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WATCH

“We Have to Beg So Many People”

Human Rights Violations in Nepal’s Legal Gender Recognition Practices



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Glossary

A note on terminology:

In English, “transgender” is often used as an inclusive or umbrella term for anyone whose sex assigned to them at birth does not conform to their lived or perceived gender. It refers to people for whom the designation as “female” or “male” on their birth certificate does not align with the gender that they are most comfortable expressing or would express if given a choice. In Nepali, there are several terms that refer to people whose gender identity and expression differ from their sex assigned at birth. This glossary explains them—as widely-recognized English terms—in an attempt to clarify where terms differ or overlap.

Cisgender: The gender identity of people whose sex assigned at birth conforms to their identified or lived gender.

Gender: The social and cultural codes used to distinguish between society’s conceptions of “femininity” and “masculinity.”

Gender Expression: The external characteristics and behaviors that societies define as “feminine,” “androgynous,” or “masculine,” including such attributes as dress, appearance, mannerisms, hairstyle, speech patterns, and social behavior and interactions.

Gender Identity: A person’s internal, deeply felt sense of being female or male, both, or something other than female and male, such as third gender or non-binary.

Gender Non-Conforming: A person who does not conform to stereotypical appearances, behaviors or traits associated with sex assigned at birth.

Intersex: An umbrella term that refers to a range of variations in chromosomes, gonads, and/or genitals that vary from what is considered typical for female or male bodies. A former medical term, “intersex” has been reclaimed by some as a personal and political identity. Intersex is not the same as transgender, which describes individuals whose gender differs from the sex they were assigned or presumed at birth.

Sex: The biological classification of bodies as male or female based on such factors as external sex organs, internal sexual and reproductive organs, hormones, and chromosomes.

Third Gender: A term referring to the gender identity of people who do not identify with male or female gender categories. Third gender categories exist throughout history and across cultures around the world. In Nepal, the term first entered legal and political discourse following the Supreme Court judgment in *Pant v. Nepal (2007)*.

Meti: A term that is believed to have originated in Darjeeling, India, which refers to people assigned male at birth who develop a more feminine gender identity. It has sometimes been used in reference to people who identify as transgender women or third gender.

Hijra: An identity category for people assigned male at birth who develop a feminine gender identity, which has long been recognized culturally, if not legally. Hijras' traditional status, which included bestowing blessings at weddings, had provided some protection and a veneer of respect. But rather than being viewed as equal to others before the law, they were regarded as marginal.

Transgender: The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender. A transgender person usually adopts, or would prefer to adopt, a gender expression in consonance with their gender identity but may or may not desire to alter their physical characteristics to conform to their gender identity.

Transgender Men: Persons designated female at birth but who identify and may present themselves as men. Transgender men are referred to with male pronouns.

Transgender Women: Persons designated male at birth but who identify and may present themselves as women. Transgender women are referred to with female pronouns.

Summary

Since the founding of the Blue Diamond Society in 2001 and a groundbreaking victory for fundamental rights at the Supreme Court in 2007, Nepal has been recognized globally for advances for lesbian, gay, bisexual, and transgender (LGBT) rights. A significant focus of Nepali civil society organizing and legal advocacy has been human rights violations against transgender people, and the fight for trans people’s recognition before the law. Activists have used creative strategies that draw on local cultures and international frameworks to gain a foothold in the Nepali legal system and in society.

While early gains, such as Nepal’s pioneering recognition of a third gender category based on self-identification, have garnered widespread praise and made Nepal an important touchpoint for LGBT rights movements elsewhere, implementation remains piecemeal and inadequate. There is no explicit legal option in Nepal to change one’s gender marker to “male” or “female,” and even the procedure for the third (or “other”) gender option is unclear and ad hoc. In addition, as this report shows, interactions between transgender people and the state have become particularly fraught with discriminatory, ill-informed, and harmful medicalized practices.

Following the resounding victory at the Supreme Court in 2007, activists used the judgment to push government agencies to respect their rights. Much of this came about through advocacy for administrative recognition of the third gender category on official documents and in data sets. There was significant progress in this regard, including the recognition of the third gender category in the national census, on citizenship cards, and on passports, among other advances.

But each gain was also met with challenges. The definition of who was included in the third gender category differed across systems and lacked clarity. And when it came to perhaps the most important instance of the state’s recognition of legal gender—the *nagarikta* or citizenship card—the government ordered local administrative offices to implement it without providing a clear procedure. As a result, a haphazard and para-official process for transgender people to change their legal gender has emerged. This process has no official basis in policy, but rather is carried out according to stereotypes and assumptions by bureaucrats, physicians, and other people in positions of power.

Some people have been able to obtain documents reading “third gender” or “other”; others have been denied entirely, or wrongly told they must have surgery to be eligible. A small number of people have been able to change their documents from “male” to “female,” but doing so invariably involves an invasive and humiliating physical exam in a medical setting. As documented in this report, the process for obtaining legal gender recognition contains troubling elements of medicalization and inappropriate bureaucratic scrutiny of physical characteristics as markers of gender identity; trans people’s experiences of the ad hoc process reveal it is too often confusing, slow, and rife with human rights violations.

International human rights law and medical best practices support the complete separation of medical and legal processes with regard to gender transition. In other words, individuals attempting to access transition-related medical interventions should not face legal barriers, and people attempting to change their legal gender and name should not be required to undergo any medical procedures. The World Professional Association for Transgender Health (WPATH)—an international, multidisciplinary professional association composed of more than 700 members worldwide—“opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents.” The organization stated that “[m]edical and other barriers to gender recognition for transgender individuals may harm physical and mental health.”

The Supreme Court has been an important venue for advancing the rights of transgender people in Nepal. The Court in *Pant v. Nepal* (2007) and subsequent cases, including *Pant v. Nepal* (2017), made significant strides in recognizing the rights of transgender people. Nonetheless, as illustrated by *Kapali v. Nepal*, a case before the court at time of writing, implementation of the court's decisions has been uneven and fraught with missteps, and the process for obtaining and updating identity documents is in urgent need of clarification and revision. In Rukshana Kapali’s petition to the court, she is asking that the principle of self-identification (or as the court said, “self-feeling”) expressed in *Pant v. Nepal* (2007) in relation to a third gender category also now be applied to transgender people who want to change their documents to a binary male or female legal gender.

In 2007 when the court issued its first judgment on LGBT rights, it ordered the government to take three steps: audit all laws and scrap those that discriminated against LGBT people; form a committee to study same-sex marriage legislation; and legally recognize a “third

gender” category based on an individual’s own self-identification. The judgment in *Pant v. Nepal (2007)* has been cited by courts around the world, including the Supreme Court of India, courts in the United States considering third gender passports, and the European Court of Human Rights, as a positive example. However Nepali authorities continue to lag in implementing the court’s order to recognize gender identity on the basis of self-identification.

The court’s emphasis on self-identification has echoed through subsequent judgments, which are discussed in this report. In practice, however, trans people in Nepal have met significant barriers when attempting to change their legal gender according to their identity. These barriers include instructions to undergo surgeries that are not available in-country, invasive medical exams to confirm the appearance of their genitals and breasts, and other forms of humiliation and violations of their privacy by government officials.

The principle of self-feeling should be consistently applied, and its application should not allow medical practitioners or bureaucrats to confirm or deny an applicant’s self-declared gender identity. The lack of a clear procedure for self-declaration of gender identity has led to decisions based on the prevailing perceptions among officials rather than the “self-feeling” of the individual concerned. As the accounts in this report demonstrate, trans people who approach different administrative offices are given different advice and instructions, which sometimes contradicts what their peers are told while undertaking the same process elsewhere. One trans woman interviewed for this report said: “The state just throwing in medical steps is a way they think they’re stabilizing something that was confusing, whereas we experience it as yet another barrier and yet another way in which we have to beg for our rights.”

Legal gender recognition is an essential element of a range of fundamental rights—including the right to privacy, the right to freedom of expression, the right to be free from arbitrary arrest, and rights related to employment, education, health, security, access to justice, and the ability to move freely.

The Yogyakarta Principles—compiled by a group of experts, including Nepali LGBT rights activist and former member of parliament Sunil Babu Pant—state that each person’s self-defined sexual orientation and gender identity is “integral to their personality” and is a basic aspect of identity, personal autonomy, dignity, and freedom. The principles are clear

that gender recognition may involve, “if freely chosen, modification of bodily appearance or function by medical, surgical or other means.” Put simply, the process for legal recognition should be separate from any medical interventions. But if an individual’s personal transition process requires medical support, those services should be available and accessible.

Implementing the right to legal gender recognition is important for transgender people to leave behind a life of marginalization and enjoy a life of social equality and dignity. A shift toward allowing people autonomy to determine how their gender is expressed and recorded is gaining momentum. The law should not force people to carry an identity marker that does not reflect who they are. It should also not force transgender people to undergo unwanted medical procedures to be recognized or achieve any of the other associated rights.

The Nepali government should urgently follow the Supreme Court’s judgments and implement a transparent and quick administrative procedure to change their legal gender on citizenship certificates and all other legal documents and registers.

Recommendations

To the Ministry of Home Affairs

- Consistently oppose the introduction of “medical proof” clauses in drafts laws and policies related to citizenship.
- Issue a clarifying directive, in line with international human rights law and global medical best practices, that no medical proof should be required for Nepalis to change their legal gender.
- Work with civil society groups to create a transparent and quick procedure for processing paperwork related to legal gender change, which would end extreme delays, as an interim measure while appropriate and rights-respecting legal gender recognition policy is created.

To Members of Parliament

- Develop a law, with the input of civil society groups, that enables transgender people to be recognized according to their self-defined gender identity and to change their legal name and gender without any medical requirements.
- Ensure that transgender children are not excluded from the possibility of applying for legal recognition of their gender identity, in recognition of the fact that it may be in the best interests of some transgender children to change their legal gender before the age of majority.
- Design the relevant procedures in line with Nepal’s obligations under the Convention on the Rights of the Child to acknowledge that, as children grow and acquire capacities, they are entitled to an increasing level of responsibility for and say in the regulation of matters affecting them.

To the Ministry of Health

- Update all healthcare policies that affect transgender people so they align with the World Professional Association of Transgender Health (WPATH) Standards of Care-

8,¹ which were set by international health and medical experts for healthcare systems to provide the best possible care for transgender people.

- Publicly support the creation of procedures through which transgender people in Nepal can change their legal gender on the basis of their own self-declared identity. The ministry should clarify that according to international health and human rights standards, medical evidence is not required for legal gender recognition.
- Ensure that transgender people have access to the medical and psychological assistance and support they need, regardless of whether they pursue medical steps or a legal gender change, and that such assistance and support is affordable and available within a reasonable time.
- Ensure, in consultation with transgender people and civil society groups, that health insurance schemes cover all medical interventions related to gender transition.
- Provide training to health service professionals, including psychologists, psychiatrists, general practitioners, and social workers, regarding the specific needs and rights of transgender persons and the legal and ethical requirements to respect their dignity.
- Conduct a rigorous and independent investigation into human rights abuses in the ad hoc legal gender recognition process in various parts of the country, including violations that take place in medical settings such as Bir Hospital.

To the Nepal Medical Council and Nepal Medical Board

- Work with WPATH to adopt the WPATH Standards of Care as the Nepal Medical Council’s care standards, and train providers on these standards.
- Undertake consultations with transgender community leaders and endocrinology experts to discuss and understand how to provide hormone therapy to transgender people in a manner that supports their access to desired therapies and to ensure safe and effective monitoring of these medications.

¹ World Professional Association of Transgender Health, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8* (International Journal of Transgender Health, 2022), <https://www.wpath.org/publications/soc> (accessed May 19, 2023).

To the National Human Rights Commission

- Working with civil society groups, the National Human Rights Commission should launch a rigorous and independent investigation into human rights abuses in the ad hoc legal gender recognition process in various parts of the country, including violations that take place in medical settings such as Bir Hospital.

Methodology

Human Rights Watch conducted the research for this report between August and December 2022. A researcher interviewed 18 transgender people who had attempted to change their legal gender or had not undertaken the process due to various barriers, as well as activists who help others undertake the legal gender recognition process. In addition, the researcher accompanied a trans woman during her “medical verification” visit in a hospital in Kathmandu, at her request and after a thorough discussion about comfort and security considerations with her and another activist accompanying her for the procedure.

Interviews were conducted in English and Nepali, with an interpreter when necessary. All interviews had the full informed consent of participants who were informed that they could stop the interview at any time or decline to answer any questions they did not feel comfortable answering. All interviews were conducted in private, except for one group interview with interviewees who had indicated they preferred to speak in this manner. Most of the names in the report are pseudonyms, unless interviewees explicitly asked Human Rights Watch to use their real names because they are already well-known and their experience was shaped in part by their public profile.

Human Rights Watch reimbursed transportation costs of interviewees who traveled to meet researchers in safe locations outside their homes or offices. No compensation was paid to any interviewees.

Human Rights Watch wrote to the Ministry of Health and Population, and the Ministry of Home Affairs regarding the findings in this report, in May 2023. The letters are included as appendices to this report. At the time of publication, we had not received a response.

Background: Nepal’s LGBTI Rights History

In a 2009 report about LGBT rights movements globally, Human Rights Watch wrote that Nepal’s early successes were inspiring activists across South Asia. It lauded the tenacity, creativity, and effectiveness of the first eight years of organized Nepali LGBT rights activism:

Nepal’s leading LGBT group negotiated the thickets of HIV/AIDS funding, found its own path from service provision to political advocacy, and changed the country. ‘We started with health intervention,’ they recount, which was ‘a way to reach out to the larger society in a non-threatening manner.’ With the information collected through outreach they began documenting and publicizing human rights abuses, ‘letting the world know what kinds of violations sexual and gender minorities faced.’ Political interventions grew out of that, as they ‘took to the streets, began to lobby political parties, and even participated in elections,’ as well as ‘took the government to court.’ They persuaded the country’s Supreme Court to mandate protections in law for sexual orientation and gender identity—and the group’s founder [from 2008 to 2012] served in parliament.²

In celebrating the successes of LGBT rights activists in Nepal, Human Rights Watch joined dozens of other global institutions in holding the country up as a success story.³ However, legal progress has stalled. Astraea Foundation, a global donor organization, cautioned in a 2022 report that “Nepal cannot rest on praise from the international community promoting it as a bastion of progress on LGBTQI+ rights.”⁴ Continued advancement of LGBT rights remains crucial, however, as the Prevention Collaborative and UN Women-Nepal explained in 2020: “Translating the Supreme Court rulings into a legal framework that guarantees inclusion and protections is slow-paced and hindered mainly by bureaucracy and

² Human Rights Watch, “Together, Apart Organizing around Sexual Orientation and Gender Identity Worldwide,” June 11, 2009, <https://www.hrw.org/report/2009/06/11/together-apart/organizing-around-sexual-orientation-and-gender-identity-worldwide>.

³ Astraea Foundation, “Bridges to Justice: Case Study of LGBTI Rights in Nepal,” 2015, <http://www.astraeafoundation.org/uploads/files/Astraea%20Nepal%20Case%20Study.pdf> (accessed May 19, 2023).

⁴ Astraea Foundation, “Nepal LGBTQI Landscape Analysis of Political, Economic, and Social Conditions,” April 2022, <https://www.astraeafoundation.org/nepallgbtqireport/> (accessed May 19, 2023).

dominant patriarchal institutional and social culture.”⁵ Legal scholar Mara Malagodi observed in a 2023 paper: “Legal reforms towards greater gender inclusion are often resisted by [Nepali] state authorities in the name of protecting the nation’s autochthonous social values and religious traditions to legitimize patriarchal and heteronormative forms of exclusion.”⁶

Among other unrealized promises, Nepal lacks a comprehensive and rights-based procedure for transgender people to change their legal gender. A third gender, or “other,” category is available to trans persons, but in some cases applicants for the third gender category are requested to provide medical evidence of transition. There is no explicit legal option to change gender markers to “male” or “female” without undergoing a full surgical transition, and even then, the administrative procedure is unclear and ad hoc.

In addition, as this report shows, interfaces between transgender people and the state have become particularly fraught with discriminatory, ill-informed, and harmful medical practices. The history of gender and sexuality activism—as well as legal progress and regress—in Nepal sheds light on the potential for further change and underlines the actions the government should undertake to fulfill its international human rights obligations. As Bhumika Shrestha, a leading trans advocate in Nepal, said: “After 20 years of LGBTI rights advocacy in Nepal, we are just spreading our wings now—we have really just started.”⁷

Claiming Space for LGBT Rights Groups

In the 1990s, some queer people held informal discussion groups about sexuality in Kathmandu, but their efforts were unfunded and ultimately ephemeral in terms of organizing.⁸ It was not until 2001 that human rights activism focusing on sexual orientation and gender identity began in earnest in Nepal with the founding of the Blue Diamond

⁵ Anam Abbas, “UN Women supports efforts to improve LGBTIQ rights in Nepal,” UN Women, January 27, 2021, <https://asiapacific.unwomen.org/en/news-and-events/stories/2020/12/rights-and-representation-of-lgbtiq-community> (accessed May 19, 2023).

⁶ Mara Malagodi, “Gender, Sexuality, and Constitutionalism in Nepal,” *Gender, Sexuality and Constitutionalism in Asia*, W. Chang, K. Loper, M. Malagodi and R. Rubio-Marín (eds.), Oxford: Hart Publishing (2024), pg. 286.

⁷ Human Rights Watch interview with Bhumika Shrestha, Kathmandu, December 11, 2022.

⁸ Charlie Chaulagain, “The Year 1999,” *The Nepali Man*, April 21, 2015, <https://tnm.com.np/the-year-1999-in-1999-i-did-not-know-any-of-this/> (accessed May 19, 2023).

Society (BDS).⁹ According to Sunil Pant, BDS’s founder, “The clerk at the office looked at the papers and said he could only register the organization if its goal was to convert people back to heterosexuality.”¹⁰ Because of this BDS was registered as a “sexual health” nongovernmental organization (NGO).¹¹

At the time, the country was embroiled in an increasingly violent civil war, which began in 1996, and Kathmandu was frequently under curfew. For sexual and gender minorities, including gay and trans sex workers, this meant increased policing of public spaces where they typically gathered.¹² In 2005 and 2006, Human Rights Watch documented repeated attacks on trans and queer people by security forces, calling the pattern a “sexual cleansing drive.”¹³

BDS came into existence a decade after the 1990 reinstatement of multi-party democracy, which had increased space for civil society and introduced a constitution that would become a battleground for minority rights.¹⁴ And it gained its foothold in a rapidly changing civil society sector, influenced by changes in donor priorities in the 1990s and the international apparatus responding to the civil war.¹⁵

⁹ The Astraea Foundation, “Bridges to Justice: Case Study of LGBTI Rights in Nepal,” 2015, <http://www.astraeafoundation.org/uploads/files/Astraea%20Nepal%20Case%20Study.pdf> (accessed May 19, 2023).

¹⁰ Kyle Knight, “Outliers: Sunil Babu Pant, the Blue Diamond Society, and Queer Organizing in Nepal,” *Studies in Nepali History and Society*, vol. 19, no. 1, (June 2014), <https://www.martinchautari.org.np/storage/files/sinhas-articles-vol19-no1-kyle-knight.pdf> (accessed May 19, 2023), p. 113–176.

¹¹ Jo Becker, *Campaigning for Justice: Human Rights Advocacy in Practice*, (Palo Alto: Stanford University Press, 2013) (accessed May 19, 2023).

¹² Anthropologist Paul Boyce documented how public spaces in Kathmandu were common sites for sexual encounters and intimacy for non-heterosexual (in behavior) Nepali men. See: Paul Boyce and Sunil Pant, “Rapid Ethnography of Male-Male Sexuality in Kathmandu,” (Kathmandu: Family Health International (FHI), 2001), www.hivpolicy.org/Library/HPP000564.pdf (accessed May 19, 2023).

¹³ Human Rights Watch, “Nepal: Police Attack Transgender People,” April 19, 2005, <https://www.hrw.org/news/2005/04/19/nepal-police-attack-transgender-people>; Human Rights Watch, “Nepal: Police on ‘Sexual Cleansing’ Drive,” January 13, 2006, <https://www.hrw.org/news/2006/01/13/nepal-police-sexual-cleansing-drive>; Human Rights Watch, “Nepal: ‘Sexual Cleansing’ Drive Continues,” March 18, 2006, <https://www.hrw.org/news/2006/03/18/nepal-sexual-cleansing-drive-continues>.

¹⁴ Mara Malagodi, “Minority Rights and Constitutional Borrowings in the Drafting of Nepal’s 1990 Constitution,” *The European Bulletin of Himalayan Research*, vol. 37 (2010), p.56–81.

¹⁵ Seira Tamang, “Civilizing Civil Society: Donors and Democratic Space,” *Studies in Nepali History and Society*, vol. 7, no. 2, (December 2002), <https://www.martinchautari.org.np/storage/files/sinhas-vol7-no2-seira-tamang.pdf> (accessed May 19, 2023), p. 309-353.

The decade saw international donors shift away from supporting the government’s work on social services and poverty alleviation to supporting NGOs that took up the mantle.¹⁶ Like elsewhere, Nepal received an influx of HIV/AIDS funding. While there were 114 known cases of HIV in Nepal in 1992, the American Foundation for AIDS Research, a major donor, received applications from more than 80 Nepali NGOs that wanted to work on AIDS.¹⁷ Anthropologist Stacey Pigg wrote: “Attention to AIDS therefore [came] to mean, in a very practical sense, an attention to the sexual activities and sexual consciousness of Nepalis in the name of disease prevention.”¹⁸

Judicial Victories for LGBT Rights

As BDS and its HIV-related activities grew, its formal status as an NGO coupled with public visibility provoked legal challenges and opportunities.¹⁹ On June 18, 2004, a private lawyer petitioned the Supreme Court to shut down BDS. The petition accused the group of trying to “make homosexual activities legal” and demanded it be banned because the lawyer claimed that same-sex conduct was criminalized in Nepal under a vague provision in the law.²⁰ However, the Supreme Court registrar rejected this claim and the petition because:

From a study of relevant legislation and documents, in relation to the registration of this petition, it did not seem that the sexual activities conducted by adult homosexual persons, in private or personal locations, could become a subject for criminal law. Against Nepal’s current legal scenario, the issue raised by the petition is not found to be a matter of public concern....²¹

¹⁶ Seira Tamang and Carmen Malena, *The Political Economy of Social Accountability in Nepal*, (Washington, DC: The World Bank, 2011), <https://openknowledge.worldbank.org/entities/publication/300f15d5-89d3-5aa7-92d9-ebdad894eca4>; (accessed 2014).

¹⁷ Stacey Leigh Pigg, “Languages of Sex and AIDS in Nepal: Notes on the Social Production of Commensurability,” *Cultural Anthropology*, vol. 16 no. 4, (2001) p. 481–541.

¹⁸ *Ibid.*

¹⁹ Mara Malagodi, “Constitutional History and Constitutional Migration: Nepal,” in *Constitutionalism in Context*, ed. D. Law, (Cambridge: Cambridge University Press, 2022), p. 113-135.

²⁰ *Achyut Prasad Kharel v. His Majesty’s Government* (HMG), Ministry of Home Affairs, District Administration Office, Kathmandu, Supreme Court of Nepal, Writ No. 3736 of 2061 v.s. (2004).

²¹ *Kharel v. Nepal*.

But the lawyer refiled the petition immediately, arguing that Nepal’s National Code (the *Muluki Ain*, which is a combined civil and criminal code re-issued in 1963) did indeed criminalize same-sex conduct.

The *Muluki Ain* of 1963 referenced *aprākṛtik* (unnatural) sexual acts and outlaws them, but it does not enumerate those acts. The petitioning lawyer contended that the clause covered same-sex conduct and that BDS’s activities therefore promoted illegal behavior. The court accepted the second petition and asked the government to clarify whether the phrases in the *Muluki Ain* included same-sex conduct.²²

The government entities named in the petition responded. The Ministry of Home Affairs denied the petitioner’s argument, saying “there is no clear legal provision to take action against homosexual persons under Number 4 of Bestiality.”²³ The Kathmandu District Administration Office responded with identical language. The cabinet secretary wrote on behalf of the Prime Minister and the Council of Ministers: “The writ petition is worthy of annulment.” The Ministry of Law, Justice, and Parliamentary Affairs said that in no way had the ministry or this law violated the petitioner’s rights, so the petition should be dismissed. After several delays and as the country plunged into increased political tumult, including the then-king declaring martial law, the court ultimately refused to entertain the petition in 2006, setting the stage for BDS to return to the court with proactive demands.

In *Sunil Babu Pant and others v. Nepal*, filed in 2006, LGBT rights activists exercised a new and important tool: the Yogyakarta Principles.²⁴ These principles—formally the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity—had just been published, and one of the co-authors was BDS’s founder, Sunil Babu Pant. The Yogyakarta Principles are an interpretation of International Human Rights Law as it applies to sexual orientation, gender identity and expression, and sex characteristics. Sunil Pant and his co-litigants petitioned the Supreme Court to recognize the Yogyakarta Principles in Nepali law.

²² Human Rights Watch, “Nepalese Supreme Court’s Proposed Ban,” July 22, 2004, <https://www.hrw.org/news/2004/07/22/nepalese-supreme-courts-proposed-ban>.

²³ *Kharel v. Nepal*.

²⁴ Yogyakarta Principles, “Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,” March 2007, www.yogyakartaprinciples.org (accessed May 19, 2023).

The case was novel and complex for everyone involved. Advocate Hari Phuyal (now a Supreme Court justice) represented the LGBT groups with advice from two Indian lawyers, Arvind Narrain and Vivek Divan. On the day of the final hearing, the lead justice, Bala Ram KC, asked the chamber if there was anyone who could speak from personal experience about being a sexual or gender minority. A young trans woman, Manisha Dhakal, shared her story, as chronicled in a magazine article:

“I was born male and have a male body and a male name from my family, but that is not how I feel.” She spoke about police abuse and the humiliation of carrying citizenship documents that listed her [sex assigned at birth]. She talked about LGBTI people being harassed at school and dropping out, resulting in [economic marginalization]. “You can see my hair is a little bit long and some of my clothing is for me and some for women,” she said. “This is because my family does not know about my identity. I leave my house in the morning looking like a son, but when I get to the office I wear a shawl and put on a little bit of make-up and I let my hair down like this. This is my reality.”²⁵

The court’s final judgment, written by Bala Ram KC in 2007, required the government to legally recognize a third gender category based on the self-identification of the individual, audit all laws to identify those that discriminated against LGBT people, and form a committee to study legal recognition of same-sex relationships.²⁶

In response to the court’s order, the government identified more than 100 laws that discriminated against LGBT people. A government-appointed committee then issued a report in early 2015.²⁷ While it contained some regressive analysis of the nature of the family and sexuality, it effectively recommended the legal recognition of same-sex relationships. But such post-judgment efforts did not gain as much prominence or traction as the court’s order that the government legally recognize a third gender category.

²⁵ Kyle Knight, “The Spark: How Sunil Pant Ignited a Queer Rights Movement in Nepal,” *The Caravan*, February 28, 2014, <https://caravanmagazine.in/reportage/spark> (accessed May 19, 2023).

²⁶ Michael Bochenek and Kyle Knight, “Establishing a Third Gender Category in Nepal: Process and Prognosis,” *Emory International Law Review*, vol. 26, no. 1, (2012), <https://scholarlycommons.law.emory.edu/eilr/vol26/iss1/3/> (accessed May 19, 2023).

²⁷ The committee established by the Government of Nepal in compliance with the Supreme Court’s order, “A Study Report on Same-Sex Marriages,” p. 55 (2071 BS/2014-15 AD).

Within weeks of the Court’s ruling, Richard Bennett, the representative of the Office of the High Commissioner for Human Rights (OHCHR) in Nepal at the time, called the judgment “truly a ground-breaking decision on gender identity and sexual orientation in South Asia and perhaps worldwide.”²⁸ Courts around the world have referenced the case. For example, courts in the United States²⁹ and India,³⁰ as well as the European Court of Human Rights,³¹ have cited *Pant v. Nepal* (2007) in their consideration of comparative law on how to recognize transgender people’s rights.

By 2010, the Election Commission had added the third gender option to voter rolls,³² and a third gender box was added to immigration forms for tourists soon after.³³ In 2011, Nepal became the first country to include a third gender option on its federal census. In the end, some who wanted to were not allowed to identify as third gender,³⁴ and because the number of third gender entries was so small the Central Bureau of Statistics processed no data from people who reported as third gender.³⁵ And in 2015, the government started issuing passports that recognized three genders.³⁶ That same year, Nepal became the world’s tenth country to specifically protect LGBT people in its constitution.³⁷ Dhakal, who

²⁸ “Discussion Program on the Supreme Court Decision on Sexual Minority Organized by Blue Diamond Society”, Richard Bennett, Representative of the United Nations Office of the High Commissioner for Human Rights (UNOHCHR), Kathmandu, January 12, 2008, http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2008/2008_01_12_SexualMinorities_E.pdf (accessed May 19, 2023).

²⁹ *Zzyym v. Pompeo*, 958 F.3d 1014 (10th Cir. 2020), <https://cases.justia.com/federal/appellate-courts/ca10/18-1453/18-1453-2020-05-12.pdf?ts=1589313701> (accessed January 17, 2024).

³⁰ *National Legal Services Authority (NALSA) v. Union of India and Others*, WRIT PETITION (CIVIL) NO.400 OF 2012, <https://translaw.clpr.org.in/wp-content/uploads/2018/09/Nalsa.pdf>.

³¹ *HÄMÄLÄINEN v. FINLAND*, Application no. 37359/09.

³² The Carter Center, “The Carter Center’s Information Sessions on the Election Commission of Nepal’s Voter Registration with Photograph Program,” May 9, 2012, https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-regional-sessions-voter-registration-050912-eng.pdf (accessed May 19, 2023).

³³ Lester Feder, “Trans People Now Have Their Own Box On Nepali Immigration Form,” *Buzzfeed News*, May 19, 2014, <https://www.buzzfeednews.com/article/lesterfeder/trans-people-now-have-their-own-box-on-nepali-immigration-fo> (accessed May 19, 2023).

³⁴ Kyle Knight, “What We Can Learn from Nepal’s Inclusion of ‘Third Gender’ on Its 2011 Census,” *The New Republic*, July 18, 2011, <https://newrepublic.com/article/92076/nepal-census-third-gender-lgbt-sunil-pant> (accessed May 19, 2023).

³⁵ Kyle Knight, Andrew Flores, and Sheila Nezhad, “Surveying Nepal’s Third Gender: Development, Implementation, and Analysis,” *Transgender Studies Quarterly*, vol. 2, no. 1, (2015), doi: <https://doi.org/10.1215/23289252-2848904> (accessed May 19, 2023), p. 101–122.

³⁶ Kyle Knight, “Nepal’s Third Gender Passport Blazes Trails,” *The Advocate*, October 26, 2015, <https://www.hrw.org/news/2015/10/26/nepals-third-gender-passport-blazes-trails>.

³⁷ Kyle Knight, “How Nepal’s Constitution Got Queered,” *The Los Angeles Review of Books*, October 14, 2015, <https://www.hrw.org/news/2015/10/14/how-nepals-constitution-got-queered>.

spoke up that day in court in 2007, became the executive director of BDS in 2015 and is an internationally-recognized human rights campaigner.

Legal scholar Mara Malagodi noted:

In Nepal, the women’s and queer movements have concentrated their efforts first on strategic constitutional litigation anchored in international standards to unhinge deep-seated forms of legal discrimination. They have succeeded in building an impressive body of pro-women and pro-SGDP case law since the early 1990s.³⁸

Nepal promulgated a new constitution in September 2015. Article 18 explicitly prohibits discrimination against “gender and sexual minorities,” but this phrase is not defined anywhere in the constitution. Article 42, on the right to social justice, states that “gender and sexual minority groups” have the right to employment in state entities. Article 12 of the 2015 constitution also includes a provision for issuing citizenship documents “by descent on the basis of gender identity.”

Citizenship and Gender in Nepal

Nepal’s constitution guarantees equal rights to men and women and prohibits gender-based discrimination. It also contains provisions that discriminate against women by limiting their ability to confer citizenship to their children.³⁹ According to Article 11(7) of the constitution, Nepali men can automatically confer citizenship to their children by descent, but Nepali women must prove that her child’s father is Nepali or declare he is “unidentified.” If such a declaration is proven false, the woman would face prosecution.⁴⁰ This issue has been embattled through successive governments, in particular around the much-debated Nepal Citizenship Act (Amendment) Bill in recent years.⁴¹

³⁸ Mara Malagodi, “Gender, Sexuality, and Constitutionalism in Nepal.”

³⁹ Shivani Mishra, “Equal Laws in Nepal Crucial for Ending Discrimination Against Women,” March 8, 2023, <https://www.hrw.org/news/2023/03/08/equal-laws-nepal-crucial-ending-discrimination-against-women>.

⁴⁰ Meenakshi Ganguly, “Nepal President Blocks Citizenship Law,” September 26, 2022, <https://www.hrw.org/news/2022/09/26/nepal-president-blocks-citizenship-law>.

⁴¹ Mara Malagodi, “Gender, Sexuality, and Constitutionalism in Nepal,” pg. 285.

As significant as the changes to include a third gender category were, the lived experience of trans people in Nepal by and large remains a struggle unsupported by government entities. Definitions of the “third” or “other” gender vary from one ministry or policy to another, and trans people seeking to change their documents have often had their experiences dictated more by the personal preferences and biases of the officials they interacted with than by the letter of the law. Meanwhile, the emphasis of the Supreme Court on the third gender category and related implementation do not accommodate trans people who want to change their gender to “male” or “female”, and not “third” or “other.”

While the Supreme Court has continued to issue judgments that set out procedures for legal gender recognition, the implementation of legal gender recognition for trans people across the country has instead been influenced by contested and confusing definitions, loose accountability, and some high-profile cases in the media.

Over time, authorities began deferring to medicine and medical practitioners to “verify” the sex and gender of trans people even though this process was never explicitly written in policy. Dipeksha M., a trans woman in Kathmandu, described to us why these issues emerged and persist:

Some of the misunderstanding and confusion we’re seeing from officials is the fallout from the early activist emphasis on the third gender category. It opened up space for discussions and rights gains, but it also really cemented that trans people aren’t male or female, and it can be hard to undo that. And so the government, when confused and under pressure, just defaults to medicalization because it’s perceived as neutral and prestigious. And if a doctor says I’m a woman, then the state can just shrug and say it’s not their fault.⁴²

This creeping medicalization has created an ad hoc and harmful pathway to legal gender recognition in Nepal. This para-official process where trans people are subjected to the scrutiny of bureaucrats and physicians to “prove” they are transgender is antithetical to the Nepal Supreme Court’s orders, international human rights law, and international medical best practices, which center self-identification; this process needs urgent reform

⁴² Human Rights Watch interview with Dipeksha M. (pseudonym), Kathmandu, December 11, 2022.

and regulation. Clarity around definitions and procedures, as well as explicit protections against human rights violations are needed to guide what is already a difficult and fraught process for trans people.

Dipeksha M. attributed the challenges faced by trans people to the lack of governmental accountability and patriarchal systems:

I don't think the government is actively trying to harm us, but there's very little accountability in the administrative state. And it's steeped in patriarchy.... Marginalized people just feel it more because we need these profoundly dysfunctional systems to actually function or we can't live our lives.⁴³

Intersex Rights Advocacy in Nepal

In its concluding observations on Nepal in 2016, the UN Committee on the Rights of the Child recommended that the government raise awareness about intersex people, ensure intersex children have access to identity documents that allow them to self-declare their gender, regulate the use of medically unnecessary “normalizing” surgeries, and train medical personnel on sexual and gender diversity. In its concluding observations on Nepal in 2018, the CEDAW Committee recommended that Nepal “[a]dopt 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.”

These two significant interventions by human rights treaty bodies were largely the result of assiduous advocacy undertaken by Esan Regmi, an intersex person and activist in Nepal whose personal story has received widespread media attention as he attempts to raise awareness about how children born with variations in their sex characteristics are misunderstood and mistreated.

⁴³ Ibid.



Bipin Kadayat was born with intersex characteristics. After surviving a harrowing experience of violence and discrimination from his family, in 2020 he was able to change his nagarikta from female to male, without medical examinations. © 2023 Courtesy of Bipin Kadayat

When he was 20, Regmi came across LGBTI organizations and information on the internet and began to understand that he had been born with an intersex variation. He had been assigned female at birth; his family, not understanding what was happening with his body as he went through puberty, had sought medical attention in India, but physicians there told them there was no “cure” and to hand him over to hijra communities.⁴⁴ “It occurred to me that there may be many others like me in the country who, just like me, had no access to information in their language and stayed hidden in society. I realized that I needed to raise my voice because I did not know anything about intersex until this time,” Regmi said in an interview.⁴⁵

In 2017, Regmi registered an NGO called Campaign For Change (CFC), and formalized his activism. Legal gender recognition has been a major focus of CFC’s efforts, as intersex people in Nepal struggle—much like trans people—to change their legal

⁴⁴ Blue Diamond Society (BDS), “A Brief Report on the Rights of Intersex People in Nepal,” 2015, <https://resourcecentre.savethechildren.net/pdf/2016-crc-nepal-blue-diamond-intersex.pdf/> (accessed May 19, 2023).

⁴⁵ “Intersex Asia Talks: Special Conversation with Esan Regmi on the journey of CFC Nepal,” *Intersex Asia*, May 11, 2021, <https://intersexasia.org/3268-2/> (accessed May 19, 2023).

gender on citizenship documents. “Many intersex people are stuck in the middle when it comes to legal documentation. People think we are frauds because our details don’t match our gender identity,” Regmi said.⁴⁶

⁴⁶ “Growing Up As An Intersex Person in Nepal,” UNAIDS, June 8, 2016, <https://unaids-ap.org/2016/07/08/growing-up-as-an-intersex-person-in-nepal/> (accessed May 19, 2023).

Creeping Medicalization of Legal Gender Recognition

[The government official told me:] ‘Only a physician can tell us if you are really a sexual and gender minority community member.’

—Raju B. (pseudonym), Kathmandu, December 11, 2022

Having to come out repeatedly and explain and justify yourself to a hospital clerk or administrative staffer in a public setting with dozens of people who could listen in—it’s exhausting and terrifying.

—Dipeksha M. (pseudonym), Kathmandu, December 11, 2022

In recent years, medicalization has been creeping into the para-official processes for trans people in Nepal seeking to change their legal gender to male or female, and also to those seeking documents that identify them as “other” gender. Sarita L., 34-year-old trans woman in Kathmandu, told Human Rights Watch:

There is this unwritten rule these days that if you have done sex reassignment surgery, you can go to the Nepal Medical Board and they will give you a recommendation letter, then you take that to your Chief District Officer and re-apply for citizenship. You have to do so much personal begging and lobbying to make it happen—we have to beg so many people.⁴⁷

The “unwritten rule” Sarita describes above, and which this report documents further, colors the lives of trans people in Nepal today. The fact that gender-affirming surgery—and more specifically genital surgery—could allow a person to change their legal gender to male or female (and not have to choose “other”) appears to have been popularized following a high-profile public transition of Caitlin Pant, the child of a famous comedian.⁴⁸ Interviewees attributed the uptick in interest in gender-affirming surgeries over the past decade, as well as the shift in popular understanding of gender identity to a more

⁴⁷ Human Rights Watch interview with Sarita L., Kathmandu, December 13, 2022.

⁴⁸ AFP, “Actor welcomes home transgender daughter,” February 13, 2012, <https://www.9news.com.au/world/actor-welcomes-home-transgender-daughter/f3ef4baa-7d1c-4b27-a5bb-f21647402ec3> (accessed May 19, 2023).

medicalized concept, to Caitlin Pant’s public transition and acquiring of citizenship documents that identified her as “female” following surgery in Bangkok.

The medical paradigm became quickly embedded, with activists publicly noting as early as 2013 that government officials were demanding letters from doctors for trans people to change their legal gender.⁴⁹ By 2019, discussions around amending the citizenship law featured arguments for including a “medical proof” clause for legal gender change in the new law.⁵⁰ While the medicalized paradigm is most consistently applied to people seeking binary legal recognition as male or female, Human Rights Watch documented accounts of people seeking third (or “other”) gender legal recognition also being asked by authorities for medical evidence.

Interviewees’ experiences illustrate the gravity and complexity of categories on identity documents, of bureaucratic hurdles and privacy rights violations, and of the impact of the creeping medicalization of legal gender recognition.

For some trans people, including those who had tried multiple times to change their legal gender to “other” in accordance with the 2007 judgment in *Pant v. Nepal*, the creeping medicalization established an additional hurdle. For others, it created a prohibitive barrier, leaving them in the lurch as their documents undergo years-long processing. And for everyone who was compelled to undergo a medical verification procedure, the new para-official procedure resulted in them being subjected to unnecessary, invasive, and humiliating interventions that violated their rights to privacy, health, and bodily autonomy.

Medicalization of the legal gender recognition process is not the sole barrier, but it is a significant impediment in an already discriminatory system. “Even if you take out the medicalization part of this so-called process, it’s still a horrible, difficult, cumbersome process full of human rights violations,” said Dipeksha M. She continued:

⁴⁹ At a press conference in July 2013, Sunil Pant, at the time executive director of the Blue Diamond Society, told reporters that he had just met with the Chief District Officer in Mahendranagar and the official had told him: “We had one case [of a trans person applying for updated nagarikta] but I told that person to come back with a certificate from a doctor.” In: Kyle Knight, “Outliers: Sunil Babu Pant, the Blue Diamond Society, and Queer Organizing in Nepal,” <https://www.martinchautari.org.np/storage/files/sinhas-articles-vol19-no1-kyle-knight.pdf>.

⁵⁰ “Nepal government’s citizenship bill clause on sex change certification alarms LGBT community,” *The Kathmandu Post*, March 17, 2019, <https://kathmandupost.com/national/2019/03/17/nepal-governments-proposed-amendment-to-the-citizenship-act-could-affect-the-future-rights-of-sexual-minorities> (accessed May 19, 2023).

So the state just throwing in medical steps is a way they think they're stabilizing something that was confusing, whereas we experience it as yet another barrier and yet another way in which we have to beg for our rights.⁵¹

Bhumika Shrestha, 32, a well-known trans woman activist and politician, explained that she had carried three different gender markers in the past decade: “Male,” “Other,” and “Female.” Her experience with the processes of changing her gender markers and then navigating public spaces, illustrates the need for a transparent and accessible legal gender recognition procedure and a more comprehensive approach to recognizing legal gender across systems.

In 2012, Shrestha went to the District Administration Office (DAO) in Kathmandu to request a change to her legal gender on her *nagarikta*:

I approached the officer there and asked him to provide me with appropriate ID because I looked like a woman but I still had my *nagarikta* with a *dhaka topi* (a hat traditionally worn by some Nepali men, including in official photos) and a male name.⁵²

Her request was denied, so in 2015, Shrestha tried again. “The real problem for me is that my *nagarikta* had my birth name and a male photo. So I put in my request and told them this ID was giving me employment issues,” she said. Bhumika continued:

The DAO officials told me they would change my photo and give me the “other” marker but that it was impossible to change my name. So I did that, then I changed my passport right away. That year, I traveled to Delhi and to Taipei and both places had no problem. In India they ticked “T” [for transgender] based on my “O” documents; in Taiwan they gave me an “X” [for indeterminate] in the gender box. But in Kathmandu, there were problems. At the airport, they couldn't decide what box to tick for me or which security queue I belonged in—it was humiliating to have them debate

⁵¹ Human Rights Watch interview with Dipeksha M. (pseudonym), Kathmandu, December 11, 2022.

⁵² Human Rights Watch interview with Bhumika Shrestha, Kathmandu, December 11, 2022. Also chronicled here: <https://www.hrw.org/news/2015/10/26/nepals-third-gender-passport-blazes-trails>.

this in public. This was just the beginning for me with “O” documents, but it kept going like this—lots of queries everywhere I went, lots of extra waiting for verification because officials looking at my documents had never seen one like this before.⁵³

Frustrated, Shrestha decided to approach the DAO again in 2020. “This time, I went with my SRS [sex reassignment surgery] papers and asked for ID that has my name Bhumika on it,” she said. “They told me they’d had a few other people recently come with SRS and ask for gender change and to come back in a month. When I went back, it was a different official, but he told me the same thing, and he said the medical verification process was compulsory.”⁵⁴

The DAO forwarded Shrestha’s request to the Medical Board, and the Board asked her to come for a physical exam. She recounted:



Bhumika Shrestha, a trans woman activist in Kathmandu, holds her nagarikta (citizenship card) in 2011, before her first attempt to change it. © 2011 Kyle Knight

⁵³ Ibid.

⁵⁴ Ibid.

At Bir Hospital,⁵⁵ I met with doctors. I showed them my surgery documents; they said it wasn't enough. They wanted to see my body. It was so humiliating. There was a female nurse with me. They told me this was to prevent abuse from male doctors. I understand that, but the fact that they said it to me like that made me feel even less comfortable. The doctor started feeling around my groin, he said, "to make sure everything is in the right place." He also told me that if I had a flat chest, he couldn't consider me a woman.⁵⁶

Shrestha was humiliated. She described her feelings during the experience:

The way the process works with the Medical Board makes us uncomfortable. It was very intimidating to get naked in front of a bunch of strangers. And this is how it is being applied in all the bureaucracy—they send us all to medical exams even though the Home Ministry has endorsed the concept of self-identification.⁵⁷

DAO officials received the Medical Board's report and summoned Shrestha for a meeting. "They told me they could only change my name from Kailash to Kailashi, but not to Bhumika," she said.⁵⁸ "But I told them that I was too famous under my name [Bhumika]—in politics and on television—for them to give me another fake name. So they gave me Bhumika." At that time, Shrestha's main issue with her nagarikta was the male name and photograph, not the gender marker, so she never requested that they change it. However, when she received her new nagarikta three months later, it listed her legal gender as "F." She accepted it and was happy with the speed with which her case had been resolved, although she attributed it to her status:

I got my new ID in three months; I know people who are still waiting after three years. It just worked out for me because of my public profile—the officials didn't want to look bad by failing in my case.⁵⁹

⁵⁵ A central, government hospital in Kathmandu.

⁵⁶ Human Rights Watch interview with Bhumika Shrestha, Kathmandu, December 11, 2022.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

Shilpa Chowdhury, a 39-year-old trans woman from Dang district, told Human Rights Watch a similar story. She was happy with her “O” document, but officials said she needed to undergo gender-affirming surgery in order to change her name. When she did the surgery, they changed her name and her legal gender to “F.” Chowdhury felt that her political connections and reputation helped ease the process for her.⁶⁰

However, as Shrestha emphasized, the nagarikta is not the only paperwork: “Changing [your] nagarikta is important, but just having one document changed doesn’t mean you’re finished—there’s all the other ones, then there are the forms that the people checking your documents need to fill out.”⁶¹ Other interviewees, including Rukshana Kapali, whose case at the Supreme Court is detailed later in this report, stressed similar issues in comprehensively changing their documents.

For Sarita L., undergoing gender-affirming surgery in India in 2020 led her to seek a medical verification exam at Bir Hospital, a government hospital in central Kathmandu, in 2021. “Other people I knew had gone through it and said it was fine, not great but fine, so I just decided to get it over with,” she said. Sarita had asked to be seen by only one doctor, but once she entered the clinic room, two others came in. “I didn’t like it, but I thought they were doctors, so I had to do what they wanted.” The plastic surgeon overseeing the first part of her exam called in his colleagues to observe: eight in total. “I felt like I had to do it, let them touch me, let them watch. A woman doctor put her fingers in my vagina and when I winced in pain, she removed them,” she said.⁶² After that experience, she stopped pursuing the subsequent steps in the administrative process and has not been comfortable seeing a doctor since then.

Dipeksha M., the 26-year-old trans woman in Kathmandu, described how despite undergoing gender-affirming surgeries and acquiring all of the supposedly required documentation for medical verification, she still faced significant hurdles in the process.⁶³ Dipeksha first submitted her documents to the Medical Board at Bir Hospital for verification. After following up daily with the office, she was told three weeks later to come and collect the documents. She said:

⁶⁰ Human Rights Watch interview with Shilpa C., Kathmandu, December 11, 2022.

⁶¹ Human Rights Watch interview with Bhumika Shrestha, Kathmandu, December 11, 2022.

⁶² Human Rights Watch interview with Sarita L., Kathmandu, December 13, 2022.

⁶³ Human Rights Watch interview with Dipeksha M. (pseudonym), Kathmandu, December 11, 2022.

I had to put my legal name on the registration list with the clerk, so when they called me to see the doctor, they were calling my deadname. It was the first time I got deadnamed⁶⁴ in a long time, and the first time following my surgery, so that was quite jarring.⁶⁵

The officials handed her back her documents, which were stamped “Certified.” Next, she had to undergo medical exams. The first was with a plastic surgeon. The senior plastic surgeon was not in that day, so she was told to come back in a week. “When I went back, I did get to meet that senior doctor, but I had to insist that a woman nurse be in the room, which seemed to irritate him, but he didn’t resist,” Dipeksha said.⁶⁶ The nurse inspected Dipeksha’s genitals before the doctor did as well, although the doctor did not touch her during the exam. “Having to come out repeatedly and explain and justify yourself to a hospital clerk or administrative staffer in a public setting with dozens of people who could listen in—it’s exhausting and terrifying,” she said.⁶⁷

Following the exam, Dipeksha took the medical paperwork back to the Medical Board, but the clerk said the meeting was going to be delayed, so she should come back the following week. She returned prepared to wait it out.

I brought my laptop and some books and just did work sitting there, refusing to leave. I’m tall and I speak English and own a laptop—that signals something to the officials that they should take me seriously. Not everyone can pull that off. I basically just performed all of my privilege until they did what I needed.⁶⁸

But receiving the recommendation letter from the Medical Board was just the beginning for Dipeksha, as it is for most trans people in Nepal who elect to undergo these steps. She had to return to the ward office in the district where she was born and begin a negotiation process with them to accept the Medical Board’s letter. “No one in the ward office even

⁶⁴ “Deadnaming” is the act of calling a transgender person by the name given to them at birth, when they have changed their name as part of their gender transition.

⁶⁵ Human Rights Watch interview with Dipeksha M. (pseudonym), Kathmandu, December 11, 2022.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

knew what transgender meant,” Dipeksha said. “So me showing them these medical documents and asking them write a letter to the Chief District Officer [CDO] about changing my legal gender was mind-boggling to them.” She had to return for several days to argue with the officials, who repeatedly told her, “We’re not sure if we can trust you.”⁶⁹

Eventually, Dipeksha decided to travel to the District Administration Office, which was in a different town, and try to advocate for herself there. Upon arrival, she realized that she had interacted with the CDO staffer because they had both worked previously at the same INGO, and so they struck up a conversation as former colleagues. “She was eager to help me, so she called the ward office while I sat there and told them to write the letter to her so she could process it.” Dipeksha traveled back to the ward office the next day, received the letter, and then carried it to the CDO’s office the following day.⁷⁰

After that, Dipeksha had to submit all of the letters—from the Medical Board, Ward Office, and CDO—to the Ministry of Home Affairs. In addition, Dipeksha understood that she had to include her original birth certificate and her original nagarikta. She called in a favor with a colleague at the United Nations Nepal country office to ask if they could send the documents in a diplomatic pouch, and they agreed. At the time of her interview with Human Rights Watch in December 2022, Dipeksha had been waiting for three months with no updates, which made her nervous. “When I’ve called [the Ministry of Home Affairs] for an update, they tell me they have to verify each of the documents on the phone, and sometimes officials in other offices don’t pick up, so it delays things,” she said.⁷¹

Triya’s Experience with the Medical Verification Process⁷²

In December 2022, Human Rights Watch and a Nepali LGBT rights activist joined Triya Rai, 43, at Bir Hospital in her effort to obtain a recommendation letter from the Nepal

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² During an interview with Human Rights Watch on December 12th, Rai had indicated her intent to pursue the physical exams the following day, and issued an invitation to join her. Human Rights Watch, an activist with the Federation of Sexual and Gender Minorities-Nepal (FSGMN) who was planning to accompany Rai, and Rai discussed the ethics and implications of additional people attending the process. Rai consented, and indicated if there were moments where she felt uncomfortable, she would indicate it and the HRW and/or FSGMN staff could leave.

Medical Board that her legal gender be changed, a step in her so-called medical verification process.

It is December 13, a sunny winter day in Kathmandu. Triya arrives at Bir Hospital, a bustling, over-capacity government facility in the center of the city, just before 9 a.m. She joins a queue to get a ticket and a book that will be used by doctors to document her care. We ride up three stories in an elevator. The first stop is in a small examination room. There are two men in sweatshirts sitting there; one has a mask on.

Simran, an activist who has accompanied more than a dozen trans people through this same procedure, points for me, and then Triya, to sit, before she sits herself. Triya hands the booklet to one of the doctors, a plastic surgeon. He opens it and asks her what she's there for. Triya darts her eyes over to Simran. "She's transgender," Simran says. "And she needs the medical letter to change her citizenship card." The plastic surgeon starts writing in the book.

A male patient enters and sits with the doctor who isn't busy writing. The doctor writes instructions, mutters something about antibiotics, and sends the man away. Another man enters with a bloodied cast on his arm. The doctor sends him out, saying they will need the examination bed soon. Meanwhile, the plastic surgeon stops writing and gestures for Triya to go sit on the bed, which is crammed in a corner behind tattered curtains. She stands up, hiking up her down jacket so she can access her belt. He puts on gloves while she shuffles over to the bed. Simran pipes up: "Is there a female nurse here?"

The doctor says yes and tells the man with the cast, who is standing in the doorway, to shout into the hallway for a female nurse. The nurse arrives two minutes later, and the surgeon stands up. They each yank one side of the curtain to close it, but it only covers about two-thirds of the space.

Their examination takes about 90 seconds. The curtain is yanked. The doctor snaps off the gloves, sits down, and starts writing again. Triya emerges into our field of vision and sits next to the doctor. Simran asks: "Did he feel your breasts?" She nods.

The guy with the arm cast is let in. There's two more minutes of writing before we leave the examination room.

Our second stop is a booth in the hallway, where Simran asks a woman for a form. She gets a two-page form plus a blank page. We shuffle Triya into the urology department. Simran goes inside to help Triya register—showing Triya's legal male name and ID card to an elderly man with a ledger—then comes out to say: “we're never allowed inside the urology exam room,” meaning we can't accompany Triya for this exam. We sit in the hallway. Simran tells me she's depressed: “I come here to help people who really want this, then I go to Singha Durbar [the government complex] to try to make this not happen anymore. It's difficult. I hate this, but this is also a really good day for her, which is why she's so happy, so I have to try to be happy with her so she has good feelings about it.”

Triya comes out holding the form she received earlier. Simran snatches it and we walk 10 paces back to the booth where she had got it. She asks the woman inside for glue, takes a small envelope from Triya, and plucks out a single passport-style headshot: a recent image, with Triya's long black hair pulled back. The form, in Nepali, is filled out in English and reads “gender dysphoria” in two boxes and in the third, “breast reconstruction—7 years back in Kathmandu (no documentation). Gender affirmation surgery stage I (vulva reconstruction) and chest reconstruction at Olmec Hospital—Delhi in December 2019.” On the next page in the top box: “well defined vulva. Vagina is lying above urethral opening. Breast well defined circa areola and nipple.”

Simran glues a photo to the form and hands it back to the woman. I see the woman reading it and entering it into the ledger while two men lean over her, reading it too. They look up at Simran and crane their necks to look at Triya. The woman enters more information into her ledger and stamps a handwritten letter Simran wrote for Triya, which we take to the administration office (our third stop) for a signature.

No one is inside that office, so we stand outside for 20 minutes. A man approaches. Simran recognizes him and asks him to sign. “A transgender form,” she says. He signs, not reading it.

Our fourth stop is the Medical Board office. We sit next to a man in a mask holding a pile of papers. He asks Triya: “Why are you here?”

“Nagarikta.”

“Nagarikta?”

“Nagarikta.”

“Why?”

“I need to change it.”

He looks baffled. “At the Medical Board?”

“Why are you here?” she asks him.

“I am a kidney patient and I need financial support, so I am here asking for it.”

He looks back at his papers then looks up. “Nagarikta? Here?”

“Yes, I need to change it.”

Three other men in the room listen to this exchange.

Triya sits down between me and Simran.

An hour later, everything is done. Triya is told to return the following week and check on the status of her letter. A positive result will be a letter from the Medical Board confirming she has a vagina and describing it as adequate to qualify her as a legal woman.

We are at the hospital for just under three hours in total, during which time at least 17 people are made aware of Triya's reason for being there. Four are licensed health care professionals; the rest are hospital administration staff or onlookers.

Ritu N., a 27-year-old trans woman, also had to submit to medical verification at Bir Hospital as part of her gender verification process, in her case in November 2022. She explained: “The male doctor touched my breasts, but the female nurse checked my genitals. They weren't rude, so it was OK, and I'm just excited to never have to be the center of attention again when my name gets called.”⁷³

While Ritu managed to cope with how she was treated, others experienced the medical verification procedure as traumatizing. Anita L., a 29-year-old trans woman from Kavre district who now lives in Kathmandu, said that her medical verification procedure at Bir Hospital in 2018 made her so uncomfortable that she stopped the procedure and postponed it until a later time. “I didn't like how the male doctors were looking at me,” she said. “So I called a woman doctor friend and asked for her help. After she called Bir Hospital and got a promise that a female nurse would be present for my exam, I returned.”⁷⁴

But despite the nurse's presence, the exam was humiliating for Anita. “The male doctors still touched me a lot,” she said. “They touched my breasts and genitals and inserted an instrument into my vagina to test its size. It was really uncomfortable.”⁷⁵

Roya G., a 38-year-old trans woman from Chitwan district explained how she was eager to do whatever it took to change her documents when she began her legal gender recognition process in 2020. “I initiated the process from the Chitwan CDO, all the way up to the Ministry of Home Affairs in Kathmandu,” she said.⁷⁶ “I didn't know my rights, so I begged a lot, including at the hospital. I went three days in a row and begged them to give me the medical verification exam. I had no idea while I was begging for it that it would be so horrible.” This exam was the first time someone else had touched Roya's body since she

⁷³ Human Rights Watch interview with Ritu N., Kathmandu, December 12, 2022.

⁷⁴ Human Rights Watch interview with Anita L., Kathmandu, December 12, 2022.

⁷⁵ Ibid.

⁷⁶ Human Rights Watch interview with Roya G., Kathmandu, December 12, 2022.

underwent gender-affirming surgery in 2019. There were two male doctors in the room and no nurse. “One of the male doctors put his fingers in my vagina and also touched me all over my genitals and breasts,” Roya said. “I had all the documents from my surgery, but [the doctors] still forced me to do that.”⁷⁷

Following her exam and the Medical Board’s approval, Roya’s original documents were sent to the Ministry of Home Affairs in Kathmandu. By December 2022, more than two years later, they had not been returned. “For two years, I haven’t been able to apply for any government services because they all require the original nagarikta,” she said.⁷⁸

The Particular Impact of Medicalization on Trans Men

Roshan, a 30-year-old trans man in Kathmandu, credits his survival as a trans person to having family support and finding community organizations as a teenager. “I got to meet other trans people, learn about their experiences, and make my own decisions,” he said.⁷⁹ But for Roshan and other trans men, legal gender recognition amid the creeping medicalization of gender identity in Nepal has posed acute challenges.

When he was 23, Roshan started hormone therapy and, using five years of savings, when he was 26, he underwent top surgery (to remove his breasts) in Kathmandu. “It was expensive, and it was the surgeon’s first trans surgery,” Roshan said. “I was left with big, painful scars, but I’m glad I did it.”⁸⁰

The surgeon advised Roshan to continue with gender-affirming operations, including a hysterectomy. “I tried to get one at a government hospital because it would be cheaper there and I was out of money, but they told me it would be illegal because my uterus wasn’t damaged,” Roshan said. The doctors told him that they could proceed with the hysterectomy if he got a letter from the Ministry of Health. Roshan tried for five months to obtain such a letter, but despite polite assurances from staff at the Ministry of Health, he never received it.⁸¹

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Human Rights Watch interview with Roshan B., Kathmandu, December 14, 2022.

⁸⁰ Ibid.

⁸¹ Ibid.

“Now when I approach my ward office, they say they want to see a ‘sex change certificate’ from the Nepal Medical Board,” Roshan said. He explained

The problem is, the surgeries I would need in order to get that, namely a phalloplasty, cannot be done in Nepal. And moreover, I don’t even want one. The Nepal Medical Board just wants to know if I have a penis or not. They’re not checking the penises of cisgender men, so I’m not sure why they have the right to look at my genitals.⁸²

The medicalization of legal gender recognition also raised significant barriers for Arun P., a 38-year-old trans man in the city of Nepalgunj. In 2018, he visited the District Administration Office (DAO) and requested to change his legal gender to male. “They told me I could change my name but not my gender,” Arun said. “The staff at the [DAO] specifically said that no gender change on nagarikta was possible until I got surgery.” He asked if he could get the “O” marker on his ID without surgery, but the officials said no and that surgery was required for any change to legal gender. “I felt awful in that moment—I felt as if I am not part of this world,” he said.⁸³

Arun left his family home when he was 18, after his parents made two attempts to marry him to men; one was his age and one much older. He lives on his own now, supporting himself as an outreach worker at a small NGO and doing odd jobs. His birth certificate is at his family home, and he is not sure family members would give it to him if he asked, adding yet another obstacle. Like other trans people, he has faced harassment and public humiliation due to his gender marker at airports, public toilets, while voting, and in seeking formal employment. However, Arun is intimidated by the potential cost of the surgery he was told to get in order to change his gender marker. “It’s very expensive,” he said, noting that he often comes up short on paying rent.⁸⁴

Procedures for changing legal gender are para-official, inconsistent, and difficult to navigate. Parina Chowdhury, a prominent trans woman activist in Nepalgunj, said her personal relationships with local government officials allowed her and some other well-

⁸² Ibid.

⁸³ Human Rights Watch interview with Arun P., Nepalgunj, December 15, 2022.

⁸⁴ Ibid.

connected and famous trans people to avoid medical verification procedures. Still, in her own encounters and those of other trans people she helped with the process, medicalization norms influenced how officials interacted with them.⁸⁵

In 2021, Parina underwent gender-affirming surgery in India and then approached the CDO in Nepalgunj with a request to change her legal gender to “O.” “He asked me ‘what is your proof?’ and I replied ‘I am the proof,’” she said. “That was enough—he accepted it and wrote a recommendation letter, I never had to get a medical test.”⁸⁶ But Parina was quick to acknowledge that it was her existing relationship with the official that led to this non-medicalized process. “Of course he knows me, everyone knows me around here,” she said. “And if that wasn’t the case, I would still have a male nagarikta with a dhaka topi in my photo.”⁸⁷

⁸⁵ Human Rights Watch interview with Parina Chowdhury, Nepalgunj, December 15, 2022.

⁸⁶ Ibid.

⁸⁷ Ibid.

A Complaint to the National Human Rights Commission

On December 8, 2022, Ashika Thapa, a trans woman in the city of Bhairahawa, filed a complaint with the regional office of the National Human Rights Commission. The full text is below, translated from Nepali to English:

*National Human Rights Commission,
Lumbini Province.
Subject: Requesting justice and compensation*

Dear Sir/Madam,

My name is Ashish Thapa (Ashika). I am a transgender woman living in Tilottama Municipality, Ward No. 5. I went to the District Administration Office, Bhairahawa with a letter of recommendation from Ward No. 5 Office requesting nagarikta that reflected my gender identity. But the chief of administration handed me a letter asking me to get examined by a physician and to come back with evidence of my transgender status.

I went to the Lumbini Provincial Hospital, Butwal, along with that letter and got examined by Dr. Bhuwan (surgeon) by baring my whole body. As the medical examination did not lead to any result, they (the hospital authorities) did not give me any written evidence. I am currently without citizenship documents, which has prevented me from doing many things. In this way, the District Administration Office, Bhairahawa has made fun of me and my gender identity in this manner.

[Through this letter], I am requesting that the National Human Rights Commission take steps as soon as possible in order for me to acquire citizenship that reflects my gender identity and arrange for compensation for baring my identity (humiliating me by asking me to undress).

*As you command, Your Honor!
Petitioner: Ashish Thapa (Ashika)*

Medicalization and Social Services

Interviewees described how government officials used medicalized justifications to deny not only citizenship document changes, but also other social services.

Raju B., a 35-year-old trans man from the far west of Nepal, explained how he had not pursued legal gender recognition because it would require him to obtain documents from his family, from whom he was estranged. He had not lived with them for 13 years, after they tried twice to force him into heterosexual marriages. “I also hear from my peers about how badly they’ve been treated in the process, so I assume I would get treated the same. It’s too much for me to go into it knowing how awful it will be,” he said.⁸⁸ Raju worked part-time for some NGOs over the years but struggled to support himself outside of the family home, so he was excited to learn in 2018 that the government was offering social security support for sexual and gender minorities.

“I went to the social security office with two other trans friends and the official told us ‘we can’t give you money because we can’t be sure you are really sexual and gender minorities,’” Raju said, explaining that the subsequent conversation between the officials that day suggested they incorrectly believed that all sexual and gender minorities were intersex. Consequently, Raju worked with a community-based organization to set up a meeting and information session to educate the officials about the range of sexual orientation and gender identity categories. Unfortunately, the session did not help Raju as hoped. He recalled the feedback from the officials at the end of the session was that “There are too many identities, so we won’t be able to provide social security to that many people. You need to have the ‘O’ marker on your nagarikta plus provide medical proof in order to receive this benefit.” Raju challenged them on the additional medical requirement, explaining that if the nagarikta said “other,” that should suffice for all government offices. He told us that the official replied: “Because you can’t reproduce, you need to go through a medical verification. Only a physician can tell us if you are really a sexual and gender minority community member.”⁸⁹

While medicalization has crept into some applicants’ experience, others have faced outright rejection. “I went to the DAO [in Nepalgunj] in 2013 and asked for my gender to be

⁸⁸ Human Rights Watch interview with Raju B. (pseudonym), Kathmandu, December 11, 2022.

⁸⁹ Ibid.

changed to ‘other,‑” said Nandini L., a 32-year-old trans woman in Nepalgunj.⁹⁰ “They told me, ‘If we change this document for you, we will get arrested.’ They didn’t ask me for surgery documents—I even had those from my castration in India—they just said that even with surgery proof, it wasn’t possible at all.”⁹¹

⁹⁰ Human Rights Watch interview with Nandini L., Nepalgunj, December 15, 2022.

⁹¹ Ibid.

Impact of Inadequate Legal Gender Recognition Policy

To force them to live an intimidating and invisible life by forcing them to hide their identity and live differently from how they would rather live with a sense of their own gender experience is to violate the rights of the sexual minority community.

—*Pant v. Nepal*, Supreme Court of Nepal, 2017

I would like to change my legal gender. It would bring me so much inner happiness—to feel that I am recognized and respected like that would be my biggest dream.

—Nandini L., 26, Nepalgunj, December 15, 2022

The right to recognition as a person before the law is a fundamental aspect of affirming the dignity and worth of every person. For transgender people whose documents do not recognize them according to their gender identity and appearance, everyday interactions can be fraught with humiliation and danger. Transgender people in Nepal interviewed for this report described how the lack of legal gender recognition, combined with pervasive and harmful stereotypes, has limited their ability to access services and exposed them to daily indignities.

Citizenship cards, according to a Supreme Court judgment discussing legal recognition for trans people, “must be obtained for the operation of day-to-day business.”⁹² But when trans people are blocked from changing their legal gender, they are forced to improvise on a daily basis. “I try to hide my ID documents as much as possible,” Raju B. said. “The NGO where I used to work gave me an employee ID that has my male name and photo on it and that seems to work in most places, so I just use that unless an official demands to see a government document.”⁹³ Dipeksha M. described a similar tactic: “I use my [former INGO employer] ID to go to the bank and at the airport. It’s working for now, but it expires in a few months, and I have no idea what I’ll do after that.”⁹⁴

⁹² Sunil Babu Pant, et. al. v. Office of the Prime Minister and Council of Ministers, et.al. / Case: Mandamus / 071-WO-0845.

⁹³ Human Rights Watch interview with Raju B. (pseudonym), Kathmandu, December 11, 2022.

⁹⁴ Human Rights Watch interview with Dipeksha M. (pseudonym), Kathmandu, December 11, 2022.

At an event hosted by Blue Diamond Society and UN Women in Kathmandu on December 22, 2023, Dr. Roshan Pokhrel, a psychiatrist and the secretary of health at the Ministry of Population and Health, said: “I commit to creating a simple and accessible process for people to change their legal gender.”

Complexities of the “Other” Gender Legal Category

The introduction of a third gender category into the Nepali systems has been implemented with mixed results.

Some of the complications are rooted in the definition of the third gender category. Within this category, there are numerous identities and expressions. An open-ended gender question posed as part of a survey of more than 1,200 sexual and gender minorities in Nepal conducted in 2013 captured more than seven common identity terms.⁹⁵ According to anthropologist David Gellner, “Politically aware Nepalis understood very well that this was a heterogenous category mobilized in order to bring pressure on, and claim resources from, the state, even though many people found the new term confusing and even inappropriate.”⁹⁶ Scholar Kumud Rana examined identity formation in her study of sexual and gender minorities in Nepal, explaining that “the ‘third gender,’ ‘meti,’ and ‘natuwa’ are different variations of the same category ... However [individuals] thought of these categories as distinct from each other even though one person might identify with more than one of these categories.”⁹⁷ Rana concluded that “reportedly indigenous terms ... were all understood as gender—but also sexually-transgressive subjectivities which are all equivalent to each other, and to *tesro lingi* [third gender].”⁹⁸ This observation accords with the Supreme Court’s capacious use of “third gender” to refer to a range of identities and expressions in *Pant v. Nepal (2007)*.

While such a flexible and capacious category, based on the principle of self-identification, is a step forward and accords with human rights standards, it is not sufficient: trans

⁹⁵ The Williams Institute, “Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach,” 2014, <https://williamsinstitute.law.ucla.edu/publications/survey-smg-nepal/> (accessed May 19, 2023).

⁹⁶ David Gellner, “Masters of hybridity: how activists reconstructed Nepali society,” *Journal of the Royal Anthropological Institute*, vol. 25, no. 2, March 2019, doi: <https://doi.org/10.1111/1467-9655.13025> (accessed May 19, 2023).

⁹⁷ Kumud Rana, “Transnational resources and LGBTI+ activism in Nepal,” (Ph.D. thesis, University of Glasgow, 2020), doi: 10.5525/gla.thesis.81407 (accessed May 19, 2023).

⁹⁸ *Ibid.*

individuals who identify as male or female and who object to being placed in the third gender category should be able to seek and gain state recognition as male or female.

Some trans people are comfortable using terminology anchored in indigenous categories to refer to their identity, and their rights can be recognized by a third gender marker on documents and records. Others are not, as they identify with male or female categories; their rights to legal recognition should not be circumscribed to either choosing to carry documents reflecting their birth-assigned sex, or a third gender marker. The male and female categories should be available to them as well, on the same principle of “self-feeling.”

The Nepali government, working with civil society, has made considerable strides in opening space for sexual and gender minorities, including trans people, to enjoy their fundamental rights. However, by limiting the available gender marker for trans people to “other” (and not including “male” or “female” as gender marker options for trans people), the current system is inadequate. This combined with uneven application of the law, and an increased reliance on medical certification, leads to individual rights violations for trans people in Nepal, including in public spaces and employment opportunities.

Harassment and Humiliation in Public Spaces

Simply going from one place to another can be a dangerous and humiliating experience for people whose documents do not match their gender expression. The stakes are high, particularly for international travel, ranging from fraud accusations and exposure to intense scrutiny and humiliation. UN human rights experts have condemned such targeting of transgender people in security processes.⁹⁹

These barriers impact trans people in Nepal, and nearly every trans person interviewed for this report described an instance of interrogation, humiliation, or delay when attempting to access transportation. Gendered queues at airport security were a frequently cited problem; instances on buses were also mentioned.

⁹⁹ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/64/211, August 3, 2009, <https://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A-64-211.pdf> (accessed May 19, 2023).

Raju B., a trans man who would like documents listing him as male but does not have them, recounted a trip to Delhi:

At the Kathmandu airport, the official looked at my ID and sent me to the female queue. The women in the queue stared at me and whispered, then after a few minutes, a guard pulled me out of the queue and berated me, telling me to go to the male queue. When I got to the front of the male queue, the guard there looked at my ID and shouted “why are you here, sister?”¹⁰⁰

Raju explained that this situation ended thanks to a friend advocating for him by shouting back at the airport official until he relented and allowed Raju to stand in the female queue.

Kathmandu airport staff harassed Dipeksha M., a 26-year-old trans woman, in the summer of 2022 on the night she returned from her gender-affirming surgery in Thailand. “It was 2 a.m. and the guard insisted on patting me down, then shouted at me ‘this isn’t you!’ in front of the whole queue of other people trying to pass through immigration,” she said.¹⁰¹

Ritu N., a 27-year-old trans woman from Tanahun district, faced similar harassment at the Kathmandu airport.

In September of 2022, after I had had my surgery in Bangkok, officials at the Kathmandu airport for a domestic flight harassed me because of my gender marker. I had to explain myself, my body, my surgery in Bangkok. They held my ID for over an hour, and discussed amongst themselves whether it was really me on the card. That was the point where I realized I needed to pursue a new ID. I realized it might involve some awful moments with a doctor and it might take years to get the new card, but it’s better than the daily humiliations.¹⁰²

¹⁰⁰ Human Rights Watch interview with Raju B. (pseudonym), Kathmandu, December 11, 2022.

¹⁰¹ Human Rights Watch interview with Dipeksha M. (pseudonym), Kathmandu, December 11, 2022.

¹⁰² Human Rights Watch interview with Ritu N., Kathmandu, December 12, 2022.

For Roya G. and Gita G., trans women in Kathmandu who do sex work, discordant gender markers have created physical and financial vulnerabilities. Roya explained how she is very careful with sex work clients in terms of disclosing that she is trans. “I’ve been beaten, blackmailed, and denied payment by clients once they discover I am trans, so I hide it all the time,” she said. “I can’t have them see any document that indicates my legal name or gender because I haven’t changed it yet.”¹⁰³ Gita explained another problem posed by her legal gender:

Sex work clients increasingly want to pay with apps, but when I register with an app, I have to register with my bank account, which is in my legal male name, so that’s what shows up on the app. I get nervous when new clients, or clients who don’t know I’m trans, see my app profile with my male name.¹⁰⁴

Barriers to Employment

The limited options for legal gender recognition and lack of consistent application of the Supreme Court’s orders in Nepal has negatively impacted transgender individuals’ ability to secure employment and their right to be treated with dignity and respect. This puts transgender people at a distinct disadvantage when it comes to finding and keeping a job. In a 2021 study of 200 trans women in Kathmandu, researchers found that 78 percent of respondents had been denied employment, they believed, because of their gender identity.¹⁰⁵

Roshan B., a trans man in Kathmandu, attempted to gain employment in the formal sector but got denied once the employer noticed the discordance on his citizenship card. “I sent in my CV and nagarikta (with a female gender marker, name, and photo) and the company called me for an interview for a receptionist position,” he said. “But when I arrived, the boss said ‘oh, we expected a pretty lady, not you—so we can’t hire you.’”¹⁰⁶

¹⁰³ Human Rights Watch interview with Roya G., Kathmandu, December 12, 2022.

¹⁰⁴ Human Rights Watch interview with Gita G., Kathmandu, December 12, 2022.

¹⁰⁵ Erin Wilson, Manisha Dhakal *et al.* “Population-based HIV prevalence, stigma and HIV risk among trans women in Nepal.” *BMC Infectious Diseases*, vol. 21, no. 128 (2021), <https://doi.org/10.1186/s12879-021-05803-7> (accessed May 19, 2023).

¹⁰⁶ Human Rights Watch interview with Roshan B., Kathmandu, December 14, 2022.

“Having a ‘F’ document will make looking for formal employment easier,” said one interviewee, a 43-year-old trans woman who does sex work. “I have tried to get other jobs, but they either reject me directly or just never call me back. I’m a competent person, and I think I can get work.”¹⁰⁷

For Anita L., 29, every time she has been hired, formally or informally, she ends up facing harassment at work. “People put me under scrutiny because my voice is a little deep or my mannerisms aren’t 100% traditionally feminine,” she said. “I accept and express myself as trans but that doesn’t mean people are allowed to harm me, and it doesn’t mean the government should play a role in making a bad situation worse by creating obstacles to me obtaining a proper ID.”¹⁰⁸

Chandika N., a 50-year-old trans woman in Nepalgunj, has only ever worked in the informal sector “because every time I would try to get a more formal job, such as at a hotel as a cleaner, they would say ‘but you’re a woman and this document says man, so bring us another one or we can’t hire you.’”¹⁰⁹ Chandika heard that if she gets surgery, she can change her documents to “F,” but given her economic precariousness, the financial barriers make the surgery impossible to imagine:

I want to get food first, and health care and housing. Then if I have more money, I’ll go for surgery, I guess. It would be better to just have the new documents without spending all that money on surgery.¹¹⁰

Impact of Covid-19 Measures

Emergency and crisis situations such as the Covid-19 pandemic exacerbate structural inequalities, including for LGBT people. While struggles with stigma, discrimination, and violence are experienced by various marginalized populations, LGBT people may be disproportionately impacted in specific ways. Narrow definitions of gender and family can put LGBT people at risk of exclusion from aid, relief, and services.

¹⁰⁷ Human Rights Watch interview with Kritika R., Kathmandu, December 12, 2022.

¹⁰⁸ Human Rights Watch interview with Anita L., Kathmandu, December 12, 2022.

¹⁰⁹ Human Rights Watch interview with Chandika N., Nepalgunj, December 15, 2022.

¹¹⁰ Ibid.

In Nepal, as this report documents, and in other parts of the world, many transgender people do not have ID documents that match their identity and expression.¹¹¹ This means any time they have to show ID to an official—for example, to travel or access healthcare or aid—potentially poses risks. Services that are distributed in a sex-segregated manner are potentially discriminatory for people who express one gender and carry an ID that lists another. This situation can occur in humanitarian assistance situations, as aid and relief are often delivered to “family” units, which can be strictly defined as one-man/one-woman households, thus excluding many LGBT people and families.¹¹²

Although disaster response mechanisms in Nepal already failed to include trans people prior to the Covid-19 pandemic,¹¹³ the government is making the same mistakes. “The relief packages from the government after the 2015 earthquake and during the Covid-19 pandemic required ID, which made it basically impossible for trans people who hadn’t gotten their documents changed to present for relief services,” Roshan B., a trans man in Kathmandu told Human Rights Watch.¹¹⁴

The pandemic further exposed the ongoing exclusions of and challenges for LGBT people in crises, prompting the Nepal UN Women office and activists, including Rukshana Kapali, to write a Feminist and Queer Charter of Demands in Response to Covid-19 in Nepal.¹¹⁵

Raju B., a trans man, explained:

The reality is that Covid lockdowns made employment, which was bad before for us, even worse. A lot of us had broken with our families and moved out to rented rooms, so we really needed income. When that stopped because of lockdowns, some of us had to go back and live with our

¹¹¹ Zhan Chian et. al., “ILGA World, Trans Legal Mapping Report, 3rd Edition,” September 2020, <https://ilga.org/trans-legal-mapping-report> (accessed May 19, 2023).

¹¹² Independent Expert on sexual orientation and gender identity, “LGBTI and Gender-Diverse Persons in Forced Displacement,” <https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/lgbti-and-gender-diverse-persons-forced-displacement> (accessed May 19, 2023).

¹¹³ Courtney Welton-Mitchell and Kyle Knight, “Gender identity and disaster response in Nepal,” *Forced Migration Review*, vol. 42, April 2013, <https://www.fmreview.org/sogi/knight-weltonmitchell> (accessed May 19, 2023).

¹¹⁴ Human Rights Watch interview with Roshan B., Kathmandu, December 14, 2022.

¹¹⁵ “Feminist and Queer Charter of Demands in Response to Covid-19 in Nepal”, UN Women, <https://dokumen.tips/documents/feminist-and-queer-charter-of-demands-in-response-to-covid-kinnar-maugiyah.html?page=1> (accessed January 8, 2024).

families. And staying inside with them all the time—it was torture for some of us. They really treated us badly and made us feel horrible all the time. I know of two suicides of lesbian friends in the past two years near here as a result of this. Economic independence is our safety; without it, we are at risk of constant poor treatment.¹¹⁶

According to the Astraea Foundation, “Many LGBTQI+ individuals could not return to families that had abandoned them in the first place” to alleviate the financial stresses caused by Covid-19’s impact on Nepal’s economy.¹¹⁷

Nepal has international legal obligations to make Covid-19 vaccines available and accessible to everyone. Upstream barriers to accessing Covid-19 vaccines put governments such as Nepal, who do not have the purchasing power to compete with wealthier governments, at a disadvantage. The failure of wealthy governments and pharmaceutical companies to share the intellectual property and transfer the relevant manufacturing technology created an artificial scarcity of lifesaving vaccines. Despite considerable financial and intellectual property-related barriers,¹¹⁸ Nepal eventually obtained adequate vaccine doses.

Discrimination against people whose ID documents have gender markers different from their appearance has been another barrier to vaccines for some trans people. While the Nepali government obtained vaccines to cover its entire population, availability and accessibility are not the same thing. This can be especially true for marginalized populations, like trans people, who already face discrimination and barriers to health care.

Arun P., a trans man in Nepalgunj, recounted his struggle to get vaccinated.

I first went to a government vaccination site, but I had to show my ID. And the person there asked “why are you carrying this ‘F’ nagarikta? This isn’t

¹¹⁶ Human Rights Watch interview with Raju B. (pseudonym), Kathmandu, December 11, 2022.

¹¹⁷ Astraea Foundation, “Nepal LGBTQI Landscape Analysis of Political, Economic, and Social Conditions,” April 2022, <https://www.astraeafoundation.org/nepallgbtqireport/> (accessed May 19, 2023).

¹¹⁸ Aruna Kashyap, Margaret Wurth, and Kyle Knight, “COVID-19 Exposes Warped Global Health Power: The System Needs a Course Correction,” *Business and Human Rights Journal*, August 31, 2021, doi:10.1017/bhj.2021.38 (accessed May 19, 2023).

you.” They told me to come back later, but the next day, another person just said the same thing. I realized they were never going to let me get the vaccine, so I just stopped going. I only got a Covid vaccine injection because BDS had them at the office.¹¹⁹

Advocacy efforts by BDS and its affiliate organizations across the country resulted in a third gender option being added to vaccine cards as well as targeted outreach to trans people during Covid-19 vaccine campaigns in some areas, leading to improved access. GAVI, the global vaccine organization, explained the positive shift: “A rigid male/female ID system in Nepal was preventing many members of the country’s transgender community from getting the COVID-19 jab. A group of activists, working with the government, is turning things around.”¹²⁰

¹¹⁹ Human Rights Watch interview with Arun P., Nepalgunj, December 15, 2022.

¹²⁰ Chhatra Karki, “Nepal’s transgender community gets vaccinated,” Vaccines Work, May 17, 2022, <https://www.gavi.org/vaccineswork/nepals-transgender-community-gets-vaccinated> (accessed May 19, 2023).

National Jurisprudence on Gender Identity and Human Rights

I completely disapprove of the medicalized process for legal gender recognition. The whole idea is incoherent—they would never ask a cisgender person to get a genital exam if they lost their nagarikta and needed a replacement. Gender verification through genitals makes no sense; they’re just doing this because they want to control us.

—Shilpa Chowdhury, a trans activist from Dang district, December 11, 2022

The creeping medicalization of legal gender recognition in Nepal is nested in a complex interface that involves the administrative state, the sociopolitical authority afforded to medical practitioners, and the urgent, pragmatic desires of trans people to recognition before the law. With the beginning of the peace process in 2006 and the promulgation of the Interim Constitution in January 2007, a wave of LGBT rights activism successfully used constitutional litigation. Successive Supreme Court judgments have ordered authorities to implement a procedure based on a trans person’s self-identification—for a third gender category, or for male and female categories—and respect the rights of trans people through inclusion in social schemes. The court’s existing analysis should guide future judgments, including the cases currently pending at time of writing, and the development of legislation related to trans people’s rights.

Sunil Babu Pant and others v. Nepal (2007)

The original case, *Pant and others v. Nepal*, remains foundational in its orders to respect the self-proclaimed gender identity of trans people and its specific instructions to amend citizenship documents to include a third gender based solely on the criterion of “self-feeling.”

The Supreme Court in 2007 was unambiguous in its conclusions about the human rights of trans people:

If any legal provisions exist that restrict the people of third gender from enjoying fundamental rights and other human rights provided by Part III of

the Constitution and international conventions relating to the human rights which Nepal has already ratified and applied as national laws, with their own identity, such provisions shall be considered as arbitrary, unreasonable and discriminatory. Similarly, the action of the state that enforces such laws shall also be considered as arbitrary, unreasonable and discriminatory.¹²¹

The bulk of the judgment's citations were European cases involving legal gender recognition for trans people who have undergone surgeries. However, in line with the then-recent Yogyakarta Principles, justice Bala Ram KC wrote that the sole criterion for being legally recognized as third gender in Nepal would be based on self-identification, not on any medical (or other) criteria: "Legal provisions should be made to provide for gender identity to the people of transgender or third gender, under which female third gender, male third gender and intersexual are grouped, as per the concerned person's self-feeling."¹²²

The judgment reads:

It is wrong to say that a person's sex depends on some limited range of factors, such as the state of the person's gonads, Chromosomes or genitals (whether at birth or at some other time)... the relevant matters include the person's biological and physical characteristics at birth; ... the person's self perception as a man or woman; ... and the person's biological, psychological and physical characteristics at the time of the marriage, including any biological features of the person's brain that are associated with a particular sex. ¹²³

Dilu Buduja v. Nepal (2015)

In this case, the Supreme Court directed the government to issue passports with gender markers that align with those who had a third indicator on their nagarikta. The petitioner was a citizen who had changed his legal gender on his nagarikta to "third" and applied for

¹²¹ *Sunil Babu Pant et al v. His Majesty's Government, the Prime Minister and Office of Council of Ministers*, Case No./Writ No. 914 of the Year 2007, National Judicial Academy Law Journal, 2008, pp. 261-286.

¹²² Ibid.

¹²³ Ibid.

a passport listing him as “third.” The passport office of the Ministry of Foreign Affairs denied the passport request, and told the Supreme Court that they could not issue a passport with a gender other than “male” or “female” because their software had already been set to only accommodate two gender categories.

Arguing that “Third-gender individuals are also human,” the court ordered the passport office to update its software and issue passports in three genders. Citing advances in “third,” “other,” and “X” passports issued by other countries, global passport regulations set by the International Civil Aviation Organization, and the adjustments that had already been made in Nepal to include a third gender category on citizenship documents and the census, the court stated:

Given that such efforts have been made, without discrimination, to recognize them at par with the general citizens, there can be no question about not being able to provide the third-gender recognition in the sought passport in accordance with the petitioner's demand.¹²⁴

Sunil Babu Pant and others v. Nepal (2017)

Pant and two trans activists petitioned the Supreme Court to order the government to facilitate the legal recognition of the “other” gender category on citizenship documents. The applicants had attempted to start the legal gender change process in their home districts, much as in the cases documented in this report, but their applications were either denied or severely delayed. The government’s responses to the court indicated that the authorities felt the law was clear and trans people had the right to change their legal gender, but failures of implementation at a local level was not the central authorities’ concern. Ultimately, the court sided with the petitioners and ordered the government “to amend and modify the necessary laws regarding this matter,” specifically calling for name—and not only gender—changes to be possible on official documents.

The judgment, reproduced in full in Appendix 2, also featured strong human rights arguments for allowing self-identification in legal gender recognition procedures, including:

¹²⁴ *Dilu Buduja v. Office of Prime Minister and Council of Ministers, et al.* (NLR 2070, Issue 8, Decision No. 9048).

- “It is solely the individual right to self-determination of any person to acquire gender identity as per his/her perception. It is not relevant to determine the biological gender of any person by other person, society, state or the law. Any provisions injurious to independent reputation and dignity of human being shall not be acceptable from the viewpoint of human rights.”
- “To have to remain with identity cards that are different from their actual identity means for the gender minority community that their self-respect is hurt and that their sense of community ownership is weakened. To force them to live an intimidating and invisible life by forcing them to hide their identity and live differently from how they would rather live with a sense of their own gender experience is to violate the rights of the sexual minority community.”¹²⁵

Rukshana Kapali v. Nepal (2021)

In this case, trans activist Rukshana Kapali has petitioned the Supreme Court on the basis of the 2015 constitution, which explicitly recognizes the rights of sexual and gender minorities, previous Supreme Court decisions, and international standards to order education authorities to amend relevant certificates and diplomas with her gender identity. Kapali had attempted to be legally recognized as “female” on her original citizenship card when she turned 16 (the age when the *nagarikta* is acquired) in 2015. Despite her request, the *nagarikta* was produced identifying her as “other” gender, and her subsequent attempts to have her educational registration documents, exams, and diplomas issued with her chosen female name and her female gender identity were denied.

“I have had to face hurdles in different places for four years as my certificate and identity card are not according to my real identity,” she wrote in her petition..¹²⁶ Her writ petition, which is featured in Appendix 4, details the grueling steps she has taken since 2015 to amend her *nagarikta* and other documents, and the Kafkaesque outcomes she has endured. For example, she writes:

I have two passports. The first was issued on 16 January, 2017. In the passport I got my gender description “F” (female). I have had the

¹²⁵ See Appendix 2 for the full judgment.

¹²⁶ See Appendix 1 for Human Rights Watch’s brief submitted in support of Kapali’s case.

opportunity to attend many international conferences and travel abroad frequently. After my passport sheets expired, I applied for a new passport. But at that time, as my citizenship mentioned “other”, people filing the form started making counter-questions saying that I should not apply for “female”. I was in a hurry to get a visa to attend a conference in Canada. On 20 September, 2018, another passport was issued in which the gender details “O” (Other) was stated.¹²⁷

*Interim Order (2023)*¹²⁸

While Kapali awaited her delayed hearing at the Supreme Court, she received additional bad news. Purbanchal University law school, where she had been enrolled as a student, withheld her exam results, insisting that they can only be released in her deadname and sex assigned at birth.

Kapali appealed to the Supreme Court, asking that the university and relevant government authorities

not state her dead gender,¹²⁹ that her gender identity be amended on her SLC [an official document indicating results for class 10 exam] that the results of her first year of BA LLB not be withheld, and that she be allowed to take the examinations of the second year of BA LLB in a dignified manner.

On January 6, 2023, the Court ordered the National Examinations Board to release her results according to her gender identity and name, finding that:

[N]ot allowing any person to enroll at a school or university based on their gender identity, not allowing them to obtain an education, or preventing them from taking an examination would appear to be a serious violation of the rights enshrined in the Constitution.

¹²⁷ Rukshana Kapali v. Government of Nepal, 2021.

¹²⁸ See Appendix 4 for full translation of the Supreme Court’s interim order.

¹²⁹ The gender assigned to her at birth.

The Court further elaborated:

Gender identity is an individual’s private matter. In order for an individual to freely enjoy their personal liberties and right to live with dignity, the dignity and respect for gender identity must be upheld. The Constitution of Nepal has guaranteed the right to education as a fundamental right. In this vein, it is clear that gender identity may not be an obstruction on any ground when it comes to obtaining an education. Linking the issue of gender identity to education and using that as a basis to create any hindrance to university enrollment or any act related to learning goes against all the provisions envisaged by the Constitution for an individual’s human dignity and it is an unexpected situation that cannot even be imagined in civilized society. This makes a mockery of the constitutionally guaranteed right to live with dignity. If an undesirable obstruction is created in the way of a citizen’s right to obtain an education, then fundamental rights lose purpose for them.

The order concluded by instructing the National Examinations Board not to withhold her results, not to obstruct her access to education due to her gender identity, and specifically not to obstruct her access to her educational results on the basis of her gender identity.

At the time of publishing this report, Human Rights Watch was aware that Kapali’s case had been resolved by the Supreme Court, and that the judgment was in favor of the petitioner, but other explanatory details are unknown as of now.

Adheep Pokhrel and Tobias Volz. v. Ministry of Home Affairs, Department of Immigration (2023)¹³⁰

The case was brought by a gay couple—Adheep Pokhrel, a Nepali citizen, and Tobias Volz, a German citizen. The pair were legally married in Germany in 2018. They applied for a non-tourist visa for Volz in July 2022, which would entitle him to the same rights to live in Nepal

¹³⁰ *Adheep Pokhrel, et al. v. Ministry of Home Affairs, Department of Immigration, Kalikasthan, et al.*

Certiorari, Mandamus / 079-WO-0198,

https://www.hrw.org/sites/default/files/media_2023/05/20221219%20-%20Adheep%20Pokhrel%20et%20al.%20v%20M%20oHA%20Dol.pdf.

as a married heterosexual spouse in the same circumstance. Nepali authorities denied the request on the grounds that the application form reads “husband” and “wife” and does not recognize two husbands.

In addition to ordering the department of immigration to grant Volz a non-tourist visa, the court also instructed the government to urgently consider a 2015 court-ordered committee report (from *Pant v. Nepal, 2007*) that recommended broader recognition of same-sex relationships. The court ruled that failure to recognize same-sex spouses violates Nepal’s constitution and its international human rights obligations.

While the judgment primarily focuses on same-sex relationship recognition, it also involves nuanced discussions of terminology and human rights related to sexual orientation and gender identity. For example, the judgment explains:

Generally speaking, the term "third gender" is used to indicate communities other than men and women. In several documents, the use of "third gender" also refers to the transgender community. Given the current context where various terms of gender identity have been developed and individuals are openly identifying themselves with those identities, "third gender" cannot denote everyone and, therefore, the use of such a term can potentially diminish the identity of the members of the gender and sexual minority community as a whole. At a time when there seems to be a general agreement to use the more inclusive term SOGIESC [sexual orientation, gender identity/expression, and sex characteristics] instead of LGBTIQ+ [lesbian, gay, bisexual, transgender, intersex, queer, and asexual], which cannot represent the entire non-binary community, the use of "third gender" to address the entire non-binary community would seem contrary to the principle of inclusion as well.¹³¹

The judgment makes important strides in clarifying terminology related to gender identity and, while acknowledging that a range of identities may be understood under a “third gender” heading and some people may pursue legal recognition as “third gender,” others may identify as male, female, or a range of indigenous identity terms.

¹³¹ *Pokhrel v. Nepal*.

International Law and Legal Gender Recognition

In its 2014 review of Nepal, the UN Human Rights Committee, which monitors state compliance with the International Covenant on Civil and Political Rights (ICCPR), complimented Nepal’s progress on transgender rights, noting “[t]he introduction of a third gender in various official documents, including citizenship certificates, pursuant to the Supreme Court judgment of 21 December 2007.”¹³² In its currently-pending review of Nepal, the Human Rights Committee has asked the government to indicate what steps it has taken to protect against discrimination on the basis of gender identity.¹³³

The ICCPR, which Nepal ratified in 1991, provides for equal civil and political rights for all (article 3), the right to recognition for everyone before the law (article 16), the right to privacy (article 17), and equality before the law and the equal protection of the law without discrimination on any grounds, including sex (article 26).

The right to recognition is captured in Principle 3 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which was developed by international human rights experts, including former Member of Parliament in Nepal, Sunil Babu Pant, and endorsed by the UN. Principle 3 states that:

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal

¹³² UN Human Rights Committee, Concluding observations on the second periodic report of Nepal, April 15, 2014, CCPR/C/NPL/CO/2.

¹³³ UN Human Rights Committee, List of issues prior to submission of the third periodic report of Nepal, May 27, 2021, CCPR/C/NPL/QPR/3.

recognition of their gender identity.... No one shall be subjected to pressure to conceal, suppress, or deny their sexual orientation or gender identity.¹³⁴

Nepali Federal Law and Legal Gender Recognition

The Constitution of Nepal explicitly protects the rights of LGBT people and the right to legal gender recognition according to gender identity.¹³⁵ Article 12 recognizes that people eligible for citizenship by descent can obtain it on the basis of their gender identity. Articles 18(3) and 42(1) respectively protect “gender and sexual minorities” (*laiñgik tathā yaunik alpasañkhyak*) against discrimination and entitle them to affirmative action in public services.¹³⁶

In Nepal, citizenship is regulated by the constitution, the Nepal Citizenship Act of 2006,¹³⁷ and acts relating to passports, birth certificates,¹³⁸ and identity cards.¹³⁹

In 2012, the Ministry of Home Affairs issued a directive on the process for providing citizenship documents for people with “other” as a gender marker. The directive defines gender identity as: “[T]he feeling that comes from every person’s inner heart and personal gender experience.”¹⁴⁰

The directive vaguely explains the eligibility and process requirements for changing one’s gender to “other”:

(1) An individual from the sexual and gender minority community who wishes to acquire citizenship based on their gender identity and who is eligible to acquire citizenship pursuant to the prevailing law, shall submit

¹³⁴ “Principle 3,” Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006, <http://yogyakartaprinciples.org/principle-3/> (accessed September 13, 2023).

¹³⁵ Mara Malagodi, “Post-Conflict Constitution-Making in Nepal and the Limits of Constituent Assemblies,” in *Asian Comparative Constitutional Law, Volume I: Constitution-Making*, eds. S. Bui and M. Malagodi, (Oxford: Hart Publishing, 2023), p. 409-427.

¹³⁶ The Constitution of Nepal, *Nepal Law Commission*, September 20, 2015, <https://perma.cc/U623-DK25>.

¹³⁷ Nepal Citizenship Act of 2063 (2006), https://jp.nepalembassy.gov.np/wp-content/uploads/2017/11/citizenship_act_eng.pdf (accessed January 17, 2024).

¹³⁸ The Correction of Age, Name, and Surname Rules of 2017 (2017); National Identity Card and Vital Registration Act of 2076 (2020).

¹³⁹ National Identity Card and Vital Registration Act of 2076 (2020).

¹⁴⁰ See appendix 3 for full text of the directive.

[a letter of] application to a relevant local body if they wish to acquire citizenship marked other gender based on their gender identity.

(2) The local body may conduct a necessary investigation on the submitted application to issue citizenship based on gender identity and make a recommendation to a relevant officer.¹⁴¹

While the MOHA order was helpful in reiterating the Supreme Court's order in *Pant v. Nepal (2007)*, it fell short of adequately enumerating a clear procedure for identity-based legal recognition. Absent that clarity, authorities across the country have implemented it inconsistently, and violated the rights of many people who have attempted to change their legal gender.

A 2023 UN Women report analyzed the legal landscape for transgender people in Nepal, including the various laws that impact their ability to have their gender identity legally recognized. The report featured anonymized interviews with Nepali policymakers, including one who remarked: "Although there has been improvement compared to the past, there have been inadequacies in the seriousness executed by the government."¹⁴² The agency recommended that the Ministry of Home Affairs undertake:

To implement the 2007 directive from the Supreme Court (*Sunil Babu Pant versus Nepal, 2007*), self-determination and self-feeling should be the basis for gender identity. At present, it needs to be clearly stated that [people] have the right to do this without proof of medical intervention.¹⁴³

Legal Gender Recognition

The UN Human Rights Committee has made recommendations about legal gender recognition: For example, it specifically recommended that Ireland should guarantee the

¹⁴¹ Guidelines for Issuing Citizenship to Individuals from Sexual and Gender Minority Community by Including 'Other' in the Gender Category, 2069, (2012), Government of Nepal, Ministry of Home Affairs. See Appendix 3 for full text of directive.

¹⁴² UN Women, "Evidence to Action: Addressing Violence Against LGBTIQ+ People in Nepal," June 4, 2023, https://un.org.np/sites/default/files/doc_publication/2023-06/LGBTIQ%20Study%20Report-Final-web%20version-11%20June%202023%20evening.pdf (accessed January 17, 2024).

¹⁴³ Ibid.

rights of transgender persons including the right to legal recognition of their gender¹⁴⁴ and that Ukraine should repeal abusive and disproportionate requirements for legal recognition of gender identity.¹⁴⁵

In his report to the UN General Assembly in 2018, the UN independent expert on sexual orientation and gender identity stated:

[L]ack of legal recognition negates the identity of the concerned persons to such an extent that it provokes what can be described as a fundamental rupture of State obligations. As expressed by one scholar, when States deny legal access to trans identities, what they are actually doing is messaging a sense of what is a proper citizen.¹⁴⁶

A critical component of evolving international standards—and states’ implementation of those standards—has been the clear separation of medical procedures related to gender transition, and legal procedures related to gender transition.

Shifting from Requiring Medical Procedures as a Precondition

International human rights standards are increasingly understood to require the separation of legal and medical processes of gender reassignment for transgender people. In some countries, legislatures have adopted these standards in laws and policies; in other countries, courts have required the application of these principles.

Several countries have adopted best practices that reflect this. In recent years, Sweden, the Netherlands, Ireland, Colombia, Malta, and Denmark¹⁴⁷ changed their legal recognition

¹⁴⁴ UN Human Rights Committee, Concluding observations on the fourth periodic report of Ireland, August 19, 2014, (CCPR/C/IRL/4), para. 7.

¹⁴⁵ UN Human Rights Committee, Concluding observations on the seventh periodic report of Ukraine, August 22, 2013, CCPR/C/UKR/CO/7, para. 10.

¹⁴⁶ UN independent expert on sexual orientation and gender identity, Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, July 12, 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/152 (accessed May 19, 2023).

¹⁴⁷ Parliamentary Gazette, Law 182, Motion to Law amending the Law on the Central Office (Assigning new personal number for people who experience themselves as belonging to the other sex), Government of Denmark, April 30, 2014 (Law 182 Assigning new personal number); Act XI of 2015 - Gender Identity, Gender Expression and Sex Characteristics Act, Government Gazette of Malta No. 19,410,

procedures to remove invasive medical requirements; Denmark and Malta, along with Argentina, do not require a medical diagnosis for legal gender recognition.¹⁴⁸ Argentina and Malta are widely considered to set best standards in legal gender recognition procedures.¹⁴⁹

A 2012 OHCHR report on discrimination and violence and discrimination on the basis of sexual orientation and gender identity, noted that “[r]egulations in countries that recognize changes in gender often require, implicitly or explicitly, that applicants undergo sterilization surgery as a condition of recognition.”¹⁵⁰

According to a 2013 report of the UN special rapporteur on torture, “In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender.”¹⁵¹ He noted a trend of finding such compulsory sterilization a violation of non-discrimination rights and physical integrity,¹⁵² and called upon governments “to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.”¹⁵³

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26805&l=1> (Act XI of 2015 - Gender Identity) (accessed January 17, 2024); Act No. 25 of 2015, Gender Recognition Act of 2015, Government of Ireland, Oireachtas, <http://www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf> (accessed January 17, 2024); IDENTIDAD DE GENERO Ley 26.743 Establécese el derecho a la identidad de género de las personas, Government of Argentina, 2012, <http://tgeu.org/argentina-gender-identity-law/> (IDENTIDAD DE GENERO Ley 26.743) (accessed January 17, 2024); Cristian González Cabrera, “Colombia’s Constitutional Court Advances Gender Diversity,” *El Espectador*, March 8, 2022, <https://www.hrw.org/news/2022/03/08/colombias-constitutional-court-advances-gender-diversity>; Law of December 18, 2013 amending Book 1 of the Civil Code Act and the municipal personal records database in connection with the changing conditions and the competence of amending the entry of sex in the birth certificate, Kingdom of the Netherlands, <http://wetten.overheid.nl/BWBR0034670/2014-07-01> (Amending Book 1 of the Civil Code Act) (accessed January 17, 2024).

¹⁴⁸ Law 182 Assigning new personal number, Government of Denmark; Act XI of 2015 - Gender Identity, Government of Malta; Act No. 25 of 2015, Gender Recognition Act of 2015, Government of Ireland, Oireachtas.

¹⁴⁹ IDENTIDAD DE GENERO Ley 26.743, Government of Argentina; Ministry of Justice and Law, Decree 1227, Republic of Colombia, June 4, 2015; (Amending Book 1 of the Civil Code Act), Kingdom of the Netherlands.

¹⁵⁰ UN Human Rights Council, Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity: Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/19/41 (November 17, 2011), para. 72.

¹⁵¹ Report of the Special Rapporteur on Torture, and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, February 1, 2013, para. 78.

¹⁵² *Ibid.*, paras. 78-79.

¹⁵³ *Ibid.*, para. 88.

In a 2014 joint statement, the WHO, OHCHR, UN Program on HIV/AIDS (UNAIDS), UN Development Programme (UNDP), United Nations Children’s Fund (UNICEF), and United Nations Population Fund (UNFPA) said:

States parties’ obligation to respect the right to health requires that they abstain from imposing discriminatory practices. This includes an obligation to respect the rights of persons with disabilities and transgender and intersex persons, who also have the right to retain their fertility.¹⁵⁴

These agencies further called on governments to “[p]rovide legal guarantees for full, free and informed decision-making and the elimination of forced, coercive and otherwise involuntary sterilization, and review, amend and develop laws, regulations and policies in this regard.”¹⁵⁵

The 2015 “Blueprint for the Provision of Comprehensive Care for Trans People in Asia and the Pacific”—co-published by the World Health Organization (WHO), UN Development Programme (UNDP), United States Agency for International Development (USAID), the US President's Emergency Plan for AIDS Relief (PEPFAR), the Asia-Pacific Transgender Network, and the Health Policy Project—recommended that governments “[t]ake all necessary legislative, administrative, and other measures to fully recognize each person’s self-defined gender identity, with no medical requirements or discrimination on any grounds.”¹⁵⁶

In its 2015 report on violence and discrimination on the basis of sexual orientation and gender identity, OHCHR recommended that states begin immediately “[i]ssuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce.”¹⁵⁷

¹⁵⁴ OHCHR et al., “Eliminating Forced, Coercive and Otherwise Involuntary Sterilization,” 2014, https://www.unaids.org/sites/default/files/media_asset/201405_sterilization_en.pdf (accessed May 22, 2023) p. 10.

¹⁵⁵*Ibid.*, p. 13.

¹⁵⁶ Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme, *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific* (Washington, DC: Futures Group, Health Policy Project, 2015), p. 112, http://www.healthpolicyproject.com/pubs/484_APTBFINAL.pdf (accessed May 19, 2023).

¹⁵⁷ UN Human Rights Council, *Discrimination and Violence against Individuals Based on Their Sexual Orientation and Gender Identity: Report of the Office of the United Nations High Commissioner for Human Rights*, May 4, 2015, A/HRC/29/23, para. 79(i).

In addition to international human rights bodies and experts, in recent years, international health expert bodies have strengthened their positions against medical models for legal gender recognition.

In a 2010 statement, the World Professional Association for Transgender Health (WPATH)—an international, multidisciplinary professional association aimed at promoting evidence-based care, education, research, advocacy, public policy, and respect in transgender health and composed of more than 700 members worldwide—called on governments “to remove any sterilization requirements as part of legal gender recognition.”¹⁵⁸ WPATH stated:

No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person’s lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.¹⁵⁹

In 2015, WPATH updated the statement, reiterating its condemnation of forced sterilization and expanding its critique of arduous and medicalized procedures for legal gender recognition, with: “No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone’s gender identity, so these should not be requirements for legal gender change” and “appropriate legal gender recognition should be available to transgender youth.”¹⁶⁰

And in 2017, WPATH updated their position statement again while reiterating the stance expressed in its 2015 statement:

¹⁵⁸ World Professional Association for Transgender Health (WPATH), Statement, June 16, 2010, https://amo_hub_content.s3.amazonaws.com/Association140/files/Identity%20Recognition%20Statement%206-6-10%200n%20letterhead.pdf (accessed May 22, 2023).

¹⁵⁹ Ibid.

¹⁶⁰ World Professional Association for Transgender Health (WPATH), “WPATH Statement on Legal Recognition of Gender Identity”, January 19, 2015, https://amo_hub_content.s3.amazonaws.com/Association140/files/WPATH%20Statement%200n%20Legal%20Recognition%20of%20Gender%20Identity%201-19-15.pdf (accessed May 22, 2023).

WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status.... Transgender people, regardless of how they identify or appear, should enjoy the gender recognition all persons expect and deserve. Medical and other barriers to gender recognition for transgender individuals may harm physical and mental health. WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents.¹⁶¹

Rights of Transgender Children

The right to recognition as a person before the law is guaranteed not only by the ICCPR, but also the Convention on the Rights of the Child (CRC), which Nepal ratified in 1990.¹⁶² Article 8 of the CRC guarantees the right to preserve one’s identity, which specifies three aspects of identity: nationality, name, and family relations as recognized by law; however, that list is not exhaustive. Together with the right to protection from arbitrary interference in privacy (article 16), the right to preserve one’s identity is understood to extend to the way one’s identity is reflected on state-issued documents, including for children.

As the CRC makes clear, “[i]n all actions concerning children, ... the best interests of the child shall be a primary consideration.”¹⁶³ Such actions include decisions about legal recognition of the gender identity of transgender children.

Article 12 of the CRC provides that in determining the child’s best interests, the child themselves should be heard and taken into account:

1. Governments should assure to the child who is capable of forming their own views the right to express those views freely in all matters affecting the

¹⁶¹ World Professional Association for Transgender Health (WPATH), “WPATH Identity Recognition Statement,” November 15, 2017,

<https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf> (accessed May 23, 2023).

¹⁶² Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, see also CRC, arts. 7 and 8; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 16.

¹⁶³ CRC, art. 3.

child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.¹⁶⁴

The Yogyakarta Principles+10, an update to the original Yogyakarta Principles, adopted in 2017, includes the right to legal recognition (principle 31). Principle 31 directs states to “Ensure that no eligibility criteria, such as ... minimum or maximum age ..., shall be a prerequisite to change one’s name, legal sex or gender.”¹⁶⁵

Gender Markers

Non-Binary Gender Markers

An increasing number of governments recognize—at least on some documents—a non-binary gender identity. These include Australia, India, Nepal, the Netherlands, New Zealand, and the United States, among others.

The International Civil Aviation Organization (ICAO), which sets global standards for machine-readable passports, allows for three sex categories: female, male, or “X” for unspecified.¹⁶⁶ Analysts have pointed out that historically, international passport regulations did not require gender to be listed on the documents. Gender markers were only added following US government advocacy at the ICAO in the 1970s.¹⁶⁷

Removing Gender Markers from Official Documents

In 1972, Sweden instituted the world’s first law allowing transgender people to change their legal gender. The world has changed much since then. An increasing number of

¹⁶⁴ Ibid.

¹⁶⁵ The Yogyakarta Principles +10, November 10, 2017, <https://yogyakartaprinciples.org/principles-en/yp10/> accessed May 22, 2023), principle 31.

¹⁶⁶ International Civil Aviation Organization, “Machine Readable Travel Documents, Eighth Edition, 2021,” https://www.icao.int/publications/Documents/9303_p4_cons_en.pdf (accessed May 22, 2023).

¹⁶⁷ Samantha Allen, “How the Rise of Androgyny Changed Our Passports,” *Daily Beast*, October 14, 2018, <https://www.thedailybeast.com/how-the-rise-of-androgyny-changed-our-passports>.

countries have legal gender recognition procedures on the books; many of those governments that previously had laws with discriminatory and medicalized requirements have since eliminated medical barriers, and some have apologized for past wrongdoing;¹⁶⁸ some are including third gender or non-binary options for people to select; and some are exploring the removal of gender markers altogether.¹⁶⁹

Principle 31 of the Yogyakarta Principles+10 states:

Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents *while gendered information is included in them*.¹⁷⁰ [Emphasis added]

Principle 31 seeks an end to requiring gender information in identity documents and urges governments to:

Ensure that official identity documents only include personal information that is relevant, reasonable and necessary as required by the law for a legitimate purpose, and thereby end the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver's licenses, and as part of their legal personality.

In his report to the UN General Assembly in 2018, the UN independent expert on sexual orientation and gender identity stated: “The notion that there is a gender norm, from which

¹⁶⁸ Reuters, “Sweden to offer compensation for transgender sterilizations,” *Reuters*, March 27, 2017, <https://www.reuters.com/article/us-sweden-transgender-sterilisation/sweden-to-offer-compensation-for-transgender-sterilizations-idUSKBN16Y1XA> (accessed May 22, 2023).; Human Rights Watch, “Netherlands Apologizes for Transgender Sterilizations,” December 1, 2020, <https://www.hrw.org/news/2020/12/01/netherlands-apologizes-transgender-sterilizations>.

¹⁶⁹ Neela Ghoshal, “Transgender, Third Gender, No Gender: Rights Perspectives on Laws Assigning Gender,” *Opinio Juris*, September 8, 2020, <https://www.hrw.org/news/2020/09/08/transgender-third-gender-no-gender-part-i>.

¹⁷⁰ The Yogyakarta Principles+10, November 10, 2017, <https://yogyakartaprinciples.org/principles-en/yp10/> (accessed May 22, 2023).

certain gender identities ‘vary’ or ‘depart’ is based on a series of preconceptions that must be challenged if all humankind is to enjoy human rights.”¹⁷¹

The report continues:

[T]he mandate holder has significant doubts as to the real need for the pervasive exhibition of gender markers in official and non-official documentation, which appears to be fulfilling the vestiges of needs that have long been superseded or adhering to a rationale that should have never been applied in the first place. The simple principle remains that States must refrain from gathering and exhibiting data without a legitimate, proportionate and necessary purpose.¹⁷²

Employment Discrimination

Nepal has ratified both the International Labor Organization (ILO) Equal Remuneration Convention, 1951 (No. 100)¹⁷³ and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).¹⁷⁴ Both conventions affirm the right to non-discrimination for workers in Nepal.

The Equal Remuneration Convention “promotes equal pay for work of equal value between men and women, addressing pay discrimination on the grounds of sex.”¹⁷⁵

The Discrimination Convention “sets comprehensive standards to promote equality of opportunity and treatment in the world of work” and requires states to adopt “a proactive, positive approach” to achieving this goal.¹⁷⁶ The Discrimination Convention defines “discrimination” as:

¹⁷¹ Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 2018, A/73/152, <https://undocs.org/en/A/73/152> (accessed May 22, 2023), para 6.

¹⁷² *Ibid.*, para 37.

¹⁷³ ILO Convention No. 100 concerning Equal Remuneration, adopted June 29, 1951, entered into force May 23, 1953.

¹⁷⁴ ILO Convention No. 111 concerning Discrimination in Respect to Employment and Occupation, adopted June 25, 1958, 362 U.N.T.S. 31, entered into force June 15, 1960.

¹⁷⁵ ILO Convention No. 100 concerning Equal Remuneration, adopted June 29, 1951, entered into force May 23, 1953.

¹⁷⁶ *Ibid.*

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.¹⁷⁷

¹⁷⁷ ILO Convention No. 111 concerning Discrimination in Respect to Employment and Occupation, adopted June 25, 1958, 362 U.N.T.S. 31, entered into force June 15, 1960.

Acknowledgments

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The report was reviewed by Anji Manivannan, senior editor, Graeme Reid, LGBT rights program director, an Asia division researcher, Juliana Nnoko-Mewanu, senior women's rights researcher, Hye Jung Han, children's rights researcher and advocate, Julia Bleckner, senior researcher on health and human rights, Joseph Saunders, deputy program director, and Michael Bochenek, senior legal adviser. Production assistance was provided by Andres Burgos and Yasemin Smallens, LGBT rights program coordinators.

Expert review was provided by Simran Sherchan, executive director of the Federation of Sexual and Gender Minorities-Nepal, Manisha Dhakal executive director of the Blue Diamond Society, Rukshana Kapali, executive director of Queer Youth Group Nepal, Sunil Babu Pant, former member of parliament and founder of the Blue Diamond Society, and Mara Malagodi, Reader (Associate Professor), Warwick Law School, University of Warwick, United Kingdom.

Appendix 1: HRW Submission in *Kapali v. Nepal*

Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
www.hrw.org



HRW.org

May 5, 2022

To: The Nepal Supreme Court

Regarding: Expert Opinion Statement in the case of *Rukshana Kapali v Government Nepal et al.*

I am senior researcher on lesbian, gay, bisexual, and transgender (LGBT) rights at Human Rights Watch. Over the past 10 years, I have researched and written extensively on the issue of legal recognition for transgender people around the world. I have also specifically focused a significant amount of my work on the situation in Nepal, having spent the 2011-2012 academic year as a Fulbright Scholar in Kathmandu working under the advisement of Prof. Chaitanya Mishra at Tribhuvan University. I have published extensively on issues of gender and sexuality in Nepal, including in peer-reviewed academic journals. A full list of my publications is attached to this expert witness statement as an appendix.

Human Rights Watch is an international non-government organization that monitors and reports on the human rights situation in 100 countries around the world, including Nepal.

In this submission, please find:

1. The expert opinion by Kyle Knight, senior researcher on LGBT rights.
2. A list of Kyle Knight's relevant publications.

I hereby present the attached expert statement on the case (9 pages).

Sincerely.

Kyle Knight
Senior LGBT Rights Researcher
for Human Rights Watch
1/9

1. Expert Witness Statement

Nepal's Leadership on Legal Gender Recognition

The petitioner, Rukshana Kapali, has illustrated to the court the daily indignities and fundamental rights violations she experiences because of the government's failure to recognize her gender identity as Female on official documents.

Scholars of international law and scholars of Nepal have noted that the Supreme Court's 2007 judgment in *Pant v. Nepal*, which ordered the government to establish legal gender recognition on the basis of "self-feeling," was a groundbreaking and monumental historical achievement.¹⁷⁸ At that time, legal recognition of gender identity around the world was a nascent issue and only a few governments had policies, virtually none of which accepted someone's self-identification as the criterion for recognition; the Nepal Supreme Court's influence on jurisprudence around the world was profound. Within weeks of the Court's judgment Richard Bennett, the representative of the Office of the High Commissioner for Human Rights in Nepal, called the judgment "truly a ground-breaking decision on gender identity and sexual orientation in South Asia and perhaps worldwide."¹⁷⁹ Courts around the world took the order seriously. For example, courts in the United States¹⁸⁰ and India,¹⁸¹ as well as the European Court of Human Rights,¹⁸² have cited *Pant v. Nepal (2007)* in their consideration of appropriate comparative law regarding how to recognize transgender people's rights.

Following the 2007 judgment, implementation of the Court's order demonstrated its strengths and weaknesses, and the need for further adjudication.

¹⁷⁸ Ryan Thoreson, "Queering Human Rights: The Yogyakarta Principles and the Norm that Dare not Speak Its Name," *Journal of Human Rights*, vol. 8, no. 4, (2009), p. 323–339; David Gellner, "Masters of hybridity: how activists reconstructed Nepali society," *Journal of the Royal Anthropological Institute*, vol. 25(N.S.) vol. 25, (2019), p. 265-284.

¹⁷⁹ "Discussion Program on the Supreme Court Decision on Sexual Minority Organized by Blue Diamond Society", Richard Bennett, Representative of the United Nations Office of the High Commissioner for Human Rights (UNOHCHR), Kathmandu, January 12, 2008, http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2008/2008_01_12_SexualMinorities_E.pdf (accessed May 19, 2023).

¹⁸⁰ *Zzyym v. Pompeo*, No. 18-1453 (10th Cir. 2020), <https://cases.justia.com/federal/appellate-courts/ca10/18-1453/18-1453-2020-05-12.pdf?ts=1589313701>.

¹⁸¹ *National Legal Services Authority (NALSA) v. Union of India and Others*, WRIT PETITION (CIVIL) NO.400 OF 2012, <https://translaw.clpr.org.in/wp-content/uploads/2018/09/Nalsa.pdf>.

¹⁸² *HÄMÄLÄINEN v. FINLAND*, Application no. 37359/09.

As noted in the petition before this court, some Nepali entities have adopted and implemented the third gender category (a third gender identity, marked as “Third Gender,” “Other,” or “Sexual and Gender Minority”). These include the Election Commission¹⁸³ and the Central Bureau of Statistics.¹⁸⁴ However implementation has been piecemeal and, in some cases such as the national census, insufficient—with transgender people being denied inclusion due to an unclear definition of the third gender category, and some of them identifying as Male or Female and not Third Gender. Thus, as outlined below, the Court in *Pant v. Nepal (2007)* and subsequent cases, including *Pant v. Nepal (2017)*, made significant strides in recognizing the rights of transgender people. Nonetheless implementation has shown, as in this case of *Kapali v. Nepal* before the Court, that the system needs additional updates.

The lack of a coherent, consistent, transparent, and rights-based legal gender recognition procedure in Nepal falls short of the government’s obligations under international human rights law. Those transgender individuals who identify as Male or Female are not provided the legal right to do so, as those who identify as third gender are provided. The current situation, in which some people are able to avail themselves of documents that align with their gender identity, and others are not, merits rectification by the Court.

As the United Nations Independent Expert on Sexual Orientation and Gender Identity noted in his 2018 report to the UN General Assembly:

In 2007, the Supreme Court of Nepal required that the Government recognize a third gender based on self-determination and without medical requirements.... It remains, however, focused solely on a third gender identity, with no option for trans women to be recognized as female or trans men to be recognized as male.¹⁸⁵

¹⁸³ The Carter Center, “The Carter Center’s Information Sessions on the Election Commission of Nepal’s Voter Registration with Photograph Program,” May 9, 2012, https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/nepal-regional-sessions-voter-registration-050912-eng.pdf (accessed May 19, 2023).

¹⁸⁴ Kyle Knight, “What We Can Learn From Nepal’s Inclusion of ‘Third Gender’ on Its 2011 Census,” *The New Republic*, July 18, 2011, <https://newrepublic.com/article/92076/nepal-census-third-gender-lgbt-sunil-pant> (accessed May 22, 2023).

¹⁸⁵ UN General Assembly, Report of the independent expert on sexual orientation and gender identity, Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, July 12, 2018, <http://www.un.org/en/ga/search/viewdoc.asp?symbol=A/73/152>.

Self-Identification

The Court’s definition of third gender in *Pant v. Nepal (2007)* situated it as a minority encompassing a broad range of identities. However, the court did make clear that the sole criterion for being legally recognized as third gender was based on individual “self-feeling.”¹⁸⁶

This drew from and is consistent with Yogyakarta Principle 3, which holds that states must,

Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person’s gender/sex—including birth certificates, passports, electoral records and other documents—reflect the person’s profound self-defined gender identity.¹⁸⁷

As the Court noted subsequently in *Pant v. Nepal (2017)*,

“[T]o say that citizenship certificates, which were obtained based on the biological organ while one’s sexual identity was not yet known, cannot be amended to include their actual gender identity is tantamount to refusing to accept the existence of individuals from the gender minority community, such as the petitioners themselves.”¹⁸⁸

This accords with the UN Independent Expert’s analysis that,

“[L]ack of legal recognition negates the identity of the concerned persons to such an extent that it provokes what can be described as a fundamental rupture of State obligations. As expressed by one scholar, when States

¹⁸⁶ *Pant v. Nepal*, Writ No. 917 of the Year 2064 BS (2007 AD), translated in NAT’L JUD. ACAD. L.J., 2008, at 281 (“Legal provisions should be made to provide for gender identity to the people of transgender or third gender, under which female third gender, male third gender and intersexual are grouped, as per the concerned person’s self-feeling.”).

¹⁸⁷ Yogyakarta Principles, “Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,” March 2007, www.yogyakartaprinciples.org (accessed May 19, 2023), princ. 3.

¹⁸⁸ *Sunil Babu Pant, et. al. v. Office of the Prime Minister and Council of Ministers, et.al.* / Case: Mandamus / 071-WO-0845.

deny legal access to trans identities, what they are actually doing is messaging a sense of what is a proper citizen.”¹⁸⁹

Maintaining the Nepali legal system’s commitment to self-determination for legal gender recognition is critical. This includes eschewing any attempt to require medical intervention or certification as part of the legal gender recognition process.

The International Covenant on Civil and Political Rights, which Nepal ratified in 1991, provides for equal civil and political rights for all (article 3), the right to recognition for everyone before the law (article 16), and the right to one’s privacy and family (article 17).

Governments are obligated under the ICCPR to ensure equality before the law and the equal protection of the law of all persons without discrimination on any ground, including sex (article 26). The Human Rights Committee has specifically recommended that governments should guarantee the rights of transgender persons including the right to legal recognition of their gender, and that states should repeal abusive and disproportionate requirements for legal recognition of gender identity.¹⁹⁰

The Court should explicitly reiterate, in line with its judgment in *Pant v. Nepal (2007)*, that Nepal’s legal gender recognition procedure is based solely on “self-feeling” and no medical intervention or assessment is allowed as part of the process.

Gender Categories

In addition to the criteria for gender recognition analyzed above, governments have undertaken various processes for establishing and recognizing gender categories.

Some governments began the process of recognizing the fundamental right of transgender people to be recognized before the law by allowing applicants to be recognized in binary

¹⁸⁹ UN General Assembly, Report of the independent expert on sexual orientation and gender identity, Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, July 12, 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/152.

¹⁹⁰ UN Human Rights Committee, “Concluding observations on the fourth periodic report of Ireland,” CCPR/C/IRL/CO/4, August 19, 2014; UN Human Rights Committee, “Concluding observations on the seventh periodic report of Ukraine,” CCPR/C/UKR/CO/7, August 22, 2013.

legal genders, namely Male and Female. Then later, those governments added a third gender category.

Three examples of governments that followed this process are: Argentina, Iceland, and the Netherlands. In Argentina, for instance, the legislature passed the 2012 Gender Identity which issues binary LGR on official government documents;¹⁹¹ in 2021, Argentina's president, Alberto Fernández, issued a decree adding a third gender option for passports.¹⁹² Iceland passed legislation in 2012 which issues binary LGR on official government documents;¹⁹³ in 2014, the Icelandic parliament passed legislation which added a third gender option on government documents.¹⁹⁴ The Netherlands passed legislation in 2013 which issues binary LGR on official government documents;¹⁹⁵ in 2021, following a series of court rulings, the Netherlands added a third gender option for passports and birth certificates.¹⁹⁶ Argentina, Iceland, and the Netherlands offer examples of how countries may supplement a pre-existing binary gender LGR model with a third gender option.

Some countries have developed their legal gender recognition procedures in the opposite direction, starting by adding a third gender category and allowing people assigned Male or Female at birth to elect it, then later allowing applicants to be recognized as Male or Female as well.

These countries include India and Pakistan. In India, following a 2014 Supreme Court ruling, the government began listing a third gender option on ration cards, voter identity

¹⁹¹ US Library of Congress, "Argentina: New Law on Transgender Rights Approved," May 16, 2012, <https://www.loc.gov/item/global-legal-monitor/2012-05-16/argentina-new-law-on-transgender-rights-approved/> (accessed May 22, 2023).

¹⁹² Human Rights Watch, "Argentina Recognizes Non-Binary Identities," July 22, 2021, <https://www.hrw.org/news/2021/07/22/argentina-recognizes-non-binary-identities>.

¹⁹³ Act on the Status of Individuals with Gender Identity Disorder No. 57/2012, Alþingi (Parliament), 2012a.

¹⁹⁴ Law on sexual autonomy, No. 80/2019, Alþingi (Parliament). <https://www.althingi.is/thingstorf/thingmalin/atkvaedagreidsla?nnafnak=57694> (accessed May 22, 2023). It might also be of interest to note that this law eased requirements for people to change their gender ID.

¹⁹⁵ Human Rights Watch, "Netherlands: Victory for Transgender Rights," December 19, 2013, <https://www.hrw.org/news/2013/12/19/netherlands-victory-transgender-rights>.

¹⁹⁶ Dutch News, "Court Rules Non-Binary Person Can Be X Without Providing Expert Opinion," December 2021, <https://www.dutchnews.nl/news/2021/12/court-rules-non-binary-person-can-be-x-without-providing-expert-opinion/> (accessed May 22, 2023).

cards, passports, and bank forms;¹⁹⁷ in 2019, the cabinet of India approved the Transgender Persons (Protection of Rights) Bill granting transgender people a pathway towards Male or Female LGR in addition to a third gender option.¹⁹⁸ In Pakistan, following a 2009 Supreme Court decision,¹⁹⁹ the government began listing a third gender option on the national identity card registry. In 2017, the government began issuing passports with a third gender option as well.²⁰⁰ In 2018, Pakistan passed the Transgender Persons (Protection of Rights)²⁰¹ which grants Pakistanis access to not only a third gender option, but also Male or Female options in accordance with their self-declared gender identity.²⁰²

India's and Pakistan's approaches to legal gender recognition illuminate how countries may supplement a pre-existing third gender category with Male or Female gender options. Nepal appears to be in the latter category, with this case before the Court offering the opportunity for transgender men to be recognized as Male and for transgender women to be recognized as Female.

Pant v. Nepal (2007) was one of the world's first examples of a court citing the 2006 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Principle 3 of the Yogyakarta Principles—a set of principles developed by international human rights experts and endorsed by the UN—states that:

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of

¹⁹⁷ Lelin Mallick, "State's first transgender passport," Telegraph India, April 11, 2017, <https://www.telegraphindia.com/odisha/state-s-first-transgender-passport/cid/1391219> (accessed May 22, 2023).

¹⁹⁸ The Transgender Persons (Protection of Rights) Bill, Ministry of Social Justice and Welfare, No. 210-C, 2019, http://orinam.net/content/wp-content/uploads/2018/12/2018_LS_Eng.pdf (accessed May 22, 2023).

¹⁹⁹ *Khaki v. Rawalpindi*, Supreme Court of Pakistan, No. 43/09, April 11, 2009, <https://www.icj.org/wp-content/uploads/2012/07/Khaki-v.-Rawalpindi-Supreme-Court-of-Pakistan.pdf> (Accessed May 22, 2023).

²⁰⁰ Dawn, "Pakistan issues first third-gender passport for transgender activist," June 24, 2017, <https://www.dawn.com/news/1341545> (accessed May 22, 2023).

²⁰¹ The Transgender Persons (Protection of Rights) Bill, Ministry of Social Justice and Welfare, No. 210-C, 2019, http://orinam.net/content/wp-content/uploads/2018/12/2018_LS_Eng.pdf (accessed May 22, 2023).

²⁰² Section 3 of the 2018 Transgender Persons Act: "a transgender person shall have a right to be recognized as per his or her self-perceived gender identity."

the most basic aspects of self-determination, dignity, and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress, or deny their sexual orientation or gender identity.²⁰³

In the subsequent 15 years, courts and legislators around the world have increasingly referenced or been inspired by the Yogyakarta Principles in developing legal gender recognition procedures.

In 2017, a group of international experts developed the “Yogyakarta Principles + 10,” a set of principles that explicitly stakes out a progressive expansion of those codified in 2006. Principle 31 states:

Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.²⁰⁴

The continued emphasis by individuals, activists, experts, jurists, and lawmakers around the world on simple, transparent, and accessible legal gender recognition procedures, and the reinvigoration of the Yogyakarta Principles a decade after they were first codified to further emphasize the importance of this issue, offers the Court important guidance to continue Nepal's leadership on this issue.

²⁰³ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2006, <http://yogyakartaprinciples.org/principle-3/> (accessed May 22, 2023), principle 3.

²⁰⁴ The Yogyakarta Principles +10, November 10, 2017, <https://yogyakartaprinciples.org/principles-en/yp10/> (accessed May 22, 2023).

2. Relevant publications by Kyle Knight

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Knight K., Sollom R. “Making disaster risk reduction and relief programmes LGBTI inclusive: examples from Nepal,” *Humanitarian Exchange*, October 2012.

Knight K., Welton-Mitchell C. “Gender identity and disaster response in Nepal,” *Forced Migration Review*, April 2013 (co-author).

Knight K., et al. “Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach,” *The Williams Institute*, 2014.

Knight K. “Outliers: Sunil Babu Pant, the Blue Diamond Society, and Queer Organizing in Nepal,” *Studies in Nepali History and Society*, Vol. 19, No. 1, 2014.

Knight K., Flores A., Nezhad S. “Surveying Nepal's Third Gender: Development, Implementation, and Analysis,” *Transgender Studies Quarterly*, 2015.

Knight K. “Bridges to Justice: Case Study of LGBTI Rights in Nepal,” *Astraea Foundation for Justice*, 2015.

Knight K. “How Nepal’s Constitution Got Queered,” October 14, 2015, *The Los Angeles Review of Books*.

Knight K. “Legal Gender Recognition: Building The Infrastructure For Trans Communities To Thrive,” chapter in: *Trans Lives in a Globalizing World: Rights, Identities and Politics*, 2021, Routledge.

Appendix 2: Judgment in Sunil Babu Pant v. Nepal (2017)²⁰⁵

Supreme Court, Joint Bench
Hon. Justice Mr. Deepak Kumar Karki
Hon. Justice Mr. Hari Krishna Karki

Order
070-WO-0287
Case: Mandamus

Petitioners:

Sunil Babu Pant, permanent resident of Gaikhur, Gorkha, currently residing in Sitapaila, Kathmandu; founder of Blue Diamond Society in Kathmandu Metropolitan City, Ward No. 2, Lazimpat; former Constituent Assembly Member

..... 1

Sanjiv Gurung, also known as Pinky, Chairperson of Blue Diamond Society, and authorized on behalf of the same organization

..... 1

Yam Bahadur Rana “Anik,” resident of Karhaiya-8, Rupandehi, currently residing in Bhairhawa, Rupandehi

..... 1

Versus

Respondents:

Government of Nepal, Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu

..... 1

Government of Nepal, Ministry of Law, Justice, Constitution and Federal Affairs, Singha Durbar, Kathmandu

..... 1

Government of Nepal, Ministry of Home Affairs, Singha Durbar, Kathmandu

..... 1

District Administration Office, Taplejung

..... 1

District Administration Office, Panchthar

..... 1

District Administration Office, Ilam

..... 1

²⁰⁵ *Sunil Babu Pant v. Office of Prime Minister and Council of Ministers, et al.* (2073/10/10), Decision No. 987)

District Administration Office, Jhapa	1
District Administration Office, Tehrathum	1
District Administration Office, Dhankuta	1
District Administration Office, Sunsari	1
District Administration Office, Morang	1
District Administration Office, Solu Khumbu	1
District Administration Office, Sankhuwasabha	1
District Administration Office, Bhojpur	1
District Administration Office, Okhaldhunga	1
District Administration Office, Khotang	1
District Administration Office, Udayapur	1
District Administration Office, Saptari	1
District Administration Office, Siraha	1
District Administration Office, Dolakha	1
District Administration Office, Sindhuli	1
District Administration Office, Ramechhap	1
District Administration Office, Sarlahi	1
District Administration Office, Dhanusha	1
District Administration Office, Mahottari	1
District Administration Office, Makwanpur	1
District Administration Office, Bara	1
District Administration Office, Parsa	1

District Administration Office, Rautahat	1
.....	1
District Administration Office, Chitwan	1
.....	1
District Administration Office, Rasuwa	1
.....	1
District Administration Office, Nuwakot	1
.....	1
District Administration Office, Sindhupalchowk	1
.....	1
District Administration Office, Kavrepalanchowk	1
.....	1
District Administration Office, Dhading	1
.....	1
District Administration Office, Kathmandu	1
.....	1
District Administration Office, Bhaktapur	1
.....	1
District Administration Office, Lalitpur	1
.....	1
District Administration Office, Manang	1
.....	1
District Administration Office, Gorkha	1
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District Administration Office, Tanahun	1
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District Administration Office, Lamjung	1
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District Administration Office, Kaski	1
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District Administration Office, Syangja	1
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District Administration Office, Myagdi	1
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District Administration Office, Baglung	1
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District Administration Office, Parbat	1
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District Administration Office, Gulmi	1
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District Administration Office, Palpa	1
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District Administration Office, Arghakhanchi	1
District Administration Office, Nawalparasi	1
District Administration Office, Rupandehi	1
District Administration Office, Kapilvastu	1
District Administration Office, Rukum	1
District Administration Office, Rolpa	1
District Administration Office, Salyan	1
District Administration Office, Pyuthan	1
District Administration Office, Dang	1
District Administration Office, Jajarkot	1
District Administration Office, Dailekh	1
District Administration Office, Surkhet	1
District Administration Office, Banke	1
District Administration Office, Bardiya	1
District Administration Office, Dolpa	1
District Administration Office, Humla	1
District Administration Office, Jumla	1
District Administration Office, Mugu	1
District Administration Office, Kalikot	1
District Administration Office, Bajhang	1
District Administration Office, Bajura	1
District Administration Office, Doti	1

District Administration Office, Achham	1
District Administration Office, Kailali	1
District Administration Office, Darchula	1
District Administration Office, Baitadi	1
District Administration Office, Dadeldhura	1
District Administration Office, Kanchapur.....	1

The facts and order issued against the writ petition submitted pursuant to Articles 32 and 107(2) of the Interim Constitution of Nepal, 2063 (2007) are as follows:

We, the petitioners, are Nepali citizens from the sexual and gender minority community that falls in the minority category. Among the petitioners, I, Yam Bahadur Rana Anik, lodged an application at the District Administration Office, Rupandehi in order to obtain an amended copy of my citizenship certificate complete with my gender identity. A long time has passed since, but no amendment has been made per my request in the petition. Therefore, I have had to be deprived of my right to hold a citizenship certificate that includes my identity. Positive court orders are in place to allow the law to make special provisions for the development and protection of those groups that are lagging behind socially, economically, or educationally, or of women, children, senior citizens, or persons with disabilities, by upholding the principle that discrimination shall not be made against any citizen on any ground, including gender. Regardless of this situation, the Rupandehi District Administration Office, which is among the respondents, has acted against the 2012 guidelines on the issuance of citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category, as well as violating a circular from the Citizenship and Weapons Section of the Ministry of Home Affairs, dated December 31, 2012 and bearing Dispatch No. 249, by denying citizenship to the petitioner.

Among the petitioners, I, Sunil Babu Pant, obtained the citizenship of Nepal from the Gorkha District Administration Office. At the time (of obtaining my citizenship), circumstances were not favorable for the sexual and gender minority community to come out of the closet. I obtained my citizenship on the basis of my biological organ, with “Male” mentioned in the gender category. However, I would like to possess a citizenship certificate that indicates my actual gender identity. There are other members in our sexual and gender minority community who, like me, have already been issued citizenship certificates with “Male” or “Female” mentioned in the gender category. The petitioner hereby requests that the gender category in our citizenship certificates be amended to mention “Other” and that other personal documents be amended accordingly, too. An individual is eligible to obtain citizenship at the age of 16. However, he or she does not

have a clear idea about his or her sexual and gender identity at that age. In fact, they discover their actual sexual and gender identity much later. Given these circumstances, it is our right to have our citizenship certificates, which were issued based on our biological organ and did not take into account our experience and realization of our sexual and gender identity, amended. But our identity has been directly affected because the respondent has told us that the gender category cannot be amended. As the legal and constitutional right of the petitioners has been violated by the respondent organizations, the petitioner hereby requests the Honorable Court to issue an order of mandamus in the name of the respondents to ensure the right of the members of the sexual and gender minority community to obtain citizenship certificates with “Other” mentioned in the gender category, to have the gender category amended to indicate “Other,” if their citizenship certificates were issued before the abovementioned guidelines were enforced, and to have other personal documents amended accordingly, as well as to initiate a process that would be necessary to facilitate such amendment. As it is felt that everyone, including the government, society, and guardians, is in need of comprehensive knowledge regarding the given subject matter and issues in order to ensure the rights of the sexual and gender minority community, the petitioner hereby requests that an order be issued in the name of the respondents to design and implement an orientation program in coordination with governmental agencies, petitioning organizations, physicians, and guardians.

An order from this Court dated October 22, 2013, given priority because an order was issued in the name of the respondents to submit a rejoinder pursuant to the rules and the given writ petition appears to be related to the issue of gender.

A rejoinder submitted by the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs requesting that the writ petition filed with the said Ministry as respondent be quashed because every Nepali citizen is able to obtain a certificate of citizenship subject to the Interim Constitution of Nepal, 2007, Citizenship Act, 2006, Nepal Citizenship Rules, 2006, and the 2012 guidelines on the issuance of citizenship certificates to members of the sexual and gender minority community mentioning “Other” in the gender category; it is not clear in the writ petition which of the functions of the said Ministry prevented the respondents from obtaining citizenship; and the said Ministry does not have any involvement in the acquisition of citizenship.

A rejoinder submitted by the Office of the Prime Minister and Council of Ministers requesting that the writ petition be quashed as there was no need to issue an order as requested because: Articles 8, 9, 10, 11 of the Interim Constitution of Nepal, 2007 contain provisions relating to citizenship. A clear provision has been made to obtain citizenship by applying to a relevant authority for a citizenship certificate by completing the process and procedure determined by the Citizenship Act, 2006, and the Nepal Citizenship Rules, 2006. With regard to the request that an order of mandamus be issued to provide citizenship on the basis of the 2012 guidelines on issuing citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category, on June 18, 2012, the Government of Nepal replaced the words son and

daughter contained in various Schedules, including Schedule 7, of the Nepal Citizenship Rules, 2006 with son, daughter, and other, by revising and editing those Schedules, thereby making it possible for the Nepali citizens from the sexual and gender minority community to obtain citizenship with “Other” mentioned in the gender category. Under these circumstances, it cannot be taken to understand that the state makes discrimination against persons with a different gender identity and sexual orientation. Also, the writ petitioners have already accepted that the 2012 guidelines on the issuance citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category are in place, which demonstrates that the state has already met their request.

A rejoinder submitted by the Ministry of Home Affairs requesting that the given writ petition be quashed because: A notice has been published in the Nepal Gazette of June 23, 2012 about issuing identity-based citizenship certificates with “Other” mentioned in the gender category, pursuant to the 2012 guidelines on the issuance citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category, as long as an individual from such a community is eligible to obtain citizenship pursuant to Nepal’s prevailing law and applies with a letter of recommendation in accordance with the records maintained by a relevant local authority or educational institution. The writ petitioners have already accepted this issue. A law enforcement agency cannot deny a matter for which a law has made provisions. If the Government of Nepal is to be repeatedly issued an order solely for the purposes of implementing such a matter, the authority afforded by law to relevant bodies or officials will become inefficient, and the overall rule of law will come to an end.

Separate rejoinders submitted by the 75 District Administration Offices, including the Kathmandu District Administration Office, contain similar language in requesting that the given writ petition be quashed because these Offices have not done anything to violate the rights of writ petitioners; unlike what is mentioned in the writ petition, they have not made any discrimination on the grounds of sexual orientation and gender identity while issuing citizenship; and they claim that the writ petitioners have included false charges against them in establishing these Offices as respondents.

In the given writ petition submitted before the Bench according to daily cause list, pursuant to the rules, learned advocates Mr. Hari Phuyal and Mr. Sujan Pant pleaded on behalf of the petitioners. Subject to the Constitution of Nepal, Citizenship Act, 2006, the Nepal Citizenship Rules, 2006, and the 2012 guidelines on the issuance of citizenship certificates to members of the sexual and gender minority community mentioning “Other” in the gender category, every Nepali citizen has the legal and constitutional right to obtain citizenship. But because the respondents refused to smoothly issue citizenship certificates to members of the sexual and gender minority community with “Other” mentioned in the gender category, and to amend their citizenship certificates, they have been deprived of citizenship based on the identity they can relate to. As the gender one can identify with is more important than one’s biological identity, it is the petitioners’ legal and constitutional right to amend citizenship certificates that were obtained on the

basis of their biological sex rather than their experience and realization of sexual and gender identity. The learned advocates pleaded that the right of the members of the sexual and gender minority community to obtain citizenship with “Other” mentioned in the gender category and to have their citizenship certificates amended, if issued prior to the 2012 guidelines, to mention “Other” in the gender category, as well as to have other personal documents amended accordingly, should be ensured. They requested that an order of mandamus be issued in the name of the respondents asking them to initiate a process that would be necessary to make such amendments.

Pleading on behalf of the Government of Nepal, the respondent, learned Joint-Attorney Mr. Shyam Kumar Bhattarai stated that the given writ petition was insignificant because a notice has been published in the Nepal Gazette about issuing identity-based citizenship certificates with “Other” mentioned in the gender category as long as an individual is eligible to obtain citizenship pursuant to Nepal’s prevailing law and applies with a letter of recommendation in accordance with the records maintained by a relevant local authority or educational institution. Furthermore, no law enforcement agency can deny a matter for which a law has made provisions, and this provision is contained in the law. Current circumstances already allow for amendments claimed in the writ petition to be possible. If the Government of Nepal is to be repeatedly issued an order solely for the purposes of implementing this matter, the authority afforded by law to relevant bodies or officials will become inefficient.

Upon hearing the deliberation of the learned advocates, and upon perusal of the evidence attached with the case file, it is for this Bench to decide whether or not the order sought by the petitioners should be issued.

The contents of the writ petition filed by petitioner Yam Bahadur Rana Anik are as follows: He lodged an application at the Rupandehi District Administration Office to obtain an amended copy of his citizenship certificate that included his gender identity. But no amendment was made as requested in the petition, so he has been deprived of his right to obtain citizenship based on his identity. The contents of the writ petition filed by another petitioner, Sunil Babu Pant, are as follows: He obtained citizenship from the Gorkha District Administration Office based on his biological organ, with “Male” mentioned in the gender category. However, the petitioner wishes to obtain citizenship that indicates his actual gender identity. He requests that members of the sexual and gender minority community who have already been issued citizenship certificates with “Male” or “Female” mentioned in the gender category be able to obtain amended citizenship certificates with “Other” mentioned in the gender category and that other personal documents be amended accordingly. He requests that an order of mandamus be issued in the name of the respondents to ensure the right of the members of the sexual and gender minority community to obtain citizenship certificates with “Other” mentioned in the gender category, to have the gender category amended to indicate “Other,” if their citizenship certificates were issued before the 2012 guidelines on the issuance of citizenship to members of the sexual and gender minority community with “Other” mentioned in the gender category were enforced, and to have other personal documents

amended accordingly, as well as to initiate a process that would be necessary to facilitate such amendments.

The respondents have submitted a written rejoinder stating that a clear legal provision has been made to obtain citizenship by applying to a relevant authority for a citizenship certificate by completing the process and procedure determined by the Citizenship Act, 2006 and the Nepal Citizenship Rules, 2006. With regard to issuing identity-based citizenship certificates with “Other” mentioned in the gender category, pursuant to the 2012 guidelines on the issuance of citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category, if an individual from such a community, who is eligible to obtain citizenship pursuant to Nepal’s prevailing law, applies with a letter of recommendation in accordance with the records maintained by a relevant local authority or educational institution, no law enforcement agency can deny this, as it is something for which a legal provision has already been made. If the Government of Nepal is to be repeatedly issued an order solely for the purposes of implementation, the authority afforded by law to relevant bodies or officials will become inefficient. The respondents request that the given writ petition be quashed, claiming that they have not done anything to violate the rights of writ petitioners; unlike what is mentioned in the writ petition, they have not made any discrimination on the grounds of sexual orientation and gender identity while issuing citizenship.

With regard to the request by the writ petitioners that they be issued citizenship certificates complete with their gender identity, that their citizenship certificates be amended to include their gender identity, and that all important documents, including academic certificates, be amended accordingly to include this information, the 2012 guidelines on the issuance of citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category define gender identity as, “a feeling that comes from within every individual and his or her personal experience relating to gender, which contrasts with the biological gender assigned at birth, and which is a different gender feeling that is expressed through other dress up, speech, and behavior than the one associated with the gender assigned at birth.” Based on this definition, irrespective of one’s gender assigned at birth, his or her actual identity is the gender feeling he or she experiences personally. This definition, therefore, appears to accept the existence of individuals with a different gender feeling/experience. It is an individual’s basic human right to live with self-respect that includes his or her identity. Given this situation, it is the basic human and constitutional right of the individuals who have a different gender identity and sexual orientation to also live with self-respect that includes their independent identity. With regard to citizenship, Part 2 of the Interim Constitution of Nepal, 2007 states that individuals who are eligible to obtain citizenship shall become citizens of Nepal. Furthermore, the Citizenship Act, 2006 and the Nepal Citizenship Rules, 2006 have made clear provisions regarding citizenship. With regard to citizenship with identity of descent and gender, Article 12 of the current constitution states, **“A person who obtains the citizenship of Nepal by descent in accordance with this Constitution may obtain a certificate of citizenship of Nepal with gender identity by the name of his or her mother or father.”** From this, it is clear that the

fundamental right of the petitioners to obtain a citizenship certificate with gender identity is secure in the constitution.

With regard to applying for citizenship, 3(1) of the 2012 guidelines on the issuance of citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category states: **“If a person from the sexual and gender minority group, who is eligible to obtain citizenship pursuant to the prevailing law, wishes to obtain citizenship based on his or her gender identity with “Other” mentioned in the gender category, he or she shall submit an application to a relevant authority.”** From this, it is clear that those individuals from the sexual and gender minority community, who are eligible to obtain citizenship pursuant to the prevailing law, may obtain citizenship based on their gender identity with “Other” mentioned in the gender category.

It is purely a matter of private self-determination right to achieve a person’s gender identity that he or she identifies with. It would not be relevant for other persons, society, state, or law to determine an individual’s biological gender. No provisions that hurt a person’s freedom, prestige, and self-respect can be granted recognition from a human rights point of view. With regard to obtaining a citizenship certificate with one’s own identity, based on the right to have one’s identity and free of discrimination, the Supreme Court through the Nepal Law Magazine 2065, Issue 4, Decision No. 7958 relating to the writ petition *Sunil Babu Pant v. Office of the Prime Minister and Council of Ministers, Government of Nepal*, et. al. states: “Although a child may be assigned a certain gender at birth, it is possible that as he or she grows up, he or she will develop another gender identity that is different from the one he or she got at birth through a biological and natural process, so the gender forms may change. Just because there are these changes, one cannot say that they are not citizens or members of the human race. Apart from men and women, no discrimination can be made against members of the third gender on the grounds of sexual orientation.” The Supreme Court thereby issued a directive order to make appropriate laws that allow people with different gender identity and sexual orientation to enjoy their rights like everyone else, without facing any discrimination. Through the Nepal Law Magazine 2070, Issue 8, Decision No. 9048, the Supreme Court issued a directive order to make provisions to issue passports with the third gender identity at a time when efforts are being made to grant members of the sexual and gender minority community an identity like that of the general citizen, without making any discrimination. Also, the 2012 guidelines on the issuance of citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category have come into force. Additionally, Schedule 7 of the Nepal Citizenship Rules, 2006 has been amended to replace the words “son, daughter” with “son, daughter, other” and the existence of gender minorities has been accepted and secured. Given these circumstances, it is apparent that an individual can obtain a citizenship certificate with a gender identity based on how that individual feels about his or her gender and enjoy his full rights, just like everyone else, with self-respect.

With regard to the petitioners' contention for amendment of citizenship with gender identity based on their inner feeling, if they have already obtained citizenship based on their biological organ, Section 17 of the Nepal Citizenship Act, 2006 has made the following provision regarding the correction of particulars: **“Any person desiring to correct his/her caste or age for being differently mentioned in the academic certificate to that of the citizenship certificate or correct the minor mistakes in the citizenship certificate, shall have to provide for an application with necessary evidence to the designated authority.”** From this, it is clear that errors and particulars in citizenship certificates can be corrected. It is apparent that the petitioners of the given writ petition, who have already obtained citizenship certificates based on their biological gender but feel differently about their gender than what is indicated on their citizenship certificates, feel humiliated as they have to live, and be known by, an identity that is different from how they feel about their gender from within; this has also hurt their self-respect. Given that there is a legal provision for the obtainment of citizenship with one's sexual and gender identity, that there is ignorance and the lack of sensitivity in relation to that topic, and citizenship must be obtained for the operation of day-to-day business, the rejoinder submitted by the respondents suggesting that citizenship certificates issued at the age of 16, based on one's biological organ and not taking into account his or her sexual and gender experience or feeling of identity, can be amended to include “Other” in the gender category only if applicants bring letters of recommendations aligning with the records maintained by local authorities and educational institutions was not found to be agreeable. Given that the Constitution, the Nepal Citizenship Act, 2006, the Nepal Citizenship Rules, 2006, and the 2012 guidelines on the issuance of citizenship to members of the sexual and gender minority community mentioning “Other” in the gender category have already accepted the existence of the third gender individuals and expressed a commitment towards the rights of that community, to say that citizenship certificates, which were obtained based on the biological organ while one's sexual identity was not yet known, cannot be amended to include their actual gender identity is tantamount to refusing to accept the existence of individuals from the gender minority community, such as the petitioners themselves.

To have to remain with identity cards that are different from their actual identity means for the gender minority community that their self-respect is hurt and that their sense of community ownership is weakened. To force them to live an intimidating and invisible life by forcing them to hide their identity and live differently from how they would rather live with a sense of their own gender experience is to violate the rights of the sexual minority community. Therefore, it is apparent that to refuse to amend the petitioners' citizenship certificates, which were issued based on their biological organ, with “Other” mentioned in the gender category is to discriminate against the said petitioners, to interfere with the constitutionally mandated fundamental rights and citizenship rights afforded by law, as well as to deprive them of their self-determination rights, and it would seem appropriate for the petitioners to obtain citizenship certificates mentioning their gender identity and to amend citizenship cards that were issued on the basis of the biological organ with “Other” mentioned in the gender category.

In some cases, people find out about and can express their gender identity only much later, so it is deemed necessary to legally secure their right to have the citizenship certificates they obtained on the basis of their biological organ amended. Based on the grounds and reasons mentioned above, it is apparent that the said petitioners can have their citizenship certificates amended to have “Other” mentioned in the gender category and, therefore, an order of mandamus can be issued in the name of the respondents to amend the citizenship certificates of the said petitioners to indicate “Other” in the gender category. Additionally, in situations where an individual’s actual gender identity is known much later, it would seem appropriate to amend the gender category in their important personal documents with gender identity mentioned, including academic certificates, which were obtained based on his or her biological organ, in accordance with their amended citizenship certificates. Therefore, a directive order has been issued to the Office of the Prime Minister and Council of Ministers, Government of Nepal, and the Ministry of Law, Justice and Parliamentary Affairs, the respondents, to amend and modify the necessary laws regarding this matter, to formulate appropriate law and regulation to maintain a separate record of citizenship certificates with “Other” mentioned in the gender category and to address the possible misuse of such citizenship certificates, to carry out appropriate coordination and interaction among relevant institutions with regard to the rights and obligations of people from the sexual and gender minority community, to put into practice the recognized principle that everyone is equal in the eyes of the law, and to create an environment to ensure that these individuals do not have to face discrimination and humiliation from anyone and anywhere. Send a written notification to the Office of the Attorney General asking them to provide information, along with a copy of this order, to the respondents and to the Monitoring and Evaluation Division of this Court asking them to regularly monitor and inspect the execution of this order. Also, provide information, along with a copy of this order, to the petitioners and deregister the writ petition and to handover the case file according to the rules.

S/d
Justice

I consent to the above opinion.

S/d
Justice

Bench Officer: Geeta Shrestha
Computer Operator: Uttar Man Rai
Dated 23rd day of January 2017, Monday

Appendix 3: Ministry of Home Affairs 2012 Directive on Citizenship

Guidelines for Issuing Citizenship to Individuals from Sexual and Gender Minority Community by Including ‘Other’ in the Gender Category, 2069 (2012)

Preamble: As it has become necessary to issue citizenship to individuals from the sexual and gender minority community with “Other” included in the gender category, in addition to Male or Female, in order to create an environment where individuals from this community can freely enjoy their rights together with their identity based on the Constitution of Nepal, 2063 (2007) and the human rights laws to which Nepal is a party, as well as the orders issued by the esteemed Supreme Court, the Ministry has made and issued these Guidelines by exercising the rights conferred by Rule 17 of the Nepal Citizenship Rules, 2063 (2006).

Chapter 1

Preliminary

1. **Short Title and Commencement:** (1) These Guidelines shall be called “Guidelines for Issuing Citizenship to Individuals from Sexual and Gender Minority Community by Including ‘Other’ in the Gender Category, 2069 (2012/13).”

(2) Commencement: These Guidelines shall come into force from the date prescribed for enactment followed by a decision by the Ministry of Home Affairs, Government of Nepal.

2. **Definitions:**

(a) “Ministry” means the Ministry of Home Affairs, Government of Nepal.

(b) “Gender identity” means the feeling that comes from every person’s inner heart and personal gender experience, which is contrary to the biological sex assigned at birth, and any gender experience expressed differently through dress, speech, and behavior.

(c) “Individuals from sexual and gender minority community” means lesbian, gay, bisexual, transgender, and intersex individuals.

(d) “Other gender” means sexual and gender minority other than male and female.

(e) “Local body” means village development committees, municipalities, sub-metropolitan cities, metropolitan cities, and ward offices under these bodies.

(f) “Relevant officer” means chief district officer and other officers under their authority who issue citizenship.

(g) “Educational institution” means educational institutions established pursuant to the prevailing law with the objective of providing education, skills, and training.

Chapter 2

Application and Recommendation for Citizenship

3. **May apply for citizenship:** (1) An individual from the sexual and gender minority community who wishes to acquire citizenship based on their gender identity and who is eligible to acquire citizenship pursuant to the prevailing law, shall submit [a letter of] application to a relevant local body if they wish to acquire citizenship marked other gender based on their gender identity.

(2) The local body may conduct a necessary investigation on the submitted application to issue citizenship based on gender identity and make a recommendation to a relevant officer.

Chapter 3

Recordkeeping at Educational Institution and Recommendation

4. **Keep record at educational institutions:** (1) Educational institutions shall include, in addition to Male and Female categories, ‘Other’ in the gender (identity) category of the admission and registration forms for students and individuals interested in training and keep a record of those who choose to document their gender identity under the ‘Other’ category.

(2) If individuals from the sexual and gender minorities submit a letter of application requesting recommendation from the educational institutions of their learning to be based on their identity for acquiring citizenship and for educational or other purposes, recommendation may be made pursuant to the records maintained.

Chapter 4

Provision relating to Citizenship

5. **Issue citizenship:** (1) If individuals from the sexual and gender minority community who are eligible to acquire citizenship pursuant to the prevailing law of Nepal come with recommendations from the relevant local body and pursuant to the

records maintained by the educational institution, citizenship may be issued to such individuals with 'Other' stated in the 'Gender' category.

Chapter 5

Miscellaneous

6. **Keep record:** (1) Relevant offices shall keep a separate record of citizenship certificates issued to individuals from the sexual and gender minority.

Information on such records shall be included in a separate chapter of the monthly progress reports every month and submitted to the Ministry.

7. **Shall be pursuant to the Guidelines:** The provisions contained in these Guidelines shall be pursuant to these Guidelines to the extent they do not contradict with the prevailing law and the prevailing law shall prevail in other cases.

Appendix 4: Interim Order in Kapali v. Nepal

Supreme Court, Single Justice Bench

Honorable Justice Nahakul Subedi

Order

079-WO-0681

Subject: Certiorari

Rukshana Kapali -----
Petitioner

Versus

National Examinations Board, Sanothimi, Bhaktapur, et al. -----
Respondent

1. The Bench has gone through the documents included in the case file received together with the petition.
2. The deliberations made by learned senior advocate Mr. Prakash Mani Sharma and learned advocates Mr. Raju Chapagain and Mr. Sanjaya Adhikari, present on behalf of the petitioner, were heard.
3. An order has been set aside by the Court which reads as follows: the Court hereby seeks as to why an order as sought by the petitioner should not be issued, asking respondents to state the reasons, if any, as to why the order should not be issued, and hence orders Respondent Nos. 1, 3, and 4 to submit their rejoinder through the Office of the Attorney General within fifteen (15) days excluding the period of travel and orders Respondent No. 2 to submit the rejoinder in person or through a legal representative, and it is hereby ordered to execute the summon in the name of the respondents along with a copy of the petition and to submit the case upon submission of the rejoinder or expiry of the limitation period and submit the case file for hearing upon informing the Office of the Attorney General.
4. It appears that the petitioner's main claims are as follows: she is a transgender woman, and the defendant bodies denied her the gender identity on her Class 10 (SLC) certificates, because of which her constitutionally provided rights, including her right to be educated at an educational institution of her choice and her right to employment, have been violated. The fact that the university refused to register her, that it did not accept her gender identity by using her dead name and dead gender, and that it withheld her results for the first year of BA LLB has

- violated her constitutionally provided right to equality and her human rights. Therefore, the petitioner requests that an interim order be issued in the name of the respondents ordering that the respondent bodies not state her dead gender, that her gender identity be amended on her SLC certificate, that the results of her first year of BA LLB not be withheld, and that she be allowed to take the examinations of the second year of BA LLB in a dignified manner.
5. Sub-article (1) of Article 18 of the Constitution of Nepal provides that all citizens shall be equal before law and that no one shall be denied the equal protection of law. Sub-articles (2) and (3) of the same Article provide that the State shall not discriminate among citizens on grounds of origin, religion, race, caste, tribe, sex, condition of health, ideological conviction or on other similar grounds. Through these provisions, the Constitution has ensured the equal use of law and established the right to equality as a fundamental right for citizens in the eyes of the law. According to Article 12 of the Constitution of Nepal, it appears that every citizen may obtain a certificate of citizenship based on their gender identity. Likewise, Article 16 of the Constitution of Nepal provides that every person shall have the right to live with dignity, and Article 17 guarantees that no person shall be deprived of their personal liberty except in accordance with the law. In this vein, not allowing any person to enroll at a school or university based on their gender identity, not allowing them to obtain an education, or preventing them from taking an examination would appear to be a serious violation of the rights enshrined in the Constitution.
 6. Gender identity is an individual's private matter. In order for an individual to freely enjoy their personal liberties and right to live with dignity, the dignity and respect for gender identity must be upheld. The Constitution of Nepal has guaranteed the right to education as a fundamental right. In this vein, it is clear that gender identity may not be an obstruction on any ground when it comes to obtaining an education. Linking the issue of gender identity to education and using that as a basis to create any hindrance to university enrollment or any act related to learning goes against all the provisions envisaged by the Constitution for an individual's human dignity and it is an unexpected situation that cannot even be imagined in civilized society. This makes a mockery of the constitutionally guaranteed right to live with dignity. If an undesirable obstruction is created in the way of a citizen's right to obtain an education, then fundamental rights lose purpose for them.
 7. Every individual is equal in terms of rights and human dignity. If respect for an individual's identity and dignity is denied, their right to live with dignity is seriously violated. If hindrances and obstructions are created on grounds of gender identity in relation to the petitioner's right to register and enroll at a university, her right to learning, her right to appear for examinations, and her other rights, she will be deprived of her basic and fundamental right to enroll at a university and pursue her education; she will experience an irreparable loss; and if an interim order is not issued immediately, her constitutionally guaranteed rights will continue to be violated. In consideration of these matters, the Court has issued an interim order in the name of the respondents, pursuant to Rule 49(2)(a)

of the Supreme Court Rules, 2074 (2017), asking them not to carry out, or cause to carry out, any of the following acts until a final decision has been made on the petition.

- a. It appears that the petitioner’s results for the first year of BA LLB have been withheld. If the results have been postponed because of gender identity, do not postpone her results on those grounds;
- b. Do not carry out, or cause to carry out, any acts preventing or obstructing the petitioner from taking her exams for the second year of BA LLB based on her gender identity;
- c. Do not obstruct, based on the petitioner’s gender identity, do not obstruct her from enrolling at a university—naturally and with ease—pursuant to the university acts and rules, do not obstruct her from appearing in an examination and obtaining her results, and do not obstruct her from accessing opportunities using her academic credentials; do not discriminate, or cause to discriminate, in any way.

[Signed]

Justice

Done on Friday, January 6, 2023

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Appendix 5: Dilu Buduja v. Government of Nepal

Supreme Court, Joint Bench
Honorable Justice Ms. Sushila Karki
Honorable Justice Mr. Baidya Nath Upadhyay
Order
068-WO-0027
Subject: Mandamus

Dilu Buduja, resident of Myagdi District, Narchyang VDC, Ward No. 6- Petitioner
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versus

Government of Nepal, Office of the Prime Minister and Council of
Ministers, Singha Durbar, Kathmandu----- Respondents
-----1
Ministry of Foreign Affairs, Singha Durbar, Kathmandu-----
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Pursuant to Articles 32 and 107(2) of the Interim Constitution of Nepal, 2063 (2007), the writ petition presented before this Court and the synopsis of the petition and decision is as follows:

I, the petitioner, am a Nepali citizen belonging to the third gender group that is part of the minority community. The Myagdi District Administration Office has issued me a certificate of citizenship that states my third gender identity. After obtaining citizenship, I was in need of a passport based on that citizenship and applied for one at the Ministry of Foreign Affairs, the respondent, along with the application fee, on 06/21/2011. The respondent Ministry of Foreign Affairs accepted my application for passport, together with the application fee of 5,000 rupees through voucher number A000000001/14 of Global Bank Ltd., and I was waiting to contact them on 07/24/2011, as I had been advised. When I went to collect my passport on the date and time prescribed by the respondent, they informed me that they could not issue my passport because I was a third-gender individual and that I should take back my passport application fee. When I sought additional information as to why the entity that issues passports based on citizenship could not issue a passport stating my identity, I was informed that no person from the third gender community had been issued a passport until that time and, therefore, it could not be issued to me either. When I reported that matter to a higher official, the acting chief of the Central Passport Office under the respondent Ministry of Foreign Affairs refused to provide a response. I asked him to provide information in writing concerning that matter but instead of providing that information, he provided an irresponsible response, stating that I could obtain a passport with male or female marked as my gender. As the respondent refused to issue me a passport stating my identity, my right to obtain a passport pursuant to Articles

12(1) and 13 of the Interim Constitution of Nepal, 2007 has been violated. I have, therefore, come to file this petition.

Article 12(1) of the Interim Constitution of Nepal, 2007 guarantees that every person shall have the right to live with dignity, while Article 13(1) states that all citizens shall be equal before the law and that there shall be no discrimination against any citizen in the application of the law. Article 13(2) states that no discrimination shall be made in the application of the law against citizens on grounds of religion, race, gender, caste, tribe, origin, language, or ideological conviction, or any of these. Likewise, Sub-article 14 of Article 35 with the title State Policies states that special provision shall be made on the basis of positive discrimination for the minorities. In a situation where I as a third-gender citizen from a minority community have been placed in a special protected category pursuant to these constitutional guarantees, the respondent does not have the right to refuse to issue my passport stating my identity. Among the respondents, it appears that the Ministry of Foreign Affairs has been given the authority to issue passports to Nepali citizens in Nepal so they can carry out foreign travel. Section 3 of the Passports Act, 2072 (1967) provides that a Nepali citizen may make a journey abroad only upon receiving a valid passport issued in their own name. It is clear from the provision that one may go abroad only with a passport issued in one's name that the Act is pointing to my name along with my identity. Section 5 of the same Act provides that whosoever receives a passport by providing false statements or false details may be punished. It is clear from these provisions that my right to receive a passport stating my identity for the purpose of traveling abroad is not obstructed. The constitution has placed individuals such as the petitioner in the special protected category and the Act, too, has guaranteed the right to receive a passport in their name with the gender identity stated. Against this backdrop, the respondent's denial of a passport is contrary to the constitution and law. In the case of *Sunil Babu Pant v. Government of Nepal, Office of the Prime Minister and Council of Ministers (Ne. Ka. Pa. 2065, Decision No. 7958)*, the honorable Supreme Court has set the precedent that a person's gender identity is not determined only on the basis of their biological sex but also on the basis of their behavior, character, and concept. Many countries are found to have issued national identification cards stating their identity to persons with a different gender identity and passports that facilitate foreign travel. Several countries issue passports to third-gender individuals stating Unis or Others as their gender identity. But the respondents did not make any of those provisions and instead thwarted and violated the constitutionally provided rights, the right to non-discrimination, the right to travel freely, and the right to live with dignity. As such activities have also violated international laws and enforcements that have been or are being developed for a third-gender individual like me, I hereby request the honorable Court to issue an order of mandamus and any other appropriate order, asking that my passport be issued along with my identity (third gender), for the exercise of my right. Where considerable time is presumed to be consumed to issue the above order, and as a situation has arisen for me to travel abroad immediately and I have already completed the process for the application of a passport, the petitioner hereby requests the honorable Court to also issue an interim order in the name of the respondents pursuant to Rule 41 of the Supreme Court Rules, 2072 (1992).

An order was set aside by this Court on 07/28/2011 which reads as follows: the Court hereby seeks as to whether or not an order as sought by the petitioner should be issued and hence orders the respondents to submit their rejoinder through the Office of the Attorney General within 15 days from the date of receipt of this order, excluding the period of travel, and it is

hereby ordered to execute the summon in the name of the respondents along with a copy of the writ petition, with a carbon copy provided to the Office of the Attorney General, and to submit the case upon submission of the rejoinder or expiry of the limitation period. Also, in consideration of the sensitivity of the matter, the hearing of this case has been prioritized pursuant to Rule 63(3)(j) of the Supreme Court Rules, 1992 and this Court hereby orders that this be done in accordance with the law.

A rejoinder submitted on behalf of the Office of Prime Minister and Council of Ministers reads as follows: The writ petitioner fails to mention in their petition which of the actions, proceedings, or decisions of the Office of the Prime Minister and Council of Ministers have infringed upon which of their constitutional and legal rights. Additionally, the petitioner has named this Office as a respondent for the actions and proceedings of other authorized bodies and officials that function according to the prevailing law of Nepal. Therefore, it is hereby requested that the petitioner does not have the right to file the writ petition by making this office a respondent. As far as the petitioner's claim that a Nepali passport should be received based on the third gender status is concerned, the Government of Nepal is committed to complying, and causing to comply, with the order issued by the honorable Supreme Court in relation to the third-gender citizens. This has also been confirmed by the petitioner's statement that their certificate of citizenship includes their third gender identity. Issuing a passport to the petitioner with their third gender identity stated is a matter concerning the Ministry of Foreign Affairs of the Government of Nepal. The Ministry of Foreign Affairs, too, has been made a respondent and the matter shall be addressed through the Ministry's rejoinder, when submitted. Therefore, it is hereby requested that the writ petition be quashed.

A rejoinder submitted on behalf of the Ministry of Foreign Affairs reads as follows: Rule 7 of the Passport Rules, 2067 (2010) provides that a Nepali citizen desiring to obtain a passport shall submit an application in the format as prescribed in Schedule-2 before the office pursuant to Schedule-1 along with the original copy of certificate of Nepali citizenship and its duplicate. In Point No. 6 of the form under Schedule-2 of the Rules, formed pursuant to the existing law, there is a provision to write M for male and F for female, and a program has been set in the machine software to print passports accordingly. In the passport application filled out by the passport applicant Dilu Buduja on June 21, 2011, instead of entering M or F in Point No. 6 of the application form, T was entered. As it was found that the form had been filled out in a manner that was contrary to the existing rules, and because the letter T was not compatible with the passport form, a passport could not be issued to the petitioner Dilu Buduja according to their demand, based on the prevailing laws and in the absence of the rules. When this Ministry studied the provisions of other countries in relation to issuing passports to third-gender individuals along with their identity, it was found that India and Bangladesh had a provision for O (others) in addition to M and F on their passports, while Switzerland, Italy, Russia, the United Arab Emirates, Australia, Kuwait, Israel, Brazil, South Korea, China, South Africa, Pakistan, Egypt, France, Hong Kong, Sri Lanka, Canada, Malaysia, Thailand, etc. only stated M and F on their passports. Given that only M and F can be stated under an applicant's gender identity in the passport application form included in Schedule-2 of the Passport Rules, 2010 and that there is a lack of legal provisions that allow the application for and issuance of passports with any other gender identity option stated, such as the one sought by the petitioner, a passport could not be issued with the gender identity stated pursuant to the petitioner's demand. Therefore, a passport was not issued to the petitioner stating the information that was

sought. As the passport application form was filled out in a manner that was contrary to the Rules, a passport could not be issued pursuant to the petitioner's demand. If the petitioner applies for a passport in accordance with the prevailing laws and regulations, the passport will be issued to the petitioner. As it does not seem relevant that the writ petitioner is seeking a passport without filling out the form in accordance with the prevailing laws and regulations, it is hereby requested that the writ petition be quashed.

In the given case submitted for hearing of the decision pursuant to the rules, learned advocates Mr. Milan Rai and Mr. Kedar Prasad Dahal, present on behalf of the petitioner, made their deliberations as follows: The petitioner has received a certificate of citizenship with the third gender identity included, thereby clearly marking their gender identity. As the petitioner's gender identity is clear, they cannot be deprived of a passport issued based on that identity. With respect to not discriminating on grounds of gender identity and sexual orientation and providing equal treatment, the Supreme Court on 12/21/2007 issued an order in the case of *Sunil Babu Pant, et al. v. Office of the Prime Minister and Council of Ministers, et al.*, wherein a judicial precedent has been propounded by the Supreme Court. In the Passport Rules, 2010, which was issued by the Government of Nepal after the Supreme Court issued an order with respect to the third-gender individuals, the legal provisions made with respect to issuing machine-readable passports discriminate against third-gender citizens. Therefore, it is hereby requested that an order of mandamus be issued pursuant to the demand of the petition.

Learned Joint Attorney of the Office of the Attorney General Mr. Dharmaraj Poudel, present on behalf of the respondent, made his deliberations as follows: There is a provision for the Central Passport Office to issue machine-readable passports pursuant to the standards prescribed by Document 9303 of the International Civil Aviation Organization. For the person who applies for a passport, there is a provision to apply by selecting the male or female option in Point No. 6 of the form under Schedule-2 pursuant to Sub-rule (1) of Rule 7 of the Passport Rules, 2010 and to issue a passport by building computer software to issue passports based on that gender identity. By stating third gender (T) as their gender identity on their passport application form, the petitioner Dilu Buduja has furnished information that differs from what has been determined by the prevailing law and because that information differs from the information determined by the law, the applicant's passport cannot be issued based on their demand without first amending the law and making additional provisions for computer software to issue machine-readable passports as specified by the amended law. Therefore, it is hereby requested that the writ petition be quashed.

Upon hearing the deliberations and pleading as stated above and studying the case file, it became apparent that a judgment had to be made with respect to whether an order of mandamus should be issued pursuant to the demand set out in the petition.

While considering the judgment, the main claim made in the petition seems to be as follows: I, the petitioner, am a Nepali citizen belonging to the third gender community and the Myagdi District Administration Office has issued me a certificate of citizenship that states my third gender identity. I applied for a Nepali passport at the Ministry of Foreign Affairs, the respondent. When I went to collect my passport on the date prescribed by the Ministry, I was informed that my passport could not be issued because I was a third-gender individual. I demanded that if my passport could not be issued along with my identity based

on my citizenship, the relevant information be provided in writing. But an official from the Central Passport Office under the respondent Ministry of Foreign Affairs refused to provide the information in writing. The officials of that office provided an irresponsible response, stating that I could obtain a passport with male or female marked as my gender. The respondent does not have the right to refuse to issue my passport with my identity stated. The constitution has placed individuals like me in the special protected category and the Act, too, has guaranteed the right to receive a passport with the gender identity stated. Therefore, the respondent's denial to issue a passport is contrary to the constitution and law. Several countries issue passports to third-gender individuals stating Unis or Others as their gender identity. But the respondent did not make any such provisions and instead violated the constitutionally provided rights and international laws and enforcements that have been developed for third-gender individuals. Therefore, I hereby request that an order of mandamus be issued in the name of the respondents, asking that my passport be issued along with my identity. The rejoinder [submitted by the respondent] reads as follows: In Point No. 6 of the form under Schedule-2 of the Passport Rules, 2010, there is a provision to write M for male and F for female and a program has been set in the machine software to print passports accordingly. As the passport application form was filled out by Dilu Buduja by entering T instead of selecting M or F, which is contrary to the existing rules, a passport could not be issued according to their demand. If the petitioner applies for a passport in accordance with the prevailing laws and regulations, the passport will be issued to them. Therefore, it is hereby requested that the writ petition be quashed.

It appears from the copy of Dilu Buduja's certificate of citizenship, included in the case file, whose certificate number is 671 and which was issued by the Myagdi District Administration Office, that the gender marker does not mention female or male but states *third* under the "sex" category. Based on this fact, there is no need to debate that the petitioner is a third-gender individual. Now, while considering the claim made in the petition stating that the [petitioner's] right provided by Article 12(1) of the Interim Constitution of Nepal, 2007 to live with dignity and the right to equality provided by Articles 13(1) and 13(2) have been violated, the constitutional provisions that can be found are as follows: Article 12(1) of the Interim Constitution of Nepal, 2007 states, "Every person shall have the right to live with dignity, and no law which provides for capital punishment shall be made." Likewise, Article 13(1) states, "All citizens shall be equal before the law. No person shall be denied the equal protection of the laws." Article 13(2) states, "There shall be no discrimination against any citizen in the application of the law on grounds of religion, race, gender, caste, tribe, origin, language or ideological conviction or any of these."

Third-gender individuals are also human. The Interim Constitution of Nepal and international law have guaranteed the right to equality for them, too. Within the third gender, various categories can be found. As defined in *An Introductory History, New York, MC Graw Hill*: The terms third gender and third sex describe individuals who are categorized as neither man nor woman, as well as the social category present in those societies who recognize three or more genders. The term "third" is usually understood to mean "other."

As stated in the case of the *'Third Gender' in India: Contributions to Indian Sociology (Agrawal A, 1997)*, the hijras in Bangladesh, Pakistan, and India and the kathoey in Thailand

were seen as important from a cultural and traditional perspective, although no steps had been taken in the past to establish their right to freedom and equality. While the traditional way of looking at the third gender was to view them as neither male nor female, there now seem to be various categories of third gender that have been granted legal recognition by India, Bangladesh, and Pakistan. The third gender has various categories, among which gay is one. The rights and identity of the third gender have been recognized in Nepal. In the case of *Sunil Babu Pant v. Government of Nepal, Office of the Prime Minister and Council of Ministers, et al.* (Ne. Ka. Pa. 2065, Volume 4, Decision No. 7958), the rights of the third gender have been ensured and social discrimination has been ended. In addition to forming a committee to study the issue of same-sex marriage among the third gender in Nepal, the Court is found to have issued orders ranging from identifying the various categories of the third gender to issuing citizenship at par with other citizens.

Provisions have been made in Nepal for the third gender to receive citizenship with their identity recognized. The Census of 2011 has already identified their number. Given that such efforts have been made, without discrimination, to recognize them at par with the general citizens, there can be no question about not being able to provide the third-gender recognition in the sought passport in accordance with the petitioner's demand. For example, the passports issued in India and Bangladesh include the "Others" category. India has been using "O" on citizenship certificates and passports since 2005, whereas Australia and New Zealand use the "X" symbol on the passports they provide. The Supreme Court of Pakistan issued an order to provide citizenship to the hijra community in 2009.

In Nepal, too, the Passports Act, 1967, which was introduced to make provisions to issue passports to Nepali citizens wishing to travel abroad, and the legal provision contained in the Passport Rules, 2010, formed pursuant to Section 7 of the same Act, do not seem to make any discrimination with respect to issuing passports to the third gender. Therefore, it does not seem that it can be stated that the petitioner's rights provided by Articles 12(1), 13(1), and 13(2) of the Interim Constitution of Nepal, 2007 have been violated. However, it also does not appear in the respondents' rejoinder that it has been refused to issue a passport to the petitioner with their gender recognized. Rule 7 of the Passport Rules, 2010 provides that a Nepali citizen desiring to obtain a passport shall submit two copies of the application in the format as prescribed in Schedule-2 before the office pursuant to Schedule-1 along with the original copy of certificate of Nepali citizenship and its duplicate. The rejoinder is found to state that the passport sought by the petitioner, along with their identity, could not be issued immediately because Point No. 6 relating to sex on the passport application form under Schedule-2 of the Rules contains a provision to write M for male and F for female.

The respondent Ministry of Foreign Affairs seems have submitted a rejoinder stating the following: A program has been set in the machine software to print passports pursuant to the provision in Point No. 6 of the form under Schedule-2 of the Passport Rules, 2010, and because T was entered instead of selecting M or F in Point No. 6 of the passport application form filled out by the writ petitioner, a passport was not issued in accordance with the petitioner's demand. It also does not appear that the petitioner Dilu Buduja was able to apply pursuant to Article 107(1) of the Interim Constitution of Nepal, 2007 by challenging Point No. 6 under Schedule-2 of the Passport Rules, 2010 which contains the provision to write M for male and F for female. It appears from the rejoinder submitted by the respondent Ministry of Foreign

Affairs that a passport would be issued to the petitioner if the passport application form is filled out by using M or F as stated in Point No. 6 under Schedule-2 of the Passport Rules, 2010. As it appears that a passport with the requested third gender identity cannot be issued immediately without amending the provision contained in Point No. 6 under Schedule-2, an order sought pursuant to the petition cannot be issued. Hence, the writ petition is hereby quashed.

A machine-readable passport (MRP) is not a document that only concerns one country, but it is an international document. When making changes to a document of this nature, attention must be paid to other areas that will also be affected. There are no two opinions about the fact that the writ petitioner Dilu Buduja is a third-gender individual and that they have already obtained citizenship that states their third gender identity. As the petitioner has already received a certificate of Nepali citizenship stating their identity and based on the provisions contained in Articles 12(1), 13(1), and 13(2) of the Interim Constitution of Nepal, 2007 that guarantee equal rights for all and state that there shall be no discrimination on grounds of tribe, sex, and class, the respondents must fulfill their duty to provide the petitioner with a passport that includes their identity. However, the issue of passports is one of international nature and one must be cautious that the international structure is not upset while making passport-related changes or revisions. It is mandatory to issue machine-readable passports as prescribed by the standards pursuant to Document 9303 of the International Civil Aviation Organization. Although this software has already been developed, the Court has hereby issued a directive order in the name of the respondents to make additions to the software or make changes or take whatever measures necessary for the petitioner's gender identity and to restore their constitutional rights and to make amendments to Schedule-2 relating to Sub-rule 1 of Rule 7 of the Passport Rules, 2010 to make provisions for issuance of passports to the third gender recognizing their gender identity as soon as possible. It is hereby ordered to inform the respondents about the order issued herein and it is also directed to remove the registration of the writ petition and handover the case file in accordance with the rules.

[Signed]
Justice

I concur with the above opinion.

[Signed]
Justice

Bench Officer: Krishna Prasad Poudel
Computer Typist: Prem Bahadur Thapa
Executed on Monday, June 10, 2013 AD (27th Day of the Month of Jeth of the Year 2070 BS).....

Appendix 6: Letters to Government of Nepal

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300

May 31, 2023

LESBIAN, GAY, BISEXUAL, AND TRANSGENDER RIGHTS PROGRAM

Granna Radt, *Director*
Mauricio Albarracín, *Deputy Director*
Kyle Knight, *Senior Researcher*
Cristian González Cabrera, *Researcher*
Rasha Younes, *Researcher*
Erin Kilbride, *Researcher*
Carl Collison, *Researcher*
Yasemin Smalls, *Coordinator*
Andrés Burgos, *Coordinator*

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Wista Heneghan, *DED/Chief Operating Officer*

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Sari Bashi, *Program Director*
Mei Fong, *Chief Communications Officer*
Colin Minoy, *Chief People Officer*
James Powell, *Chief Technology Officer*
Valentina Rosa, *Chief Development Officer*
James Ross, *Legal and Policy Director*
Bruno Stagno Ugarte, *Chief Advocacy Officer*
Minjon Tholen, *Director of Diversity, Equity, and Inclusion*

Mohan Bahadur Basnet
Honorable Minister of Health & Population
Ministry of Health & Population
Ramshah Path, Kathmandu, Nepal

Transmitted via facsimile: +0097714262696

Dear Minister Basnet:

We write to inquire about the Ministry of Health and Population's work to protect the rights of transgender people.

As you may know, Human Rights Watch is an independent nongovernmental organization that monitors and reports on human rights in more than 90 countries around the world, including in Nepal.

We have conducted research on the rights of transgender people in Nepal as it relates to their ability to change their legal gender. Because of inadequacies in the process for transgender people in Nepal to change their legal gender, they often face discrimination in accessing education, employment, and health care.

Nepal has been recognized globally for advances of the rights of gender and sexual minorities, also known as for lesbian, gay, bisexual, and transgender (LGBT) rights. A significant focus of LGBT rights civil society groups, often with the support of MoHP, has been creating pathways for transgender people in Nepal to change their legal gender on the citizenship certificate. In 2007 when the Supreme Court issued its first judgment on LGBT rights, it ordered the government to take three steps: audit all laws and scrap those that discriminated against LGBT people; form a committee to study same-sex marriage legislation; and legally recognize a "third gender" category based on an individual's own self-identification. The judgment in *Pant v. Nepal (2007)* has been cited as a positive example by courts around the world, including the Supreme Court of India, courts in the United States considering third gender passports, and the European Court of Human Rights. However, Nepali authorities continue to lag in implementing the court's order to recognize gender identity on the basis of self-identification.

Our recent research revealed that many transgender people in Nepal—including some who are seeking legal recognition as "other"—face obstacles in obtaining their citizenship documents with the appropriate gender marker. These include instructions from government officials to undergo invasive and humiliating medical examinations at Bir Hospital and other medical facilities, which amount to human rights violations.

For the purposes of our research, we request that the Ministry kindly provide us with information by August 10, 2023 about its plans to update Nepal's standards



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of care and support the creation of a rights-based legal gender recognition procedure so that we may reflect this in our reporting.

We kindly request the following information from the ministry:

1. Is the Ministry aware of physicians carrying out medical examinations of transgender people during the process of accessing citizenship?
2. Is the Ministry aware of any guidelines mandating or suggesting what these medical examinations include, and are intended to achieve?
3. Has the Ministry issued any recommendation letters for individual transgender people during the process of acquiring citizenship documents that reflect their gender identity? If yes, what is included in those letters, and what is the process and timeline for acquiring them?
4. Has the Ministry received complaints regarding mistreatment of transgender people in medical settings? If so, what steps has the Ministry taken to react to such reports?

Thank you for your attention to this important matter. After we have received this information, we would be happy to meet in Kathmandu to discuss our findings or the international health standards and human rights law relevant to our research in more depth.

Please send your reply to Graeme Reid, LGBT rights program director at: [REDACTED] or fax: [REDACTED]

Sincerely,



Meenakshi Ganguly
South Asia Director
Human Rights Watch

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300

**LESBIAN, GAY, BISEXUAL,
AND TRANSGENDER RIGHTS
PROGRAM**

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James Ross, Legal and Policy Director
Bruno Stagno Ugarte, Chief Advocacy Officer
Minjon Tholen, Director of Diversity, Equity, and Inclusion

May 31, 2023

Narayan Kaji Shrestha
Honorable Deputy Prime Minister and Home Minister
Singha Durbar Kathmandu, Nepal

Dear Minister Shrestha:

We write to inquire about the Ministry of Home Affairs' work to protect the rights of transgender people.

As you may know, Human Rights Watch is an independent nongovernmental organization that monitors and reports on human rights in more than 90 countries around the world, including in Nepal.

We have conducted research on the rights of transgender people in Nepal as it relates to their ability to change their legal gender. Because of inadequacies in the process for transgender people in Nepal to change their legal gender, they often face discrimination in accessing education, employment, and health care.

Nepal has been recognized globally for advances for the rights of gender and sexual minorities, also known as lesbian, gay, bisexual, and transgender (LGBT) rights. A significant focus of LGBT rights civil society groups, often with the support of MOHA, has been creating pathways for transgender people in Nepal to change their legal gender on their citizenship cards.

In 2007 when the Supreme Court issued its first judgment on LGBT rights, it ordered the government to take three steps: audit all laws and scrap those that discriminated against LGBT people; form a committee to study same-sex marriage legislation; and legally recognize a "third gender" category based on an individual's own self-identification. The judgment in *Part v. Nepal (2007)* has been cited as a positive example by courts around the world, including the Supreme Court of India, courts in the United States considering third gender passports, and the European Court of Human Rights.

Our research has revealed that, despite orders from the Supreme Court, and the 2012 directive from MOHA regarding the issuance of citizenship cards to people who identify as third gender with the "others" category, there are significant gaps in implementation resulting in human rights violations against transgender people across Nepal.

For the purposes of our research, we request that the Ministry kindly provide us with information by August 10, 2023 about its plans to support the creation of a rights-based legal gender recognition procedure so that we may reflect this in our reporting.

We kindly request the following information from the ministry:



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1. How many people have applied for third gender recognition, and how many of them have received citizenship cards reflecting their gender identity as the “other” category?
2. Through what procedures were these individuals' requests processed, and what were applicants required to present as proof or justification of their transition?
3. How many people have applied to change their legal gender to male or female, and how many of them have received citizenship cards reflecting their gender identity?
4. For each of the cases, how much time did the process take from the submission of the application materials to the granting of the citizenship certificate with the appropriate gender identity?

Thank you for your attention to this important matter. After we have received this information, we would be happy to meet in Kathmandu to discuss our findings or the international health standards and human rights law relevant to our research in more depth.

Please send your reply to Graeme Reid, LGBT rights program director at: [REDACTED] or fax: [REDACTED].

Sincerely,

A large black rectangular redaction box covering the signature area.

Meenakshi Ganguly
South Asia Director
Human Rights Watch



“We Have to Beg So Many People”

Human Rights Violations in Nepal’s Legal Gender Recognition

Over the past 20 years, Nepal has been recognized globally for advances in lesbian, gay, bisexual, transgender, and intersex rights. This includes significant progress on legal recognition for transgender people, based largely on a 2007 Supreme Court order that instructed the government to recognize trans people on the basis of their “self-feeling.”

While gains such as Nepal’s pioneering recognition of a third gender category based on self-identification have garnered widespread praise and made Nepal an important touchpoint for LGBT rights movements globally, implementation remains piecemeal and inadequate. There is no explicit legal option in Nepal to change one’s gender marker to “male” or “female,” and even the procedure for the third (or “other”) gender option is unclear and ad hoc.

“*We Have to Beg So Many People*” documents the situation today, showing how transgender people seeking gender recognition too often are subjected by officials to harmful and invasive medical requirements.

Some people have been able to obtain documents reading “third gender” or “other”; others have been denied entirely, or wrongly told they must have surgery to be eligible. A small number of people have been able to change their documents from “male” to “female,” but doing so invariably involves an invasive and humiliating physical exam in a medical setting, an experience that is often confusing, slow, and rife with human rights violations.

Nepal’s position as a global LGBT rights leader is one the government should fulfill through genuine policy change, including thorough implementation of successive orders from the Supreme Court to recognize and respect sexual and gender diversity.

(above) Bhumika Shrestha, a transgender woman in Kathmandu, Nepal, holds her citizenship certificate which lists her birth-assigned sex and birth name in 2011 following a failed attempt to change her legal gender.

© 2011 Kyle Knight

(front cover) Bhumika Shrestha, a transgender woman in Kathmandu, Nepal, holds her citizenship certificate in 2023, which lists her name, current photo, and female gender.

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