



**Statement by Richard Bennett
Representative of the United Nations High Commissioner for Human Rights in Nepal
at a Discussion Program on the Supreme Court decision on Sexual Minorities
Organized by Blue Diamond Society,
12 January 2008, Kathmandu**

Honorable Minister of Culture, Tourism & Civil Aviation Prithvi Subba Gurung, Sunil Pant,
President of Blue Diamond Society (BDS), Distinguished guests, Colleagues and Friends:

Thank you for inviting me to speak here today. It is indeed refreshing to attend a program that will discuss a **positive** human rights development. In that vein, because I was not in the country when the Supreme Court decision was released in December, I would like to belatedly extend congratulations to BDS and the other organizations and individuals who supported the Supreme Court challenge; to the lawyers who argued on their behalf; and to the Justices who delivered what is truly a ground-breaking decision on gender identity and sexual orientation in South Asia and perhaps worldwide.

The decision reinforces what High Commissioner for Human Rights, Louise Arbour, has long argued: “Excluding lesbian, gay, bisexual, transgender and intersex (LGBTI) persons from equal protection violates international human rights law as well as the common standards of humanity that define us all.”

The Supreme Court’s decision explicitly recognizes LGBTI persons as “natural persons” who are entitled to the same rights as all other persons, including equal recognition before the law. It directs the Government of Nepal to enact laws to ensure these rights and to amend all laws that discriminate against sexual and gender minorities. Thus, we would expect the State to promote and protect the rights of LGBTI persons to equal treatment, opportunities and access to, *inter alia*, education, jobs and – significantly in Nepal – citizenship certificates, which are a prerequisite for accessing many other government documents and services.

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The Supreme Court issued another ground-breaking decision, on disappearances, on June 1st 2007. Among other things, that decision directed the government to criminalize disappearances and to set up a commission of inquiry conforming to international standards and best practices. Many of you will know that the Government is still working to fulfil those directives, and that OHCHR-Nepal, along with our colleagues in the national and international community, has been monitoring progress and offering assistance. I suspect that implementation of the Supreme Court's directives in this case will require similar careful and constant scrutiny, a role which OHCHR will undertake as part of its efforts to ensure respect for the human rights of members of historically marginalized groups.

The symbolic significance of December's decision cannot be overstated. I have already mentioned its regional and global resonance, but in Nepal itself the directives should, for example, influence political parties when they are choosing their candidates for elections to the Constituent Assembly. Once elected, members of the Constituent Assembly will have to ensure that the new Constitution explicitly guarantees the rights of all LGBTI persons and prohibits any discrimination on the basis of gender identity and sexual orientation.

Also looking ahead, it will be important to monitor progress in responding to the Supreme Court's directive that the Government form a committee to examine the issue of same-sex marriage and to act according to its recommendations. As the UN Human Rights Committee has stated, States have an obligation not to discriminate between different-sex and same-sex relationships in allocating partnership benefits such as survivors' pensions.

In closing, I would again like to quote from High Commissioner Louise Arbour, a message that bears repeating as often as possible: "Human rights principles, by definition, apply to all of us, simply by virtue of having been born human... Just as it would be unthinkable to exclude some from their protection on the basis of race, religion, or social status, so too must we reject any attempt to do so on the basis of sexual orientation or gender identity."

Thank you.