



OHCHR-Nepal

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**Address at the Blue Diamond Society Talk Programme on “Nepal’s New
Constitution and the rights of minorities (based on sexual orientation and
gender identities): experience from South Africa”**

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Distinguished Guests, Members of Blue Diamond Society, friends,

I am honoured to join you here today, for this important dialogue about the new constitution of Nepal and the rights of minorities, in this case in relation to sexual orientation and gender identity. I congratulate Blue Diamond Society on your important initiative, which is a very constructive follow-up to your first dialogue in May last year, after the *Jana Aandalon*.

The peace process in Nepal is significant not just because it brings to an end 11 years of violent conflict, which is an historic achievement in itself, but also because it carries with it the hopes of millions of Nepalese people for a better, fairer society in which they can finally claim their rights as equal members of this society. The foundation of lasting peace, the future protection of human rights, and the capacity for development and prosperity will be greatly strengthened if these hopes are realised. The voices of lesbians, gay men, bisexual and transgender people (*metis*), are often among the most marginalized in society due to deep-seated norms, prejudice and discrimination which has often led to profound social exclusion. Many LGBT people in Nepal are also from groups that suffer other longstanding discrimination such as Madhesis, indigenous people, Dalits or persons living with disabilities – they suffer double and sometimes multiple discrimination.

An important priority for OHCHR-Nepal in the peace process is to monitor issues of longstanding discrimination and social exclusion, including against LGBT people, and advocate for change. OHCHR-Nepal has seen from its own monitoring, and from working together with Blue Diamond Society and other NGOs, that the discrimination

against LGBT persons in Nepal makes them vulnerable to abuse and human rights violations – such as arrest and detention, beatings and sexual violence.

The peace process, including the constitution-making process, offers an opportunity to ensure that Nepal creates a new foundation for the State which is built upon equality, respect and inclusion of all its people.

The fundamental starting point in international human rights law is, of course, the Universal Declaration of Human Rights. The Preface to the Declaration emphasises “the inherent dignity and ... the equal and inalienable rights of all members of the human family”; Article One states that “(a)ll human beings are born free and equal in dignity and rights”; and Article Two states that “(e)veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The Human Rights Committee of the United Nations has recognised that “sex” in this Article, and as it is referred to in the non-discrimination clauses of the International Covenant on Civil and Political Rights, includes sexual orientation.

The human rights mechanisms of the United Nations have addressed the issue of discrimination based on sexual orientation and gender identity in a range of ways. There is no single convention or statement which encapsulates the rights of sexual and gender minorities, but mechanisms and procedures such as the Human Rights Committee and the Special Procedures of the Human Rights Council have included attention to human rights violations against sexual and gender minority individuals within their respective mandates.

From the various considerations and decisions of the United Nations human rights mechanisms, two key points are clear: that lesbians, gay men, bisexuals and *metis* have the right to non-discrimination and that they have the right to equality before the law.

This is a good starting point for discussions of constitution-making in Nepal, and of ensuring the rights of all Nepalese people before the law, including those from sexual and gender minorities.

Constitutions should, and most do, contain general anti-discrimination provisions which conform with the international standards established in the Universal Declaration of Human Rights. Nepal’s national legal framework, as well as its international legal obligations, provide a good basis for addressing protection for sexual minorities. The Interim Constitution, consistent with the provisions of the Comprehensive Peace Agreement of 21 November, sets out a framework for abolishing discrimination and addressing the problems in Nepal society related to oppressed and neglected minorities. Discrimination on the basis of “sex” is specifically outlawed in the Interim Constitution.

It is a privilege to be able to listen to Justice Edwin Cameron and to learn more of the experiences of constitution-making in South Africa. I have worked in Africa myself for many years, and I followed very closely the work on South Africa’s post-apartheid constitution. Like so many people I have been inspired by the efforts of the South African people to struggle to build a just society from the devastating injustice of apartheid and the conflict it caused. The Constitution of South Africa is an

outstanding example of constitutional protection in relation to sexual orientation, developed after the end of the apartheid era in one of the best processes of participatory constitution making in recent times. In the Bill of Rights, which forms Chapter Two of the South African Constitution, in the section on Equality, the Constitution states:

“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

I congratulate Blue Diamond Society for this initiative to enable Nepalese lawyers, judges, political and human rights actors to learn from the South African experience. There is no question that many States are challenged by the notion of recognizing the equality of LGBT people. Initiatives such as this talk programme, where new ideas can be shared and discussed, are an essential part of the process of meeting this challenge. The courage of South Africans to insist on enshrining equality in their Constitution, in the most inclusive terms, inspired people around the world. In the same way, Nepal has the opportunity to demonstrate leadership to the world in building the foundation of a new, inclusive State and society. The commitments of the Government and the CPN-Maoist in the CPA and the Interim Constitution certainly give Nepalese human rights activists, including those advocating for the protection of the human rights of LGBT persons, scope to lobby for full protection against discrimination in the new constitution.

Securing protection under the law, and especially the constitution, is a fundamental step in guaranteeing the human rights of LGBT people in Nepal. But of course, we know that even if such guarantees are achieved on paper, there will be much work to be done to translate these into reality. The broad representation of civil society, lawyers and judges, and political parties participating in this talk programme will continue to be an essential coalition to work for social education and awareness raising and training within State institutions. The commitment to non-discrimination is required in law, and to be enforced by the authorities; it is also for communities, families and each of us individually to make sure that as we live our day-to-day lives that we do not discriminate against anyone.

In closing, I would like to once again congratulate Blue Diamond Society for this initiative. OHCHR-Nepal is committed to working with you, and with all our civil society partners participating in this programme, to end discrimination in all its forms in Nepal.

Thank you.