



△
POSITION
PAPER

Provision of
MARRIAGE EQUALITY

Key to establishing human rights of
young sex and gender minorities
in Nepal



RIGHT HERE
RIGHT NOW



This paper has been published with technical support of Right Here Right Now Nepal platform, which is a strategic partnership between fifteen likeminded youth-led and youth-serving organizations¹, that are advocating for enhanced experience of young people on sexual and reproductive health, focused on three thematic areas - provision of age-appropriate comprehensive sexuality education, legalization of marriage equality and provision of stigma-free, youth-friendly safe abortion services.

Visible Impact, which is a partner organization of Right Here Right Now, is a young women led organization that aims to bring visible impact on the lives of every women, every girls and every youth by unleashing the social and economic leadership of girls, women and youth through human centered approaches.

Support for this project was provided on behalf of the Right Here Right Now Partnership. The partnership is funded by the Ministry of Foreign Affairs of the Netherlands.

Authors for Second Edition

Medha Sharma
Laxman Bhattarai

© Copyrights Reserved

First edition: (1000 copies), June 2018
Second edition: (600 copies), March 2020

Layout Designer

Saurav Thapa Shrestha

For further information please contact:



Visible Impact

212/48 Dhapasi Marga, Basundhara
01-4016563 || mail.visim@gmail.com
www.visim.org



**RIGHT HERE
RIGHT NOW**

Right Here Right Now Nepal

Secretariat: YUWA

310 Krishna Dhara Marga, Maharajgunj
01-4419489, 01-4418747
info@yuwa.org.np || www.yuwa.org.np

¹ Association of Youth Organizations Nepal (AYON), Beyond Beijing Committee(BBC), Blue Diamond Society (BDS), CDS- Park Mugu, Family Planning Association of Nepal (FPAN), Federation of Sexual and Gender Minorities Nepal (FSGMN), Human Development and Environment Protection Forum (HUDEP), LOOM Nepal, Restless Development, Rural Women's Network Nepal (RUWON), Visible Impact, Youth Action Nepal (YAN), Youth Development Center (YDC), YUWA, Yuwalya.

CONTENTS

LIST OF ACRONYMS AND ABBREVIATIONS	2
ACKNOWLEDGEMENT	3
DEFINITIONS	4
EXECUTIVE SUMMARY	5
CALL TO ACTIONS	6
INTRODUCTION	7
POSITIONING MARRIAGE EQUALITY IN THE HISTORY OF SGM MOVEMENT IN NEPAL	8
POLITICAL ENVIRONMENT SUPPORTING OR IMPEDING MARRIAGE EQUALITY IN NEPAL	11
NEPAL'S INTERNATIONAL COMMITMENTS ON HUMAN RIGHTS RELEVANT TO MARRIAGE EQUALITY	13
WHY LEGALIZATION OF MARRIAGE EQUALITY IS IMPORTANT?	14
ZOOMING INTO BEST PRACTICES	17
CALL TO ACTION	18
REFERENCES	19

LIST OF ACRONYMS AND ABBREVIATIONS

AYON	Association of Youth Organizations in Nepal
BBC	Beyond Beijing Committee
BDS	Blue Diamond Society
FPAN	Family Planning Association Nepal
FSGMN	Federation of Sexual and Gender Minorities Nepal
HUDEP	Human Development and Environment Protection Forum
ICCPR	International Covenant on Civil and Political Rights
ICPD	International Conference on Population and Development
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MoWCSW	Ministry of Women, Children and Social Welfare
MooWCSC	Ministry of Women, Children and Senior Citizens
NHRC	National Human Rights Commission
RHRN	Right Here Right Now
RUWON	Rural Women's Network Nepal
SDGs	Sustainable Development Goals
SGM	Sexual and Gender Minorities
SSM	Same-Sex Marriage
STI	Sexually Transmitted Infection
UDHR	Universal Declaration of Human Rights
YAN	Youth Action Nepal
YDC	Youth Development Center

Acknowledgements

This position paper is financially and technically supported by Right Here Right Now (RHRN) Nepal. We would like to thank all the RHRN platform members for their valuable support, and more specifically to the RHRN thematic group members on "marriage equality".

Thanks to Ms. Shilpa Lamichhane for serving as author of the first edition of this paper. Special thanks to Sujan Panta, Manisha Dhakal and Apekshya Dahal, Anuj Rai Peter the thematic experts of the issue for supporting to feed technical information into this paper.

We express our gratitude to Rajendra Maharjan, National Coordinator for RHRN Nepal and Kamal Gautam, Former National Coordinator for RHRN Nepal for providing us linkages and networks to experts, and providing guidance throughout. Also, thanks to Samreen Shahbaz and members of RHRN global consortium who have supported the making of this paper.

Special thanks to all the people who have been part of marriage equality advocacy and Sexual and Gender Minorities movement in Nepal and around the globe.

Authors

DEFINITIONS

Two terms are used most often in advocacy and discussions related to equality of marriage rights of SGM couples - "Same-sex marriage" and "marriage equality".

SAME-SEX MARRIAGE (SSM) is the marriage between two persons of same biological sex, entered into in a civil or religious ceremony.¹ It is the union of two individuals of the same sex in a marital relationship, with full legal rights and responsibilities in a given jurisdiction.²

MARRIAGE EQUALITY refers to a political status in which the marriages of same-sex couples and the marriages of opposite-sex couples are considered legally equal. It is the equal allocation of rights and benefits to all married couples, regardless of whether those couples are of different or same sexual orientation.¹

** The term same-sex marriage implies marriage between people of same sex (meaning gay, lesbian marriages only), while marriage equality is a broader term that implies marriage between and among people of all sexual orientation and gender, and is a political status when two individuals have equal rights to marriage, and benefits such as property acquisition, child adoption etc. RHRN Nepal uses the term marriage equality in this document, because it believes on the comprehensive approach it takes regarding marriage. However, the current bill that is drafted in Nepal on the issue uses the term "Same-sex marriage" as it was documented several years back, and the same term has been used in the process throughout. Understanding that the intention of the same-sex marriage bill is to ensure that all SGM have rights to marriage, RHRN accepts and welcomes the draft bill. However, whenever possible, it also encourages advocates to use the term marriage equality.*

EXECUTIVE SUMMARY

INTRODUCTION

As of now, 28 countries have enacted national laws allowing same-sex couples to marry, but Nepal is yet to achieve marriage equality. Recognizing the choice of marriage as a human right, Right Here Right Now (RHRN) Nepal platform has been advocating for legalization of marriage equality in Nepal. This position paper aims to highlight the situation of marriage equality in Nepal, through legal and socio-political lens, and provide recommendations to the Government and relevant stakeholders for achieving marriage equality in Nepal.

CONTEXT

Nepal is one of the first country in Asia to provide legislative protection to SGM against discrimination, as it has affirmed the fundamental rights of SGM in the constitution itself. Nepal has also showed its progressive stand for marriage equality by signing in international human rights instruments such as Universal Declaration of Human Rights, International Covenant on Civil and Political Right, and Sustainable Development Goals.

There have been some success regarding legalizing marriage equality in Nepal. With growing demand from civil society, the Supreme Court asked the Government to form a committee to study same-sex partnership in 2007. In 2011, the committee recommended Nepal to adopt marriage equality, family protections and strike out discriminatory provisions from the civil and criminal codes. In 2016, the National Human Rights Commission (NHRC) asked the Government to introduce a bill to allow same-sex marriage after which the Ministry of Women, Children and Social Welfare (then, now called Ministry of Women, Children and Senior Citizens) created a high level expert committee for the purpose of preparing a draft bill on the issue. The same-sex marriage report is now under the consideration of MoWCSW but no progress has been achieved yet.

In the absence of law that supports marriage equality, young SGM couples have been facing several challenges that violate their right to marry. According to International Conference on Population and Development (ICPD), every individual has the right to decide freely whether or not they want to marry, and to decide when and with whom to do so. Researches on marriage and health, reports a consistent and well-established theme: married people live happier, healthier and longer lives. Being in a legally recognized same-sex relationship, diminished mental health differentials between heterosexuals and lesbian, gay, and bisexual persons and has had positive effects on the health status of this at-risk community. Not being allowed to marry is not only breaching the human rights, but other legal consequences associated with it, such as access to partner's property or deciding ownership over joint property in case of divorce, renting living spaces with identity, and adoption of homosexual or heterosexual child.



CALL TO ACTION

- On the light of the discussion presented above, RHRN Nepal would like to urge the Government to implement, and all other stakeholders including key decision makers, organizations that work with and for SGM rights, SGM activists, human right activists, young people, media personnel etc. to lobby with the decision makers to:
- Legalize marriage equality in Nepal at all levels - federal, state and local level by institutionalizing it as soon as possible.
- Amend the discriminatory laws, such as Civil Code as it only mentions "Male and Female" in the marriage provision under Family law of Chapter 3, which itself contradicts with the Criminal Code that specifies marriage as the union of two "Persons", and all other laws that are discriminatory to the rights of SGM to choose their partners freely and responsibly.
- Immediately put into actions, the recommendations submitted to the Government by Same-Sex Marriage Committee which was formed according to the verdict of Supreme Court, in 2007.
- Develop the capacity of the Government at all three levels to properly implement and correctly interpret the legal provisions for human rights of sexual and gender minorities.
- Urge the media, school curriculum and other agents of change to promote sex positive and sex and gender affirmative attitudes, perspectives and behaviors towards sexual and gender minorities.

INTRODUCTION

The recognition of marriage equality is considered to be a political, social, and religious concern. There are communities around the world that openly support homogenous relationship allowing Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) couples to marry, while many faiths also object marriage equality.³ People in opposition to marriage equality believe that homosexuality is unnatural and abnormal and the recognition of same-sex unions will promote homosexuality in the society, and that children are better off when raised by opposite-sex couples.⁴ These claims are opposed by science which shows that homosexuality is a normal behaviour and natural human sexuality, that sexual orientation cannot be chosen or influenced, and that the children of same-sex couples are not any different from heterogeneous couples.⁵

Recognizing that the choice of marriage is a human right, Right Here Right Now (RHRN) Nepal platform has been advocating for legalization of marriage equality, so as to allow all the sexual and gender minorities couples to freely and responsibly decide about their marriage.

This position paper aims to highlight the situation of marriage equality in Nepal, through legal and socio political lens, and provide recommendations to the Government and relevant stakeholders for legalizing marriage equality in Nepal. This paper will serve as a basis to all the RHRN platform member organizations and other

stakeholders for joint advocacy for attaining marriage equality in Nepal.

MARRIAGE EQUALITY SCENARIO AROUND THE WORLD

Marriage equality is recognized by law (nationwide and/or in some parts) in around two dozens of countries and the journey was by no means an overnight process. In Europe, homosexual behavior was considered to be socially unacceptable and the most common penalty for open homosexuality was death in the 18th and 19th century.⁶ In United States, civil rights campaigning in favor of marriage without distinction as to sex or sexual orientation began in the 1970s.⁷ In 1989, Denmark enacted legislation providing for registered partnerships which provided most of the rights of marriage to same-sex couples.⁸ In the late 20th century, marriage of same-sex couples without legal recognition became increasingly common. The first law establishing marriage equality in modern times was enacted in 2000 in the Netherlands and came into force in 2001.⁹

As of now, around the world, 28 countries have enacted the national laws allowing same-sex couples to marry namely, The Netherlands, Belgium, Canada, Spain, South Africa, Norway, Sweden, Argentina, Iceland, Portugal, Denmark, England and Wales, France, New Zealand, Brazil, Uruguay, Luxembourg, Scotland, Finland, Ireland, Greenland, United States, Colombia, Germany, Malta, Australia, Equador and Taiwan¹⁰. In case of Nepal, marriage equality (Same-sex marriage) is yet to legalize.¹¹

POSITIONING MARRIAGE EQUALITY IN THE HISTORY OF SGM MOVEMENT IN NEPAL

Nepal is one of the first countries in the Asia region to provide legislative protection for Sexual and Gender Minorities (SGM) against discrimination¹¹ as it has affirmed the fundamental rights of SGM in the constitution itself. Although SGM people have not been able to enjoy their rights to the fullest, giving it a place in the constitution has provided a solid foundation to protect their rights.

The SGM movement in Nepal has been believed to have started in 2001, when a national organization called Blue Diamond Society (BDS) was established with the objective of securing the rights of SGM people. BDS is currently the largest organization working to protect the rights of SGM in Nepal. Through various knowledge building programs, attitude altering sessions, campaigns and activities, BDS has been leading the advocacy movement, with its focus gradually moving from reducing stigma among SGM people, to providing them legislative protection, to advocating for marriage equality and adoption of children for SGM.

In 2009, Nepal became a republic country, before which in 2006 there was a huge demonstration of people termed "People's Movement" against democratic ruling. After 2006, there was greater openness to new ideas and attitudes and it led to a number of developments that imparted a

pathway for better future. Afterwards, in April 2007, the Blue Diamond Society, Mitini Nepal, Cruise AIDS Nepal, and Parichaya Samaj, all organizations representing lesbians and gays filed a writ petition under Article 107(2) of the Interim Constitution of Nepal seeking recognition of transgender individuals as a SGM and a law prohibiting discrimination on the basis of sexual orientation and gender identity.¹²

Following the people's movement and the writ petition, Supreme Court gave a decision on 21st of December 2007 instructing the Government to amend existing laws that discriminated against the country's sexual and gender minorities.¹³ Supreme Court issued a final judgment to guarantee full rights to SGM people, which included permitting same-sex couples to marry.¹¹ This was the landmark decision made in favor of SGM people. Also, the court asked the Government to form a committee to study same-sex partnership laws in other countries and mandated that the new law will not discriminate against SGM people. After two years, i.e., in 2009, the Government formed the committee of experts to study and make report about same-sex marriage in Nepal.¹¹

The committee consisted of seven representatives nominated by Ministry of Health, National Human Rights Commission, Government of Nepal, Nepal Police, Ministry of Health and

Population, Ministry of Law, Justice and Federal Affairs and an advocate. The committee started its work with review of literatures on sexual orientation, gender identity and Same-sex marriage, since it was necessary for the committee itself to be familiar with the subject matter. Following that, various discussions were held with community leaders, human rights activists, religious persons, gender rights activists, sexual minorities, professors and students in Kathmandu valley and in various parts of the country –Terai (southern belt of Nepal, with highest population, and often associated to be radical than northern belt) and major cities from Mechi (Easternmost zone) to West Mahakali (Western most zone). During such visits, the problems faced by SGM people and their priorities, experiences of marital life were discussed. Furthermore, information and experiences of parents, neighbors of sexual minorities, district and regional administration, heads of police, teachers of some schools, representatives of some organizations and human rights activists were gathered using a designed questionnaire.¹⁴

After 5 years of committee formation, in 2014, the experts' committee submitted a comprehensive report to the Chief Secretary of the Government on February 2015 highlighting the situation of SGM movement in Nepal, current social and political hindrances, and reference laws from other countries. This report recommended Nepal to adopt marriage equality, family protections and strike out discriminatory provisions from the Civil and Criminal Codes. The report was sent to then Ministry of Women, Children and Social Welfare for further consideration.

In February 2016, the National Human Rights Commission (NHRC) asked the Government to introduce a bill to allow marriage equality.¹⁵ In October 2016, the Ministry of Women, Children and Social Welfare (MoWCSW) created a high level expert committee for the purpose of preparing a draft bill on the issue.¹⁶ The same-sex marriage report is now under the consideration of MoWCSW (then, but now called Ministry of Women, Children and Senior Citizen) but no progress has been achieved yet.



The 2014 report recommended Nepal to adopt marriage equality, family protections and strike out discriminatory provisions from the civil and criminal code.

Case Story

—

A Nepali transgender woman, Mandira Joshi (name changed) 40, and a biological man Mahesh KC (name changed) 22, registered their marriage in their home district Dadeldhura on May 7, 2017 despite the lack of law regarding transgender couple and marriage equality in the country. The registration is first of its kind in the country.¹⁷ Mandira Joshi is also the first SGM who got her first passport with gender denoted as 'other' category. Mahesh KC was already married to a biological female and was a father of two children at that time. After finding out that her husband has fallen in love with Mandira, Mahesh's first wife consented Mahesh to marry to Mandira. They were married according to Hindu tradition and Mahesh's wife even facilitated the marriage ceremony and gave written consent at the marriage registration office. It is interesting to note that the bureaucracy didn't object to register this marriage despite no marriage equality law being passed at that time.¹⁸

POLITICAL ENVIRONMENT SUPPORTING OR IMPEDING MARRIAGE EQUALITY IN NEPAL

CONSTITUTION OF NEPAL

The new Constitution of Nepal 2072 has recognized Sexual and Gender Minorities (SGM) rights as being fundamental and includes several provisions pertaining to the rights of SGM people.

In 2008, Sunil Babu Pant became the first open gay member of parliamentarian in the first Constituent Assembly, and contributed to protect the right of SGM people in the constitution. He had been heavily involved in drafting of the “Fundamental Rights” chapter to include provisions regarding non-discrimination on grounds of gender and sexual orientation. As a result, three years later, when the constitution was drafted, it was quite progressive in regards to spelling out about the fundamental rights of SGM, and this constitution became the first Constitution to do so. However, the Constituent Assembly was not able to formulate and pass the Constitution in the Parliament, and before the Constitution was implemented, a new Constituent Assembly was formed and started drafting the new Constitution again. Even so, the fundamental rights chapter in the new constitution was identical with the previous constitution which was drafted by the first Constituent Assembly.

Under the new constitution 2015, the

SGM community is protected against discrimination, violence and abuse, under the following Articles¹⁹:

- Article 12 states that all people have the right to have citizenship ID that reflects their preferred gender or gender identity.
- Article 18 covers rights to equality and states that the State will not ‘discriminate against any citizens based on origin, religion, race, caste, tribe, gender, language or ideological conviction or any other status.’
- Article 18 lists SGM people among disadvantaged groups that are recognized by the Constitution, and paves ways for making any laws especially for SGM people.
- Article 18 substitutes gender-neutral terms for previous ‘male and female’ and ‘son or daughter’.
- Article 42 lists ‘sexual and gender minorities,’ among groups that will have right to participate in state mechanisms and public services based on the ‘principle of inclusion’.

CIVIL CODE AND CRIMINAL CODE

Civil Code and Criminal Code are two latest Codes that have already been approved and will enter into force from August 17, 2018. Civil Code deals with private affairs such as marriage,

while criminal code deals with actions considered offences in the law. These two codes have defined marriage in two different ways. Section 67 of Civil Code reads out marriage as “Men and women accepting each other as husband and wife” is a major concern for marriage equality advocates because it implies marriage between biological male and female only. This provision is against the verdict of Supreme Court, against the Constitution and against international commitments. Offences relating to marriage in Criminal Code is contradictory to the provision in Civil Code as Criminal Code hasn't mentioned "men and women" for marriage, but instead uses the word "person" which is gender neutral.



The new Constitution of Nepal 2015 has recognized SGM rights as being fundamental and includes provisions pertaining to the rights of SGM people.

NEPAL'S INTERNATIONAL COMMITMENTS ON HUMAN RIGHTS RELEVANT TO MARRIAGE EQUALITY

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

Article 1 of Universal Declaration of Human Rights, 1948 clearly states that "All human beings are born free and equal in dignity and rights". Article 2 of UDHR mentions that "Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHT (ICCPR)

Various provisions of International Covenant on Civil and Political Right (ICCPR), 1966 has given rights of equal legal protection for every individuals, self-choice for marriage to those who have attained required age and established family. The decision of Human Rights Committee under Covenant on Civil and Political Rights has given recognition to Same-sex marriage.

SUSTAINABLE DEVELOPMENT GOALS (SDG)

Goal 10 of SDGs aims to reduce the existing inequalities. Goal 10 targets to empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status by 2030.

YOGYAKARTA PRINCIPLE AND YOGYAKARTA+10

The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity which was developed by the human rights experts from around the world. Article 24 of the Yogyakarta Principle has clearly mentioned that every individual based on sexual orientation and gender identity has right to establish family without discrimination. Yogyakarta is not a state-level endorsement, but civil society representatives of Nepal have been a signatory of the principle, and still add value to the advocacy movement in Nepal.

WHY LEGALIZATION OF MARRIAGE EQUALITY IS IMPORTANT?

According to International Conference on Population and Development (ICPD) Plan of action, every individual has the right to decide freely whether or not they want to marry, and to decide when and with whom to do so. Research on marriage and health, reports a consistent and well-established theme: married people live happier, healthier and longer lives. Hence marriage equality should enable SGM adults to live happier, healthier and longer lives. In fact, studies conducted in the states that have adopted marriage equality have already established significant improvements in health and access to care.¹⁹

According to Hendrik Hertzberg, "Marriage should be between a spouse and a spouse, not a gender and a gender". Legalization of same-sex marriage would foster the societal acceptance of SGM couples and SGM individuals and helps in diminishing youth suicides.²⁰ The suicide attempt rate among transgender person range from 32% to 50% across the countries. The major factors that influence suicidal behavior are: gender-based victimization, discrimination, bullying, violence, being rejected by the family, friends, and community; harassment by intimate partner, family members, police and public; discrimination and ill treatment at health-care system.²¹

Not being allowed to marry is not only breaching the human rights, but there are other legal consequences associated with it that will hinder SGM couples, such as access to partner's

property or deciding ownership over joint property in case of divorce. Living together couples have also been found to face challenge for finding rental spaces. Legalization of Same-sex marriage will also allow the couple to be a legal parent to their non-biological child.

SGM have been found to suffer from the phenomenon known as "minority stress", being the subject to societal prejudice in a heterosexist world which has negative mental and physical health effects.²² Findings suggest that, with access to relationships that is socially and legally recognized, they will have incremental mental health benefits. Being in a legally recognized same-sex relationship, marriage in particular, appeared to diminish mental health differentials between heterosexuals and lesbian, gay, and bisexual persons²³ and has had positive effects on the health status of this at-risk community.

As a result of marriage, individuals feel more committed to their partners and more accepted by their families and communities. Over 72% feel more committed to their partners and almost 70% feel more accepted by their communities. Also, married same-sex couples show a high degree



Marriage should be between a spouse and a spouse, not a gender and gender.

of community engagement.²⁴

Same-sex partnership laws are found to reduce risky sexual behavior and the incidence of Sexually Transmitted Infections (STIs). Supporters suggest that same-sex partnership laws will have a healthy effect on homosexuals, encouraging them to form the emotional and legal commitments as in companionate partnership laws. An important notion based on the latter view is that same-sex partnership laws will promote sexual fidelity and possibly reduce the incidence of STIs.²⁵

Taken together, the researches show that there's no scientific basis for denying marriage rights to same-sex couples, and doing so can adversely affect them as well as their family and friends.

Case Story

—
Sushma Thapa (female, name changed) fell in love when she was 14 years old. Her partner, Binita Karki (female, name changed), was 16. But in 2011, when Sushma was 17 years old, her parents told her they were arranging her marriage with a guy. Her parents couldn't accept that she was in love with another woman.

The young couple attempted suicide by poison, but they were treated in time that saved their lives. So they chose another escape: a move to Kathmandu, Nepal's capital city, where they would build a life together. It wasn't easy, but the couple survived. Karki now identifies as a man —he hasn't had a formal sex change— and the couple is happy, but they can't marry.

Sushma said that extending marriage to same-sex couples will strengthen, not weaken, marriage as an institution and help ensure it remains an essential building block of society. She believes marriage equality would give them a sense of recognition and social inclusion.

—
Sabina Joshi (female, name changed) from Kanchanpur Mahendranagar married Luna Mishra (female, name changed), an American citizen during her stay at USA. The lesbian couple, a year after their marriage decided to come to Nepal. For few months Luna stayed in tourist visa. After her period of stay in tourist visa was about to expire, they requested the Immigration Department for marriage visa. Accepting their request, Immigration Department forwarded their file to Ministry of Home and Ministry of Foreign Affairs. However, no decision could be made by the Immigration Department regarding whether to grant or deny Luna with non- tourist visa.

So Sabina lodged a complaint on demanding non tourist visa for her partner in the Supreme Court. Initially, the court denied issuing and staying order regarding their case. However, Sabina and Luna didn't lose their hope. They kept on fighting and at last, the joint jury of Supreme Court ordered the Immigration Department to issue non-tourist visa to Luna. Sabina's lawyer says this has instituted a new dimension in Nepal's judicial system as based on this decision, the tourist who has undergone same-sex marriage with Nepali can get a non-tourist visa in Nepal.²⁶

ZOOMING INTO BEST PRACTICES

NETHERLANDS

The Netherlands was the first country in the world to extend civil marriage laws to same-sex couples in 2001. As such, any couples of the same sex or gender identity can cement their union by one of the options available to heterosexual couples in the Netherlands.²⁷

◇ Marriage

Marriage is established through a license issued by a state Government that grants both legal rights and obligations to two individuals.

◇ Registered partnership

For couples who want to enjoy the social benefits of marriage, but don't want to have a traditional marriage, it is possible to have a registered partnership. Registered partnership gives the couple essentially the same rights that a married couple might have in the Netherlands.

◇ Cohabitation agreement

If marriage or a registered partnership does not suit the needs, then a final option would be to make a cohabitation agreement. Cohabitation agreements are ideal for couples in the Netherlands who live together and wish to share their finances and assets, for example, bank accounts, properties or mortgages.

TAIWAN

Same-sex marriage is legal in Taiwan. On 24th May 2017, Taiwan's highest court ruled that same sex

couples have right to marry under the constitution and barring gay couples from marrying violated "the people's freedom of marriage" and "the people's right to equality". The court gave parliament two years to amend or enact laws addressing same-sex unions, otherwise gay couples will automatically be allowed to register under the current framework. On May 24th 2019, Taiwan ruled in favor of gay marriage, and became the first place in Asia to legalize same-sex unions.²⁸

SOUTH AFRICA

◇ Marriage versus Civil Partnership (Minister of Home Affairs v Fourie)

South Africa's Constitutional Court made it clear that a so-called 'separate but equal' approach to recognizing same-sex unions would be unconstitutional. As there is obviously a difference in status between a 'marriage' and a 'civil partnership', merely granting the right to enter into a 'civil partnership' to same-sex couples while allowing only heterosexual couples to enter into a 'marriage' would not have removed the unfair discrimination.¹⁴

◇ Civil Union Act

A union under the Civil Union Act may, at the choice of the spouses, be called either a marriage or a civil partnership; whichever name is chosen, the legal effect is identical to that of a marriage under the Marriage Act.

NEW ZEALAND

◇ **The Marriage (Definition of Marriage) Amendment Act**

This act allows couples to marry regardless of their gender or sexual orientation. The definition reads marriage as “the union of two people, regardless of their sex, sexual orientation, or gender identity”. This Amendment allowed transgender people to now change their gender on their identity documents but stay married (previously had to divorce and change to a civil union). On the marriage forms, individuals may choose ‘bride’, ‘bridegroom’ or ‘partners’.¹⁴

The laws with respect to tax, pensions, immigration, obligations of spousal support, maintenance, succession, and next of kin apply equally to all marriages.

CALL TO ACTION

On the light of the discussion presented above, RHRN Nepal would like to urge the Government to implement and all other stakeholders including key decision makers, organization that work with and for SGM rights, SGM activists, human right activists, young people, media personnel etc. to lobby with the decision makers to:

- ▶ Legalize marriage equality in Nepal at all levels - federal, state and local level by institutionalizing it as soon as possible.
- ▶ Amend the discriminatory laws, such as Civil Code as it only mentions “Male and Female” in the marriage provision under Family law of chapter 3, which itself contradicts with the Criminal Code that specifies marriage as the union of two “Persons”, and all other laws that are discriminatory to the rights of SGM to choose their partners freely and responsibly.
- ▶ Immediately put into actions, the recommendations submitted to the Government by Same-Sex Marriage Committee which was formed according to the verdict of Supreme Court, in 2007.
- ▶ Develop the capacity of the Government at all three levels to properly implement and correctly interpret the legal provisions for human rights of sexual and gender minorities.
- ▶ Urge the media, school curriculum and other agents of change to promote sex positive and sex and gender affirmative attitudes, perspectives and behaviors towards sexual and gender minorities.

REFERENCES

- ¹ Woodford MR. Marriage equality and beyond. *Journal of Gay & Lesbian Social Services*. 2010 Jan 29;22(1-2):1-8.
- ² Human Rights Campaign Foundation. Answers to questions about marriage equality [Internet]. Human Rights Campaign Foundation; [cited 2018 Jan 3] Available from: <https://gaymarriage.procon.org/sourcefiles/HRC-answers-to-questions-about-marriage-equality.pdf>
- ³ Washington Post. Marriage Sacred or Civil Institution [Internet]. 2009 Aug. [cited 2017 Dec 24] Available from: <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/31/AR2009073103602.html>
- ⁴ Cline, Austin. 10 Common Arguments Against Gay Marriage [Internet]. ThoughtCo; [updated 2018 April 10]; [cited 2018 April 15]. Available from: thoughtco.com/moral-and-religious-arguments-250095.
- ⁵ Kuchianidze K. Adoption By Same-sex Couples. *European Scientific Journal*, ESJ. 2013 Aug 8;9(10).
- ⁶ Laws.com. Gays Rights Movement [Internet]. Laws.com; 2017; [cited 2017 Nov 23] Available from: <https://marriage.laws.com/gay-rights-movement>
- ⁷ Erick Eckholm. The Same-Sex Couple Who Got a Marriage License in 1971 [Internet]. Minneapolis: The New York Times; 2015 May 16; [cited 2018 Feb 2] Available from: <https://www.nytimes.com/2015/05/17/us/the-same-sex-couple-who-got-a-marriage-license-in-1971.html>
- ⁸ Sheila Rule. Rights for Gay Couples in Denmark [Internet]. The New York Times; 1989 October. [cited 2018 Dec 3] Available from: <https://www.nytimes.com/1989/10/02/world/rights-for-gay-couples-in-denmark.html>
- ⁹ The Associated Press. First Gay Couples Marry in the Netherlands [Internet]. The New York Times; 2001 April 2. [cited 2018 Mar 4] Available from: <https://www.nytimes.com/2001/04/02/world/first-gay-couples-marry-in-the-netherlands.html>
- ¹⁰ Masci D, Sciupac E, Lipka M. Gay Marriage Around the World [Internet]. Pew Research Center; 2017 Aug 8. [cited 2018 Jan 14]. Available from: <http://www.pewforum.org/2017/08/08/gay-marriage-around-the-world-2013/>
- ¹¹ Panthi K. SGM Rights in Nepal: Few Steps forward, one step backward [Internet]. The Huffington Post; 2016 Sep 5 [update 2017 Dec 6]; [cited 2017 Nov 23]. Available from: https://www.huffingtonpost.com/kishor-panthi/SGM-rights-in-nepal-few_1_b_.9854660.html
- ¹² International Commission of Jurists. Sunil Babu Pant and Others/ v. Nepal Government and Others, Supreme Court of Nepal (21 Dec 2007) [Internet]. International Commission of Jurists. 2007; [cited 2017 Dec 3] Available from: <https://www.icj.org/sogicasebook/sunil-babu-pant-and-others-v-nepal-Government-and-others-supreme-court-of-nepal-21-december-2007/>
- ¹³ Hope Online. Gender Equality: A movement for Change [Internet]. Hope Magazine; [cited 2018 Jan 5] Available from: <http://hope.com.np/en/cover-story/gender-equality-movement-change>
- ¹⁴ Same-sex marriage Committee. Same-sex marriage Study Report, 2014.
- ¹⁵ The Kathmandu Post. NHRC writes to implement report on Same-sex marriage [Internet]. Kathmandu: The Kathmandu Post; 2016 Nov 02; [cited 2017 Dec 15] Available from: <http://kathmandupost.ekantipur.com/news/2016-02-11/nhrc-writes-to-implement-report-on-same-sex-marriage.html>
- ¹⁶ Pahichan. All set to get legal status [Internet]. Pahichan; 2016 Oct 21; [cited 2017 Dec 4]. Available from: <http://pahichan.com/all-set-to-get-legal-status/>
- ¹⁷ The Himalayan Times. LGBT couple registers marriage first Nepal [Internet]. Kathmandu: The Himalayan Times; 2017 Aug 5. Available from: <https://thehimalayantimes.com/nepal/lgbt-couple-registers-marriage-first-nepal/>
- ¹⁸ Pahichan. Same-sex marriage has been registered for the first time in Nepal [Internet]. Pahichan; 2017 July 25. Available from: <http://pahichan.com/same-sex-marriage-has-been-registered-for-the-first-time-in-nepal/>
- ¹⁹ Gonzales G. Why Same-sex marriage is important for good health [Internet]. Scholars; 2013 Dec 10. [cited 2017 Dec 13]. Available from: <http://www.scholarsstrategynetwork.org/brief/why-same-sex-marriage-important-good-health>

- ²⁰ Willingham AJ. Same-sex marriage laws might decrease teen suicides, says study [Internet]. CNN; [updated 2017 Feb 20]. Available from: <http://edition.cnn.com/2017/02/22/health/teen-suicide-same-sex-marriage-study-trnd/index.html>
- ²¹ Virupaksha HG, Muralidhar D, Ramakrishna J. Suicide and suicidal behavior among transgender persons. *Indian journal of psychological medicine*. 2016 Nov;38(6):505.
- ²² Buffe WC. Public health implications of marriage equality. *American Journal of Public Health*. 2011 Jun;101(6):986-90.
- ²³ Wight RG, LeBlanc AJ, Lee Badgett MV. Same-sex legal marriage and psychological well-being: findings from the California Health Interview Survey. *American journal of public health*. 2013 Feb;103(2):339-46.
- ²⁴ Ramos C, Goldberg NG, Badgett MV. The effects of marriage equality in Massachusetts: A survey of the experiences and impact of marriage on same-sex couples.
- ²⁵ Dee TS. Forsaking all others? The effects of same-sex partnership laws on risky sex. *The Economic Journal*. 2008 Jul 1;118(530):1055-78.
- ²⁶ Sharma S. Nagarikasangamalingibahagarnebideshilaigairparyatikiya visa dinasarwoccha ko aadesh. Kathmandu: Setopati; 2017 October 25. Available from: <http://setopati.com/politics/98704>
- ²⁷ Expat Info. Same-sex marriage in Netherlands. Available from: <https://www.iamexpat.nl/expat-info/family-kids/same-sex-marriage-netherlands>
- ²⁸ Haas B. The Guardian. Taiwan's top court rules in favour of marriage equality; 2017 May 24; [cited 2017 Nov 14]. Available from: <https://www.theguardian.com/world/2017/may/24/taiwans-top-court-rules-in-favour-of-same-sex-marriage>

