Transitioning into the Third Gender in Nepal: The Politics of Recognition within Transnational LGBT and Human Rights Regimes

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Abstract

This article traces the biography of the third-gender identity as it came into being amid intense political and social upheavals in Nepal between 2000 and 2007. It argues that the third gender in this context is a reimagination of "transgender" as Nepali LGBT activists navigated the constraints and opportunities posed by multiple human rights frameworks amid increasing international attention on a violent civil war and the rise in transnational mobilization around LGBT rights. It shows how these shifting terrains of engagement led to the transition from the public health category of meti—often ghettoized as street-based, cross-dressing sex workers—to the LGBT rights category of transgender, and subsequently the vernacular but cosmopolitan, pan–South Asian category of third gender. By doing this, the article advances a transregional approach to queer scholarship that emphasizes the role of globalization, NGO-ization, and the active participation of transnational networks of LGBT activists in collective identity formation.

Keywords: transgender, third gender, South Asia, human rights, LGBT rights

The years since 2007 have seen increasing legal recognition of the third-gender identity in Nepal, extending to include the partial and contested recognition of transgender rights in countries like India, Bangladesh, and Pakistan. Such recognition has been a result of growing mobilization of "local" gender-nonconforming people like the *hijras*, *kwaja siras*, or *metis* alongside the mobilization of transgender, intersex, and nonbinary people more recently.[3] This is of particular significance in Nepal, since it went from being a country wrestling with the very idea of sexuality as an essential element of personhood at the turn of the millennium (Pigg 2001: 509) to becoming one of the few countries in the world to recognize the rights of the *tesro lingi* or third gender in 2007.

Despite the prominence of this category in South Asia, few studies have paid attention to the histories and genealogies of these identities other than that of the hijras, which have been dominated by studies on India. Many of these studies are limited by methodological nationalism and religio-cultural explanations of the third gender that obscure the significance of transnational flows of people, ideas, and resources in shaping social justice movements, and the collective identities that allow for the discovery of common bonds and interests crucial for mobilizing people within these movements.

[3] For a critique of how identities are mobilized within these movements as mere local variants, see Dutta and Roy 2014 and Rana 2021. Hijras are communities of gender-non-normative people assigned male at birth who occupy a third gender position in India and some other countries in South Asia, while kwaja siras occupy a similar position in Pakistan. Metis in Nepal, on the other hand, have been positioned as feminine-presenting men who might occupy a liminal position between masculinity and femininity but do not necessarily organize themselves into dedicated groups like the hijras or khwaja siras.

New Social Movement theorists explain the role of identity formation as central to the successful mobilization of social movements, noting that people's propensity to become involved in collective action is tied to their capacity to define an identity in the first place (Melucci 1996). In contrast to personal identities that make an individual unique, collective identities make people occupying the category similar. As Francesca Polletta and James M. Jasper (2001: 298) explain:

> Collective identity describes imagined as well as concrete communities, involves an act of perception and construction as well as the discovery of pre-existing bonds, interests, and boundaries. It is fluid and relational, emerging out of interactions with a number of different audiences . . . rather than fixed. It channels words and actions, enabling some claims and deeds but delegitimising others. It provides categories by which individuals divide up and make sense of the social world.

What might consideration of such fluidity and relationality contribute to the understanding of third-gender politics and a history of transgender identities? What might this say about the reimagination of the third gender as a Hinduized, sanitized, and homogenized category of identification in the Indian subcontinent? This article moves away from the traps of cultural relativism and methodological nationalism to instead trace the biography of the third gender as it came into being amid intense political and social upheavals in Nepal and beyond. I argue that the collective identity of the third gender in this context is a reimagination of "transgender" resulting from the constraints and opportunities posed by transnational LGBT and human rights regimes.

To do this, I specifically focus on the deliberations of Nepali LGBT activists with three broad groups of experts between 2000 when the movement took off, and 2007 when the third gender was legally recognized by the Supreme Court of Nepal.[5] These three groups are (1) trans/national human rights advocates working on conflict-related violations in Nepal during the Maoist insurgency who shaped the rights-based framework within which Nepali LGBT activists had to work; (2) globally mobile LGBT activists and allies from India and other parts of the world who extended moral, financial, and technical support to Nepali LGBT activists;[7] and (3) a more amorphous network of international organizations that could be activated in times of crises in support of LGBT rights.

Here it is important to situate the Nepali LGBT movement within the sociopolitical context of the country between 2000 and 2007. The Maoist insurgency in Nepal started in 1996 in response to persisting socioeconomic inequalities under a 240-year-old Hindu monarchy, despite the introduction of multiparty democracy through a popular people's revolt in 1990. Initiated by the Communist Party of Nepal (Maoist), the armed insurgency

[5] During the timeline covered by this article, Nepali activists used the acronym *LGBT*, which is why I use the acronym in reference to this time period. But during the Supreme Court petition in 2007, they used *LGBTI*, even though intersex activism was not prominent within the movement until much later. By the time of my research, activists were using *LGBTI+*, which is what I use to refer to the broad group of activists who took part in my study.

[7] I conceptualize resources as including financial, technical, and moral resources (Edwards and McCarthy 2004), in which financial resources are monetary donations; technical resources include information, expertise, and training; and moral resources include the solidarity, support, and legitimacy provided by external sources. Finally, social networks are the relationships between individuals and representatives of institutions that facilitate social exchange, exchange of all the above types of resources, as well as opportunities for collaboration. In this sense, the networks themselves work as important resources for organizations, though I maintain a separation to highlight the specific salience of social networks.

aimed to overthrow the constitutional monarchy and establish a people's republic. The war reached its peak in 2001 after the massacre of the royal family, during which the government declared a state of emergency after repeated failures in negotiating a ceasefire with the Maoists. With Nepal backed by military aid from the US and Indian governments as part of the global war on terror (Amnesty International 2005a), a culture of impunity prevailed in the country, with numerous war crimes committed by both the state and the Maoists, resulting in the deaths of over thirteen thousand Nepalis and the displacement of hundreds of thousands from rural Nepal. The conflict ended when the Maoists were joined by seven major political parties in a second democratic movement in 2006, leading to a ceasefire and an end to the monarchy. In 2008 the Maoists were elected as the largest political party in the first Constituent Assembly, which was tasked with writing a new constitution that would be inclusive of its diversity and be cognizant of the demands of other historically marginalized groups like women, Indigenous people, and sexual and gender minorities. It is within this domestic context of multiple social movements, the rise of identity politics, and the reverberating impact of conflict-era rights violations that I locate the rise of the third gender as a collective identity within an emerging LGBT movement.

At the same time, I use Ronnie D. Lipschutz's (2006) conceptualization of the term *transnational* to emphasize regular interactions between Nepali and Indian LGBT activists and international nongovernmental organizations (NGOs) while avoiding the universalizing tendencies associated with the term *global*.

By bringing together these varied actors and levels of analysis, I show how transnational activist networks as far away as Geneva and New York and closer to home in India inadvertently led to the transition from the vernacular subjectivity of meti—mainly used within HIV and AIDS intervention work in the late 1990s to early 2000s—to the cosmopolitan and vernacular cosmopolitan (Werbner 2006: 7) categories of transgender and third gender respectively,[9] with the latter being more prominent within LGBT rights discourses in the South Asian region. By doing this, the article advances a transregional approach to queer scholarship (Chiang and Wong 2016: 1643) that emphasizes the role of globalization, NGO-ization, and the active participation of transnational networks of LGBT activists in collective identity formation.

This article is drawn from my PhD study involving participant observations, document analysis, and in-depth interviews with seventy-one LGBT activists, including their allies and donors, in Nepal, India, Malaysia, Thailand, and the UK. My understandings have been further shaped by personal and professional engagements with new queer, trans, feminist, and Indigenous activist collectives after my doctoral study, in which I have contributed to and benefitted from sustained discussions around the practicalities and necessities of mobilizing around not just queer but also Indigenous ethnic identities. These engagements have come because of my study, my membership in a feminist collective in Nepal, and my position as a woman from a mixed Indigenous and working-class background in the country. The challenges that accompanied some of these involvements—like when I was asked by some queer collectives to comment on court petitions, booklets, and draft parliamentary bills—have also allowed me as a cisgender, queer-ish woman located outside Nepal to better understand the complexities within which queer scholars and activists as outsiders worked in concurrence with their Nepali counterparts since the early 2000s. My

[9] Anna Stirr (2017) uses Pnina Werbner's conceptualization of vernacular cosmopolitanism to talk about nonelite Nepali migrants. See also Stirr 2021.

critique is in solidarity with the activists and their allies, and with activist-scholar engagements.

In the following sections, I start by discussing how transnational and national human rights discourses and networks of activists helped shape LGBT rights discourse in Nepal. In this section, I particularly focus on the interactions between Nepali LGBT activists and human rights advocates, and exchanges between Nepali and Indian activists, to demonstrate how these set the framework within which LGBT rights could be legitimized as human rights. In the next two sections, I discuss the transition between three of the identity categories used as collective identities within the Nepali movement—meti (feminine-presenting men who desire other men), transgender, and tesro lingi (third gender). By going back to the much-publicized case of the arrest of thirty-nine metis and Blue Diamond Society (BDS) activists in August 2004—which some activists say made the Nepali movement transnational—I show how the subsequent discursive processes through which this transnationalization happened resulted in the metis becoming embedded within the prevailing discourse on conflict-era human rights violations. These discourses, I argue, led to not only increasing inter/national support for LGBT rights in Nepal but also the transition of the meti—ghettoized as street-based, cross-dressing, migrant, working-class sex workers within HIV and AIDS intervention work—to the more cosmopolitan, political categories of transgender and tesro lingi/third gender. I particularly emphasize the role of global solidarity networks in bringing about the shift in language from *meti* to *transgender*, and the role of Nepali activists in reimagining transgender as the third gender for the sake of cultural legibility. I then conclude the article by discussing what this has meant for the movement and for the legally recognized category of tesro lingi or third gender in the country.

Trans/National Human Rights and LGBT Rights Discourses and Networks in the Formulation of LGBT Rights in Nepal

The LGBT movement in Nepal took off with the establishment of the Blue Diamond Society (BDS) in 2000 by Sunil Babu Pant and a group of meti contemporaries to whom Pant had been distributing condoms as an occasional social worker in Kathmandu's cruising spots (Knight 2014).[11] The metis were primarily from marginalized class and ethnic groups, mostly spoke local languages, and were migrants to the capital (Tamang 2003: 231). The BDS described metis as "feminine-presenting men." Established as an HIV and AIDS service delivery organization for men who have sex with men (often abbreviated to MSM), the BDS continues to be one of the largest LGBT organizations in Asia. In the absence of domestic and international support for an explicitly political gay or LGBT rights agenda, the BDS relied extensively on HIV and AIDS activist networks and donors working on HIV prevention and care to sustain itself and the movement. This early association with HIV and AIDS activism has shaped the trajectory of the movement whereby those assigned male at birth have been able to capitalize on the resources available, with those assigned female at birth often sidelined in terms of resource distribution and decision-making within the organization and within the broader funding landscape. It is within this context of unequal power relations that it is important to critically analyze the emergence of LGBT rights and what it has meant within post-conflict Nepal.

[11] While lesbian organizations and other independent collectives were part of my study, this article will focus on the mobilization around the third-gender category where the BDS was at the forefront of this collective action.

Pant made use of multiple strategies available to him at the time in developing professional networks with donors in Nepal and activists outside. Although the earliest HIV and AIDS allies like Family Health International/US Aid for International Development (FHI/USAID) and the Joint United Nations Programme for HIV and AIDS (UNAIDS) facilitated such network building through financial assistance, these resources were mainly meant to enable HIV and AIDS intervention work. The donors had warned Pant against misusing office space and resources for work that fell outside the purview of HIV and sexual health, so much so that they asked Pant to delete the term *sexuality* from final reports on their work with the BDS. While this specially pertained to donor government policies like in the case of USAID (which does not fund work on abortion rights or the rights of sex workers, for instance), donor hesitance to adopt a social justice approach, or more specifically a human rights approach in this case, was also driven by the prevailing political climate in Nepal. As Joel E. Oestrich (2018: 266) records in the context of an increasingly violent Maoist insurgency (1996–2006) alongside rising ethnic activism, rights-based work by UN agencies was seen as "too political and a dangerous interference in the internal workings of member states." Oestrich adds that a human-rights-based approach to development has only recently been made central to most multilateral development agencies' work in Nepal, including the UN (267). The LGBT rights discourse had come into prominence in the West since the early 1990s through the collaborative efforts of transnational LGBT NGOs like the International Lesbian and Gay Association and the International Gay and Lesbian Human Rights Commission (IGLHRC), and mainstream human rights organizations like Amnesty International and Human Rights Watch (Kollman and Waites 2009: 2). However, this framework was not yet available or legible in Nepal in the early 2000s. The dominant framework within which BDS could operate and seek financial aid was an apolitical public health approach adopted by many MSM NGOs in South Asia, as opposed to a more political social justice approach (Currier and McKay 2017: 72) that also considered what was happening in conflict-ridden Nepal. Pant explained of other South Asian MSM organizations in a personal interview for this study[12]:

> Their "pure focus" was on "MSM health." I was very clear and they did not agree with me before and, uh, they said it would be highly dangerous to talk about rights. But I said we would talk about "rights!" Then later during the state of emergency when the issues of "arrests" and "detentions" came up a lot, they used to tell me this is what happens. My argument was that we can't postpone these things to the next "generation" just because there's a "backlash." We need to address it now, "fight" now. So if there's "backlash," let it be now. (personal interview, 2018)

Not all South Asian MSM organizations, though, were apolitical. The Naz Foundation in India already had in-house lawyers like Aditya Bandopadhyay working on documenting human rights violations against their broader constituency. Naz had also filed the landmark petition against Section 377 in the Indian Supreme Court in 2001 alongside an advocacy group, the Lawyers' Collective. As Pant himself verified later during the interview, Bandopadhyay had visited the BDS within the first year of its establishment and advised Pant on legal matters concerning human rights violations. "He was the one who taught me informally," Pant said of the latter, "It was not even a training. He taught me how to

[12] This interview was mostly conducted in Nepali though words used in the English language have been put under quotations to highlight the language dominant in human rights works in Nepal. All translations of interviews and quotations are my own unless indicated otherwise.

'document human rights abuse' . . . a simple thing . . . how to turn that into a 'call' or 'petition.' He showed me an example and that was a great help."

In subsequent years, Pant and his team at the BDS recorded every incident involving police harassment as well as cases of abuse and discrimination in other spheres of public and private lives. Detailed records of the cases between 2000 and 2010 were meticulously maintained in an undated, fifty-page report titled *Documentation of Human Rights Abuse and Media Report: A Review* (Bhandari n.d.). Most of the cases between 2000 and 2003 are ones of physical abuse meted out to "MSMs," "metis", "cross-dressing men," "homosexuals," and "gays" by the police, accompanied by gruesome pictures of bodily harm. However, after 2003, records within the report refer to metis as "transgender." A more detailed analysis of the labeling of metis as "transgender" will be discussed below. For now, it is important to analyze why such meticulous documentation of violence at the hands of the police or other state security forces was important for the BDS to maintain. This is puzzling when considering the fact that some of the most persistent forms of abuse and discrimination faced by LGBT people are also from family members (CREA 2012: 200), health-care workers (201–2; UNDP and Williams Institute 2014: 54–55), government officials, and the general society (UNDP and Williams Institute 2014: 51–59).

According to an international human rights advocate and ally of the BDS whom I interviewed in 2016, this was mainly because of the framing of human rights that was dominant during the national political climate then. As mentioned earlier, the war between the Maoist insurgents and state security forces had turned increasingly violent since 2001. This meant "increased extra-judicial killings, enforced disappearances, arbitrary detention and a breakdown in the rule of law" (Amnesty International 2005b). As the international human rights ally explained, rights-based work was highly compartmentalized in Nepal, with different organizations working on different kinds of rights like women's rights, LGBT rights, or civil and political rights. But as the war intensified, conflict-related violations took urgent precedence over other forms of rights violations (Pudasaini 2016: 3–11).[13] During this climate of impunity, human rights campaigners like those in the International Commission of Jurists and Advocacy Forum-Nepal worked under the framework of the United Nations Convention Against Torture to document and seek accountability for such violations. As the international ally recounted:

> [LGBT] people would turn up at those meetings and they'd talk about LGBT rights, which was not the way you'd engage with human rights lawyers working on torture. And they (the lawyers) were very clear: "Talk to me about torture." So basically, we ended up in a scenario where the LGBT folks thought everybody was discriminating against them, because they wouldn't take up their cases, and what the human rights people were saying was that "we're not going to take up your cases because we don't work on LGBT rights. YOU work on LGBT rights if there's such a thing. WE work on torture. We work on enforced disappearances. We work on extrajudicial killings. We work on displacement. We work on all these other serious things. If as LGBT people, you are to come to us and say you had been tortured, we will pick up your

[13] In 2006 the Office of the High Commissioner on Human Rights (OHCHR) set up an office in Nepal to monitor the human rights situation and to help "strengthen the national capacity to protect human rights" by working directly with the executive, legislative, and judicial branches of the government as well as with civil society (OHCHR n.d.).

> case." . . . We had tried to sort of say that we need to train these folks [LGBT activists] on what human rights are. So, stop talking about LGBT rights.

In Nepal's case, there were only two parties who were understood to be involved in human rights violations—the Maoists and the state security forces, with the latter reportedly committing more violations. The BDS records of such rights violations show only one such case by the Maoists—the abduction and detainment in 2007 of two young women in a relationship with each other and carried out on the request of their families who did not approve of their relationship (Bhandari n.d.: 26–27). However, more cases of torture, harassment, rape, and abuse of metis by the police were documented by the BDS for various reasons—first, these were already occurring; second, these violations happened in public spaces like streets or police stations and hence were more visible; and third, it was more difficult for lesbians and gay men to come out openly to the BDS to document their cases of abuse where the perpetrators were more likely to be family members, friends, or partners rather than outsiders like the police and hence could not be described as torture under the human rights framework in operation. The lack of focus on domestic violence against LGBT people was compounded by the fact that the women's movement in Nepal, led by middle- and upper-class and higher-caste cisgender women, had persistently lagged in addressing intersectional issues of marginalization (Tamang 2009: 63) and had shown little interest in aligning itself with the LGBT movement (Pudasaini 2016: 13). To add to this, work on violence against women, which would have included domestic violence, had slowed down as the conflict peaked and more funding and attention was directed to work on conflict-era violations throughout the decade (10–11).

The cases of violations that carried more weight under the dominant framework of human rights within Nepal did not allow much space to institutionally address violations perpetrated in private spaces, by private actors. As the quote above shows, the focus on torture—specifically by state security forces or the Maoists or both—meant that the only cases that human rights defenders in Nepal would legitimate as violations of rights were those of metis who were usually targeted by the police. For this—as the international ally mentioned above explained—human rights allies of the BDS needed to "train" BDS folks on what human rights are; BDS activists had to "learn the language of the UN human rights system." This urgency was magnified when BDS donors like FHI/USAID and UNAIDS found rights-based work too political, while domestic NGOs working on human rights, including women's rights NGOs, did not take the BDS seriously. This meant the BDS had to seek support from international allies explicitly committed to LGBT rights. The technical support provided by transnational activists within these organizations then became pivotal in the transition of meti to transgender and eventually to tesro lingi or third gender, as will be discussed in the next sections.

Imagining Transgender

As mentioned earlier, activists like Aditya Bandopadhyay from the Naz Foundation in India had already provided the BDS some basis from which to start documenting human rights violations of Nepali LGBT people. According to BDS records, in the years between 2000 and 2003, these violations by state security forces overwhelmingly targeted MSMs, metis, cross-dressing men, homosexuals, and gays. While this might seem inclusive of both gay men and metis, it was the metis who were overwhelmingly the subject of the BDS reports, as discussed earlier. In contrast, there is no reference to transgender people or transgender women at all in these reports.

However, this changed notably after the highly publicized case of the detention of thirty-nine metis by the police. On August 9, 2004, these meti BDS activists were arrested without a warrant while protesting the rape of four metis by the police on July 25. The police had picked up the four metis in the early hours of the morning from one of their cruising sites, forced them into a police van, and raped, beat up, and robbed them. Twelve policemen went on to gang rape two of them at the police station (Amnesty International 2004). The BDS had held a rally on July 5 to challenge the impunity with which state security forces often treated the metis at that time, during which the rally was violently disbanded by the police. The police also often refused to register complaints of assaults made by the metis. All this meant that there was a real risk to the safety of the thirty-nine metis arbitrarily detained in August. On top of this, the BDS had been facing a potential Supreme Court ban on its activities following a petition filed by a local lawyer in June using the "unnatural sex" clause in the National Civil Code to argue that it was trying to make homosexual activities legal in the country. From records during this time as well as interviews with BDS activists, it is apparent that the arrest of the thirty-nine metis was the last straw for the BDS.

With the intensification of persecution and apathy, the BDS turned to international LGBT allies for support, which quickly drew "unprecedented international media and human rights attention" (Knight 2015: 2). The BDS's records show a sudden spike in reports and calls for action from international organizations like Amnesty International, IGLHRC, UNAIDS, the Coalition of Asia-Pacific Regional Networks on HIV/AIDS (the Seven Sisters), Human Rights Watch ,and Sidaction "in cooperation with Act Up-Paris and Inter Centers LGBT" (Bhandari n.d.). Only one national ally is recorded—the Forum for Women, Law, and Development, a legal aid organization in Nepal mainly working on women's rights (discussed later).

Amnesty International published a petition entitled "Petition (Urgent Action) Nepal: Safety of Arrested Transvestites (Metis), from AIGL Switzerland" and urged allies to sign a letter prepared by the BDS calling for government intervention. The IGLHRC did the same, while UNAIDS (Geneva) called for the release of the "AIDS activists" (UNAIDS 2004). Similar incidents in 2005 drew a protest from OutRage! (UK) in front of the Nepal Embassy in London (Tatchell 2005), and Human Rights Watch published a report on a purported sexual cleansing drive by the Nepal police. All organizations used various identity categories to signify the same people. While the UNAIDS called all the metis "AIDS activists," other groups like Amnesty International and Human Rights Watch called them "male transvestites" and "transgender people"—terms that made sense to their Euro-American audiences. These were new categories that the BDS and the Nepali media had never used before.

In the earliest reports when the BDS was still a nascent organization, *metis* was defined as feminine-presenting men with no discernible community as such but rather small-scale friendship networks that were often site specific (Pant 2002: 5–6), namely, the few cruising sites around the capital city. In its fifth year in 2005, BDS reports still defined *metis* as "effeminate homosexual men" (Pant 2005). As I show elsewhere (Rana 2021), *meti* was a feminized version of *meta*, fashioned after the *kothi-panthi* model (Cohen 2005), in which the meti (or kothi in India) had come to signify the subservient, "bottom" or feminine partner while the meta (or panthi) signified the dominant, "top" or masculine partner. The kothi-pathi and meta-meti models gained prominence in a move toward an "insider perspective" or "engaged activist research" (Parker, Barbosa, and Aggleton 2000: 5–6) in AIDS intervention work in India since the mid-1990s. *Meti* continued to gather more meanings in subsequent years.

With the increasing involvement of a wider network of international LGBT activists and human rights organizations with little expertise in South Asia, the understanding of what made one a meti started to overlap with accounts of what made one a transgender woman. This overlap is evident when considering that those who previously called themselves meti are now calling themselves transgender women or third gender. As a BDS staff member from a community-based organization outside Kathmandu explained, "It's like this—in English, it is called 'transgender' but in the Terai [the plains of Nepal bordering India] it's called *maugiya* in Tharu language, while in the hills it's called *phulumulu*. Others are *natuwa*, kothi." According to this account—which is consistent with the BDS's official account—vernacular terms like *meti*, *kothi*, *phulumulu*, *natuwa*, and *maugiya* were all understood as gender nonnormative but also sexually transgressive subjectivities that are all equivalent to each other. Early reports like those by Paul Boyce and Pant (2001) and Pant and Boyce (2001) do not mention the terms *maugiya*, *phulumulu*, or *natuwa*. These early accounts also do not mention transgender people, nor do they interpret the meti as transgender. However, subsequent records by the BDS start referring to the meti as "transgender." For instance, one of the reports reads, "On 28 August 2007, Bipasha Rai, a 23-year-old transgender was walking in the Thamal area at 11pm" (Bhandari n.d.). The workings of transnational solidarity, then, have led to the imagination of meti as transgender in Nepal.

Transitioning into the Third Gender

The second mention of the category of transgender was to be the most significant one within the emerging LGBT movement, as it came with the landmark petition filed at the Supreme Court of Nepal in 2007 for the legal recognition of the third-gender category (*Pant vs Government of Nepal*, Writ No. 917, 2007). An English translation of the court verdict reads,

> The writ petitioners . . . state that female homosexuals (lesbians), male homosexuals (gays), as well as people of the third gender are considered minority people on the basis of sexual orientation and gender identity. Such people introduce themselves as third types of people. Those people are also known as third gender and homosexuals internationally and in general parlance . . . categorized under the five different groups. Those are known as lesbian, gay, bisexual, transgender, and intersexual.

The court verdict cites the petition, which consistently use the composite term "third gender and homosexuals" to refer to those on whose behalf the petition was drawn. As shown in the extract above, "third gender and homosexuals" are understood as representing the five categories of LGBTI persons. The document goes on to use the terms *third gender*, *third sex*, *homosexuals*, *sexual minorities*, and *LGBTI people of sexual minorities* to refer to a third-gender community. Though the document makes distinctions between "lesbian, gay, bisexual, transsexual, and intersexual persons," it replaces *transsexual* with *transgender* in some instances while replacing *transgender* with *third gender* in other cases.[14]

[14] A similar confusion occurs around the interchanging use of *sex* and *gender*. Some of this confusion might be attributed to issues arising from transliteration of what is originally a Nepali document, in which the term *linga* might have been used to refer to gender as well as sex, thus translating *tesro lingi* as both "third gender" and "third sex" and conflating *transgender*, *transsexual*, and *intersexual*.

When asked how he, as the lead petitioner, had defined *third gender*, Pant replied that they did not define it precisely, although the petition was framed around the term *tesro lingi*. He explained[15],

> We were not "clear-cut" on that because what happened was—one, we needed to take up Western jurisprudence which talked only of "LGBTI"; another thing was we had also included our "Eastern culture, religion" to make a link with "person of third nature" . . . so we had to take both. So . . . uh . . . we took the benefit of ambiguity, let's say. We took that and we said let's not get into definition, otherwise it will be difficult.

On this, Barbara B. Tadié (2016: 364) argues that the law had been enlisted by the activists and deployed by the Nepalese Supreme Court to introduce new gender and sexual categories into the public discourse, and thus to institutionalize a "new" minority based on these categories. Tadié further concludes that this process of validating new identity categories led to a "production of truth". However, I contend that, by foregrounding domestic processes as substantive, Tadié's analysis overemphasizes the significance of the Nepali Supreme Court and completely misses the major role of transnational LGBT activists who provided the BDS with the financial, technical, and moral resources required to draw and argue the petition in the Court, subsequently influencing the language of the arguments and identity categories foregrounded in both the petition and the decision that came after.

Public interest litigations (PILs) like the one filed by the BDS had been successfully used by Nepali women's rights advocates since the advent of multiparty democracy in 1990 (Malagodi 2013; Tadie 2016) to push for a greater role of the Supreme Court as a catalyst for debates on gender equality (Malagodi 2018: 549). But narrowly confined within the realm of cisgender, heterosexual women, women's rights advocates often did not have the expertise required to litigate on behalf of LGBT people, nor did most have the interest to engage meaningfully with the movement, as explained earlier. The BDS also did not have any financial, technical, or moral support from bilateral and multilateral donors like the UK Department for International Development or the UN, which funded only HIV and AIDS intervention work with men who have sex with men. "They tended to be a bit reluctant about legal challenges because they must follow the local country's law, culture," Pant explained. "We needed something on international jurisprudence and . . . a bit of training for our lawyers," he added, "plus someone who knew about Eastern, let's say, South Asia's LGBTI culture" (personal interview, 2018).

So Pant turned to the IGLHRC for financial assistance in filing the 2007 petition, and to gay activists in India for technical assistance. Back then, Arvind Narrain and Vivek Divan were among the very few South Asian lawyers qualified for this. Divan worked at the Lawyer's Collective, which had led the legal research for a PIL challenging the constitutionality of a British-era criminal code, Section 377, which criminalized "unnatural offences" or intercourse "against the order of nature," mostly used against men who have sex with men. Narrain cofounded the Alternative Law Forum in Bangalore and subsequently became the director of ARC International in Geneva—both organizations centralize work on LGBT rights. As a lawyer and activist, Narrain has also been part of the struggle against Section 377 since the beginning. At the time of the BDS's petition in 2007, these two lawyers

[15] This interview with Pant was conducted in Nepali though English language terms used have been put under quotations.

had had at least seven years of experience in LGBT rights advocacy in India. They had themselves sought legal assistance from gay judges from South Africa and Australia when filing the petition against Section 377 (Kolmannskog 2016: 92). Such technical expertise facilitated by transnational gay networks has been significant in the framing of LGBT rights in related countries.

Transnational gay networks were especially significant in the collaboration between Indian and Nepali activists when the BDS decided to file its own petition. In 2004 the Delhi High Court in India had dismissed the Naz petition because, as it said, homosexuality did not fit with traditional Indian morality (93). This opposition to homosexuality in the Indian court influenced the drawing of the petition in Nepal, with both Divan and Narrain providing extensive input from the Indian litigations. As the lawyer, Hari Phuyal, who fought the case for the BDS recalled in an interview in 2017:

> They came and helped me a lot. We had discussions for three days. . . They gave me different reports. That Arvind Narrain gave me a historical perspective [on the third gender] in Hindu society . . . then after there was research he conducted in Bangalore among a group of kothis I think. Vivek also gave me various information on legal issues and gave me lots of materials. They introduced me to a hell of a lot of documents—about the court case in South Africa, Lawrence v/s Texas [US], a German case—whatever cases they introduced, I used them and prepared a brief after these three days.

This account shows that transnational allies based in and outside Nepal were willing and capable of providing the BDS technical and financial assistance. The Indian case in which the Delhi High Court had dismissed the Naz petition that was framed around sexual rights provided an important lesson for the Nepali petitioners. The BDS's subsequent petition foregrounded gender over sexuality and focused on the simplified category of the third gender legible within a largely Hindu society. The petition further emphasized the significance of this category by using it as an umbrella category to represent all LGBTI people.

Pant recalled the debate prevalent in India at that time on whether being gay was natural or unnatural. He recounted his instructions to the Nepali lawyers arguing the case: "I told them not to go into debates around 'natural-unnatural.' . . . We'll not reach anywhere with that, we can't reach a decision on that." It was important for the BDS to avoid the pitfall of the Indian petition, which had insisted on the naturalness of homosexual people. Pant instead chose to focus on the violation of human rights while keeping the language vague when it came to discussing sexualities and identity categories.

This ambiguity in language alongside the prominence of the third-gender category in the petition and subsequent advocacy efforts resulted in a long-lasting transformation in the way people self-identified. As a BDS activist recounted, it was only after the court case and especially after Pant's election to Nepal's Constituent Assembly in 2008 that most of the metis or "effeminate men" started identifying explicitly with the transgender category. As the activist explained in an interview in 2017:

> Even when the court was mulling over the decision, X and others would not be wearing their outfits full-time like now. They would wear that when coming to the office and change to male dress again before going home. So after the court decision

> came and [Pant] became elected into the Constituent Assembly and the [new] constitution was being written, policies were being changed. Only after that many "fully transformed" themselves on the basis of their outfit.. . . Previously, they would only wear it occasionally or during festivals like Gaijatra Pride [parade].

One of the earliest international allies of the BDS also recalled in an interview in 2016 –"It seemed literally overnight a lot of the gay men I knew, who seemed to be quite happy to be gay, suddenly started identifying as transgender. And then from transgender . . . it sort of went to third gender. And everybody became third gender!" Often echoed by outsiders to the BDS, this was an exaggeration of a situation in which activists were still making sense of new categories best aligned with their experiences and sense of self. Some of those I interviewed hinted at the organizational pressure within the BDS to identify as the third gender immediately following the court decision, especially with increased media coverage of the BDS and the landmark case. The ally quoted above also pointed out an important shift in identification from gay to transgender and, subsequently, to third gender. Curiously, the international ally did not mention meti. But from past research (see Tamang 2003) and my own study (Rana, 2021), it is evident that metis had often used Euro-American categories like gay when encountering foreigners like this ally to make themselves legible to potential collaborators or even sexual partners. The metis' suddenly identifying as transgender "overnight" interrupted this accommodation made for the benefit of outsiders who might have been more attached to the imagination of the "Global Gay" (Altman 1997). Further, the metis' transition to the third gender was a deployment of what Gayatri Spivak (1988) has termed "strategic essentialism," simplifying what would be a complex amalgam of identities in the acronym *LGBTI* used in the 2007 petition, and providing a cultural legibility for those encountering these terms for the first time, but also sanitizing the image of sex-working metis.

Conclusion

By tracing the biography of the tesro lingi or third-gender category in Nepal between 2000 and 2007, this article has shown how this collective identity is fluid and relational, emerging out of interactions with transnational queer activists and human rights defenders at a time of intense political upheaval in the country. It has been shaped by interactions between activist networks and the technical, moral, and financial resources made available by these networks in the context of growing trans activism in the global North and South on the one hand, and on human rights activism during the Maoist insurgency in Nepal on the other. Nepali activists have navigated rapidly shifting terrains of activism, often responding to the language of their transnational supporters when domestic support was not forthcoming. These shifting terrains of engagement have led to the transition from the HIV and AIDS category of meti—often ghettoized as street-based, cross-dressing sex workers—to the LGBT rights category of transgender, and subsequently the vernacular but cosmopolitan, pan–South Asian category of third gender. By putting forward a regional approach to the history of the third-gender category, this article offers a situated insight into identity formation within social movements. It foregrounds the agency of activists in the global South in defining themselves even while they are caught up in—and often try to resist—the workings of transnational power relations that make possible some ways of being more than others.

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