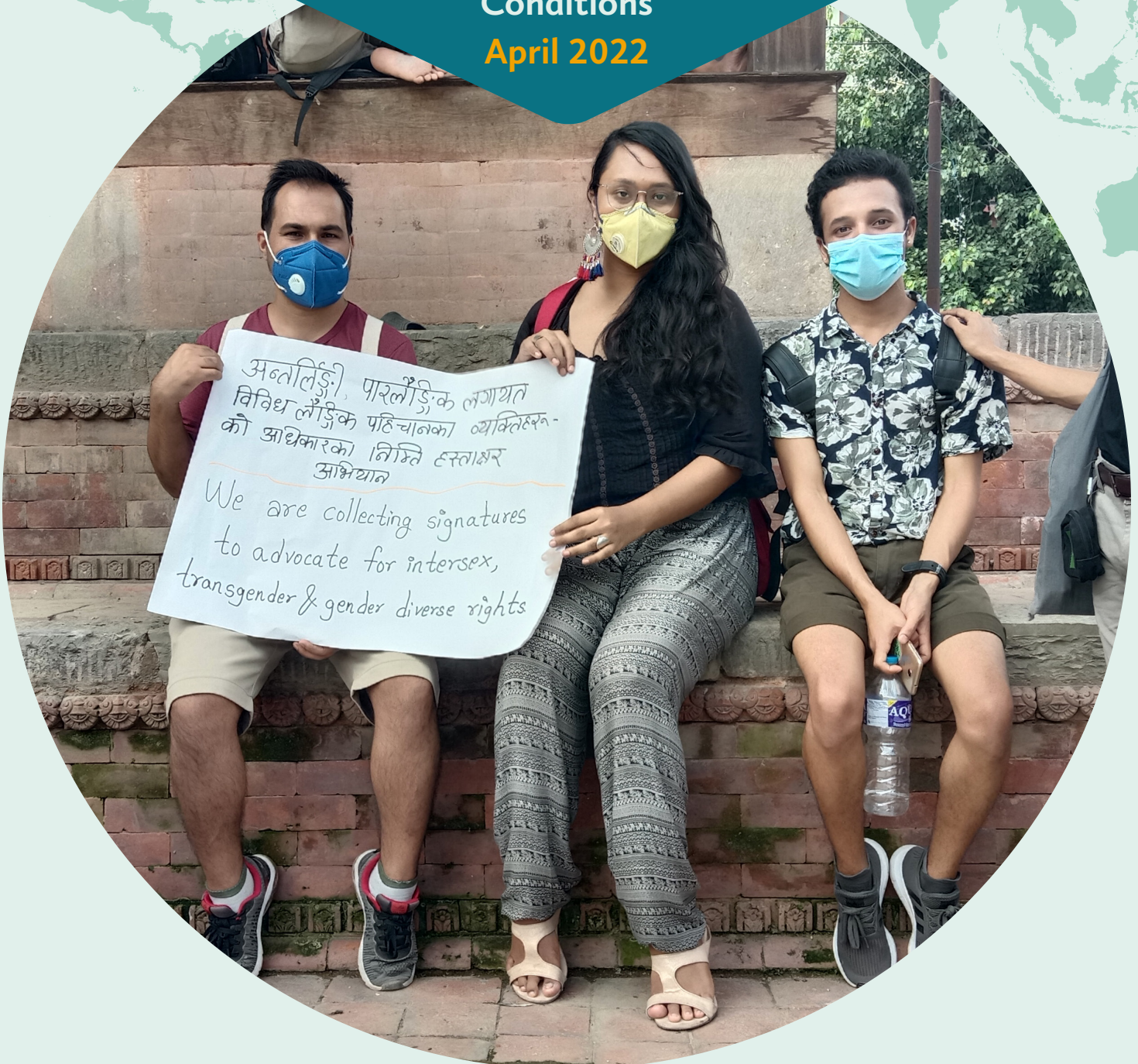


Nepal

LGBTQI

Landscape Analysis of Political,
Economic, and Social
Conditions

April 2022



ASTRAEA LESBIAN FOUNDATION FOR JUSTICE



Nepal LGBTQI Landscape Analysis of Political, Economic, and Social Conditions

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Executive Summary

Building on Astraea’s 2015 case study, this landscape report provides an overview of progress and challenges in advancing the rights of LGBTQI+ people in Nepal, and the complexities and priorities of LGBTQI+ movements in the country.¹ From recognition of a “third gender” to constitutional rights and non-discrimination guarantees for gender and sexual minorities, Nepal’s achievements are unique in the region. At the forefront of these developments are non-governmental and community-based organizations that continue to shape and reshape Nepal’s queer movements.

Unlike its neighboring countries, Nepal does not have a legacy of British colonial rule and therefore did not inherit a penal code criminalizing same-sex acts. In fact, Nepal became the first country in the region to offer protections to the LGBTQI+ community after a landmark 2007 Supreme Court ruling.² The court ordered the government to ensure that people of different gender identities and sexual orientations could enjoy their rights without discrimination; enjoined the creation of a legally recognized third gender category; and dictated that a committee be established to study same-sex marriage. In 2015, Nepal’s democratic transition entered a new phase with the promulgation of a new constitution that enshrined protections for LGBTQI+ communities.

Despite these successes, LGBTQI+ communities still contend with deeply patriarchal systems, unequal treatment before the law, as well as violence and discrimination. Requirements for legal gender recognition are onerous and degrading, and force people to choose a category of “other” gender. A 2020 proposal to amend

Nepal’s Citizenship Act requires those seeking the “other” marker to provide medical and surgical proof of gender reassignment. Nepal’s Civil Code does not recognize same-sex marriage.

LGBTQI+ rights movements gathered pace in Nepal in the late 1990s to early 2000s and were fused with the country’s movements for democratic rights in which queer communities played active roles. While early organizing spaces and networks emerged in connection to HIV and AIDS programs and primarily centered gay men and trans women, there has been a flourishing of newer organizations attuned to the various interests and demands of Nepal’s diverse queer communities. Reflective of the country’s many pluralities, their interests intersect with and vary based on class, caste, religion, geographic location, and other factors. Unlike countries where homosexuality is criminalized, Nepali organizations, networks, and collectives can openly organize, allowing them to build long-term partnerships with like-minded organizations and create coalitions around specific demands.

Nepal’s LGBTQI+ movements continue to organize for policy, legal, and regulatory changes, primarily because legal protections on paper have not translated into structural, systemic changes. Current laws are not comprehensive enough to guarantee rights, and there are discrepancies and confusion in their application. A 2020 *National Charter of Demands on Legal Recognition of Gender Identity* created by queer activists and organizations calls for ending the use of the “other” gender category, simplifying official processes, and removing barriers so that individuals can change their gender marker and name on the basis of self-identification and self-determination.³ While same-sex marriage recognition remains an advocacy priority, activists are calling for a more complex understanding of marriage as an institution. Alongside these demands, LGBTQI+ organizations are pursuing physical and mental health programs, and expansion of education and employment opportunities for queer communities.

1 For the purposes of this report, LGBTQI+ and queer are used interchangeably while acknowledging that these terms are insufficient to capture the diversity of Nepal’s communities, whose members may identify as one or more culturally and regionally specific identities. More information is in the Box: Diverse and shifting terms and identities.

2 International Commission of Jurists (2017, December 21). Nepal: Implement Supreme Court Ruling on Protecting the Rights of LGBTI Persons. Retrieved from <https://www.icj.org/nepal-implement-supreme-court-ruling-on-protecting-the-rights-of-lgbti-persons/>

3 Youth Voices Count (2020, May 19). National Charter of Demands Legal Recognition of Gender Identity. Retrieved from <https://yvc-asiapacific.org/2020/05/19/national-charter-of-demands-on-legal-recognition-of-gender-identity>



Photo Credit: Getty Images Plus / Abhishek Kumar Sah

In the words of grassroots activists, Nepal cannot rest on praise from the international community promoting it as a bastion of progress on LGBTQI+ rights when the country has a long way to go in achieving widespread and sustained progress. There is a growing field of engagement and approaches around LGBTQI+ issues in Nepal, with organizations balancing short- and long-term priorities

with emerging needs and available resources. In supporting this work, funders should understand the diversities within LGBTQI+ communities as they advocate for their interests, and any meaningful progress must reflect those multiplicities.

Introduction

Building on Astraea’s previous Nepal case study, *Bridges to Justice*, this report presents a snapshot of Nepal’s LGBTQI+ movements in the recent decade.⁴ It examines contemporary issues surrounding movement building and the achievement of LGBTQI+ rights in a rapidly changing social and political context.

Nepal’s democratic transition entered a new phase with the promulgation of a new constitution in 2015. In the last two decades, LGBTQI+ advocacy and movements have also gathered pace in the country. From recognition of a “third gender” to constitutional rights, Nepal’s achievements are unique in the region. At the forefront of these developments are non-governmental (NGOs) and community-based organizations (CBOs) that continue to shape and reshape Nepal’s queer movements.

However, most activists and advocates observe that meaningful progress has been slow. Constitutional guarantees continue to run up against deep-seated structural biases. As the previous Astraea report noted, “While the LGBTI rights movement in Nepal inarguably advanced public debate, understanding, and acceptance of non-heterosexual and gender non-conforming people, a powerful system of patriarchy pervades formal and informal systems and tinges many interactions from high politics to daily life.” The gender marker options in use by government and various institutions include “other,” which flattens fluidities and identities, and “third gender,” which restricts people from choosing female or male if they wish to. Incidents of violence and discrimination against gender non-conforming people and sexual minorities are regularly reported. There are also divergences and debates

within LGBTQI+ communities about movement building strategies, goals and tactics, and disparities within the community which require further examination.

Compared to the situation in neighboring countries, Nepal’s LGBTQI+ movement is in a better position, starting off without statutory hurdles of Section 377. Nepal’s democratic movement included LGBTQI+ participation. Constitutional protections opened up spaces for further organizing and movement building, and more local and international resources. Successes, however, are belied by continued and prevailing narrative of violence against the LGBTQI+ community, compelling a number of interviewees to ask: *If indeed Nepal is a success story, then why are reports of violence and victimization still the leading stories?* Reasons include entrenched societal and institutional discrimination, shifting government priorities and a move towards repressive policies, and disparities and hierarchies within the LGBTQI+ community connected to caste, class, religion and ethnicity.

A note on methodology

This report is based on qualitative research, including semi-structured interviews with LGBTQI+ organizations and organizations that work closely with these communities, as well as secondary research. Names of interviewees were withheld where requested.

4 Knight, K. (2015). *Bridges to Justice: Case Study of LGBTI Rights in Nepal*. Astraea Lesbian Foundation for Justice. Retrieved from <http://www.astraeafoundation.org/uploads/files/Astraea%20Nepal%20Case%20Study.pdf>

Diverse and shifting terms and identities

To understand Nepal's diverse LGBTQI+ communities is to recognize the inadequacy of umbrella terms. Historical, cultural, and religious factors have shaped the formation of local and regionally-specific terms and identities. This report uses the term "LGBTQI+" as a recognition of that heterogeneity while acknowledging that it still fails to fully capture it.

As in other South Asian countries, gender nonconforming communities in Nepal have diverse local identifications such as *meti*, *kothi*, *hijra*, *ghade*, *maibabu*, *fulumulu folok*, and *molok* which have "their own distinct society, community, communal space of living, lifestyle, culture, rituals, values and norms, social systems and processes, and sometimes even a dialect of their own."⁵ There are also specificities regarding how and where local terms are used: *meti*, for example, widely encompasses various gendered and sexual practices and is used in the hill areas, while other terms are used in the western hills and in the Terai areas.⁶ Many who identify as one or more of the culturally and regionally-specific gender identities such as *meti*, *kothi*, or *ghade* will find it difficult to fit into any of the LGBTQI markers. There are also an array of sexual practices and identities that are not easily communicated through these classifications.

"Queer" is not as prevalent or popular a term in Nepal. Although specific identities like lesbian, gay, bisexual and trans are certainly in use, they are not easily translated into Nepali and other local and indigenous languages. Even a local translation of "gender" to *lingya* in Nepali is imperfect and insufficient as it leans more towards a biological understanding. Many indigenous terms and cultural contexts were consolidated under "third gender" or *tesro lingi* but their understanding and use remains variable.⁷ Some have argued that a well-rounded understanding of *tesro lingi* would align it to cosmological and philosophical readings of "third space" of sexuality and gender, and that its conflation with the term "transgender" is limiting.⁸

On the other hand, global terms like transgender can facilitate access and legitimacy (including access to transnational networks and funding) and distance from stigmatized and pejorative local terms. The use of some terms but not others may be an explicit advocacy strategy for Nepali LGBTQI+ groups, for example, as legal categories depend on a degree of legibility. Outside of NGO circles, terms like third gender or *tesro lingi* are not as widely used.

5 Youth Voices Count (2020, May 19). National Charter of Demands Legal Recognition of Gender Identity. Retrieved from <https://yvc-asiapacific.org/2020/05/19/national-charter-of-demands-on-legal-recognition-of-gender-identity/>

6 Caviglia, L. (2019, August 19). Doing Sex Right in Nepal: Language and Sexed/Gendered Expectations. E-International Relations. Retrieved from <https://www.e-ir.info/pdf/79100>

7 Ibid.

8 Ibid.

Country Background

Nepal is a multi-ethnic country with 126 castes or ethnic groups speaking as many as 123 languages.⁹ Ninety percent of these languages are spoken by *Adivasi Janajati* (indigenous nationalities). According to official estimates, they make up almost 36 percent of the country’s population, however, indigenous groups claim that the proportion could be as high as fifty percent.¹⁰ Nepal’s LGBTQI+ community reflects these diversities—indigenous, Muslim, and Dalit among them. While there are no official estimates, the LGBTQI+ rights group Blue Diamond Society (BDS), at one point suggested that 900,000 out of Nepal’s total population of 29 million identify as a sexual minority.¹¹

After a ten-year armed conflict and Maoist rebellion, a central demand of which was an end to the monarchy and establishment of a people’s republic, a comprehensive peace accord was signed between the government of Nepal and the Unified Communist Party of Nepal in 2006. In the lead up to the peace treaty, calls for a “New Nepal” intensified with growing protests. Known as *Jana Andolan II* (people’s movement), the demonstrations, though sparked by a coalition of political parties, gained their own citizen-driven momentum. In 2008, the monarchy was abolished by Nepal’s first Constituent Assembly as it transitioned to a federal state structure.

9 Central Bureau of Statistics (CBS). Government of Nepal. National Population and Housing Census 2011. Retrieved from: <https://unstats.un.org/unsd/demographic-social/census/documents/Nepal/Nepal-Census-2011-Vol1.pdf>

10 Central Bureau of Statistics (CBS). Government of Nepal. Retrieved from <https://cbs.gov.np/>. CBS makes daily population projections.

11 Global Press Journal. (2014, December 3). In Nepal, Transgender People Spend Hefty Sums, Risk Health Problems to Manifest Their Gender Identities. Retrieved from: <https://globalpressjournal.com/asia/nepal/in-nepal-transsexuals-spend-hefty-sums-risk-health-problems-to-manifest-their-gender-identities/>

LGBTQI+ advocacy had been growing in Nepal since the 1990s. During protests for democratic rights in 2006, LGBTQI+ groups and individuals had an organized presence with aspirations to participate in the New Nepal political process. As BDS President Pinky Gurung explained, the passage from monarchy to a republic provided a comparatively *halka mahol* (democratic environment) for people working on issues considered previously taboo in the public sphere and created further openings for LGBTQI+ advocacy, including participation of BDS founder Sunil Babu Pant as the first gay parliamentarian in the first Constituent Assembly in 2008.¹²

The path to this success was hard-fought. As the movement for democratic rights gained momentum, state repression and harassment intensified, including against LGBTQI+ communities. In 2004, a law student filed a case with the Supreme Court demanding that the government disband BDS because the organization’s activities fell under the bestiality/unnatural sexual intercourse clause” of Nepal’s Civil Code (*Muluki Ain*) of 1963. Although Nepal had no laws expressly criminalizing homosexuality, the vagueness of the Civil Code regarding “unnatural sex” did not help. When the Supreme Court rejected the initial petition, the petitioner refiled the case. This compelled LGBTQI+ activists to drum up local and international support, drawing attention to violence and discrimination against LGBTQI+ people—and finally submitting a petition themselves to the Court to end the government’s discriminatory policies and practices related to sexual orientation and gender identity and clear lingering legal ambiguities. This petition led to the Supreme Court’s groundbreaking ruling in 2007.

12 Gurung, P. (2020, December 15). Blue Diamond Society. Personal interview.

Life for LGBTQI+ People in Nepal

Nepal's LGBTQI+ communities face stigma, discrimination and marginalization. This may be exacerbated by their respective class, indigenous, caste or other positions and the extent to which they can evade disclosure of those identities.

A 2018 report, *Discrimination and Violence against Lesbian and Bisexual Women and Transgender Persons in Nepal*, submitted by BDS for consideration at a working group session of the Committee on the Elimination of Discrimination against Women (CEDAW), outlines how family controls over “women’s sexuality, mobility, and access to resources” particularly harms lesbian, bisexual, and trans people.¹³ Family and kinship ties—embedded in caste, ethnic, and religious affiliations—dictate a person’s access to resources and opportunities such as education, employment, and basic needs, such as food and housing. Among women who already face restrictions on their mobility, those who do not conform to heteronormative expectations are systematically shut out of accessing resources or else disciplined for stepping out of line.

Education

The Education Board-approved syllabus includes the subject, “Health and Physical Education” for grades six through eight. It covers sexual and reproductive health with segments on same-sex attraction, transgender issues, and sexual health awareness.¹⁴ However, the government’s primary policy document on education, the School Sector Reform Plan has no mention of LGBTQI+ issues or sexual orientation and gender identity (SOGI).

¹³ Blue Diamond Society (2018). Shadow Report: Discrimination and Violence against Lesbian and Bisexual Women and Transgender Persons in Nepal. Retrieved from https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/NPL/INT_CEDAW_NGO_NPL_30008_E.pdf

¹⁴ UNDP, USAID (2014). Being LGBT in Asia: Nepal Country Report. Retrieved from https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf



Photo credit: Body & Data

A 2013 survey by the Williams Institute and BDS of nearly 1,200 LGBTQI+ community members found that rates of literacy and educational attainment among respondents were overall higher than national rates in Nepal, with higher levels among younger respondents.¹⁵ However, the same survey showed that those who identified as “third gender assigned male at birth” had proportionally lower rates of educational attainment and literacy compared to other respondent groups.

LGBTQI+ students report homophobic and transphobic bullying, discriminatory attitudes of teachers and a lack of responsiveness by school officials, inflexible school uniform policies affecting trans students, and poor mental health support.¹⁶ BDS developed toolkits for teachers on SOGI sensitivity and conducted training programs in schools across the country, but such programs need to be scaled up and ongoing.

¹⁵ UNDP, Williams Institute (2014). Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach. Retrieved from <https://williamsinstitute.law.ucla.edu/publications/survey-sgm-nepal/>

¹⁶ UNDP, USAID (2014). Being LGBT in Asia: Nepal Country Report. Retrieved from https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf

Health

LGBTQI+ people report being discriminated against at healthcare facilities and encountering barriers in accessing care. Physicians frequently ask unnecessary and intrusive questions and do not follow ethical practices. According to the 2013 survey referenced above, those who identify as third gender are more likely to be denied health services. With the lack of systems of care catering to their needs, lesbian and bisexual women, and transgender men also tend to use preventive health services less frequently than heterosexual women.¹⁷ Healthcare professionals sometimes administer “hormone treatments for financial gain without explaining the consequences to their patients” leaving many trans individuals taking hormone supplements with little knowledge of potential side effects and very little to no mental health counselling before, during, or post transition.¹⁸

While HIV prevalence rates in Nepal’s total population are low and have decreased in recent years—particularly through targeted prevention programs and availability of antiretroviral therapy (ART)—the rates among men who have sex with men (MSM) and transgender/third gender women are higher.^{19,20} LGBTQI+ people with HIV-positive status have reported denial of services at healthcare facilities.²¹ They also report that LGBTQI+-friendly HIV prevention, education, testing, counselling drop-in centers operated by LGBTQI+ organizations are more effective than government-run facilities.

17 Ibid.

18 Ibid.

19 Xinhua (2020, December 1). HIV Prevalence Rate Steadily Decreases in Nepal. Retrieved from http://www.xinhuanet.com/english/2020-12/01/c_139556430.htm

20 The government of Nepal now disaggregates these groups to better understand infection rates among different subgroups. “The ‘MSM/ TG’ group has been disaggregated into four groups: TG SW [transgender sex workers], MSW [male sex workers], TG [transgender women], and high-risk MSM.”

21 UNDP, Williams Institute (2014). Surveying Nepal’s Sexual and Gender Minorities: An Inclusive Approach. Retrieved from <https://williamsinstitute.law.ucla.edu/publications/survey-sgm-nepal/>

Employment and economic status

Employment and income often intersect with class, caste, and educational attainment, but for LGBTQI+ people, these factors are complicated by disclosure of their identity. Workplace harassment and discrimination are widespread for openly LGBTQI+ individuals and they face difficulty in securing employment. An interviewee with Campaign for Change, an organization working to improve the situation of intersex people in Nepal, recalled being asked at a job interview, “If we give you the job, what will people say?”. Those who can hide their identities and are not recognized by their outward appearance, may have greater access to employment, but have to contend with the mental pressures of maintaining privacy and potential risks of exposure. The administrative hurdles and complexities trans individuals face in securing citizenship cards adds to their difficulties, as most workplaces require citizenship documents for employment.²²

Because of workplace discrimination and a lack of employment opportunities and job protections, sex work is the only viable source of income for some LGBTQI+ people, especially trans individuals. Because sex work is illegal in Nepal, sex workers are exposed to threats, harassment, police brutality, and other risks to their health and safety.

Media

Progressive print media in Nepal regularly publish reports and opinion pieces on LGBTQI+ issues. Since radio is a popular medium in Nepal, LGBTQI+ organizations such as BDS have produced SOGI-themed educational programs, and other community radios have produced similar programming. Though these are positive developments, LGBTQI+ advocates and activists argued in multiple interviews that more consistent and careful reporting is needed, pointing to frequent sensational, irresponsible, and stereotypical portrayals and coverage. They also argue the media has a tendency to feature high-profile, attention-grabbing stories or just a handful of legal “wins” instead of in-depth, consistent, and sensitive reporting.

22 UNDP, USAID (2014). Being LGBT in Asia: Nepal Country Report. Retrieved from https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Nepal_Country_Report.pdf

Effects of COVID-19 Pandemic

In a country that relies heavily on tourism, Nepal's economy has suffered because of the pandemic. Those hardest hit have been people who are self-employed or precariously employed, including those in the informal labor sectors, especially in urban areas. This includes LGBTQI+ people already vulnerable to discriminatory employment practices, many of whom depend on informal sectors for survival. As a representative of Unity for Change, an organization that works with young lesbian and bisexual women and trans men, noted: "There are fewer work opportunities available to us, but the pandemic took the jobs. So, at the beginning of the lockdown, people were out of money, cooking gas, daily needs, hormones, sanitary napkins."²³ The financial burden has further deepened for those with others to support. Many LGBTQI+ individuals could not return to families that had abandoned them in the first place. The government's support for the LGBTQI+ community has been inadequate and complicated by the documentation initially required to access this relief.²⁴ According to a Terai-based LGBTQI+ organizer, the government's efforts to gather information were undercut by its limited understanding of the community, generalizing everyone into the

23 Representative from Unity for Change (December 19, 2020). Personal interview.

24 Mitini Nepal website. Government Aid & MN Action. Retrieved from: <https://mitininepal.org.np/government-aid-mn-lobby-action/>

"other" classification. As she explained, the National Human Rights Commission (NHRC) reported on how the pandemic has hit the community, where they dealt with every LGBTI person as an 'other.' If NHRC's report could not dissect the terms, you can imagine what would happen, because the report will be a reference for making nationwide plans for the community."²⁵ LGBTQI+ and feminist groups further developed a charter of demands, initially put together by UN Women Nepal, to highlight the government response needed.²⁶ Mitini Nepal, in partnership with other civil society groups, approached government departments, including the Ministry of Women, Children and Welfare, to implement the demands. The Supreme Court of Nepal later stated that citizenship or other legal documents would not be required to get relief packages from the government. Despite this order, LGBTQI+ people were able to access only minimal government support. Community-based fundraising efforts have helped some in dire need, but have stretched the capacity of already burdened organizations.

25 Organizer from Terai (2021, January 16). Personal interview.

26 Feminist and Queer Charter of Demands in Response to COVID-19 in Nepal. Retrieved from: <https://www.covid19nepal.support/wp-content/uploads/2020/05/Feminist-and-Queer-Charter-of-Demands-PDF.pdf>

Legal Protections for LGBTQI+ People

Nepal was not part of the British colonial rule spanning much of South Asia and beyond. As a result, it did not inherit Section 377 of the British Colonial Penal Code, which criminalized homosexual acts.

In 2007, Nepal became the first country in the region to offer protections to the LGBTQI+ community. In response to a petition filed by BDS, Mitini Nepal, Cruse AIDS Nepal, and Parichaya Nepal, the Supreme Court of Nepal ordered the government to end discriminatory practices against LGBTQI+ individuals.²⁷ Specifically, the Supreme Court dictated that a committee be established to study same-sex marriage; enjoined the creation of a legally-recognized third gender category; and ordered the abolition of all Nepali laws that discriminated on the basis of sexual orientation or gender identity. Notably, the court established self-determination or “self-feeling” as the only criterion for acquiring documents bearing a third gender.

Pursuant to the court’s judgment and advocacy by activists, other changes followed. In 2010, Nepal’s Election Commission added an option for voters to register as “third gender.” In 2011, Nepal became the first country to add a “third gender” category to its national census. In 2013, the Supreme Court ordered the Ministry of Foreign Affairs to issue passports in three genders; two years later, Nepal authorized passports to include an “O” as an “other” option.

Also in 2015, after several years of consultations, including members of the LGBTQI+ community, the new post-monarchy constitution went into effect. Nepal’s constitutional protections for LGBTQI+ communities are enshrined in the following articles:

Article 12 requires citizenship certificates to include “gender identity.”

Article 18 guarantees equal rights to all citizens and says that the government may make special provisions through laws to protect, empower, and advance the rights of “gender and sexual minorities” among other marginalized and minority groups.

27 National Judicial Academy Law Journal, NJA Law Journal Volume 2 (2008). Retrieved from: <https://www.icj.org/wp-content/uploads/2012/07/Sunil-Babu-Pant-and-Others-v.-Nepal-Government-and-Others-Supreme-Court-of-Nepal.pdf>

Article 42 lists “gender and sexual minorities” among the groups that have a right to participate in state mechanisms and public services to promote inclusion.²⁸

Limitations of the Law

Nepali activists and advocates acknowledge their hard-fought struggles to secure basic constitutional rights, and without minimizing those gains, contend that LGBTQI+ communities have yet to attain meaningful equality and equity in society. As Rukhsana Kapali, co-founder and executive director of Queer Youth Group (QYG) said, “The conversation regarding queer rights has not gone beyond the 2007 verdict. We are still treated like third-class citizens.”²⁹ An interviewee from Inclusive Forum Nepal (an organization for lesbian, bisexual and transgender community members) explained “Our constitution gives us certain rights, but when it comes [to] practice, they aren’t there.”³⁰ LGBTQI+ people in Nepal still navigate unequal treatment before law, and experience discrimination and violence in society. Despite the recognition of “gender and sexual minorities,” this status has not entitled LGBTQI+ people, for example, to the quota reservations in education, employment and politics that apply to ethnic and religious minorities, Dalits, women, and people with disabilities.

Although the law protects them on paper, many LGBTQI+ people are hesitant to seek legal recourse against discriminatory behaviors and practices, fearing unfair treatment and high costs. Highly publicized incidents, such as the murder of trans woman sex worker Junu Gurung in 2019, demonstrate the persistence of violence and discrimination as well as weak institutional responses.³¹ Police use the Public Offences Act and its vague “public nuisance” provision as an excuse to detain and harass community members.

28 Government of Nepal. Ministry of Health and Population. The Constitution of Nepal. Retrieved from: https://www.mohp.gov.np/downloads/Constitution%20of%20Nepal%202072_full_english.pdf

29 The Kathmandu Post (2020, May 17). Nepal Might Have Made Progress When It Comes to Queer Rights But It Still Has A Long Way to Go. Retrieved from <https://kathmandupost.com/national/2020/05/17/nepal-might-have-made-progress-when-it-comes-to-queer-rights-but-it-still-has-a-long-way-to-go>

30 Interview with a representative of Inclusive Forum Nepal. December 19, 2020.

31 The Kathmandu Post (2019, March 11). Death of A Transgender Woman Raises Alarm among Kathmandu’s Trans Community. Retrieved from <https://kathmandupost.com/national/2019/03/11/death-of-a-transgender-woman-raises-alarm-among-kathmandus-trans-community>

Those seeking to change their name and/or gender identity on official documents encounter onerous and discriminatory requirements, and must choose a degrading “other” category.

Despite activists’ advocacy for marriage equality, there has been little progress. Pant attested to his disappointment that constitutional guarantees fell short of expectations and did not include same-sex marriage despite prior discussions. A committee to study same-sex marriage, formed in compliance with the 2007 Supreme Court ruling, submitted a report to the Prime Minister’s office in 2015 recommending the legalization of same-sex marriage, however, no steps were taken to translate the recommendation into law. Isolated events of civil or ritual ceremonies solemnizing same-sex unions or local administrative marriage certificates for same-sex couples are not valid nationally. According to Nepal’s National Civil Code Act of 2017 “marriage [is] deemed to be concluded if a man and a woman accept each other as the husband and wife through any occasion, ceremony, formal or other act.”³² Marriage enshrines certain spousal rights, such as the ability to open joint bank accounts, jointly register property,

32 Ministry of Law, Justice and Parliamentary Affairs. Government of Nepal. The National Civil (Code) Act, 2017. Retrieved from <http://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Civil-code.pdf>

inherit property upon the death of a spouse, and rights to adopt children. Without the right to marriage, LGBTQI+ people are systematically obstructed from these rights and benefits allowed to heterosexual couples.

The 2015 Criminal Code recognizes rape as a “forceful act committed by a man to woman,” excluding many LGBTQI+ individuals, including cisgender men from its scope of protection. A 2015 Universal Periodic Review (UPR) submission on the protection of LGBTQI+ people’s rights in Nepal stated, “There is evidence to suggest that gay men and transgendered persons in Nepal are subject to significant levels of sexual violence, including by authorities, to the extent that LGBTI persons in Nepal have expressed fear of carrying condoms, which are seen to invite rape. Accordingly, LGBTI persons are disadvantaged and discriminated against by the narrow definition of rape currently employed by the Nepalese criminal code and do not have access to an effective remedy.”³³

33 Kaleidoscope Human Rights Foundation Australia (2015). Submission to the UN Universal Periodic Review Regarding the Protection of the Rights of LGBTI Persons in Nepal - 21st Session of Universal Periodic Review. Retrieved from https://www.upr-info.org/sites/default/files/document/nepal/session_23_-_november_2015/js13_upr23_npl_e_main.pdf

Background to LGBTQI+ Organizing in Nepal

LGBTQI+ rights movements gathered pace in Nepal in the late 1990s to early 2000s and were fused with the country's movements for democratic rights in which queer communities played active roles. Multiple activists remember gathering places across Kathmandu, especially Ratna (Shankhadhar) Park, popular among gay and trans people in the city; though they faced harassment from law enforcement authorities and political functionaries roaming the area, these spaces also served to coalesce a budding movement and enabled community building amidst the larger changes afoot in Nepal.

LGBTQI+ rights movements in Nepal flourished in part with support for HIV/AIDS programs that focused on MSM and trans populations and the resulting networks that created a space primarily centered on gay men and trans women. Several interviewees noted there was initial resistance to including other queer communities in HIV and reproductive health programming as well as reluctance to expand beyond the HIV focus.

Lesbians and bisexual, intersex, and trans people, especially trans men, faced uphill battles and an uneasy existence in both LGBTQI+ and women's rights movements where they felt their particular interests were ignored, misunderstood, or diminished. Many in the mainstream women's rights movements failed to acknowledge the interests of LBTQ people in part because of a compromised calculus that doing so would weaken their public advocacy in a patriarchal society. As Mira Mishra writes in *Women and the Perpetuation of the Caste System in Nepal*, despite socioeconomic, political and legal changes that increased women's access to education, information, mobility and work outside the home, and unleashed changes in norms and practices related to gender, women of all castes would remain in a subordinate position so long as men retained economic, social and political privileges.³⁴ At the same time, Mishra argues, "Women know well how to play the

rules to their advantage in order to make their life more secure within patriarchal households. Women most often do not seek to dismantle patriarchy. But they do seek to lead more secure and easier lives. As a result, women, more than men, adhere to caste and ethnic cultures and rituals." Because of these intersecting complexities and disparities, the priorities of lower caste, ethnic and religious minorities, Dalit women, and LBT people have not received sufficient recognition and attention within women's rights movements. At the same time, LGBTQI+ spaces were also slow to address LBT issues and needs of other minorities among them.

Additionally, as the everyday lives of gender non-conforming individuals in Nepal exist in a context of kinship mores, many find themselves shuttling between normative and non-conforming roles to secure the "greatest possible advantage within a set of constraining conditions."³⁵ A desire for marriage may stem from the access to wealth and support it facilitates—or from a desire for long-term commitments, family and the attendant lifestyle from which individuals could be otherwise excluded. But there have been reports that within LGBTQI+ organizing spaces, certain fluidities are discouraged, if not outright barred, especially for those who traverse heterosexual and non-conforming practices because that can undermine category-oriented rights-based campaigns. Although many of these organizations recognize the pressures of "compulsory heterosexuality" on paper, in practice, individuals report experiencing hostility from these same organizations.³⁶

Access to resources

Contemporary LGBTQI+ organizations began their journey within an aid and development framework. In the late 1990s and early 2000s, when Nepali activists started organizing more formally, legal registration processes

34 Misra, M. (2019, December). Women and the Perpetuation of Caste System in Nepal. *Dhaulagiri Journal of Sociology and Anthropology*. Retrieved from https://www.researchgate.net/publication/338226286_Women_and_the_Perpetuation_of_Caste_System_in_Nepal

35 Caviglia, L. (2019, August 19). Doing Sex Right in Nepal: Language and Sexed/Gendered Expectations. *E-International Relations*. Retrieved from <https://www.e-ir.info/pdf/79100>

36 Ibid.

lacked provisions to recognize LGBTQI+ organizations. As Gurung states, BDS could not initially register an organization as working on LGBTQI+ issues and instead chose reproductive health as its thematic area.³⁷ These earlier obstacles to registration are now gone.

Most LGBTQI+ organizations rely on donor and crowdfunding support. They report interest from international funders and, to a lesser degree, the Nepali government, in supporting Nepali organizations. Several smaller organizations explained that crowdfunding gives them more flexibility and independence than being tied to donor interests and limited timeframes; others reported accepting donor funds only when mutual interests align. Government support from ministries such as the Ministry of Social Development and Ministry of Women, Children and Senior Citizens is available, especially for skills development and employment schemes.³⁸ However, organizers stress that public funding for LGBTQI+ issues is unreliable and insufficient, and processes to access funds should be made more transparent. Broadly, Nepali organizations do not simply want to be fund recipients, but active partners with the ability to decide the direction and strategies for their communities.

As the researcher Kumud Rana argues, “the exclusive nature of transnational solidarity networks dominated by white, male, cis-gender, English-speaking allies mean that only those organizations that are able to align their work with them end up receiving their support...Visibly gender non-conforming *metis* or ‘effinate/feminine gays’ who formed the bulk of those [BDS founder] Pant was able to mobilize did not have the same kinds of resources [he] did, and hence could not have initiated the kind of movement that [he] was able to build.”³⁹ By contrast, LBT organizations may face challenges accessing both LGBTQI+ and women’s rights funding opportunities and rely on a smaller number of feminist philanthropic and women’s rights organizations.

37 Gurung, P. (2020, December 15). Blue Diamond Society. Personal interview.

38 To further understand state support, many international agencies such as the UNDP and UNICEF channel their resources through state institutions; they require support for vulnerable communities and specify guidelines for planning and programming inclusive of gender and sexual diversity.

39 Kumud, R. (2020). Transnational Resources and LGBTI+ Activism in Nepal, PhD thesis. University of Glasgow. Retrieved from <http://theses.gla.ac.uk/81407/1/2019ranaphd.pdf>

Coalition building and collaboration

Unlike in places where homosexuality is criminalized, Nepali organizations, networks, and collectives can organize openly, allowing them to build coalitions around specific demands and long-term partnerships with like-minded organizations. In building movements and pressing for specific demands, Nepali LGBTQI+ activists have adopted an array of networking and resource pooling strategies. This can be seen, for example, in joint advocacy for gender identity recognition, joint programming between queer organizations, and alliance building with feminist and other organizations. Often, and particularly for smaller organizations, partnerships may enable them to access infrastructure support—for example, shared office space. Small CBOs outside of Kathmandu may affiliate with national networks such as the Federation of Sexual and Gender Minorities-Nepal in order to connect to larger movement conversations and access resources.

Movement growth and tensions

Hierarchies of social status and social networks link to how organizations acquire legitimacy, resources, and capacity. The majority of LGBTQI+ organizations are based in Kathmandu and are headed and staffed by those with caste, class, and other privileges. (One interviewee suggested they were not hired for a program officer position because of their ties to a specific region and was given a lower position instead.)

At the same time, Nepal’s LGBTQI+ communities are diverse and there are internal movement dynamics which have led to the flourishing of newer organizations. Over the last decade, organizations and collectives have formed to address specific group needs within the broader LGBTQI+ community. Mitini Nepal, for example, began its journey as the Mitini Support Group in 2002. It was founded to provide services and safe spaces to LBT women, who were marginalized within the LGBTQI+ community, and to establish LBT rights within women’s rights movements in the country. Mitini offered support networks and prioritized LBT concerns, providing a hotline service to lesbian women. Today, the organization maintains a national lobbying office in Kathmandu and provides support groups, networking, and training services across the country.

Those building new organizations and networks often start off at established organizations. While this illustrates the growth and evolution of the movement, this also highlights the reluctance of bigger organizations to adapt and evolve. Several interviewees suggested older and bigger organizations were resistant to change and prioritized

the needs of only a segment of the community at the cost of others. Interviewees claimed that the leaders of larger, more established organizations did not support the interests of lesbian or intersex communities, while others accused those advocating for specific communities' interests as engaging in "groupism."

Often, the inclusion of marginalized voices within the LGBTQI+ umbrella remains ad-hoc or superficial, without decision-making authority or meaningful power and responsibility to influence an organization's direction or strategy. As interviewees described, "leadership [would] parade us and use us as tokens" when they wanted to seek funding from donors on those issues; in effect, organizations were likelier to respond to funder interests than constituent interests, by presenting a "diverse" staff rather than restructuring organizational hierarchies.

Interviewees voiced concern that bigger, established organizations were better able to respond to shifts in funders' strategies and priorities because of their existing capacity, know-how, and access to information and resources. One interviewee suggested many of these larger LGBTQI+ organizations were now shifting their focus to intersex issues, which they had previously ignored, and were shutting out smaller or newer organizations from those opportunities. A representative of Campaign for

Change, an intersex-focused organization, expressed ambivalence about the umbrella term "LGBTQI+" when specific interests of intersex communities are not fully represented.⁴⁰ According to them, marginalization within the LGBTQI+ community and society broadly – "society ruined people's lives by imposing different identities on them" – created untenable conditions which they hoped to address by forming a separate organization. Still, they acknowledged that public distancing from the mainstream LGBTQI+ movement could have a negative impact on the intersex community's and their organization's prospects, particularly with regards to networks and resources.

Bigger organizations with regional networks are often better equipped with the resources and infrastructure required to respond to immediate demands, like emergency housing and healthcare, and to strategize for the longer-term. However, only a handful of organizations in Nepal have such reach. When demand for services outpaces capacity, those organizations often struggle to respond. Due to their structure, organizational hierarchies, and operational constraints, these organizations are also not agile enough to be attuned to interests and demands of very diverse queer communities.

40 Campaign for Change (2020, December 29). Personal interview.

Movement Priorities: Legal and Policy Change

Given the role of social movements in Nepal's recent history and their influence on constitutional protections, activists recognize the connection between social change and political organizing, and the importance of building alliances with feminist and other movements. They see political organizing as essential to their strategy to gain greater equality and a number of LGBTQI+ organizers are active members of different political parties. These experiences have been uneven and at times disappointing; many of these parties, even socialist parties, mirror the pervasive prejudice and discrimination toward LGBTQI+ people. However, as one activist put it, when political structures are responsible for treatment of LGBTQI+ people, there have to be engagements with those structures to change them.

Nepal's LGBTQI+ communities continue to organize and advocate for policy, legal, and regulatory changes. There are two overarching concerns: First, that existing laws are not comprehensive enough to guarantee the human rights of LGBTQI+ people and that there are discrepancies and confusion regarding their application. Second, that legal protections on paper have not translated into structural, systemic changes.

Along with the demand for same-sex marriage recognition, other issues have emerged. Some of them pertain specifically to queer communities, while others affect all residents of Nepal and have with particular implications for queer communities.

Legal protections to address violence and discrimination

A key priority is addressing the stigma, violence, and harassment that LGBTQI+ people continue to experience. Nonetheless, multiple activists note that leading with narratives of violence and victimization produces a vicious cycle in which the LGBTQI+ rights and people are only understood and made legible through victimhood, potentially retraumatizing them.



Photo credit: Campaign for Change

Nepali activists want existing legal protections to have a concrete effect in their lives and are calling for administrative measures and implementation guidance and processes to make this happen. They also express the need for strong anti-discrimination statutes to tackle discrimination and disparities across employment, education, health, housing, and other sectors, in conjunction with policy measures like employment and education quotas for LGBTQI+ people. Enacted in 2011, Nepal's Caste- Based Discrimination and Untouchability (Offense and Punishment) Act, though riddled with loopholes, could serve as a guideline for formulating similar legal safeguards against LGBTQI+ discrimination. (While it aims to protect against discrimination on the basis of caste, religion, race, community or occupation, the Act focuses only on the public and not the private sphere.)

Evolution on same-sex marriage

Many LGBTQI+ activists feel let down by the false starts and lack of progress on same-sex marriage recognition – a demand based on the reality that marriage rights confer spousal and social rights and recognition. At the same time, they are also calling for a more complex understanding of marriage as an institution. As one interviewee noted, it is necessary to maintain a distinction between queer ideas of union/kinship ties and heterosexual marriage, so as not to recruit the queer community into heteronormative power structures.

Legal demands regarding gender identity

Fulfillment of the demand for third gender recognition and creation of an “other” gender option has since evolved into recognizing the administrative limits of these categories. Newer demands are for greater flexibility and easier processes for people to choose and change their gender identifications on official documents. Activists are also now calling for the removal of “other” as a category.

In 2018, a proposed amendment to the Nepal Citizenship Act of 2006 was registered in Nepal’s House of Representatives. Among its controversial provisions, it requires a medical certificate to obtain citizenship under the category of “other.”^{41,42} During the deliberation period in 2019, in response to requests from information by LGBTQI+ activists, the joint-secretary of the parliament’s State Management Committee said that issues related to the protection of their rights were not a government priority.⁴³ In June 2020, the parliamentary State Affairs and Good Governance Committee endorsed the amendment, paving the way for the bill to be presented to the full house for consideration and vote. A petition to the Committee, organized by QYG and signed by over 200 people and 19 organizations, put forth demands of trans and gender diverse people in relation to the Citizenship Bill, calling for their right to self-determination and to expunge medical requirements in spirit of the country’s constitutional

41 Letter to the government of Nepal from the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls (2020, September 21). Retrieved from: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25552>

42 Its discriminatory features include a waiting period of seven years for foreign women married to Nepali men to apply for and acquire Nepali citizenship while foreign men married to Nepali women are eligible after continuous residence in Nepal for 15 years. Besides codifying unequal treatment based on gender, observers argue the government is instrumentalizing gender for geo-political interests and relationship with India, as this law risks disproportionately affecting already disadvantaged Madheshi communities where cross-border marriages are common. Source: Turmoil over Citizenship Bill in Nepal. Observer Research Foundation, July 6, 2020.

43 The Himalayan (2019, January 1). LGBTI Issues Not Govt Priority: Joint-Secretary. Retrieved from <https://thehimalayantimes.com/nepal/lgbti-issues-not-govt-priority-joint-secretary>

protections.⁴⁴ Since then, the Nepal Citizenship (First Amendment) Ordinance 2021 was recommended in May 2021, but the Supreme Court issued an interim order to the government not to implement the ordinance stating legal complexities could arise.

Since citizenship certificates are fundamental in Nepal for participation in civic life (from enrollment at educational institutions to fulfilling employment requirements) and for obtaining other identification documents, the amendment’s exclusionary and burdensome terms entrench the marginalization of already vulnerable communities.

In May 2020, partly in response to the proposed bill, more than 10 Nepal-based national organizations and networks, along with LGBTQI+ activists, allies, and international partners, released the *National Charter of Demands on Legal Recognition of Gender Identity*.⁴⁵ The goal of the Charter was to press the government of Nepal to follow through on the principles of equality and non-discrimination. While the signatories recognized discrimination, stigma, and inequalities to be structural and present across all spheres of life, the charter focused on policy changes and revisions to procedures and categories pertaining to legal documents. The document’s detailed proposals include:

- Expansion of gender categories to male, female, non-binary, third gender, and prefer not to disclose. Allowing transgender and intersex people to choose female and male gender categories.
- Recommendations for how terms such as third gender, non-binary, and transgender should be understood.
- Removal of “other” as a gender category and the creation of a new and inclusive legal framework. Those who already have identification documents bearing “other” should be able to easily change their identities to their preferred classification from an expanded list, including the option to not disclose their gender.
- Simplification of administrative processes and the ability of people to amend and reissue citizenship

44 The Himalayan (2020, June 20). Queer Youth Group Demands Inclusion of Diverse Gender Groups. Retrieved from <https://thehimalayantimes.com/kathmandu/queer-youth-group-demands-inclusion-of-diverse-gender-groups-in-citizenship-bill>

45 Youth Voices Count (2020, May 19). National Charter of Demands Legal Recognition of Gender Identity. Retrieved from <https://yvc-asiapacific.org/2020/05/19/national-charter-of-demands-on-legal-recognition-of-gender-identity>

documents and get subsequent documents like educational certificates, passport, voter ID, land deeds.

- Self-determination and self-identification as the only requirements for an individual to change their name and gender marker; removal of degrading and unnecessary medical certification and surgical requirements.
- Privacy and data protections to safeguard data collection from official documents and a stop to unnecessary data collection where information on gender or sexuality markers is irrelevant.

The real-life experience of an intersex person illustrates the issues that activists seek to address. Having successfully changed the gender marker on his citizenship card to “male,” he faced accusations of being a “fake student” trying to take the civil service exam because his education certificates still identified him as female.⁴⁶ The charter’s demands reflect the ways existing requirements and processes have imposed undue, restrictive, and degrading burdens on LGBTQI+ people. At its core, the Charter encapsulates the values of gender fluidity and sensitivity; recognition of diversity, autonomy, and privacy; and protections from unnecessary and humiliating intrusions.

Nepali LGBTQI+ activists have long demanded the removal of “other” as a category from official documents. In 2020, trans rights activist Kapali renounced her citizenship under the “other” category in protest and applied for an amended card to reflect her gender as “female.”

⁴⁶ Campaign for Change (2020, December 29). Personal interview.

Census inclusion

Another key area of focus is the upcoming census, postponed because of the COVID-19 pandemic to November 2021. The census count is crucial for access to benefit schemes and assistance programs, quota reservations as well as allocation of resources in budgetary and planning documents. Nepal’s 2011 census included a third gender option but its limitations led to confusion and an undercount of LGBTQI+ populations. There were logistical problems with the rollout, including a lack of properly trained census-takers and a two-phase process with two forms, only one of which included a third gender option (the result of a last-minute compromise after being pressed by groups like BDS). In addition, not all gender and sexual minorities identify as “third gender” and the term itself encompasses an array of identities. The LGBTQI+ community has expressed disappointment in the updated 2021 census form since the categories are now “male,” “female,” and “others (sexual/gender community)” which combines gender identity and sexual orientation and once again limits the collection of specific data.⁴⁷ A key demand from the community is for a more detailed, exclusively LGBTQI+-focused survey.

⁴⁷ There is disagreement about gathering more detailed data. One interviewee suggested the data fragmentation was not helpful and they preferred a more aggregate number under one grouping.

Privacy and Free Expression in Nepal

Nepal's Privacy Act of 2018 aimed to solidify privacy protections guaranteed in the Constitution. It sets limits on collecting, handling, and sharing sensitive and private information, including sexual orientation and events related to a person's sex life, political affiliation, caste, race, or religion.⁴⁸ However, the government has yet to issue rules and guidelines for implementation of the legislation. Legislative experts claim the scope of "personal information" is too narrow and does not allow for a broader interpretation (e.g., a personal email can be considered personal data but not IP addresses or social media profiles) and it does not define key terms pertaining to data management such as "controller" and "processor."⁴⁹

The government also allows multiple agencies to collect enormous amounts of data without commensurate protections or purpose. A vivid example is described in an article by Body & Data, a feminist organization working on technology and digital rights:

"The Election Commission is a case in point. It collected biometric data on over 12.9 million voters for the purpose of ID cards, and now hosts the largest biometric databases in the country. These ID cards, it was initially thought, would be morphed into national ID cards; the idea was later abandoned. The data on millions of Nepalis, however, remains in their servers. Stagnant and without a clear purpose, all that private information of millions of citizens is now in the danger of abuse."⁵⁰

In 2019 and 2020, with the ostensible goal of promoting digital safety and security, the government

48 Law Commission of Nepal. The Privacy Act, 2075 (2018). Retrieved from: <https://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/the-privacy-act-2075-2018>

49 One Trust Data Guidance (2019, January). Nepal: An Introduction to the Individual Privacy Act 2018. Retrieved from <https://www.dataguidance.com/opinion/nepal-introduction-individual-privacy-act-2018>

50 Body & Data (2019, May 13). Digital Privacy: An Overlooked Side of Civil Liberties in Nepal. Retrieved from <https://bodyanddata.org/digital-privacy-national-identity-card-civil-liberty-nepal/>



Photo credit: Body & Data

of Nepal proposed a series of bills that regulate and restrict free speech, especially digital communications. These include the Information Technology (IT) Bill, the Media Council Bill, and Mass Communication Bill.⁵¹ Commenting on the IT Bill Shubha Kayastha, co-founder of Body & Data said, "Provisions in the new bill, which seeks to criminalize free speech by looking at it through the lens of decency and morality, will dilute the protection enshrined by offline laws."⁵² If enacted, these laws will give the government undue powers to control and criminalize free speech and organizing, increase social media surveillance, and create an environment of censorship and self-censorship, especially for disadvantaged communities. The IT bill, which was passed by a Parliamentary committee in early 2021, is so sweeping that it would have a chilling effect on online speech and activism, and impact the LGBTQI+ community, which relies on online spaces for support networks and organizing.⁵³ Terming it unconstitutional, a range of Nepali activists and advocates have called for its revocation.

51 Amnesty International (2020, January 16). Nepal: Information Technology Bill threatens freedom of expression. Retrieved from: <https://www.amnesty.org/en/latest/news/2020/01/nepal-information-technology-bill-threatens-freedom-of-expression/>

52 The Kathmandu Post (2019, February 15). Nepal Government's New Information Technology Bill Draws Battle Lines against Free Speech. Retrieved from <https://kathmandupost.com/national/2019/02/15/nepal-governments-new-information-technology-bill-draws-battle-lines-against-free-speech>

53 The bill's provisions, for example, cover both social media activities on Facebook and Twitter and messaging apps like Viber.

Organizing priorities

Many Nepali LGBTQI+ advocates and groups, especially newer ones, recognize that in addition to pursuing constitutional guarantees and legal protections, broad-based social and structural changes require other types of interventions and strategies. Organizations are striving to balance short- and long-term priorities with available resources and emerging, evolving needs.

Those interviewed emphasized the following needs:

- To expand from narrowly conceived HIV programming to more encompassing physical and mental health programs for LGBTQI+ communities.
- To increase education and employment opportunities for LGBTQI+ people. Several organizations offer employment and income-support activities and training. For example, QYG's organizational priorities include education, employment, and fellowship opportunities for trans people.
- To expand work with LGBTQI+ youth, especially from regions outside of Kathmandu.
- To provide creative educational materials and resource guides. For example, Kapali of QYG recently published a book titled, *Basic Vocabulary of Sexual Orientation, Gender Identity & Sex Characteristics in Nepal Bhasa*, to connect these terms to the vernacular. Inclusive Forum Nepal, which conducts media and political party engagement and sensitivity training to strengthen support for LGBTQI+ people, is creating materials on same-sex marriage and issues surrounding citizenship. QYG and several other organizations also emphasize making such resources available and accessible in local languages.
- To provide safe shelter for at-risk LGBTQI individuals.
- To respond to longer-term organizational needs, including capacity building (for example, for communications and fundraising) and strengthening of regional networks.

Online Communities and Digital Activism

LGBTQI+ activism gained pace in Nepal around the same time that the internet became widely accessible, including as a tool for political activism. The internet became a space for networking, building community, and exploring sexual expression, as well as a place where women and queer people faced harassment and bullying and had to practice self-censorship. The report by Body & Data, *Beyond Access: Women and Queer Persons with Disabilities Expressing and Exploring Sexuality Online*, illustrates these tensions, describing how people with disabilities use digital spaces to explore their many identities as well as the challenges they experience around privacy, disclosure, and expectations related to disability in these spaces. As one interviewee in the report put it, “In [the] queer community, everything starts from online.”⁵⁴

More recently, young queer-led organizations like Queer Youth Group are using digital activism to expand the movement and engage with increasingly internet-savvy youth. Digital rights and freedom of expression in online spaces, inclusive of sexual rights and expression, have emerged as areas of advocacy.

Body & Data encapsulates the approaches and strategies of such newer organizations, working at the intersection of digital rights, gender and sexuality as opposed to LGBTQI+ issues broadly. A feminist organization with a staff and board comprised of indigenous women and queer-identified people, Body & Data works to ensure that women’s and queer

54 Kayastha, S. and M. Pokharel (2020). Women and queer persons with disabilities expressing self and exploring sexuality online. Body & Data. Retrieved from <https://files.bodyanddata.org/nextcloud/index.php/s/etpDJAS7w7Poi3B#pdfviewer>



Photo Credit: Body & Data

people’s digital experiences are based on autonomy, agency, and rights to expression. The organization deploys a variety of methods to address online gender-based violence, surveillance and censorship, privacy and data protection, and internet access – including research and policy analysis, online advocacy and campaigning, and community workshops on holistic security and digital storytelling.

It is important to note, however, that although queer activists and women’s rights organizations have viewed digital spaces as an important tool for their work, a 2017 study found that those using it for organizing were primarily young, urban, educated and English-speaking activists from privileged and higher caste groups.⁵⁵

55 Nepal, I. (2017). Exploring the use of the internet among gender equality and sexual rights advocates in Nepal. EROTICS South Asia exploratory research: Sex, rights and the internet. Retrieved from https://taannepal.org.np/wp-content/uploads/2021/04/Erotics_1_LOOM.pdf

Recommendations for Funders:

- Recognize the diversities within LGBTQI+ communities and prioritize support to organizations addressing the needs of those most marginalized within them.
- Allocate resources to organizations and collectives that face structural barriers in accessing funding and other critical resources for movement building due to location, caste and class discrimination, and other factors.
- Build long-term partnerships with organizations to support their growth and sustainability, providing general operating support as well as capacity building support and accompaniment.
- Provide funding in line with the short, medium, and long-term goals of LGBTQI+ organizations.
- Provide funding, logistical, and technical support to LGBTQI Nepali organizations looking to develop local, regional, and international advocacy networks of solidarity.
- Support programs, advocacy, and research which address sector-specific issues (e.g., housing, employment, online safety) for LGBTQI+ communities.

Appendix:

Brief timeline of Nepal's major laws and policies pertaining rights of vulnerable peoples, 2015 - 2021

The following timeline presents pertinent laws and policies affecting the rights of marginalized communities, including LGBTQI+ people, in Nepal. Several of these, like the Privacy Act, do not particularly target LGBTQI+ communities but will nevertheless affect them. Astraea's previous case Nepal study *Bridges to Justice* includes a timeline from 1990 to 2015 which provides earlier context.

2015: The Parliament passes a landmark constitution which recognizes the rights of gender and sexual minorities.

Building on its 2007 judgment and another Supreme Court order from 2013, Nepal issues first passport with the legal gender marker "O" for "other."

The same-sex marriage committee mandated by the 2007 Supreme Court judgment releases and submits an extensive report to the Prime Minister's Office recommending legalization of sex-sex marriage.

2016: Launch of the government's strategy to end child marriage by 2030.

2017: Nepal adopts the Disability Rights Act and an Inclusive Education Policy, which calls for children with disabilities to study without discrimination in their communities.

The revised Criminal Code of 2017 criminalizes and bans the practice of *chhaupadi* to force menstruating women out of the home during menstruation.

Enactment of the National Women Commission Act 2017 to consolidate laws and regulations relating to the establishment of National Women Commission for the protection and promotion of the rights and interests of women and to ensure gender justice through the empowerment of women.

Nepal adopts the National Inclusion Commission Act 2017 for the establishment of a commission to protect and promote the rights and interests of vulnerable communities which mentions "marginalized communities" among others.

National Dalit Commission Act of 2017 is enacted for the creation of a commission for the promotion and protection of rights and interests of the Dalit community.

2018: The Privacy Act is enacted which sets limits on collecting, handling, and sharing sensitive and private information around such as sexual orientation and events related to a person's sex life.

2019: Nepal proposes a more sweeping Information Technology Bill to replace the Electronic Transactions Act, 2008.

2020: Young transgender men and women across all seven provinces of Nepal come together to conduct an almost six-month-long discussion on gender recognition of binary trans men and trans women. These discussions

culminated with the creation of the *National Transgender Demand Sheet* on the occasion of the International Transgender Day of Visibility.

On the occasion of the International Day against Queerphobia, the *National Charter of Demands on Legal Recognition of Gender Identity* is released.

A Parliamentary committee approves an amendment to the Nepal Citizenship Act clearing its move to a vote by the full Parliament. The bill's discriminatory features include requiring those seeking recognition under the "other" gender category to provide medical/surgical verification of gender reassignment and different waiting periods based on gender for Nepali citizenship for foreign-born spouses of Nepali citizens.

2021: The Information Technology Bill is placed at a Parliamentary committee which, if passed, will severely restrict online speech and activism.

