

**REVIEWING NEPAL'S NATIONAL CHILDREN POLICY (2080 BS) THROUGH AN
LGBTQIA+ LENS**



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A. INTRODUCTION:

Nepal's significant leap towards safeguarding its children's well-being materialized with the National Children's Policy 2080 BS. This policy outlines a framework encompassing various aspects of child development, healthcare, education, and protection. While acknowledging this vital step, a crucial aspect demands further scrutiny: the policy's effectiveness in addressing the distinct needs and challenges faced by LGBTQIA+ children.

Globally, the discourse on child rights has broadened, recognizing the necessity for inclusive policies that safeguard all children, irrespective of their sexual orientation, gender identity, and sex characteristics. Nepal, too, has witnessed growing awareness regarding the unique vulnerabilities experienced by LGBTQIA+ youth. Studies indicate concerning trends: a significant portion of LGBTQIA+ individuals face social exclusion, discrimination within families and communities, and limited access to education and healthcare services.

The National Children's Policy 2080 BS acknowledges the need for child protection but requires a deeper examination to determine its comprehensiveness concerning LGBTQIA+ children.

B. OBJECTIVE:

1. To analyze the strengths and weaknesses of the National Children's Policy (NCP 2080 BS) in addressing the specific needs and challenges faced by LGBTQIA+ children in Nepal.
2. To evaluate the policy's alignment with Nepal's existing legal framework and international human rights instruments concerning the rights of children and sexual and gender minorities.
3. To develop recommendations for targeted interventions and policy modifications to ensure the NCP effectively promotes the well-being and protection of LGBTQIA+ children in Nepal. This includes:

C. EXECUTIVE SUMMARY:

1. **Limited recognition:** The policy doesn't explicitly mention LGBTQIA+ children, potentially overlooking their specific needs and experiences.
2. **Inadequate safeguards:** Mechanisms addressing the distinct challenges of bullying, social ostracization, and potential exposure to conversion therapy remain undefined.
3. **Educational and healthcare accessibility:** The policy lacks concrete measures to ensure inclusive education environments and access to healthcare services catering to the specific needs of LGBTQIA+ children.

Addressing these shortcomings necessitates incorporating specific provisions within the policy framework.

1. **Explicit inclusion:** The policy should explicitly acknowledge the existence of LGBTQIA+ children and their right to equal protection under the law.
2. **Anti-discrimination measures:** Concrete steps to combat bullying and discrimination based on sexual orientation and gender identity within schools and communities are crucial.
3. **Promoting inclusive education:** Teacher training programs fostering sensitivity and understanding towards LGBTQIA+ issues are essential.
4. **Healthcare accessibility:** Ensuring access to healthcare services that cater to the specific needs of LGBTQIA+ children, including mental health support, is vital.

D. POSITIVE DEVELOPMENTS TOWARD LGBTQIA+ INCLUSION

1. **Broader Child Protection Measures:** The NCP outlines a comprehensive framework for child protection, encompassing various aspects like access to education, healthcare, and legal aid (Sections 11.1 - 12.5). While not explicitly targeting LGBTQIA+ children, these measures can indirectly benefit them by improving the overall child protection landscape.
 - a. Example: Section 12.4.8 emphasizes ensuring access to basic facilities like education, healthcare, and nutrition for all children. This broad approach can indirectly ensure access to essential services for LGBTQIA+ children facing discrimination within families or communities.
2. **Emphasis on Addressing Harmful Practices:** The policy aims to eradicate harmful traditional practices like child marriage (Sections 12.3.1, 12.3.5). This can indirectly protect LGBTQIA+ youth:
 - a. Section 12.3.2: Mentions protecting children at risk due to traditional practices. This could be interpreted to include LGBTQIA+ youth pressured into marriages that don't conform to their gender identity or sexual orientation.
 - b. Section 12.3.9: Criminalizes those who perform or encourage child marriage. This can help deter the practice and protect LGBTQIA+ youth from being forced into such unions.
3. **Mobilization of Stakeholders:** The NCP emphasizes collaboration with various stakeholders, including local communities (Sections 12.4.1, 12.5.6). This opens doors for the potential involvement of LGBTQIA+ rights organizations:

- a. Section 12.4.1: Encourages mobilization of "social leaders, community-based organizations and networks" for child protection initiatives. LGBTQIA+ rights organizations can be included in this network to advocate for the specific needs of LGBTQIA+ children and ensure their voices are heard during policy formulation and implementation.

E. AREAS OF IMPROVEMENT:

The rights of LGBTQIA+ children can be derived from the Constitution of Nepal which was adopted in 2015 and various international conventions to which Nepal is a party. For example, article 18 of the constitution provides “gender and sexual minority” under the Right to Equality which is the source text for inclusion of LGBTQIA+ children in the NCP. Furthermore, the concluding observation¹ by the Committee on the Rights of Child also encapsulates the rights of LGBTQIA+ children in its recommendations to Nepal as a state party.

Additionally, it becomes important for NCP to address the issues of LGBTQIA+ children explicitly given the unique challenges that can’t be addressed within the broader interpretation of the texts. Finally, these targeted recommendations not only help the standard of living of LGBTQIA+ children but all children in general.

1. LGBTQIA+ inclusivity

The NCP currently lacks explicit mention of LGBTQIA+ terminology, hindering it from directly addressing the specific needs of this group. Adding upon our previous recommendation², the focus on inclusive language is not just on the inclusion of LGBTQIA+ identities, but addressing the language too in which challenges faced by LGBTQIA+ children are incorporated.

As an example, we can take this paragraph from the third heading, a situational analysis of the present. Here, the provided paragraph (unofficial translation) explores research by the Ministry of Education, Science and Technology on general education enrollment rates and child labor statistics in Nepal.

“According to the status report of the Ministry of Education, Science and Technology (Flash-1), 2079, the net enrollment rate of children has reached 96.1 percent in the basic level (grades 1-8) and 57.4 percent in the secondary level (grades 9-12). The enrollment ratio of boys and girls from the basic level to the

¹ Concluding Observations, CRC/C/NPL/CO/3-5, 3 June 2016: Nepal
https://database.ilga.org/api/downloader/download/3/en-CRC_C_NPL_CO_3-5.pdf

² See Annex 1.

secondary level has reached the same rate. 36032 schools (27343 community, 8689 institutional) are in operation to provide education to children from pre-primary to higher secondary. According to the National Census 2078, the number of children under 18 years of age is 98,69,583, which is 33.84 percent of the total population. Among the total children, the ratio of boys and girls is 51.8 percent and 48.2 percent, respectively. According to the Nepal Labor Force Survey, 2076, conducted by the Central Statistics Department, about 286,000 children under the age of 17 are found to be engaged in labor, while according to the Nepal Child Labor Report, 2021, it is found that about 1.1 million children in the age group of 5 to 17 are involved in some form of labor. It is seen that the number of child labor is gradually decreasing. The birth rate of children under the age of five has reached 74 percent.”³

While valuable, it lacks a specific lens of LGBTQIA+:

- i. Data Gap: The report doesn't mention the enrollment or labor rate specifically for LGBTQIA+ children.
- ii. Identity Concerns: The data categorizes children only by sex (male/female), neglecting gender identities beyond this binary such as intersex children.
- iii. Vulnerability to Discrimination: LGBTQIA+ children might face discrimination within the education system and be more susceptible to child labor due to societal prejudice.

In terms of data gap and identity concerns, if we look from the lens of LGBTQIA+ children, we have to acknowledge intersex children. The policy should incorporate available data and not only rely on inherently binary research. Of course, the caveat is, that there might be research on the subject – however, this doesn't mean that the policy can't address the topic while relying on available research which is binary.

This brings us to how one might be able to incorporate social realities into the policy while we might not have concrete quantitative research data – our third point. Several anecdotal evidences have shown that LGBTQIA+ children are the most vulnerable to being outcasted by their families, or that they choose to run away from their families because of their sexual orientation, gender identity, or/and their sex characteristics. So, when we talk about child labor, it is crucial to mention the alarming involvement of LGBTQIA+ children among many other intersectionalities such as caste and poverty.

³ National Children Policy, 2028 (Unofficial translation)

Instead, a more comprehensive approach can be taken by incorporating an LGBTQIA+ lens in the policy:

1. Disaggregated Data⁴: Advocate for collecting data on school enrollment and child labor that includes a category for LGBTQIA+ students. Especially relating to gender identity (transgender and non-binary identifying children) and sex characteristics (intersex children).
2. Inclusive Language: Instead of solely relying on sex (boy/girl), the report should acknowledge diverse gender identities.
 - a. (eg. Modifying the language in policy number 12.3.11 under strategy 11.3. The term *Dharmasantan* would be more inclusive than *Darmaputri & Dahrmaputra*.)
3. Addressing Discrimination: Include initiatives to tackle discrimination against LGBTQIA+ children in school, public spaces, family and community and advocate for their protection from child labor.
4. The policy should acknowledge the potential lack of access to education, health, decision making faced by LGBTQIA+ children due to societal stigma.
5. It should mention initiatives promoting safe spaces and anti-discrimination measures within schools for LGBTQIA+ childrens.
6. Look for reports specifically addressing the situation of LGBTQIA+ children in Nepal regarding education, health, participation and child labor.
7. Research initiatives undertaken by NGOs or government bodies should focus on improving the lives, ensuring the participation of LGBTQIA+ children in Nepal.

Here are a few examples of how the NCP could be more inclusive:

⁴ When we talk about collective data for LGBTQIA+ children, we must also ensure a mechanism that protects their right to privacy.

Similarly, we acknowledge that not all children might be aware or have a comprehensive idea of their gender and sexuality, hence incorporation of these is important in the curriculum.

Lastly, sexual orientation here has a different gravity than gender identity and sex characteristics. It is not advised that data should be collected regarding sexual orientation, however, the stigma and discrimination because of it should be included.

- a. Section 11.1: Outlines the policy's objective to "fulfill the fundamental rights of every child." This objective can be strengthened by specifying that these rights apply to all children *"irrespective of their gender identity, sexual orientation or/and sex characteristics."*
- b. Section 11.5: Aims to eradicate harmful practices like child marriage (12.3.1). This section could be strengthened by mentioning that protections extend to children facing pressure to marry due to societal expectations that don't conform to their gender identity and sex characteristics.
- c. Section 12.5.3: Focuses on improving access to education. This section could be improved by acknowledging the potential challenges faced by LGBTQIA+ student due to discrimination and fostering inclusive school environments.
- d. In regard to the institutional structure for the implementation, coordination and monitoring of this policy. Section 14.1: A National Steering Committee is envisaged. Amending this section to include representatives from LGBTQIA+ rights organizations would ensure their voices are heard in policy formulation and implementation concerning the well-being of LGBTQIA+ children.

Additional Considerations:

- *Include a glossary of terms within the policy document to clearly define terminology like gender identity, sexual orientation, and sex characteristics. This can help raise awareness and understanding among stakeholders responsible for implementing the policy.*
- *Develop training programs for relevant authorities, such as teachers, social workers, and law enforcement officials, to enhance their understanding of LGBTQIA+ identities and the challenges faced by this community.*

2. Strengthening Protections for LGBTQIA+ Children against discrimination

The NCP serves a vital role in safeguarding the well-being of all children. However, the policy currently lacks explicit measures addressing the specific vulnerabilities faced by LGBTQIA+ children. This omission can leave them susceptible to discrimination and hinder their access to fundamental rights.

- i. **Reinforcing Anti-Discrimination Measures:** The NCP must be strengthened by incorporating a clear and comprehensive clause explicitly prohibiting discrimination based on sexual orientation and gender identity. This clause should encompass all areas covered by the policy, including education, healthcare, and social services.

- Example:* Amending Section 12.5.3 (access to education) could unequivocally state that "all children, irrespective of their sexual orientation or gender identity, have the right to attend school in a safe and inclusive learning environment, free from discrimination and harassment." Similar amendments should be incorporated in sections concerning healthcare and other essential services.
- ii. Establishing Accessible Reporting Mechanisms: To empower LGBTQIA+ children to voice their experiences, the policy should establish accessible reporting channels. This could involve:
 - a. Implementing dedicated hotlines or online reporting systems.
 - b. Empowering schools, healthcare institutions, and child protection agencies to receive and address complaints concerning discrimination against LGBTQIA+ children.
 - iii. Ensuring Effective Redressal: A well-defined process for investigating reported incidents must be outlined within the NCP. This process should guarantee:
 - a. Prompt and impartial investigations into allegations of discrimination.
 - b. Disciplinary action against perpetrators, ensuring appropriate consequences for those found to violate the anti-discrimination clause.
 - c. Provision of support services to victims, including counseling and other interventions to address the psychological impact of discrimination.
 - iv. Fostering a Supportive Environment:
 - a. Strategic collaboration with organizations possessing expertise in addressing the challenges faced by the LGBTQIA+ community is crucial.
 - b. Develop and deliver training programs tailored towards relevant stakeholders, such as teachers, healthcare providers, law enforcement officials, and social workers.

These programs should raise awareness about LGBTQIA+ identities and the specific challenges they encounter and equip stakeholders with the knowledge and skills to effectively:

- i. Identify incidents of discrimination.*
- ii. Respond to them appropriately.*
- iii. Address them with sensitivity and inclusivity.*

3. Education

While the National Children's Policy (NCP) emphasizes ensuring access to education for all children (Section 12.5.3), it fails to address the specific and often invisible barriers faced by LGBTQIA+ students. These children are susceptible to a hostile learning environment due to discrimination and bullying based on their sexual orientation or gender identity. This can manifest

in various ways, impacting their academic performance, mental well-being, and overall sense of belonging within the school community.

- i. **Acknowledge the Challenges:** The NCP must explicitly acknowledge the existence of these challenges faced by LGBTQIA+ children. This recognition can be integrated within the relevant sections addressing access to education. One of the most crucial gaps that can be observed in the dropout rate of children from school is the lack of research because of the stigma and discrimination faced by LGBTQIA+ children.
For example, a national study conducted by UNDP⁵ in 2014 found that 16% of LGBTIQ people experience verbal harassment in schools in Nepal which the recent 2023 UN Women⁶ national survey has also supported.
- ii. **Promoting Inclusive School Environments:** The policy should go beyond simply guaranteeing physical access and advocate for measures to create a more inclusive learning environment for LGBTQIA+ students. This multi-pronged approach can involve:
 - a. These policies should specifically address discrimination and harassment based on sexual orientation, gender identity, and sex characteristics. This requires a shift from solely reactive measures to proactive ones.
 - b. Schools should establish clear reporting mechanisms that are accessible and confidential for students to report incidents of bullying or discrimination.
 - c. Invest in training staff on identifying and effectively responding to such incidents. This training should equip educators with skills like de-escalation techniques, fostering open communication, and implementing appropriate consequences for perpetrators.
 - d. Removal of gender-stereotypical roles, such as a strict mandate on gendered uniforms for students.
- iii. **Encouraging Curriculum Integration:** The policy should advocate for the integration of LGBTQIA+ inclusive curriculum materials.
 - a. Age-appropriate educational materials that address LGBTQIA+ topics sensitively and informally can foster understanding and acceptance among students.
 - b. This can involve incorporating historical figures who identify as LGBTQIA+, exploring themes of gender identity and expression, and addressing the importance of respecting diversity.

⁵ Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach. Available at <https://www.undp.org/asia-pacific/publications/surveying-nepals-sexual-and-gender-minorities-inclusive-approach>

⁶ Evidence to Action: Addressing Violence Against LGBTIQ+ People in Nepal. Available at https://un.org.np/sites/default/files/doc_publication/2023-06/LGBTIQ%20Study%20Report-Final-web%20version-11%20June%202023%20evening.pdf

- iv. **Equipping Educators:** The NCP should advocate for providing training for teachers and school administrators.
 - a. Equipping educators with the knowledge and skills to identify, address, and prevent incidents of bullying and discrimination against LGBTQIA+ students is crucial. This training should go beyond simply providing definitions.
 - b. It should emphasize creating a safe space where students feel comfortable expressing their identities without fear of judgment or discrimination. This can involve fostering open communication within classrooms, creating Gender and Sexuality Alliance Clubs (GSAs)⁷ as safe havens for LGBTQIA+ students, and incorporating guest speakers from LGBTQIA+ rights organizations.

Additional Considerations:

- v. **Support Services:** The NCP should advocate for the establishment of support services within schools to cater to the specific needs of LGBTQIA+ students. This could involve:
 - a. **Counseling Services:** Providing access to qualified counselors who understand the unique challenges faced by LGBTQIA+ youth can offer support and guidance. These counselors should be equipped to address issues like coming out, coping with societal stigma, and navigating mental health concerns that may arise due to a hostile school environment. Here, student's right to privacy should be ensured against their families and other peers. There should be an emphasis here on the confidentiality and respecting the privacy of LGBTQIA+ children should be focused. How and when LGBTQIA+ children come out to their family/parents should be their choice. Just because a child has shared that with a counselor doesn't mean they have shared that info with their family.
 - b. **Peer Support Groups:** Facilitating the creation of safe spaces where LGBTQIA+ students can connect with peers who share similar experiences can be a valuable source of support and belonging. Schools can play a crucial role in enabling the formation of such groups either within the school environment or in collaboration with LGBTQIA+ rights organizations.
 - c. **Collaboration and Monitoring:** Partnering with LGBTQIA+ rights organizations and collaborating with organizations with expertise in addressing the challenges faced by LGBTQIA+ communities can involve Joint development of educational materials to develop age-appropriate and inclusive educational materials that address LGBTQIA+ issues and promote understanding and acceptance within schools.

⁷ What are GSAs? <https://gsanetwork.org/what-is-a-gsa/>

4. Health and Wellbeing:

The NCP emphasizes ensuring the well-being of all children. However, it currently overlooks the specific vulnerabilities faced by LGBTQIA+ children regarding both physical and mental health.

LGBTQIA+ children often encounter barriers to accessing essential healthcare services due to fear of judgment or prejudice from healthcare providers that can lead to delayed or avoided medical care. A lack of awareness and sensitivity among healthcare professionals concerning the specific health needs of LGBTQIA+ children can result in misdiagnosis or inadequate treatment.

Furthermore, LGBTQIA+ children experience heightened risks for mental health challenges due to prejudice and social isolation can lead to increased anxiety, depression, and feelings of loneliness, and limited access to affirming environments and supportive networks can exacerbate existing mental health issues.

Addressing the need for birth registration identification of intersex children:

This policy highlights the challenges and issues related to the recognition and birth registration of all children, including sexual and gender minorities. It points out the absence of identification and fragmented data for gender and sexual minority children. While the current birth registration process includes an option for "Other" and "Third Gender" in the online forms for birth registration, this provision conflicts with the government's own documents and procedures. The use of the term "other" or "third gender" is not appropriate for birth registration. In South Asia, "third gender" refers to individuals who identify differently from male or female, and the term is not suitable in the context of birth registration. The term "other" is a blanket term used in Nepalese government documents to refer to sexual and gender minorities.

Sexual and gender minorities include lesbians, gay men, bisexuals, transgender people, and intersex individuals. However, according to Nepal's legal provisions for birth registration, a child's birth must be registered within 35 days. Within this 35-days, it is not possible to identify a child as lesbian, gay, bisexual, transgender, or intersex, except for intersex children. Therefore, the use of the term "other" in birth registration processes obscures the actual identity of intersex children. This disregards the provisions set forth in the Constitution of Nepal 2072 and the Children's Act 2075, which guarantee the right to recognition and registration of each child's name and identity after birth.

To ensure the proper implementation of the provisions in the Constitution and the Children's Act, it is essential that the birth registration of intersex children reflects their actual identity. It is also important to note that some intersex variations may not be apparent at birth and might become evident during adolescence. Additionally, the gender identity of transgender children might not

align with the gender they were assigned at birth. To ensure the proper registration of intersex and transgender children, it would be beneficial to allow for corrections to the birth registration, reflecting the child's gender identity. This approach would support the correct implementation of the Constitution and the Children's Act and align with the government's sustainable development goals and standards for birth registration in Nepal.

- i. Unique Medical Considerations: Intersex individuals possess variations in their reproductive anatomy or chromosomal makeup that deviate from the typical male or female forms. These variations necessitate specialized healthcare approaches compared to the standard protocols for children.
 - a. Additionally, intersex genital mutilation should be prohibited. This can be closely linked to Female genital mutilation and how harmful it can be.
- ii. Early Identification and Management: Early detection of intersex conditions is crucial to ensure appropriate medical intervention. This can involve hormonal or surgical procedures, but critically, these interventions should only be undertaken with the informed consent of the child when they reach the age of understanding, and prioritizing the child's well-being and future bodily autonomy.
- iii. Informed Consent and Decision-Making: Coercive or unnecessary medical interventions on intersex children are a violation of their bodily autonomy and human rights. Healthcare policies must emphasize informed consent, ensuring that any medical procedures are age-appropriate and presented with a clear understanding of the potential risks and benefits. The ultimate decision regarding medical interventions, when possible, should lie with the child when they reach the legal age of consent.

The NCP should advocate for measures to create a more welcoming and inclusive healthcare system for LGBTQIA+ children. This can involve:

- i. Sensitivity Training: Mandate sensitivity training for healthcare providers, including doctors, nurses, and other staff. This training should address:
 - a. *Understanding LGBTQIA+ identities and terminology.*
 - b. *Recognizing the specific healthcare needs of LGBTQIA+ children.*
 - c. *Providing culturally competent care that is respectful and confidential.*
- ii. Developing Inclusive Guidelines: Establish clear guidelines for healthcare providers on interacting with and treating LGBTQIA+ children effectively. These guidelines should address:
 - a. *Appropriate communication methods that avoid assumptions based on gender stereotypes.*

- b. *Ensuring confidentiality and respecting the privacy of LGBTQIA+ children and their families.*
- c. *Providing resources and referrals to relevant support services available within the community.*