Call for inputs:

Report to the UN Human Rights Council on the realisation of the right of persons affected by violence and discrimination based on sexual orientation and gender identity to the enjoyment of the highest attainable standard of physical and mental health, in relation to SDG3.

# Deadline for inputs:

7 February 2022

# Issued by:

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

# Purpose:

To inform the Independent Expert's report to be presented to the 50th Session of the United Nations Human Rights Council.

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Mr. Victor Madrigal-Borloz, will dedicate his report to the 50th session of the Human Rights Council to the question of health and sexual orientation and gender identity (SOGI) including in the context of sustainable development. In particular, the Independent Expert will explore how the human rights of people with diverse sexual orientations and gender identities can be incorporated into the national plans aimed at the realisation of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, under the rubric of Sustainable Development Goal (SDG).

The SDGs should be read as an integrated whole, and SDG 3 (to ensure health and well-being for all) should guide actions towards the fulfillment of the other SDGs, such as SDG 10 (reducing inequality). This report will identify both the challenges associated with adopting such an integrated approach, as well as the good practices that have advanced the rights of all persons affected by violence and discrimination based on sexual orientation and gender identity, including but not limited to lesbian, gay, trans, bisexual, and intersex (LGTBI) persons and gender non-conforming (GNC) people.[[1]](#footnote-0) The report will further link SDG 3 to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as protected in international human rights law.

# About the SDGs

The SDGs are a set of goals intended to act as a “blueprint” for coordinated global action over the 2015-2030 period. They include 17 goals. Each goal is accompanied by a set of targets (which specify what the goal is designed to achieve), and indicators (which identify measures that will show if progress is made against the goal). The United Nations supports States and other actors in implementing these goals, including through providing advice, monitoring, as well as capacity building and awareness raising activities.

SDG 3 is to “ensure healthy lives and promote well-being for all at all ages”. The goal is accompanied by 13 targets and 26 indicators.[[2]](#footnote-1) Plainly, the goal cannot be achieved for all people unless the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the well-being needs of persons affected by violence and discrimination based on sexual orientation and gender identity are met.

# Call for inputs

In this call for inputs, the Independent Expert is seeking information about how States have worked toward the realisation of SDG 3 in relation to persons affected by violence and discrimination based on sexual orientation and gender identity, what positive examples can be documented, and what existing challenges and barriers prevent its realisation.

The Independent Expert invites all interested States, civil society organisations, academics, international organisations, activists, corporations and others, to provide written input for his thematic report.

Respondents are requested to limit their comments to a maximum of 2,500 words. Additional supporting materials, such as reports, academic studies, and other types of background materials may be annexed to the submission.

The Independent Expert particularly invites inputs commenting on the relationship between SDG 3 and populations whose experience of barriers to healthcare as well as obstacles that may prevent them from enjoying their right to health including because of violence and discrimination. is less well known. This includes lesbian and bisexual women and trans persons, particularly those living in countries of the Global South. It also includes LGTBI and GNC individuals who seek healthcare following the experience of assault or gender-based violence.

Inputs are welcome in response to the following questions:

## Research: understanding the health care needs of LGTBI and GNC people

## Does the State (or other stakeholders) gather data, including data disaggregated by sexual orientation and/or gender identity, on:

## access to and/or delivery of health services

## the number of new HIV infections per 1000 uninfected population?

## The suicide mortality rate?

## Coverage of treatment interventions for substance use disorders?

## Harmful use of alcohol?

## Access to sexual and reproductive health care?

## Coverage of essential health services?

Intersex people are born with variations of reproductive anatomy, including atypical genitals, atypical sex hormone-producing organs, atypical response to sex hormones, atypical genetic make-up, atypical secondary sex markers. In terms of Intersex people's health issues, there is no data collection based on any of the topics mentioned above by the state. Intersex population visibility is way backward in data records compared to the actual number of intersex populations in Nepal.

Intersex people face several problems, the most pressing is the ongoing Intersex Genital Mutilation (IGM), which presents a distinct and unique issue constituting significant human rights violations. Many intersex children and adults have to go through forced and coercive surgeries without proper knowledge and information about it. Forced and coercive medical interventions affecting intersex people include practices performed without their prior, personal informed consent that has been variously described as “gender assignment” or “reassignment”, “normalization” surgeries, genital “enhancement”, clitoral recessions, vaginoplasties, phalloplasties, and hypospadias repairs, gonadectomies, and associated genital examinations and genital sensitivity testing. There are 2 cases of **Vaginoplasty and 107 cases of Hypospadias Repairs** [**[1]**](#_heading=h.xo3wqabk6gk)found in medical research journals in the past 5 years from the different hospitals in Nepal.

## What steps have been taken to research and understand the health care needs of LGTBI and GNC people of all ages at the national level?

In Nepal, there is a lack of proper research and understanding of the intersex variation and health care needs of Intersex people. Most of the research/report and health campaign are conducted for trans people which is significant to highlight the health condition & needs of trans people but at the same time, it is also considered as an achievement for the whole LGBTI community. Which keeps intersex people's health issues unheard of and unsolved. Our legal framework, as well as the health system, fails to address individual needs of identities merged as gender and sexual minorities.

For more than a decade now, the global intersex movement and the intersex activists in Nepal have been strongly asserting intersex person’s right to bodily integrity. It should be unlawful for medical practitioners or other professionals to conduct any sex reversal treatment and/or surgical intervention on the sex characteristics of a minor when treatment and/or intervention can be deferred until the person to be treated can provide informed consent. Further, such medical or surgical treatment should be undertaken only in specialized centers which have a multidisciplinary clinical team. The specific nature of the intervention should be taken as a consensus by this multi-disciplinary team of experts with experience in handling intersex conditions and should be guided by standard medical protocols. For exceptional cases, where decision-making is difficult, these should be referred to the Government working group/ committee for approval.

The data and survey of IGM practice in Nepal are difficult to find because people not being aware of the Intersex variation and hospitals keep this practice hidden from the public.

# Medical Journal Lists:

# [AMNION GRAFT VAGINOPLASTY IN VAGINAL AGENESIS | Journal of Chitwan Medical College (jcmc.com.np)](https://www.jcmc.com.np/jcmc/index.php/jcmc/article/view/399)

# <https://www.jnma.com.np/jnma/index.php/jnma/article/view/4287>

# <https://www.nepjol.info/index.php/JNPS/article/view/8692/8222>

# <https://nepjol.info/index.php/JSSN/article/view/24358/20538>

# [6\_ Dr Binod The outcome of single stage Hypospadias repairs.pdf (hrdcnepal.org)](http://www.hrdcnepal.org/Content/EditorImages/files/6_%20Dr%20Binod%20The%20outcome%20of%20single%20stage%20Hypospadias%20repairs.pdf)

## Is this data analyzed through an intersectional lens, such as by disaggregating data by sexual orientation and/or gender identity, as well as intersecting identities including social or geographic origin, ethnicity, socio-economic status, nationality or migration status, minority, disability, and indigenous or other identity or status?

This information and data come from our experience working for intersex rights and issues from past more than 4 years. The information focus on the inclusion of intersex people in proper health service access. Nepal is a developing country and already due to social or geographic origin, ethnicity, socio-economic status, minority, disability status access to proper health information and service is varied. Some intersex people are facing challenges due to all these factors and mostly because they identify as an intersex person puts them at risk to exercise their rights to proper health care information & services.

## Inclusion: LGTBI and GNC people in the decision-making process

## What measures have been put in place to consult with and include persons affected by violence and discrimination based on sexual orientation and gender identity in law and policymaking concerning the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and about realizing the SDGs?

## Campaign for Change has been working since 2017 as the first and the only organization led by intersex people to address the plight of the intersex community in Nepal. According to our experience, we haven't been consulted/approached in any kind of policy-making activity. While making SDGs a national indicator there is a lack of enough data on intersex people. They don’t include us in any discussions related to SDGs, intersex issues aren’t discussd enough in these meetings. Similarly, a Voluntary National Report (VRN) was prepared and presented to the United Nations High-Level Political Forum in 2017 and 2020.” [[2]](#_heading=h.f1ic6u11kiun) There is no mention of any specific plan regarding the health of the persons affected by violence and discrimination based on sexual

# Voluntary National Report 2017 & 2020

# 2017: <https://sustainabledevelopment.un.org/content/documents/16513Nepal.pdf>

# 2020: <https://sustainabledevelopment.un.org/content/documents/26539VNR_2020_Nepal_Report.pdf>

## orientation and gender identity and sex characteristics. Intersex activists are not consulted in the process of the report preparation. There is not enough information on intersex issues.

## To what extent are persons affected by violence and discrimination based on sexual orientation and gender identity included in policies and practices around sexual and reproductive health care?

Sexuality is a taboo in Nepal which leads to a reluctance to discuss and address sexual health issues. Intersex people are already treated as taboo and deprived to exercise bodily autonomy and integrity rights. Sexual and reproductive health care policies are mostly focused on females. Whereas it is equally important for men, LGBTI, and GNC people too. The prejudices and surgery decisions made by parents for their intersex child at an early age many intersex people cannot exercise their sexuality according to their wish. They are forced to live in a gender and sexuality they don’t identify themselves in.

Sexual and reproductive health (SRHR) is one of the important health policies. The SRHR report [[3]](#_heading=h.9bldauc8jpq8) paper concludes that SRHR should be strengthened to promote equality to women and other marginalized populations. Without SRHR all other human rights (civil and political, economic and social) have limited power to advance the well-being of women and vice-versa. Similarly, these policies should be re-introduced and revised including sexual orientation, gender identity, and sex characteristics. The intersex women, trans women individually in the policies.

## What support or technical assistance is needed to ensure that the health care needs of persons affected by violence and discrimination based on sexual orientation and gender identity people are comprehensively addressed and included in relevant laws, policies, and practices?

Discrimination in healthcare impacts intersex persons’ right to health, including bias, lack of training and awareness, lack of research on long-term health outcomes in adolescents and adults, and lack of human rights-affirming

# SRHR Policy Brief: <http://arrow.org.my/wp-content/uploads/2015/04/SRHR-in-Nepal_Advocacy-Brief_Nepal_2013.pdf>

standards of care. After the first national-level meeting [[4]](#_heading=h.xs0k0tlokdw3) of intersex people in 2016, a shadow report was sent to CRC and CEDAW. In the 2016 CRC concluding observations [[5]](#_heading=h.6gnkxxs1t77c) and CEDAW concluding observations [[6]](#_heading=h.7yb1tueaer13) 2018 to Nepal, CRC explicitly criticized harmful practices on intersex children in Nepal and issued multiple recommendations, addressing inter alia “high levels of stigma and discrimination faced by intersex children” and “medically unnecessary surgeries and other procedures on intersex children and the lack of redress and compensation in such cases” (CRC/C/NPL/CO/3-5, paras 38, 41-42). **Nonetheless, to this day Nepal fails to act but instead continues to feign ignorance of these serious human rights violations. Intersex Children's mental health issues aren’t still discussed and our medical institution hasn’t shown any concern to address the needs of intersex children.**

These recommendationsare needed to implement to ensure that the health care needs of intersex persons:

* To Adapte CRC and CEDAW recommendations in laws, policies, and practices of our country
* Providing families with intersex children with adequate counseling and support;
* Understanding the needs of health care and support required for the Intersex person
* Medical profession speaking and treating intersex variations in a human right perspective
* Addressing intersex sexual & reproduction health cases with proper care and support
* Letting intersex children grow up without any medical intervention and exercise their bodily autonomy right
* Publish report or research paper focusing on intersex health needs & condition
* Educating medical professionals about the rights of intersex children and adults regarding their health and body

# First national level intersex meeting: <https://www.apcom.org/the-dawn-of-a-national-intersex-movement-the-first-national-intersex-workshop-in-nepal/>

# CRC 2016 concluding observation: <https://intersexrights.org/un/crc-npl-co-3-5/>

# CEDAW 2018 concluding observation: <https://intersexrights.org/un/cedaw-c-npl-co-6/>

* Highlight intersex issues and needs in health awareness campaigns all over Nepal
* Free, and accessiblel mental health counseling for LGBTI peoples
* Implement policies to ban IGM, unnecessary & nonconsensual surgeries practice to intersex child and adult
* Introduce SRHR policies including and addressing all sex characters and gender identity needs, and Issues.
* Medical insurance policies understanding health care support needed for intersex people. Because poverty is a big challenge for many intersex people to seek out better health services

## What are the main barriers, in law or practice, for persons affected by violence and discrimination based on sexual orientation and gender identity to receive care that meets their physical and mental health needs and rights?

The main barriers are stigmatization, lack of information, gender stereotype, lack of accountability by local and state governments. Intersex people have a lack of access to education especially higher-level education which keeps them away from many opportunities and information.

To give effect to the constitutional protection and create an institutional framework for the protection of rights recognized by the Supreme Court of Nepal, a comprehensive statutory framework is critical. In addition to enacting strict criminal laws protecting people with diverse SOGIESC identities from violence, a strong anti-discrimination framework is critical. Further, it is also important that sex characteristics are included in such legislation to protect intersex people as well.

## Access: ensuring that LGTBI and GNC people have access to health care

## What measures have been taken to ensure access to affordable non-discriminatory health care services for persons affected by violence and discrimination based on sexual orientation and gender identity?

Yogyakarta principles plus 10 [[7]](#_heading=h.6jz7awsnl996) articulate the exact need of intersex people to

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# **7**. **Yogyakarta Principles Plus 10:** [**https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\_yogyakartaWEB-2.pdf**](https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

ensure access to affordable non-discriminatory health care services. Our government should highly recommend adding these principles as our country's policies for intersex people well being. Principle 32 states, States shall:

* Guarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination;
* Ensure that legislation protects everyone, including all children, from all forms of forced, coercive, or otherwise involuntary modification of their sex characteristics;
* Take measures to address stigma, discrimination, and stereotypes based on sex and gender, and combat the use of such stereotypes, as well as marriage prospects and other social, religious, and cultural rationales, to justify modifications to sex characteristics, including of children;

## What policies or programmes exist to address the mental health care needs of persons affected by violence and discrimination based on sexual orientation and gender identity, specifically around depression and anxiety, suicidal ideation, and substance abuse?

Limited knowledge and understanding of sex characteristics and acceptance of typical binary notions of male or female bodies is a reason for the growing practise of Intersex genital mutilation. Our society understands men and women as the only acceptable identity if someone doesn't fit in this identity, or is different but identifies as men or women, our society makes it very difficult for them to interact normally in their daily life. Their education, social circle, health access is disturbed and especially intersex people have to face challenges for their mental health from an early age due to all the societal pressure, judgment, and questions. Sadly, there is no institution where they can seek help for themselves.

## What policies or programmes exist to assist the health care needs of persons affected by violence and discrimination based on sexual orientation and gender identity following the experience of assault or gender-based violence?

We have no policies or programmes to assist the health care needs of persons affected by violence and discrimination based on sexual orientation and gender identity following the experience of assault or gender-based violence.

Article 12(3) of the Constitution [[8]](#_heading=h.sp3j19sbaybs) states that no health institution shall discriminate, or cause to be discriminated, anyone in the treatment on the basis of his or her origin, religion, race, caste, ethnicity, gender, occupation, sexual and gender identity, physical or health condition, disability, marital status, pregnancy, ideology or similar other basis as such. But in practice, there is a lack of implementation found. The Interim Constitution of Nepal has asserted that “Every woman shall have the right to reproductive health and other reproductive matters.” It created a ‘space’ for women to demand and assert their health rights and control over their bodies and reproductive lives. This should also include SOGIESC minorities women. Similarly, there must be policies in our constitution that protect intersex health rights and empower them to demand and assert their health rights too.

## Have adequate human and financial resources been allocated to implement those policies and/or programmes?

Not yet. For the very first time from the ministry of children, women, and senior citizens some amount of budget has been allocated for our organization (Campaign for Change). This is the very first initiation from the government we have received so far to support work for intersex people. But the process of getting the support is lengthy and time-consuming. We are still in the process of receiving this support whereas we have only 5 months to complete the program under this support.

## Training and Education: health care professionals and educational institutions

## Are sexual orientation and gender identity, and the specific health needs of persons affected by violence and discrimination based on sexual orientation and gender identity, including in training and education of health care professionals?

## The myth that people belong to one of two distinct and separate sexes is what contributes to the stigma and discrimination felt by the intersex community.

Nepal’s education board has included sexuality and gender diversity as part of the school curriculum on sexual and reproductive health for Classes 6, 7, and 8. The new syllabus on the subject of ‘Health and Physical Education’, includes components on homosexual attraction and third gender (transgenders), among other topics related to sexual health and awareness. Guidelines for instructors

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# 8. Constitution of Nepal: [Constitution of Nepal 2072\_full\_english.pdf (mohp.gov.np)](http://www.mohp.gov.np/downloads/Constitution%20of%20Nepal%202072_full_english.pdf#:~:text=The%20Constitution%20of%20Nepal%20Date%20of%20Publication%20in,integrity%2C%20national%20unity%2C%20independence%20and%20dignity%20of%20Nepal%2C)

emphasize that these topics need to be taught in a way such that students learn to be respectful and sensitive towards transgender and homosexual communities. Also, more information about sex character variation needs to include in the textbooks. Universally used and accepted terms and definitions should be used in textbook.

In terms of training and education, health care professionals need to learn about intersex people's human rights and advocate intersex variation as a natural variation rather than a disorder.

## What measures are being taken to provide age-appropriate comprehensive sexuality education inclusive of sexual and gender diversity in educational institutions?

* A comprehensive and inclusive education law and policy is recommended to ensure that intersex children are able to access their right to education. Specific revision of existing laws and regulations must be mandated so as to prevent discrimination in the form of bullying or harassment in educational institutions based on sex characteristics. Special measures must be taken to ensure that intersex children do not face any discrimination while appearing for exams. Further, the law should prescribe training of school teachers and staff in educational institutions. The curriculum of textbooks also needs to be revised so as to ensure inclusive education.
* Distinct health needs of intersex children must be identified. Genetic counseling/consultation to be an integral part of clinics for intersex persons. Training programs should be designed suitably to address intersex/DSD issues.
* All persons seeking psychosocial counseling, support, and medical interventions relating to sex or gender should be given expert sensitive and individually tailored support by psychologists and medical practitioners or peer counseling.
* Students should taught about sex characteristics variation from an early age in a meaningful and empathetic way.

## Are evidence-based and up-to-date guidelines that include SOGI issues available? How are they used to influence health-related decisions on policy, programming, services including diagnostic manuals, and practices within the health care institutions?

No, In the case of Nepal there are no such guidelines available.

## Sustainable Development Goals

## Where the State measures its progress against SDG3, does it make reference to the health outcomes and needs of persons affected by violence and discrimination based on sexual orientation and gender identity?

According to the Nepal Planning Commission's (NPC) The Fifteenth Plan (Fiscal year 2019/20 - 2023/24) document’s [[9]](#_heading=h.e5pmmyfshfkq) review of Implementation of the Sustainable Development Goal, “Nepal had started internalizing the SDGs since the launch of the Fourteenth plan by implementing it in accordance with the country’s economic, social, and environmental Contexts. It has prepared different strategies and reports regarding the SDGs. The initial national report was published in 2015. Updating the report, “Nepal - Sustainable Development Goals: Status and Roadmap: 2016- 2030” [[10]](#_heading=h.qbf72y7vt9l1) was published in 2017. All these reports fail to address the health outcomes and needs of persons affected by violence and discrimination based on SOGISC. Intersex issues are not even mentioned in these records. Intersex Genital Mutilation (IGM) is a real ongoing medical intervention in Nepal. But our planning commission plan document doesn’t even acknowledge its practice nor any mitigation plan is prepared to stop it.

## Does the State measure progress against any of the following SDG3 indicators for persons affected by violence and discrimination based on sexual orientation and gender identity? If so, please comment on whether health outcomes are improving or declining:

* + - Indicator 3.3.1: Number of new HIV infections per 1,000 uninfected population, by sex, age, and key populations;
    - Indicator 3.4.2: Suicide mortality rate;

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# 9. National Planning Commission: <https://npc.gov.np/images/category/15th_plan_English_Version.pdf>

# 10. Nepal SDGs Status and Roadmap 2016 - 2030: <https://www.np.undp.org/content/dam/nepal/docs/2018_undpnepal/UNDP_NP-SDG-Status-and-Roadmap.pdf>

* + - Indicator 3.5.1: Coverage of treatment interventions (pharmacological, psychosocial and rehabilitation and aftercare services) for substance use disorders;
    - Indicator 3.5.2: Harmful use of alcohol, defined according to the national context as alcohol per capita consumption (aged 15 years and older) within a calendar year in liters of pure alcohol
    - Indicator 3.7.1: Proportion of women of reproductive age (aged 15-49 years) who have their need for family planning satisfied with modern methods, including lesbian and bisexual women, and trans persons;
    - Indicator 3.7.2: Adolescent birth rate (aged 10-14 years; aged 15-19 years) per 1,000 women and trans men in that age group, particularly among LBT and GNC young individuals;
    - Indicator 3.8.1: Coverage of essential health services (defined as the average coverage of essential services based on tracer interventions that include reproductive, maternal, newborn, and child health, infectious diseases, non-communicable diseases, and service capacity and access, among the general and the most disadvantaged population); and
    - Indicator 3.8.2: Proportion of population with large household expenditures on health as a share of total household expenditure or income.

Our Nepal Planning Commission’s reports [[11]](#_heading=h.o8b1yjliezjy) don’t have any date of persons affected by violence and discrimination based on SOGISC based on the above indicators. There is mention of gender and sexual minorities' existence but no effort is taken by the commission to extract proper data. Proper data is very essential to plan, prepare and implement policies or programs effectively. With all these missing data SDGs progress in Nepal is incomplete and inaccessible.

# 11. NPC reports: <https://npc.gov.np/en/category/annual_reports>

Readings:

Letter to Nepal's Minister of Justice and Minister of Home Affairs: <https://www.hrw.org/news/2006/01/11/letter-nepals-minister-justice-and-minister-home-affairs>

SRHR policy: [Microsoft Word - WOREC\_Policy Brief-Shiba-draft 2.doc (arrow.org.my)](https://arrow.org.my/wp-content/uploads/2015/04/SRHR-in-Nepal_Advocacy-Brief_Nepal_2013.pdf)

Intersex Awareness Day: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

A step forward for intersex visibility and human rights: <https://www.ohchr.org/EN/NewsEvents/Pages/Astepforwardforintersexvisibility.aspx>

Sexual and Gender minorities survey Nepal (2014): <https://williamsinstitute.law.ucla.edu/publications/survey-sgm-nepal/>

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1. The Independent Expert has taken note of the announcement made by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on the fact that her upcoming report on violence and its impact on the right to health will address violence experienced by LGTI persons (the call for inputs can be found [here](https://www.ohchr.org/EN/Issues/Health/Pages/Violence-and-its-impact-on-the-right-to-health.aspx)). The Special Rapporteur and the Independent Expert are committed to good coordination within the realm of their independent action and their respective mandates. [↑](#footnote-ref-0)
2. See <https://sdgs.un.org/goals/goal3> [↑](#footnote-ref-1)