Author’s response to reviews

Title: Human Rights Violations Among Sexual and Gender Minorities in Kathmandu, Nepal: A Qualitative Investigation

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Author’s response to reviews:

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To: BMC International Health and Human Rights

RE: MS

Dear Editors,

We are submitting the revised article “Human Rights Violations Among Sexual and Gender Minorities in Kathmandu, Nepal: A Qualitative Investigation” for kind consideration in the journal BMC International Health and Human Rights. We have revised the article in response to comments from the reviewers and believe that these have improved the content of the article.

Thank you for allowing us to submit our work to the journal.

Sincerely,

Sonal Singh MD, MPH

Editorial comments:

1) Please include a 'Competing interests' section between the Conclusions and Authors’ contributions. If there are none to declare, please write 'The authors declare that they have no competing interests'.

Author response: We have added this section

2) Please format and structure your manuscript correctly. Manuscript sections should include (in the following order): Abstract; Background; Methods; Results; Discussion; Conclusions; Abbreviations (if any); Competing interests; Authors' contributions; Acknowledgements; References; Figure legends (if any); Tables (if any); Description of Additional files (if any).

Author response: We have made these changes to the revised manuscript

3) Please ensure that your revised manuscript conforms to the journal style (http://www.biomedcentral.com/info/ifora/medicine_journals ). It is important that your files are correctly formatted.

Author response: We have made these changes to the revised manuscript.

Reviewer1

Major Compulsory Revisions:

1. There is considerable confusion in the use of the term “human rights violations.” In some cases the authors use the term to refer to participant’s reported experiences of abuse and discrimination, including teasing and social exclusion, by non-state actors. States have the duty to ensure rights i.e. respect, protect and fulfill rights. The state’s failure to ensure non-discrimination by non-state actors should be considered a human rights violation, but not the acts of discrimination and abuse by non-state actors. The manuscript should have a consistent definition of human rights, if not international human rights law, then the authors should clarify that they are referring to a participant-generated definition of rights; it is important not to conflate these two definitions. Similarly, the term “legal human rights violations” should be clarified simply as human rights violations if the authors are referring to violations of human rights law by states. “Legal human rights violations” is a contradiction in terms, i.e. violations which are legal.

Response: We have clarified that we refer to participant generated definitions of rights and their violations in the abstract and in the methods.

After obtaining written informed consent from each of the participants, written summaries of international human rights documents including the international covenant on civil and political rights and the international covenant on social, economic and cultural rights were provided to the participants in Nepalese. We also provided them a summary and tentative list of potential human rights violations developed by our community partners to initiate discussion. The participants were entrusted with generating and ranking a list of participant-generated human rights violations relevant to sexual and gender minorities in Nepal based on their experiences.
We have revised the term legal human rights violations to mean those that related to lack of access to

“Human Rights Violations due to Lack of Adequate Legal Protection “

Minor Essential Revisions:

2. Abstract and Methods Sections: Please provide additional information on the convenience sample referred to in the abstract and methods sections. Who was invited to participate and how were they invited? Please include in the limitation section any additional bias related to sampling. Also please specify the number of each category of participant, i.e. MSM, third gender and transgender.

Author response: We have clarified the selection of participants but did not collect participant demographic data to ensure confidentiality-

Over 3 consecutive days in September 2009, our local community partners from the Blue Diamond Society, an organization for sexual and gender minorities in Nepal, telephonically invited a convenience sample of 10 men who have sex with men, third genders and transgender people from the tri-city metropolitan area of Kathmandu to participate in daily discussion group sessions ( n=30). Participants were chosen purposively to represent socio-economic and geographic areas of Kathmandu. The participants were informed that their discussion would inform the development of a health and human rights scale for men who have sex with men and third gender people. In order to maintain the confidentiality and anonymity of our participants we did not collect individual demographic or data related to sexual behaviour or identity on the participants.

3. Page 4, Para 2: Please indicate which human rights summaries and documents were shared with the participants. Also, it would be helpful to clarify whether the participants were asked to generate and rank a list of human rights violations based on their experiences or on their perceptions. The ranking of importance of reported “human rights violations” implies the former, but this should be clarified.

Author response: We have clarified the documents that were provided and clarified that participants were asked to generate and rank a list based on their experiences. See our response to previous comment # 1 by reviewer 1.

4. Page 5, Para 2: It is not clear what is meant by “subtle shifts in focus. Please clarify.

Author response: We have clarified this-

Each focus group discussion was followed by a debriefing session among the investigator team in the afternoon to ensure that those examples of rights violations that had not been discussed earlier were explored on the next day.

5. Results Section: As mentioned above the headings should be reconsidered
and reflect a consistent and accurate definition of human rights violations. The section “What are Human Rights Violations” implies that participants were asked their opinions on what human rights are and violations thereof. How does this related to the distribution of human rights summaries and documents to the participants. Were the participants asked to report and rank human rights violations as they defined them or as defined in international instruments?

Author response: The distribution of documents was to serve as a starting point for the discussion. However the reporting and ranking of human rights violations was defined by the participants. See our response to previous comment # 1 by reviewer 1.

6. Results Section: Again reports of teasing, being shunned, excluded from cultural ceremonies, and cursed are not human rights violations in international human rights law.

We agree and have clarified that the purpose of the study was not limited to rights violations as described in international human rights law. We wanted to explore the full range of participant reported human rights violations that would inform a quantitative human rights scale.

Our objective was to identify a range of human rights that are enshrined in international law and/or are commonly reported by sexual and gender minority participants, in Kathmandu to be nonprotected or violated.

Discretionary Revisions:

7. Page 5, Para 3, Sentence 2: Please include the number of participants in for each category of sexual and gender minority listed.

Author response: Unfortunately, in order to maintain the confidentiality and anonymity of our participants we did not collect individual demographic or data related to sexual behaviour on those participants.

In order to maintain the confidentiality and anonymity of our participants we did not collect individual demographic or data related to sexual behaviour or identity on those participants.”


Author response: We have modified the discussion to incorporate these changes and discussion of these findings in the context of international and domestic laws in Nepal.

“The findings should be interpreted in the context of international human rights norms. Nepal has ratified the Convention on Civil and Political Rights, and is also a party to the International Covenant on Economic, Social and Cultural
Participant reported human rights violations such as discrimination against sexual and gender minorities by non-state actors, are not explicitly guaranteed under the traditional concept of international human rights norms for which state actors are held responsible. However, the state has an obligation to protect people from violence, including those committed by non-state actors. These acts of discrimination should also be interpreted in the broader context of human duties as reflected in the preamble to the International Covenant on Civil and Political Rights—“Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.” Such a broad context of international human rights norms allows one to arrive at a comprehensive understanding of the spectrum of human rights violations experienced by sexual and gender minorities in Kathmandu.

These findings also need to be interpreted in the context of local laws in Nepal. Nepal’s existing civil code of law (Mulki Ain) defines rape as “vaginal penetration”, thus providing very little legal recourse for men who have sex with men who experience acts of rape. The legal ambiguity around the prohibition of “unnatural sex” was being used to imprison men who have sex with men in Nepal. In 2007 the Supreme Court of Nepal ended the legal ambiguity by calling sexual and gender minorities’ natural people, therefore ending the potential for the use of the “unnatural sex” clause to be used against sexual and gender minorities. It also issued a decree to issue citizenship certificates with appropriate categorization of gender identity, including a self-identified “third gender.” Although various ministries have expressed support of implementing this third gender category on the national citizenship identification card, the practical realization of these rights has remained difficult due to the lack of implementation and accountability. More recently in 2011 the census in Nepal allowed citizens to identify as male, female, or third gender. The impact of the census was limited, however, because it failed to record third gender citizens along with other meaningful data sets, and there were widespread reports of discrimination during the enumeration. Nonetheless, these changes in the legal environment may have created more awareness which might be partly responsible for the forthright descriptions of personal experiences seen in our study.

9. Page 12, Para 2: Can “legal rights violations” be clarified? Were the participants referring to legal protections against discrimination and/or provisions to ensure equality before the law? Again, it is confusing to make a distinction between “human rights” and “legal rights.”

Author response: We have revised the term legal human rights violations to mean those that related to lack of access to legal protections for sexual and gender minorities.

10. Discussion, Page 12: Consider adding discussion on the relationship between acts of discrimination by non-state actors and human rights violations by
state actors, including acts of commission and omission. As you may know, human rights law makes some mention of individual duties to respect the rights of other. The idea of individual duties is included in the Preamble of both the ICCPR and ICESCR: “Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.” It would be interesting to discuss the problem of discrimination and violence against gender and sexual minorities from a human duties point of view.

Author response: We have added this. See our response to Reviewer 1, Comment # 8

11. Page 13, Para 2, Sentences 1 & 2: Please explain the “decriminalization of homosexuality” and “change in the legal environment” that is referred to.

Author response: We have added this. See our response to Reviewer 1, Comment # 8

12. Page 13, Para 3: Perhaps it would be helpful to refer to the principles of interdependence and indivisibility of rights in discussing participants’ ranking of importance.

We have added this

Although human rights are also interdependent and indivisible, we purposefully asked participants to rank various human rights violations to understand the relative importance of these violations on their daily lives.

Reviewer 2

Major compulsory revisions

1. Key references are absent in the Background.

Baral S et al. (2007) showed elevated risk for HIV infection among men who have sex with men in Nepal.

Human Rights Watch in its report “Nepal: Maoists should end anti-gay violence (2007)” indicated [0] that there are numerous reports of law enforcement committing brutal violence against Metis in Nepal because they are visible target in society by their feminine gender presentation.


Please update the reference 5 as Wilson E et al. (2011) has published the article. They mentioned that the primary perpetrators of violence towards Metis are law enforcement officers, and the rape by the law enforcement officers increased the HIV risk for Metis.
There have been anecdotal reports of human rights violations among sexual and gender minorities in Nepal. \cite{5,6,7} Violence towards Metis (cross-dressing effeminate males) by law enforcement officers, including rape, have been reported, and metis may be potentially targeted because of their feminine gender presentation. \cite{5} These reports, however, have usually been secondary accounts of sporadic incidents.

2. Research relevance:

I would suggest a separate paragraph for the Conclusion at the end of manuscript. It will be helpful to elaborate the research relevance to existing literature and policy makers both in the Background and Conclusion.

Author response: We have added a conclusion section and elaborated on the relevant literature in the background. See our response to reviewer 2, comment #1 above and conclusions below.

Despite these limitations, our findings have potential policy and research implications. Our research indicates that sexual and gender minorities in Nepal experienced a wide range of human rights violations. Future efforts should enroll a larger and more systematic sample of participants to determine frequency, timing, and/or intensity of exposure to rights violations, and estimate the population-based impact of these rights violations on specific health outcomes. Such efforts will inform interventions to reduce exposure to violations or the risk of subsequent adverse physical and mental health outcomes.

3. Study method

The expression of term needs to be consistent. In the first paragraph of Method, authors stated that they invited a convenience sample of 10 MSM, third genders and transgender individuals to participate in the study. Author used “Metis” (cross-dressing effeminate males) instead of “transgender” in the first paragraph of Results and “Hijra” (males who adapt feminine gender identity) in the quote in the page 8, as well as “TG” in the section of Discussion. Some literature indicates that “Metis” can also refer to third gender individuals in Nepal. Authors therefore should clearly define “Metis” in the section of Method in this study and include all the local terms referred to “Metis” and used by the participants in the study.

Author response: The description of terminology for sexual and gender minorities in Nepal has been added to the description of terminology section.

Men who have sex with men (MSM); men who have sex with men and third genders (MSM/TG); People Living with HIV/AIDS (PLWHA).

The description of terminology for sexual and gender minorities in Nepal is as below.
- Metis, singarus or kothis are effeminate homosexual men.

- Dohoris are gay or bisexual men who do not necessarily present as feminine

- Tas are the sexual partners of metis and dohoris who see themselves as
  masculine and mostly act like heterosexual males.

- Hijras (sometimes called eunuchs) are those who are born biologically male and
  wish to be female, and some undergo castration and join the hijra community, a
  traditional religious sect.

- Third gender- is a term used in Nepal to describe: people who are biological
  males who have "feminine" gender identity/expression and/or people who are
  biological females who have "masculine" gender identity/expression.

4. In the abstract, authors mentioned that the data was analysed independently
and cross checked by another investigator but gave an unclear message in the
main text. Authors wrote in the page 4 that two investigators (SS and MB) 
facilitated the discussion while SP maintained a running list of specific right
violations generated in the discussion. In the page 5, “two experience note takes
made notes and translated them into English. Data was transcribed by SS and
MB and content analysis was used”. Do authors mean that SS and MB facilitate
the discussion, transcribe and analyse data and cross-check the results of each
other?

Author response : We have further clarified this

Two additional experienced note takers (n= 6 note takers) made daily notes in
Nepali and translated them into English. SS and MB used content analyses in
examining the data.12 Themes derived from the focus group discussions were
grouped into categories: 1) a general category denoting broad description of
participant generated listing of human rights violations; 2) location-specific
categories including within-household, in educational settings, at the workplace,
in public places representing the life-course of these participants from more
private to more public settings and; 3) context specific categories including
violations at the hands of the authorities and violations due to the lack of
adequate legal protections.

5. More details are needed about the approach to the content analysis. How
were the themes emerging from the group discussion? Authors need to further
clarify “location-specific category”, particularly around the overlapping notions of
“public places” and educational and health care settings, as well as workplace.

Author response: We have further clarified this. We clarify in the limitations that
such categories may be arbitrary and are potentially overlapping. However we
intended to describe findings from within the home to public places to mirror the
trajectory of participant’s lives. See our response to reviewer 2, comment #4.
6. Characterization of study sample: The social demographic data presented at the first paragraph of the Results are unclear. It will be helpful to provide a summary statistics of study population in the table. For example, what is the composition of ethnic groups, what are their incomes and education level, occupations and residential status, how many of them are married and how many stay alone, etc.? How many are local residents and how many are migrant workers?

Author response: See our response to reviewer 1, comment #2

7. Discussion In Nepal abuse or violence within the family might have been placed outside of the conceptual framework of human rights. I would suggest the authors add a paragraph about structural violence and human rights violations and refer to the aspects of culture in Nepal that is used to justify or legitimize direct or structural violence and that make the human rights violations against sexual and gender minority acceptable in the society.

Author response: We have expanded this in the discussion below-

These findings should also be interpreted in the context of diverse socio-cultural landscape of Nepal. Some have argued that participant-reported abuse or violence within the family noted in this study fall outside the scope of human rights. Because Nepal is a relatively conservative society, traditional marriage between a man and a woman and subsequent child-raising are still considered essential for maintaining one’s social standing in Nepal, which was until a few years ago an official Hindu state. Any deviation from heterosexuality, explained one of our participants, may be viewed as a Western influence. The exclusion of sexual and gender minorities from cultural events could also reflect an effort on the part of the majority to preserve the traditional “social order” and a form of structural violence. This exclusion appears to hamper the ability of sexual and gender minorities to fully exercise their rights of social participation. This social arrangement may ultimately serve to justify or legitimize acts of violence against sexual and gender minorities, and also confer social acceptability on these acts.

8. Authors compared the experience of MSM/TG in Nepal with the MSMs in other continents. The third gender individuals are often classified as the MSM in such studies. When it comes to human rights violations in the healthcare sector and their mental health consequences, it seems that the third gender individuals in this study addressed their specific concern over their bodies and identities. It merits a discussion on whether such classification is appropriate as the risk of sexual harassment/abuse/attack could be higher for the third gender individual compared to the MSM due to their distinctive physical difference and expressed gender identity.

Author response: We have expanded this in the discussion below

One should be careful in distinguishing the experiences of men who have sex with men who do not identify as third gender with those of people who do identify
as third gender, although some studies may have evaluated them together. Some participants in our study, particularly third genders expressed concerns about their physical appearance which made them vulnerable to human rights violations. This is similar to the evidence from other settings such as Brazil that feminine appearing men who have sex with men may be at higher risk of violence due to their distinctive physical difference and expressed gender identity (personal communication- Professor Chris Beyrer, Center for Public Health and Human Rights).

8. It is recommended that the authors clarify to the readers why they did not use the standardized questionnaire assessing the mental health consequences such as depression, anxiety, suicide attempts or health-related quality of life.

Author response: Since this was a qualitative study we did not assess the mental health consequences of exposure to human rights violations using a standardized questionnaire. This will be the goal of the quantitative phase of the study.

9. Format When it comes to an abbreviation of a term such as MSM/TG in the text and PLWHA in the figure 1, the term should be spelled out in full on its first appearance in the text or in the figures followed by the abbreviation in parentheses. The numbers one through nine should be spelled out as well unless they are used as a unit of measurement in the body of manuscript.

Author response: We have clarified the abbreviations used.