<sup>166</sup> The Public Health Service Act, 2075, Section 47.

<sup>167</sup> Committee on the Elimination of Discrimination against Women, CEDAW/C/NPL/CO/6, 2018, pg. 3.

## **F. FAMILY RIGHTS AND MARRIAGE**

Nepali legislations on marriage and other family rights have provisions targeted to binary gender wording such as ‘man and woman.’ Many intersex people find it difficult to access these rights because of the heteronormativity of the legislations. Under the National Civil Code, marriage is deemed to be concluded if a ‘man and a woman accept each other as husband and wife through any occasion, ceremony or formal or other act.’<sup>168</sup> There are other various conditions stipulated by law where if met, ‘a man and a woman’ can conclude marriage.<sup>169</sup> Likewise, the need of ‘husband’ and ‘wife’ for registration of marriage seeking legal recognition,<sup>170</sup> has made it impossible for intersex people with varying degree of variations in sexual characteristics enjoy matrimony.<sup>171</sup> The law further categorises the man married as ‘husband’ and the woman he marries as ‘wife’.<sup>172</sup>

The Supreme Court ruling of 2007 is the most prominent LGBT political victory to date in Nepal.

The law of inter country adoption does not specifically recognize same sex foreigner couples to adopt a child from Nepal.<sup>173</sup> The law categorises the adoptee to be either ‘a son or a daughter’.<sup>174</sup> Likewise, for intra country adoption, the law categorises the adoptee to be ‘adopted son or adopted daughter’.<sup>175</sup> For Nepali citizens, the law similarly draws heteronormativity of the adopter as it be ‘either a man or a woman’.<sup>176</sup> The conditions of adoption are restrictive. Adoption is allowed to ‘couple’ who are devoid of child for upto 10 years or either an unmarried/judicially separated/widowed/divorced man or woman.<sup>177</sup> The lack of inclusive

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<sup>168</sup> The National Civil (Code) Act, 2074 (2017), Section 67.

<sup>169</sup> The National Civil (Code) Act, 2074 (2017), Section 70. These conditions are (a) If the man and the woman agree to accept each other as husband and wife, (b) If the man and the woman are not relatives, punishable by law on incest, (c) If matrimonial relationship of both the man and the woman does not exist, (d) If both have attained twenty years of age.

<sup>170</sup> The National Civil (Code) Act, 2074 (2017), Section 76 and Section 77.

<sup>171</sup> BBC, [कानून नबन्दा विवाह गर्न पाएनौं](https://www.bbc.com/nepali/news-43411272), 15 March 2018, available at <https://www.bbc.com/nepali/news-43411272>

<sup>172</sup> The National Civil (Code) Act, 2074 (2017), Section 85.

<sup>173</sup> Ibid., Section 188.

<sup>174</sup> Ibid., Section 188, Section 192.

<sup>175</sup> Ibid., Section 169.

<sup>176</sup> Ibid., Section 171.

<sup>177</sup> Ibid., Section 174.

legislation and practise has, in turn, impacted many sexual minorities who want to enjoy matrimony and family life but are unable to do so.

The law on the property further distinguishes children as – son or daughter. Son or daughter are treated as coparceners of a property,<sup>178</sup> who have equal entitlement to partition share.<sup>179</sup> However, the law does provide for the unborn baby without stipulating its gender as a coparcener.<sup>180</sup> Because of the lack of clear stipulation of property partition rights to people with intersex traits, many intersex people are hesitant to seek property rights due to unclear legal provisions. The heterosexual family structure has the greatest influence on the lives of sexual minorities in Nepal, yet acceptance by families is severely limited due to overwhelming social and cultural pressures to enter a heterosexual marriage and create a family, as well as by rigid conventional expectations of gender roles.<sup>181</sup>

On 2020, a policy was under discussion at the law ministry on providing marriage rights, and property rights to sexual minorities. According to the then Minister of Women, Children and Older Citizens Minister Parbat Gurung, the policy also included the right to access IVF services by couple having a partner of intersex variation.<sup>182</sup> However, till date, after almost two years since the news, no policies as such have been introduced or discussed. Recently, the House of Representatives of the Nepali Parliament has ordered the Nepal Government, Home Minister, and Law, and Justice Ministry to make laws considering the situation of sexual and gender minorities.<sup>183</sup>

Worldwide, the country U.S provides rights of adoption to intersex people.<sup>184</sup> Malta recognizes adoptive rights equally for sexual and gender minority couples.<sup>185</sup> The law of property partition equally recognizes sexual and gender minorities worldwide. However, with the existing legislation Nepal has a long way to go.

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<sup>178</sup> The National Civil (Code) Act, 2074 (2017), Section 205, Section 207, Section 208, Section 209.

<sup>179</sup> The National Civil (Code) Act, 2074 (2017), Section 206.

<sup>180</sup> The National Civil (Code) Act, 2074 (2017), Section 206(2).

<sup>181</sup> Being LGBT in Asia: Nepal Country Report, A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society, UNDP,et.al, 2014, pg. 10.

<sup>182</sup> BBC, लैङ्गिक र यौनिक अल्पसङ्ख्यकलाई विवाह र 'कृत्रिम गर्भधारण'को अधिकार दिने नीति तयार, अरु के-के व्यवस्था छन्, 23 August 2020, available at <https://www.bbc.com/nepali/news-53861921>

<sup>183</sup> Law, Justice and Human Rights Committee, House of Representative, Annual Report, 2079, pg. 28, available at <https://hr.parliament.gov.np/uploads/attachments/dt0ksen78eyrtvbs.pdf>

<sup>184</sup> U.S. Department of State, Bureau of Consular Affairs, available at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/before-you-adopt/LGBTI-adoption-resources.html>, accessed on 5 June 2022.

<sup>185</sup> Global citizen solutions, Malta for LGBT: The Ultimate Guide, available at <https://www.globalcitizensolutions.com/malta-for-lgbt/>, accessed on 6 June 2022.



## **G. EMPLOYMENT**

The Constitution of Nepal recognizes the right to employment and to have a choice regarding employment.<sup>186</sup> The Labor Act of Nepal has no special provisions directed towards the safety and accommodation of sexual minorities including intersex people at workplace.<sup>187</sup> The Act does stipulate the need for a safe environment for work by making appropriate safety and health arrangements at the workplace.<sup>188</sup> It is silent about advancing a safer environment for people with special needs. The Labor Rules<sup>189</sup> require the employers to draft occupational safety and health policy but do not stipulate the need to focus on the special needs of sexual and gender minorities including the intersex people. The Sexual Harassment at Workplace (Prevention) Act, 2014<sup>190</sup> does not mention or stipulate about the workplace harassment faced by gender and sexual minorities including intersex people.

In 2021, the International Labour Conference adopted a Resolution concerning inequalities and the world of work that notes that discrimination, including systemic, multiple and intersectional forms of discrimination, remains a persistent and pervasive dimension, and a root cause of inequality.<sup>191</sup> UN developed five standards for tackling discrimination against the sexual minorities- respect human rights everywhere, eliminate discrimination and provide support in the workplace, prevent other human rights violation in the marketplace and act in the public sphere in the community.<sup>192</sup> Australia introduced an Employer's Guide to Intersex Inclusion<sup>193</sup> which included strategies such as awareness training, zero tolerance: stigma and discrimination policy, commitment, recruitment and talent acquisition.<sup>194</sup>

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<sup>186</sup> Constitution of Nepal, art. 33.

<sup>187</sup> The Labor Act of Nepal, 2075.

<sup>188</sup> Ibid, Section 69.

<sup>189</sup> Labour Rules, 2075.

<sup>190</sup> The Sexual Harassment at Workplace (Prevention) Act, 2071 (2014).

<sup>191</sup> Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work: A learning guide, pg. 7, 2022.

<sup>192</sup> Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People  
STANDARDS OF CONDUCT FOR BUSINESS, accessible on  
<https://www.unfe.org/wp-content/uploads/2017/09/UN-Standards-of-Conduct.pdf>

<sup>193</sup> Carpenter, M., Hough, D, *Employers' Guide to Intersex Inclusion*, Sydney: Pride in Diversity and Organisation Intersex International Australia, 2014, available at  
<https://ihra.org.au/wp-content/uploads/key/Employer-Guide-Intersex-Inclusion.pdf>

<sup>194</sup> Ibid, pgs. 26-29.

The gravity and overarching impacts of lack of legislations and policies on the workforce sector is not realised by the government or the parliamentarians. Thus, workplace still remains a place where hetero normative standards are forced and used.

## **V. CONCLUSION AND RECOMMENDATION**

### **A. CONCLUSION**

The research has the following conclusions:

1. Nepal has no legislation directed specifically at intersex people. There is no specific legislation for the protection of the rights of intersex people.
2. The situation of intersex people in Nepal is very concerning. The lack of legislations and protections had led to unidentified number of intersex people in Nepal. The Census of 2011 did not give the true data of sexual and gender minorities. The current Census of 2021, will not be able to dissect the data of sexual and gender minorities because of use of a common term called 'other' for all gender and sexual minorities.
3. Nepal is unable to fulfil its international obligations as a state party to major human rights treaties including the UN Charter, UDHR, ICCPR, CRC, CEDAW, CAT.
4. Nepal is far from accepting, acknowledging and acting to bring legislations and policies according to the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.
5. Despite constitutional guarantees of acquiring citizenship based on gender identity, intersex people are unable to get citizenship easily. The enabling act does not have designated and dignified process of applying and obtaining citizenship by intersex people.
6. The Government of Nepal is unable to implement decisions of the Supreme Court dating back to 2013, till date.
7. The use of 'other' as an option in citizenship and other documents have been extensive and have been institutionalised in legislation. However, intersex minorities do not agree to being put in the same bracket of 'others'.
8. The existing legislations are not able to protect children with intersex traits. There are no legal regimes to protect children from harmful practices including their non-consensual surgeries. The use of neutral language is a necessity to include non-binary conforming children into protections provided by Nepalese legislation.
9. Many legislations narrow down the concept of gender to a boy and a girl, prohibiting the access of these laws to the intersex children.

10. The lack of awareness on children born with intersex variation is rampant resulting in discrimination, stigmatization, isolation, bullying.
11. Nepal does not ban sex reassignment surgeries or other sex surgeries amongst children that happen with the consent of parents or guardian.
12. There are no requirements in law to train medical and psychological professionals on the rights of intersex persons.
13. Although there are no government-based data of intersex genital mutilation amongst children, some researches and hospital websites suggest surgeries on children with intersex variation.
14. The lack of recognition of intersex children and their issues by the Government of Nepal is a blatant human rights violation by the State.
15. Nepal fails to promote inclusive education which includes intersex people.
16. Some of the curriculum mention about sexual and gender minorities but give sectional information on this topic. Many curricula are tainted as outdated and regressive.
17. The lack of inclusive education material results in a lack of awareness/ education about intersex people. This results in an unfriendly school environment, bullying, and teasing.
18. The lack of health and medical resources is one of the reasons for the inaccessibility of proper health care to intersex people. Another reason is the lack of trust towards medical professionals and health service providers..
19. Nepali legislations related to health are gender specific and protect a specific gender only-segregating intersex people.
20. Ignorance of issues of intersex people has led to a lack of laws and policies on social security.
21. Marriage, Adoption, and Property partition are limited heteronormative notions of 'male' and 'female'. Many intersex people find it difficult to access these legislations.
22. The gravity and overarching impacts of lack of legislation and policies on the workforce sector is not realised by the government or the parliamentarians. Thus, workplace still remains a place where hetero normative standards are forced and used.

## **B. RECOMMENDATIONS**

It is recommended to the government of Nepal and Parliamentarians of Nepal to:

1. adopt the recommendations put forth by various Human Rights Treaty Bodies on protection of sexual and gender minorities including the intersex people.
2. oblige by the international obligations set out by International Human Rights Treaties of which Nepal is a State Party.
3. promulgate legislations, policies, rules and plans focusing on the protection of human rights of intersex people.
4. investigate cases of intergenital mutilation and compensate where required
5. implement the judicial precedents set by the Supreme Court. The implementation process should be followed up extensively.
6. collect data of the number and condition of intersex people.
7. carry out extensive research to identify the needs, problems of intersex people.
8. amend legislations on children providing special protection to intersex children.

On the issue of legal recognition, it is recommended to the government of Nepal and Parliamentarians of Nepal to:

9. formulate legislations to protect the rights of intersex people to get citizenship on the basis of gender identity.
10. promulgate legislation to increase access to amend names and gender markers. These laws should be formulated with proper and adequate dialogue of the concerned stakeholders and experts.
11. identify and dissect various sections of gender and sexual minorities and not limit these variations under the bucket of 'other'.

On the issue of protection of intersex children, it is recommended to the government of Nepal and Parliamentarians of Nepal to:

12. immediately formulate legislations to ban non-consensual medical surgeries on children with intersex traits.
13. Formulate or amend legislation to use neutral language for ensuring rights to children.
14. Run extensive awareness campaigns in schools, hospitals, other medical and educational institutions

On the issue of inclusive education, it is recommended to the government of Nepal and Parliamentarians of Nepal to:

15. reform curricula to include chapters on basic knowledge of intersex people.
16. create policies ensuring friendly environment at home and schools of intersex people and friendly behaviour towards them

On the issue of health, it is recommended to the government of Nepal and Parliamentarians of Nepal to:

17. make plans and policies to build or build hospitals, medical services dedicated to intersex people.
18. Formulate or amend laws to incorporate gender neutral language whereby health rights can be accessible to all including the intersex people

On the issue of social security, it is recommended to the government of Nepal and Parliamentarians of Nepal to:

19. Formulate laws to incorporate rights of intersex people under social security schemes.

On the issue of marriage and family rights, it is recommended to the government of Nepal and Parliamentarians of Nepal to:

20. Formulate laws to legalize intersex couples' marriage (even where one of the couple is intersex) and their adoptive rights.
21. Amend partition laws to incorporate intersex people as well.

On the issue of employment, it is recommended to the government of Nepal and Parliamentarians of Nepal to:

22. Formulate laws that protect and respect rights of intersex people in working spaces.

