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Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

Treatment of sexual minorities, including legislation, state protection, and support services [NPL103943.E]

20 January 2012

NPL103943.E

Nepal: Treatment of sexual minorities, including legislation, state protection, and support services

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Treatment of Sexual Minorities

1.1. Attitudes Toward Sexual Minorities

In an article published in June 2011, Nepalese newspaper The Kathmandu Post says that Nepal has become "more gay-friendly in recent years" (24 June 2011). Sunil Babu Pant, a Member of Parliament and the Director of the Blue Diamond Society (BDS), an advocacy organization for sexual and gender minorities in Nepal, stated in correspondence with the Research Directorate that, since the founding of the BDS in 2001, attitudes towards lesbian, gay, bisexual, transgendered, or intersex (LGBTI) people have improved among the general population and that "[p]eople are generally supportive" (24 Dec. 2011). Pant, speaking to the media in 2010 and 2011, also indicated that gay individuals can now be more open about their sexuality (CNNGo 5 July 2010), particularly in urban areas, although he notes that people in rural areas are still afraid to come out publicly (The Canadian Press 14 Aug. 2011). Pant has also said that LGBTI individuals in Nepal are likely to be accepted by their families (BDS 24 Dec. 2011), more so than, for example, lesbians in other countries such as India, Pakistan, and Bangladesh that are in the region (International Herald Tribune 20 Oct. 2010).

Additionally, Pant and other LGBTI people have said that the local media is generally supportive of people like themselves (CNNGo 5 July 2010; República 17 Nov. 2010). The first international gay pride parade was held in August 2010 in Kathmandu (The Times of India 25 Aug. 2010; The Canadian Press 25 Aug. 2010), Nepal's capital city, and was reported to have attracted an estimated 2,000 spectators (ibid.). In previous years, the parade had attracted only Nepalese LGBTI people and had been smaller (ibid.; The Times of India 25 Aug. 2010). In August 2011, the first LGBTI rally to be held outside of Kathmandu reportedly took place in the town of Narayanghat as part of an effort to increase awareness of sexual rights in rural areas (The Canadian Press 14 Aug. 2011).

As well as Pant, who is Nepal's first openly gay parliamentarian (CNNGo 5 July 2010; Pink News 22 Apr. 2009), the Nepali Congress, the main opposition party (International Crisis Group 13 Dec. 2011, 1), elected a transgendered woman as a representative in 2010 (The Kathmandu Post 27 Aug. 2010; Monsters and Critics 11 Aug. 2010).

1.2. Behaviour Toward Sexual Minorities

Various sources indicate that LGBTI people continue to face violence (Norway 23 Nov. 2011; The Times of India 25 Aug. 2010; The Kathmandu Post 25 Nov. 2010; TrustLaw 9 Dec. 2011), "harassment" (Norway 23

Nov. 2011; US 8 Apr. 2011, 36; Freedom House 2011; Global Press Institute 19 Jan. 2011), and "discrimination" (ibid.; Norway 23 Nov. 2011; BDS 24 Dec. 2011). According to the Norwegian Embassy in Kathmandu, such treatment is particularly prevalent in the south, in the Terai region (Norway 23 Nov. 2011). The United States (US) Department of State and Freedom House explain that homosexuals may face "harassment" by both the authorities and other citizens (US 8 Apr. 2011, 36; Freedom House 2011). Freedom House notes that this treatment occurs particularly in rural areas (ibid.). Sources have also noted that lesbians in Nepal face greater challenges than gay men, largely because of the lower status of women's rights (Pink News 22 Apr. 2009) and also because of the general economic inequality of women (International Herald Tribune 20 Oct. 2010).

Media sources have reported on the beating (The Canadian Press 14 Aug. 2011), and "harassment" (Global Press Institute 19 Jan. 2011), of transgendered people by members of the public and the police (ibid.; The Canadian Press 14 Aug. 2011). The Nepalese English-language newspaper República notes that transgendered people in particular face challenges in accessing employment, education and health care (25 Jan. 2010). The Global Press Institute, an international enterprise that trains women journalists and publishes their work (n.d.), suggests these challenges may be due to the inability of transgendered individuals to obtain citizenship certificates recognizing their third-gender status (19 Jan. 2011). The same source states that, according to LGBTI rights activists in Nepal, transgendered people are "vulnerable nationwide, even in the capital city of Kathmandu, where most of the population ... tends to be more socially accepting" (Global Press Institute 19 Jan. 2011).

In 2007, Human Rights Watch reported on the "anti-gay violence ... and anti-gay rhetoric" of the Maoist armed forces (16 Apr. 2007), who led a 10-year civil war against the state before joining the government in 2007 (BBC 30 Aug. 2011; Freedom House 2011). Similarly, European media source Pink News states that LGBTI individuals faced "harassment" by Maoist fighters (17 Nov. 2008). According to The Kathmandu Post, the non-governmental organization (NGO) Women's Rehabilitation Centre (WOREC), in Nepal, documented 106 cases of human rights violations against LGBTI human rights activists between 2007 and 2010 (25 Nov. 2010). Corroborating information about the violations against LGBTI activists could not be found among the sources consulted by the Research Directorate. However, in his December 2011 correspondence with the Research Directorate, Sunil Pant explained that, in recent years, there has been "much less" killing and "active violence" against LGBTI people (BDS 24 Dec. 2011).

Pant explained further that discrimination against LGBTI people "exists at [a] more subtle level," including at the workplace and in education (ibid.). In corroboration, media sources note that LGBTI individuals may face difficulties finding work due to the prejudice of employers, and that they may be ostracized or disinherited by their families (República 17 Nov. 2010; Wave Mag June 2008). A 2011 article by a Global Press Institute journalist alleges that "[t]here has been a steady rise in complaints filed by gays and lesbians documenting unlawful dismissals from work" (22 Feb. 2011). Additionally, sources indicate that men who have sex with men may face difficulties in accessing health services due to discrimination (Nepal 2011, 9; República 25 Jan. 2010).

2. State Protection

2.1. Legislation

In 2007, a Supreme Court ruling proclaimed that LGBTI persons, or "third gender" persons, are "natural person [s]" and have the right to enjoy the fundamental human rights guaranteed to all Nepali citizens (Nepal 2007). Although Nepalese laws do not specifically criminalize homosexuality (ibid.; US 8 Apr. 2011, 36), the ruling directed the Government of Nepal to amend or enact laws to eliminate discrimination against individuals based on gender identity or sexual orientation (Nepal 2007). A May 2011 CNN report says that the Government of Nepal is reviewing a list of discriminatory laws that will be changed to protect the rights of sexual and gender minorities (31 May 2011). Various sources also indicate that the protection of rights for LGBTI people will be enshrined in the new constitution of Nepal (ILGA 20 July 2011; The Canadian Press 14 Aug. 2011; TrustLaw 9 Dec. 2011), which is expected to be completed in May 2012 (The Hindu 29 Nov. 2011).

In accordance with the Supreme Court ruling, the Government of Nepal issues citizenship certificates recognizing the third gender [transgender or tesro lingi (República 25 Jan. 2010)], although only two such certificates have been issued so far (Allvoices 15 Apr. 2011; CNN.com 31 May 2011). CNN reports that, in May 2011, the Ministry of Home Affairs had still not instructed Nepal's 75 administrative districts to issue third-gender citizenship certificates, and that the local authorities were unaware of the option (ibid.). The Himalayan Times also reports that, according to the Secretary of the Prime Minister's Office, there are technological and methodological issues that must be resolved before third-gender citizenship certificates can be granted (27 Sept. 2011). Sunil Pant told The Himalayan Times that Prime Minister Baburam Bhattarai is sympathetic to the concerns of the LGBTI community, but that the bureaucracy of Nepal is "misleading the executive body" and impeding the provision of citizenship rights to LGBTI people (27 Sept. 2011).

As well, government secretaries at a December 2011 meeting reportedly concluded that the Citizenship Act must be amended before passports recognizing third-gender persons can be issued (The Himalayan Times 25 Dec. 2011). However, the Deputy Chief of Mission for the Washington-based Embassy of Nepal attributed the delay to technical issues, not legal ones (Nepal 4 Jan. 2012). In his correspondence with the Research Directorate, he explained that, legally, it should be possible to issue such passports (ibid.).

2.2. State Initiatives

The International Gay and Lesbian Human Rights Commission (IGLHRC) reports that the Government of Nepal has developed a three-year human rights work plan for 2011-2014 (19 Jan. 2011). The plan includes a human rights program designed to increase public awareness and acceptance of LGBTI people through public seminars in 10 districts around the country (IGLHRC 19 Jan. 2011).

2.3. Police and Judiciary

The US Department of State reports that police are said to have "harassed" homosexuals and other sexual minorities, including in rural areas, particularly in the Terai region (8 Apr. 2011, 36-37). Media sources have also noted that the police have beaten transgendered people (Wave Mag June 2008; The Canadian Press 14 Aug. 2011). According to Sunil Pant, the police have become more sensitized towards LGBTI people and make efforts to protect them; however, because the law does not explicitly protect LGBTI people from discrimination, the police have a limited ability to act (BDS 24 Dec. 2011). He noted, further, that the BDS is involved in educating police departments, especially new recruits, on LGBTI issues (ibid.).

Media sources report that, in 2010, a lesbian police officer was arrested for abducting and sexually abusing a teenage girl whom she claimed was her girlfriend (República 1 June 2011; The Kathmandu Post 14 Mar. 2010). In a statement, the BDS reportedly alleged that the arrest occurred due to pressure from a high-ranking police officer related to the girl (ibid.). In June 2011, República reported that the woman, who was suspended from her job for over a year because of the arrest, was acquitted by the Kathmandu District court, which concluded that the girl's family had made baseless accusations against the woman because they had not consented to the couple's relationship (1 June 2011). The US Department of State reports that, in 2010, the Supreme Court dismissed an appeal by Bhakti Shah, who was reportedly dismissed by the Nepalese Army for being a lesbian (8 Apr. 2011, 36). Media sources reported in early 2011 that the case was still pending (GayNZ.com 18 Mar. 2011; Global Press Institute 22 Feb. 2011).

3. Support Services

According to the BDS, at least five community-based LGBTI organizations have received funding from local governments for skills development and public information programs (n.d.b). However, the BDS does not receive funding from the Government of Nepal (24 Dec. 2011).

The BDS has offices in 40 cities (n.d.b), although the locations outside of Kathmandu are limited to providing HIV prevention and counselling services due to the lack of resources (24 Dec. 2011). It reportedly serves 300,000 community members (BDS n.d.b). At its Kathmandu location, it offers HIV prevention services, legal counselling and support, skills building and training, psychosocial counselling and support groups, and it documents human rights abuses (BDS 24 Dec. 2011). The BDS also runs a shelter to assist people with HIV/AIDS who have been abused or abandoned by their families (The Kathmandu Post 24 June 2011). The shelter reportedly accommodates up to 30 people and offers free medical care (ibid.).

Sources indicate that there are organizations outside of Kathmandu specifically serving lesbians (Pink News 22 Apr. 2009; BDS n.d.a). These organizations are located in Narayangadh, Chitwan district; Itahari, Sunsari district; Nepalgunj, Banke district; Birgunj, Parsa district; Pokhara, Kaski district; and Dhangadi, Kailali district (ibid.). There is also an umbrella organization, known as the Federation of Sexual and Gender Minorities Nepal, which includes at least 15 NGOs (ibid. n.d.b).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: Attempts to contact Mitini Nepal were unsuccessful. Representatives from WOREC Nepal and the International Commission of Jurists, as well as a Nepali legal expert, were unable to provide information within the time constraints of this Response.

Internet sites, including: Asia Pacific Forum; Asian Legal Resource Centre; Forum for Women, Law and Development; GlobalGayz.com; International Federation for Human Rights; Lambda Legal; Mitini Nepal; Nepal Country Co-ordinating Mechanism; NepalResearch; Nepal South Asia Centre; Unified Communist Party of Nepal (Maoist); United Nations — Integrated Regional Information Networks, Office of the High Commissioner for Human Rights, RefWorld, ReliefWeb; WOREC Nepal.