

Sexual Orientation and Gender Identity Minorities in Transition: LGBT Rights and Activism in Myanmar

*Lynette J. Chua** & *David Gilbert***

ABSTRACT

Grounded in ongoing fieldwork inside Myanmar and amongst exiled Burmese communities, this article provides the first detailed account of the legal and human rights status of sexual orientation and gender identity minorities in Myanmar, with a focus on the abuses that they suffer. It also examines how Burmese activists overcame repressive laws to form an indigenous LGBT rights movement that has flourished since the start of the country's recent political transition. The research thus sheds light not only on future challenges for LGBT rights activism, but also on the broader political mobilization of human rights in a changing Myanmar. The research also has implications for states during democratic transition.

* *Lynette J. Chua* is assistant professor of law at the National University of Singapore.

** *David Gilbert* is a Ph.D. candidate at the Department of Political and Social Change, Australian National University.

The authors are grateful to the study respondents. They also thank Andrew Harding, Andrew Walker, Nick Cheesman, Elaine Ho, Peter Jackson, Nicholas Farrelly, Eugene Quah, and the audience at the faculty research seminar, Faculty of Law, National University of Singapore, where a draft of this article was presented, as well as assistants Naw Mar Moora, U Kyaw Maung, Khine Khine Zin, Jannelle Lau, Yeo Sam Jay, Koh Wei Jie, Maria Acton Thomas, Phua Jun Han, and Intan Wirayadi. The first author was funded by the Humanities and Social Sciences Research Grant, National University of Singapore, and the second author was funded by an Australian Postgraduate Award. Please direct correspondence to the first author at Faculty of Law, National University of Singapore, 469G Bukit Timah Road, Eu Tong Sen Building, Singapore 259776, or at lynettechua@nus.edu.sg.

I. INTRODUCTION

Myanmar's¹ political and legal institutions have been rapidly changing since the 2010 general elections—the first multi-party contest in fifty years. The elections were followed by the release of Aung San Suu Kyi and the majority of other political prisoners in 2010 and 2011, the National League for Democracy's victory in the 2012 by-elections, and the revival of diplomatic relations with the United States.² Lessons from elsewhere suggest that times of political liberalization are opportune moments for domestic lesbian, gay, bisexual, and transgender (LGBT) rights movements to emerge, as activists enjoy greater civil-political freedoms to raise rights consciousness, speak out against oppression, and organize collectively.³ Therefore, while Myanmar's military regime transitions into civilian rule and democratic institutions, this article examines the sociolegal conditions of its sexual orientation and gender identity (SOGI) minorities,⁴ highlights their collective efforts at—and prospects for—legal redress, and points to future research directions. Grounded in ongoing fieldwork in Myanmar and Burmese communities in Thailand since 2011,⁵ this article provides the first account of the legal and human rights status of SOGI minorities in Myanmar and the emergence of an indigenous LGBT rights movement.

1. This article uses "Myanmar," the country's official name since 1989, to refer to the state, "Burmese" as the adjectival form, as it remains in common usage, and "Burma" when referring to historical developments when it was the country's official name. Although both terms come from a common root, rejection of "Myanmar" was a mark of opposition to the military dictatorship.
2. HUMAN RIGHTS WATCH, "UNTOLD MISERIES": WARTIME ABUSES AND FORCED DISPLACEMENT IN BURMA'S CHIN STATE (2012); Bill Davis, *Bitter Wounds and Lost Dreams: Human Rights Under Assault in Karen State, Burma*, PHYSICIANS FOR HUMAN RIGHTS (2012), available at <http://physiciansforhumanrights.org/library/reports/bitter-wounds-and-lost-dreams.html>.
3. See, e.g., Mark Gevisser, *A Different Fight for Freedom: A History of South African Lesbian and Gay Organisation from the 1950s to 1990s*, in *DEFIANT DESIRE* 14, 36 (Mark Gevisser & Edwin Cameron eds., 1995); Stephen Brown, *Democracy and Sexual Difference: The Lesbian and Gay Movement in Argentina*, in *THE GLOBAL EMERGENCE OF GAY AND LESBIAN POLITICS: NATIONAL IMPRINTS OF A WORLDWIDE MOVEMENT* 110, 114 (Barry D. Adam, Jan Willem Duyvendak & André Krouwel eds., 1999); Agnieszka Graff, *We Are (Not All) Homophobes: A Report from Poland*, 32 *FEMINIST STUD.* 434 (2006); Lynette J. Chua, *Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore*, 46 *L. & SOC'Y REV.* 713, 714 (2012).
4. "SOGI minorities," in this article, refers collectively to Burmese who are nonheteronormative or gender nonconforming, and "LGBT" refers to the identities associated with international human rights discourse and the fledgling movement in Myanmar. Neither is intended to replace Myanmar's indigenous language and terms of reference for its unique sexual and gender identity cultures. This article, however, does not include intersex issues; of course, there are intersex people in Myanmar, but the term is relatively unknown in the country, and intersex people are yet to constitute a community involved in the LGBT rights movement.
5. The first author has been collecting primary materials from activist groups, carrying out field observations, and conducting in-depth, semi-structured interviews with Burmese LGBT rights activists and legal aid lawyers from various Myanmar cities and Thailand.

SOGI minorities in Myanmar routinely suffer human rights abuses: The British colonial legacy of Section 377 of the Penal Code still criminalizes same-sex sexual relations; wide statutory powers enable a corrupt police force to persecute them in their everyday lives; and they lack legal redress for discrimination and abuse inflicted by family members, employers, teachers, and others in their social circles. However, even before the political transition, Myanmar's LGBT rights activists had begun to address these issues, building ties between migrant and grassroots communities in their home country to seed a movement that eventually coincided with the country's democratization. Hence, since 2012, they have organized the first International Day Against Homophobia (IDAHO) and Transgender Day of Remembrance (TDoR) events in Yangon and other cities,⁶ conducted research to document human rights abuses, called for legal reform, and made political alliances. Exiled activists living in Thailand are also returning to Myanmar. As they take advantage of larger political and legal reforms, they are faced with the challenges of seeking decriminalization of same-sex relationships, as well as addressing the police persecution that is symptomatic of Myanmar's corrupt and arbitrary legal system. These future challenges and the ways in which LGBT rights activists have thus far overcome repressive laws to organize collectively shed light on the political mobilization of human rights in a changing Myanmar.

After providing background on Myanmar's political transition, this article sets out the legal context, emphasizing restrictions on civil-political liberties that suppress collective organizing. Next, it explains local understandings of SOGI minorities. Then, it analyzes their legal environment, detailing the laws, police abuse, and other forms of discrimination against them. After that, it examines how Burmese activists overcame legal obstacles to build a fledgling LGBT rights movement with grassroots support. The conclusion discusses future challenges for the movement and distills broader lessons for Myanmar's political transition.

II. MYANMAR'S POLITICAL BACKGROUND

Myanmar's post-2010 political transition is intimately linked to the British colonial experience, post-independence internal conflict, and more than

since September 2012. The second author conducted ethnography, focusing on SOGI minority cultures in Yangon between 2011 and 2013. To protect the informants, their identities are kept confidential. The authors welcome direct correspondence regarding their fieldwork and research designs.

6. IDAHO has since been renamed IDAHOT to include transphobia explicitly. On TDoR, see Transgender Day of Remembrance, GSA NETWORK, available at <http://www.gsanetwork.org/resources/gsa-actions-events/transgender-day-remembrance>.

fifty years of military dictatorship. What is geographically today's Myanmar fell to British rule following waves of colonization.⁷ To control widespread crime and disorder, which arose at least partly in response to their colonial invasion, British administrators introduced repressive laws, such as the Unlawful Associations Act of 1908 and the Rangoon Police Act of 1899, that have had long-lasting impact on civil-political liberties.⁸

In 1948, when the Union of Burma gained independence from the British, it inherited these repressive laws but also envisioned liberal democratic governance that provided for constitutional protection of fundamental liberties.⁹ However, ethnic-identity politics immediately troubled the former colony,¹⁰ which offered ethnic minorities little meaningful devolution of power within its "quasi [ethnic]-federal structure,"¹¹ and armed groups overran a significant portion of its territory within the first decade of independence. The short period of liberal democracy ended when a caretaker military government took power in 1958 and then cemented military rule with a coup in 1962. The military government later promulgated the 1974 constitution and declared Burma a one-party socialist state, solidifying its dictatorship under a centralized, totalitarian state structure.¹²

In 1988, after twenty-six years of military rule and severe economic mismanagement, a mass, student-led uprising erupted throughout urban areas. General Ne Win stepped down, but the military eventually reasserted control by killing an estimated 3,000 protestors.¹³ Amidst the crackdown on protestors, widespread arrests, and torture, the new regime—named the State Law and Order Restoration Council, and later the State Peace and Development Council—vowed to restore stability and claimed that it would hand over power after elections in 1990.¹⁴ However, when the National League for Democracy party won 82 percent of the seats, the junta suppressed the party and continued to hold Aung San Suu Kyi under house arrest.¹⁵

7. MARY P. CALLAHAN, *MAKING ENEMIES: WAR AND STATE BUILDING IN BURMA* 22 (2003). The three Anglo-Burmese wars were fought between 1824 and 1885.

8. *Id.* at 29–31.

9. See, e.g., THE CONSTITUTION OF THE UNION OF BURMA, 4 Jan. 1948 [hereinafter 1948 CONST.]. The 1948 Constitution provided for racial equality (art. 13), religious freedom (art. 20), and cultural and educational rights (art. 22).

10. *Id.* art. 202. The 1948 Constitution provided ethnic minority states with the right of secession after ten years from the date it took effect.

11. Alan Smith, *Ethnicity and Federal Prospect in Myanmar*, in *FEDERALISM IN ASIA* 189 (Baogang He et al. eds., 2007).

12. THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF THE UNION OF BURMA, 3 Jan. 1974, arts. 5, 6, 11 [hereinafter 1974 CONST.].

13. Philippa Fogarty, *Was Burma's 1988 Uprising Worth It?*, BBC News, 6 Aug. 2008, available at <http://news.bbc.co.uk/2/hi/asia-pacific/7543347.stm>.

14. HUMAN RIGHTS DOCUMENTATION UNIT, *SLORC Military Rule (1988–1997)*, in *BURMA HUMAN RIGHTS YEARBOOK* 2008, at 12–13 (2009).

15. MICHAEL W. CHARNEY, *A HISTORY OF MODERN BURMA* 165–71 (2009); DAVID I. STEINBERG, *BURMA: THE STATE OF MYANMAR* 43–46 (2001).

Ruled by the military since 1962, Myanmar experienced drastic changes in its legal system that undermined judicial independence and hampered the development of common law, inherited from the British.¹⁶ The junta gained notoriety for human rights violations, some of which were carried out using such draconian legislation as the Emergency Provisions Act and the State Protection Law, under which Aung San Suu Kyi was detained.¹⁷ Meanwhile, urban activists from the 1988 uprising went underground or joined the insurgency in rural areas. Others fled into political exile and founded human rights organizations overseas, focusing on issues such as ethnic minorities, gender, youth, and LGBT rights.

After disregarding the results of the 1990 elections, the junta announced that it would draw up a new constitution. This constitution was finally passed in 2008 by a managed referendum that was widely perceived as illegitimate.¹⁸ While the new constitution provided for a presidential system of governance¹⁹ with a bicameral legislature,²⁰ it also reflected the military's continuous influence over politics. Members of the armed forces are guaranteed 25 percent of the seats in the Lower House of the *Hluttaw* (parliament)²¹ and six out of eleven members of the powerful National Security Council, which selects the Commander-in-Chief.²² Fundamental rights are limited by qualifications, such as "Union security," "law and order," and "public order

-
16. Myint Zan, *Judicial Independence in Burma: Constitutional History, Actual Practice and Future Prospects*, 4 S. CROSS U. L. REV. 17, 31–33 (2000); Nick Cheesman, *How an Authoritarian Regime in Burma Used Special Courts to Defeat Judicial Independence*, 45 L. & SOC'Y REV. 801, 806–19 (2011).
 17. Other well-documented forms of human rights violations, typically perpetrated by the Burmese military in the context of civil war, disregard legality altogether. They include extra-judicial killings, the use of child soldiers, forced portering for the army, forced labor, rape, forced relocation of villages, and the destruction of property. See GUY HORTON, DYING ALIVE: AN INVESTIGATION AND LEGAL ASSESSMENT OF HUMAN RIGHTS VIOLATIONS INFLECTED IN BURMA, WITH PARTICULAR REFERENCE TO THE INTERNALLY DISPLACED EASTERN PEOPLES (2005); HUMAN RIGHTS DOCUMENTATION UNIT, *Arbitrary or Politically Motivated Arrests, Detention and Disappearances*, in BURMA HUMAN RIGHTS YEARBOOK 2008 (2009); HUMAN RIGHTS WATCH, *supra* note 2, at 25; Davis, *supra* note 2, at 8–9; Adam Richards, *Life Under the Junta: Evidence of Crimes Against Humanity in Burma's Chin State*, PHYSICIANS FOR HUMAN RIGHTS (2011), available at <http://physiciansforhumanrights.org/library/reports/burma-chin-report-2011.html>.
 18. Since 2004, the National League Democracy had boycotted the drafting process, as its participation was highly limited. In May 2008, the military government insisted on holding the referendum as scheduled, despite the devastation caused by Cyclone Nargis that landed in Yangon and other parts of lower Myanmar. ALTSEAN-BURMA, 2010 ELECTIONS: A RECIPE FOR CONTINUED CONFLICT (30 Oct. 2009), available at <http://www.altsean.org/Docs/PDF%20Format/Thematic%20Briefers/2010%20elections%20-%20A%20recipe%20for%20continued%20conflict.pdf>; HUMAN RIGHTS WATCH, VOTE TO NOWHERE: THE MAY 2008 CONSTITUTIONAL REFERENDUM IN BURMA (2008).
 19. CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR, Sept. 2008, ch. III [hereinafter 2008 CONST.].
 20. *Id.* ch. IV, art. 74.
 21. *Id.* art. 109 (b).
 22. *Id.* ch. V, art. 201; *id.* ch. VII, art. 342.

and morality,"²³ and come with a revocation clause that allows the military to curtail rights with impunity.²⁴

The first nationwide elections under the 2008 Constitution took place in 2010. Contrary to gloomy predictions,²⁵ President Thein Sein's government rapidly implemented reforms, signaling the beginning of transition to civilian rule. Since then, the new government has released the majority of political prisoners, allowed Aung San Suu Kyi and the National League for Democracy to enter parliament, brokered a near-nationwide ceasefire with insurgent groups (fighting continues in Northern Myanmar), permitted political exiles to return, established the Myanmar National Human Rights Commission, abolished pre-publication print censorship, removed restrictions on "politically sensitive" websites, and passed laws allowing independent trade unions and peaceful assembly.²⁶

III. CIVIL-POLITICAL LIBERTIES AND COLLECTIVE MOBILIZATION IN MYANMAR

At this early stage of political transition, Myanmar's legal reforms have a long way to go.²⁷ Tight restrictions remain on civil-political rights, oppressive laws from the colonial era exist alongside the Constitution, and military rulers still establish legislation and policy directives. This section of the article focuses on the limitations placed on constitutional rights to "form associations and organizations," "express and publish freely," and "assemble peacefully without arms and [hold] procession"²⁸—fundamental liberties that facilitate collective organizing—and thus highlights the legal obstacles LGBT rights activists have struggled to overcome.

23. *Id.* ch. VIII, art. 354.

24. *Id.* art. 382.

25. Burma Lawyers' Council, *The Rule of Law and Democratization: An Analysis of the Forthcoming 2010 Election in Burma from a Human Rights Perspective*, LEGAL JOURNAL ON BURMA 5 (11 Nov. 2009), available at <http://www.burmalibrary.org/docs08/Elections-LIOB34.pdf>; U Win Tin, *Myanmar's Prison of an Election will also be ASEAN's*, JAKARTA POST, 27 May 2010, available at <http://www.thejakartapost.com/news/2010/05/27/myanmar-s-prison-election-will-also-be-asean-s.html>.

26. Naomi Hunt, *Burma Abolishes Pre-Publication Censorship for Print Media: IPI Welcomes Move and Calls for Repeal of Other Draconian Laws*, INT'L PRESS INST. (27 Aug. 2012), available at <http://www.freemedia.at/newssview/article/burma-abolishes-pre-publication-censorship-for-print-media.html>.

27. The persecution of some minority groups has intensified since 2011, including attacks on Muslim communities and what has been characterized as "ethnic cleansing" against the Rohingya. HUMAN RIGHTS WATCH, "ALL YOU CAN DO IS PRAY": CRIMES AGAINST HUMANITY AND ETHNIC CLEANSING OF ROHINGYA MUSLIMS IN BURMA'S ARAKAN STATE (22 Apr. 2013), available at <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray-0>; Andrea Gittleman, *Patterns of Anti-Muslim Violence in Burma: A Call for Accountability and Prevention*, PHYSICIANS FOR HUMAN RIGHTS (2013), available at <http://physiciansforhumanrights.org/library/reports/patterns-of-anti-muslim-violence-in-burma.html>.

28. 2008 CONST., *supra* note 19, ch. VIII, art. 354(a)-(c).

A. Restrictions on Freedom of Association

Seeing as Myanmar's LGBT rights movement, detailed in Section VI, emerged before the new Association Registration Law took effect on 20 July 2014, its activists had to contend with restrictions on freedom of association already in place during the military regime.²⁹ In contrast to the new law, which provides for voluntary registration of organizations,³⁰ the earlier rules required state approval of organizations. Among these restrictions, Law No. 6/88³¹ most directly affected local nongovernmental organizations (NGOs) and community-based organizations (CBOs),³² including those that work with SOGI minorities. Passed in 1988, it was one of many draconian laws that the military junta swiftly deployed after the uprisings that year. It operated in tandem with the 1908 Unlawful Associations Act,³³ as well as with other laws and executive directives. According to Section 2 of Law No. 6/88, any "association, society, union, [or] . . . club" must apply for government permission to form.³⁴ The punishment for operating an unapproved organization was imprisonment for up to five years.³⁵ Organization approval was subject to vague criteria such as "law and order, peace and tranquility, or safe and secure communication," and "regularity of state machinery."³⁶ Before the political transition, permitted organizations were usually government-organized NGOs (GONGOs), groups with leadership closely linked to or trusted by the junta, groups with health or development-oriented goals, vil-

29. On 25 June 2014, Myanmar's parliament passed the Association Registration Law (2014), which replaces Law No. 6/88. The new law was then officially "gazetted" in the newspaper after the President signed it on 20 July 2014. See THE INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW, NGO LAW MONITOR: MYANMAR (Burma) (25 Oct. 2014), *available at* <http://www.icnl.org/research/monitor/Myanmar.html>. It is ostensibly more liberal than the older laws, but its long-term effects on activism and civil society are too early to gauge at this point.

30. While the newly enacted Association Registration Law is a significant reform, conditions remain in place to prevent civil society organizations that are a perceived threat to Myanmar law, leaving LGBT organisations potentially vulnerable while same-sex sexual conduct remains criminalised. See Association Registration Law, *supra* note 29, § 4(8) (a).

31. The Law Relating to Forming of Organizations, State Law and Order Restoration Council Law No. 6/88 (1988), *available at* http://burmalibrary.org/docs/SLORC_Law_6-88B.htm.

32. CBOs are grassroots groups that are smaller in size and geographical coverage than local NGOs, which may span various regions. Ashley South, *Political Transition in Myanmar: A New Model for Democratization*, 26 CONTEMP. S.E. ASIA 233, 243–44 (2004).

33. The Unlawful Associations Act, India Act XIV, § 15(2)(b) (1908) (Burma) states that unlawful associations include those that the President may declare to be unlawful. The President may make such a declaration if the association "[interferes] with...the maintenance of law and order, or...[constitutes] a danger to the public peace." *Id.* § 16.

34. Law No. 6/88, *supra* note 31, §§ 2(a), 3(a). Law No. 6/88, § 4(e) also excludes political organizations, which are governed by the Political Parties Registration Law. The latter was Law No. 4/88 and was replaced by 2010 enactments.

35. *Id.* § 6.

36. *Id.* § 5(b)-(c).

lage associations, funeral societies, and “cultural groups”³⁷ that posed little threat to the dictatorship.

Since 2010, more NGOs and CBOs have successfully obtained legal permission to organize. Nevertheless, the process of applying for approval under the former legal regime was tedious and expensive for most domestic organizations.³⁸ Applicants were required to submit forms to their relevant townships, which might then move the applications up the bureaucratic chain to the district, state, and regional levels.³⁹ The applications had to disclose the identities of the proposed organization’s executive committee members,⁴⁰ a requirement that could lead to home visits by the police to conduct background checks and interviews with family members.⁴¹ For LGBT rights activists, this could have meant inadvertently outing themselves to people to whom they were not prepared to do so. Furthermore, the annual registration fees for an organization could cost up to 100,000 kyats (100 USD)—a relatively large sum for ordinary Myanmar citizens.⁴² Faced with these legal hurdles, most NGOs and CBOs did not register at all,⁴³ meaning that they risked being charged pursuant to Law No. 6/88 or any other law that authorities saw fit.

This set of laws and directives, however, did not apply to United Nations programs and international NGOs (INGOs). Instead, they were controlled by an executive requirement to sign memoranda of understanding (MOUs) with relevant government ministries. The MOUs contained prohibitions against “engage[ment] in any political, economic, religious or social and cultural activities in conflict with the interests of the Government.”⁴⁴ Because these arrangements were usually renewed on an annual basis, United Nations programs and INGOs were subject to constant bureaucratic review processes. Nevertheless, the MOU mechanism did allow them to partner with local NGOs and CBOs—even unregistered ones—offering a safer, although limited, avenue for grassroots organizing. This is an important point that will be revisited later.

37. South, *supra* note 32, at 243.

38. An exception is trade unions, which—according to The Labour Organization Law, Pyidaungsu Hluttaw Law No. 7/2011, ch. II, § 4(a)(i) (2011) (Burma)—have to register with a minimum of thirty members.

39. Lynette J. Chua, Interview 37 with anonymous informant (27 Sept. 2012).

40. Directive No. 1/88, Ministry of Home and Religious Affairs, Form (A): Application for formation of associations in accordance with the Law for Formation of Associations or Organizations, § 6, *WORKING PEOPLE’S DAILY* (4 Oct. 1988), available at <http://burmalibrary.org/docs/Directive1-88.htm>.

41. Interview 37, *supra* note 39.

42. *Id.*

43. In August 2012, the Deputy Minister for Home Affairs reported about 270 registered NGOs, but claimed that more than 1,000 were actually in operation. Nyein Nyein, *NGO Registration Law to Be Drafted*, *THE IRRAWADDY*, 17 Aug. 2012, available at <http://www.irrawaddy.org/?slide=ngo-registration-law-to-be-drafted>.

44. Memorandum of Understanding between the Myanmar Department of Health and an informant’s INGO (14 Mar. 2012) (on file with first author).

B. Restrictions on Freedom of Assembly

Prior to the Right to Peaceful Assembly and Peaceful Procession Act (“Peaceful Assembly Act”) of 2011, Order No. 2/88 outlawed gatherings of more than five people and was used by the junta to suppress civil society. Therefore, when the Thein Sein government passed the Peaceful Assembly Act, aimed at legalizing peaceful protest, international media coverage was positive. Nevertheless, the Act significantly curtails peaceful protest in ways that affect LGBT rights activism.

Compared to Order No. 2/88, the Act covers a wider array of regulated assemblies and processions. Instead of a minimum of five persons, it covers gatherings of two or more persons.⁴⁵ Individuals or organizations must apply for permission to protest at least five days in advance from the police chief of the relevant township.⁴⁶ Section 3 lays out the documentation that protest organizers are required to file with the application. In addition to the assembly site or procession route, date, and time, it requires disclosure of the event’s purpose, “topic,” and “chants,” the biographies of leaders and speakers, and the organization’s record of its decision to protest.⁴⁷ According to Section 5, an application can be denied if the event is considered a threat to “security of the State, rule of law, [the] community’s peace and tranquility, and public morality.”⁴⁸ If a permit is granted, participants must follow Section 12, which prohibits talking or behaving in ways that could “cause any disturbance or...annoyance” or “affect the country or the Union, race, or religion, human dignity and moral principles.”⁴⁹ The penalty for holding a peaceful assembly or procession without a permit is imprisonment for up to one year, a maximum fine of 30,000 kyats (30 USD), or both, whereas contravention of Section 12 carries a maximum prison term of six months, a 10,000 kyat fine (10 USD), or both.⁵⁰ Since the Act’s passage, activists have been arrested and imprisoned.⁵¹ The Act thus makes public assembly

45. The Right to Peaceful Assembly and Peaceful Procession Act 2011, Pyidaungsu Hluttaw Law No. 15/2011, § 2(b)-(c) (2011) [hereinafter Peaceful Assembly Act].

46. On 24 June 2014, an amendment requiring police to have a “valid” reason for denying permission to protest came into force. It is an attempt to address one of the most contentious sections of the Peaceful Assembly Act, although the grounds for refusal remain vague. ARTICLE 19, MYANMAR: DISAPPOINTMENT SURROUNDS AMENDMENT TO ASSEMBLY LAW (27 June 2014), available at <http://www.article19.org/resources.php/resource/37606/en/myanmar-disappointment-surrounds-amendment-to-assembly-law>.

47. Peaceful Assembly Act, *supra* note 45, § 4.

48. *Id.* § 5.

49. *Id.* § 12(a), (e).

50. *Id.* §§ 18–19.

51. The new law has been used to charge peace, land rights, labor, and minority rights protesters. Amy Smith, *Myanmar: Arrests Continue amid Promise to Release all Prisoners of Conscience*, AMNESTY INTERNATIONAL (17 July 2013), available at <http://www.amnesty.org/en/news/myanmar-arrests-continue-amid-promise-release-all-prisoners-conscience-2013-07-17>; FORUM-ASIA, BURMA/MYANMAR: NEW FORMS OF CONTROL AND THREATS

and protest risky for LGBT rights activists. Due to the legal system's endemic corruption⁵² and widespread police abuse—examined in Section V of this article—SOGI minorities distrust the police and find the bureaucratic process intimidating. Because LGBT rights groups are generally unregistered, applying for permission also risks prosecution under laws restricting freedom of association that remain in effect as of the writing of this article. Although individuals can apply in place of their organizations, they would have to shoulder the legal responsibility of the organization, which is daunting as well.⁵³ Furthermore, a public event associated with SOGI minorities, even if initially approved, could risk *ex post facto* prosecution under the vaguely worded regulations of public morality and religion because, as Section IV will explain, the people of Myanmar commonly regard SOGI minorities as immoral.

C. Restrictions on Freedom of Speech

Restrictions on both print and online media directly affect LGBT rights activism, too. The 1962 Printers and Publishers Registration Law remains in force and requires official permission for the publication of newspapers, magazines, and books.⁵⁴ Under Section 10, permits can be revoked for the publication of anything that contradicts the government's views. All material published must also be submitted to the government. Anyone who publishes without a permit could be imprisoned for up to three years, a sentence commonly handed down to activists and journalists by the junta.⁵⁵

On 4 July 2013, amidst local opposition and international criticism, the Lower House of Parliament passed the Printing and Publishing Enterprise Law to replace the 1962 legislation.⁵⁶ The proposed law contains broad

TO FREEDOMS OF EXPRESSION, ASSEMBLY AND ASSOCIATION AMIDST REFORMS FANFARE, International Fact-Finding Mission, 24–30 Oct. 2012 (2013), available at <http://www.forum-asia.org/uploads/books/2013/March/FA-FFM-Burma-2013March.pdf>.

52. ASIAN HUMAN RIGHTS COMMISSION, DIAGNOSING THE UN-RULE OF LAW IN BURMA: A SUBMISSION TO THE UN HUMAN RIGHTS COUNCIL'S UNIVERSAL PERIODIC REVIEW ¶¶ 7–9 (2010); Andrew Selth, *Burma's Police: The Long Road to Reform*, THE INTERPRETER, 13 Dec. 2012, available at <http://www.lowyinterpreter.org/post/2012/12/13/Burmas-police-The-long-road-to-reform.aspx>.

53. ARTICLE 19, MYANMAR: THE DECREE ON THE RIGHT TO PEACEFUL ASSEMBLY AND PEACEFUL PROCESSION 14–15 (2012), available at <http://www.article19.org/data/files/medialibrary/3440/12-09-19-LA-Myanmar.pdf>.

54. 1962 Printers and Publishers Registration Law (1962), amended by Revolutionary Council of the Union of Myanmar Law No. 1 (1971) (Myanmar).

55. *Id.* § 16.

56. Kyaw Phyto Tha, *Burma's Journalists Hit the Streets as Concern Over Media Reform Grows*, THE IRRRAWADDY, 5 Aug. 2013, available at <http://www.irrawaddy.org/media/burmas-journalists-hit-the-streets-as-concern-over-media-reform-grows.html>; *Upper House Must Not Approve Proposed Media Law in its Current Form*, REPORTERS WITHOUT BORDERS (9 July 2013), available at <http://en.rsf.org/burma-upper-house-most-not-approve-09-07-2013,44916.html>.

definitions of printing and publishing: An NGO that possesses a photocopier could be classified as a “printing house,” and a range of materials, including leaflets and blog posts, could fall under its definition of “publication.”⁵⁷ Similar to the 1962 Act, the proposed law requires printers and publishers to apply for permission to operate, which is subject to the government’s wide discretion. For instance, permission could be denied for publishing content that “[expresses] nudity” or “[encourages] and [stimulates] crime.”⁵⁸ Hence, the publications of LGBT rights organizations could be construed as religiously insulting to conservatives, and the existence of Section 377 of the Penal Code—the anti-sodomy law—could support an allegation that such publications encouraged crime.

As to online media, the 1996 Computer Science Development Law carries sentences between seven and fifteen years, both for unauthorized possession of computer hardware and for using information technology in ways that could undermine “community peace and tranquility... and national culture.”⁵⁹ Similar provisions are found in the 2004 Electronic Transactions Law, which extends to short message service (telephone text messaging) and facsimile communication.⁶⁰ At the time of writing, at least three people remain in prison under the Electronic Transactions Law.⁶¹ The continued existence of these pretransition laws⁶² exposes LGBT rights activists to further legal jeopardy, as they distribute news and information on LGBT rights via social media, websites, and YouTube videos. In the past, online organizing—or even discussion of human rights—stirred fear and discord among the online communities of Burmese SOGI minorities.

IV. BACKGROUND ON SOGI MINORITIES IN MYANMAR⁶³

Having set out the legal context for LGBT rights activism in Myanmar, in this section, the article turns toward the unique cultures of SOGI minorities.

57. Printing and Publishing Enterprise Law Bill, ch. 1, § 2(b)-(c) (proposed 4 July 2013 by the Lower House to replace the 1962 Printers and Publishers Registration Law).

58. *Id.* ch. 3, § 7(c)-(d).

59. The Computer Science Development Law, State Law and Order Restoration Council Law No. 10/96, § 35(a) (1996) (Burma).

60. The Electronic Transactions Law, State Peace and Development Council Law No. 5/2004, § 33 (2004) (Burma).

61. FREEDOM HOUSE, FREEDOM ON THE NET: BURMA (2012), available at http://www.freedomhouse.org/report/freedom-net/2012/burma#_ftnref10.

62. The government has announced plans to replace these pretransition laws. Simon Roughneen, *Burma to Replace Controversial Electronic Transactions Law*, THE IRRRAWADDY, 15 July 2013, available at <http://www.irrawaddy.org/investment/burma-to-replace-controversial-electronic-transactions-law.html>.

63. Unless otherwise referenced, this part of the article on SOGI minorities’ subject positions draws from the second author’s work, which is based on the ethnographic fieldwork explained in note 5. See also David Gilbert, *Categorizing Gender in Queer Yangon*, 28 SOJOURN 241 (2013).

In particular, Myanmar's SOGI minorities have their own understandings of, and references for, different forms of nonheteronormativity and gender nonconformity. Simultaneously, they are embedded within larger Burmese society, which adheres strongly to heteronormativity and gender conformity. Understanding this background helps to contextualize SOGI rights abuses and the nascent efforts of LGBT rights activists.

Male Burmese SOGI minorities have three core categories of subject position—also known as social categories of personhood: “open” (*apwint*), “hider” (*apôn*), and “guy” (*thu nge*).⁶⁴ “Opens” are biological males who identify in public and private as feminine. In contrast, “hidiers” are biological males who identify as feminine but maintain a masculine appearance in all or most spheres of life. The third category, “guys,” consists of biological males who are gender-conforming and have a sexual preference for “opens” and “hidiers,” as well as for women, typically as the penetrative sexual partner (it is unusual for “opens” and “hidiers” to desire each other erotically).⁶⁵

In addition, a newer subject position of “homo” is gaining popularity, especially in urban areas. While “open” and “hider” can be understood as transgender categories that are associated with femininity and passivity, “homo” often denotes those who identify as male and are attracted to other biological males (although the term is also used as a synonym of “hider”). Intimate relationships between “homos” are often characterized by stronger durability not possible in relationships between “opens/hidiers” and “guys,” the latter of which eventually give in to social pressure to marry.⁶⁶

Unlike their biologically male counterparts, female SOGI minorities lack a vocabulary for common subject position categories. The word *yauk-kyalya* refers to those who “act like a man”—a term that female informants consider derogatory.⁶⁷ In informal contexts, they prefer to eschew categorical terms altogether in favor of gendered terms of address, such as “brother,” and nonverbal recognition of common subject positions. Meanwhile, within the incipient LGBT rights movement, the English loanwords of “lesbian” and “tomboy” are gaining traction. According to one Yangon-based lesbian leader, “lesbian” subject positions mirror those of their male counterparts, without the vocabulary: Lesbian “opens” are those who are masculine, and lesbian “hidiers” are feminine; both are commonly attracted to gender and sexually normative women, the equivalent of “guys.”⁶⁸

64. With the exception of names and places, Burmese terms are transliterated following the BGN/PCGN 1970 Agreement. Burmese translated terms are signaled with italics followed by the transliterated term in brackets upon first usage. English loanwords used in Burmese are also signaled with italics.

65. Gilbert, *supra* note 63, at 242.

66. David Gilbert, Fieldwork 2011–2012.

67. *Id.* Lynette J. Chua, Fieldwork 2012–2014.

68. *Id.*

In addition to the above categories, other terms exist among the general population and within particular institutional settings. The vocabulary used among the general population is often derogatory in meaning or context, for both male and female SOGI minorities.⁶⁹ One of the more commonly used expressions is *meinmalya*, which literally translates as those who “act like a woman” and is a synonym for “open.” Within institutional settings, “men who have sex with men,” or “MSM,” is an official term used by the Ministry of Health, as well as INGOs, local NGOs, and civil society networks working on HIV/AIDS⁷⁰—an area that Section VI will detail. LGBT rights activists in exile have also coined an alternative term—*leintuchitthu*, or “those who love the same gender.”⁷¹ Broader than “MSM,” it is intended to be inclusive and positive, covering both male and female SOGI minorities and shifting focus from sexual acts to the “more polite” word of “love.”⁷²

In contemporary Burmese society, SOGI minorities face myriad forms of discrimination, including limited economic prospects. “Opens” have managed to construct a social and economic niche through their domination of the beauty and spirit-mediumship professions, and a small number have accumulated substantial fame.⁷³ Nonetheless, while the spirit-mediumship and beauty industries afford access to forms of power, many SOGI minorities struggle with precarious livelihoods and limited choice. For male SOGI minorities, an association with femininity results in loss of social status, as men are “structurally superior” to women in regard to a spiritual form of power known as *hpoun*. One’s amount of *hpoun* is determined by karma through the accumulation of merit in past lives. Since men have greater (or all) *hpoun*, this particular concept of power supports a cosmological view

69. Derogatory Burmese terminology has been used in academic literature; notably, *acault* was used to refer to male SOGI minorities in Eli Coleman, Philip Colgan & Louis Gooren, *Male Cross-Gender Behavior in Myanmar (Burma): A Description of the Acault*, 21 *ARCHIVES OF SEXUAL BEHAV.* 313 (1992). The translation and transliteration of Burmese SOGI minority terminology has since been critiqued by Tamara C. Ho, *Transgender, Transgression, and Translation: A Cartography of Nat Kadaws Notes on Gender and Sexuality within the Spirit Cult of Burma*, 31 *DISCOURSE* 273 (2009).

70. Gilbert, *supra* note 63, at 247.

71. *Id.* at 265. Chua, *supra* note 67.

72. Gilbert, *supra* note 66. Chua, *supra* note 67.

73. The popular association between spirit-mediumship and male SOGI minorities is a recent phenomenon. Before the Socialist period began in 1962, the majority of spirit mediums were women. The catalyst for the demographic shift within the spirit-mediumship profession needs further research. According to some accounts, male gender minorities are naturally talented performers and have a superior ability to channel and perform both male and female spirits, compared to their gender normative counterparts. Gilbert, *supra* note 66; Bénédicte Brac de la Perrière, *The Taungbyon Festival: Locality and Nation-Confronting in the Cult of the 37 Lords*, in *BURMA AT THE TURN OF THE TWENTY-FIRST CENTURY* 65, 79 (Monique Skidmore ed., 2005); *FRIENDS IN HIGH PLACES* (Documentary Educational Resources 2001). Perhaps restrictions on the spirit cult under the Socialist regime provided an opportunity for subaltern SOGI minorities to fill a gap in spirit mediumship. Ho, *supra* note 69, at 286.

of male superiority to women. In popular belief, being the receptive partner in male same-sex sexual relations reduces a man's *hpoun*, therefore making him less worthy of respect.⁷⁴

The status of SOGI minorities is further diminished by Burmese Buddhist practices and beliefs. The formal institution of Burmese Buddhism disallows those who are not "real men" from entering monkhood, a prohibition thought to apply to male SOGI minorities.⁷⁵ Moreover, in Burmese Buddhist thought, life is cyclical, involving a process of birth, death, and rebirth. One's social position is determined by their karma at birth, as accumulated in previous lives through deeds involving the body, tongue, and mind/heart. A prevalent belief is that sexual transgressions in a past life, such as adultery or desiring monks, cause boys to become "open."⁷⁶ Hence, the ideas of karma and *hpoun* reinforce a hierarchical view that places male SOGI minorities below the status of other men and justifies their ill treatment. Overall, SOGI minorities are often the subject of ridicule in popular discourse, including novels, self-help literature, and film.⁷⁷ Hence, LGBT activists are also vulnerable targets, especially with the recent rise of the popular, ultra-conservative "969" Buddhist movement.⁷⁸

Beyond its majority Buddhist population, Myanmar's diverse cultural, linguistic, and religious groups have varying responses to SOGI minorities, but they generally accept or even support discrimination. Within the sizable Muslim communities, religious prohibitions remain in place; Muslim SOGI minorities report formidable family pressure to marry and conform to gender norms.⁷⁹ A view of homosexuality as sin permeates Christian communities, causing stigma and discrimination. In a high profile case in 2010, an openly gay Karen singer was excluded from a leading Karen music

74. Gilbert, *supra* note 66. *Hpoun* has variously been translated as "charisma" and "glory." JESSICA HARRIDEN, *THE AUTHORITY OF INFLUENCE: WOMEN AND POWER IN BURMESE HISTORY* 7, 21 (2012); Melford Spiro, *GENDER IDEOLOGY AND PSYCHOSOCIAL REALITY: AN ESSAY ON CULTURAL REPRODUCTION* 20–22 (1997).

75. However, those who "pass" as masculine can ordain if they stay unnoticed. Gilbert, *supra* note 66. As for women, with their diminished status in Burmese society, they are fully excluded from monkhood, a prohibition that has been successfully challenged in Sri Lanka and stirred up mobilization and controversy in Thailand. MONICA LINDBERG FALK, *MAKING FIELDS OF MERIT: BUDDHIST FEMALE ASCETICS AND GENDERED ORDERS IN THAILAND* 45 (2007).

76. This corresponds to a popular belief in Thailand that stigmatizes SOGI minorities. Peter Jackson, *Male Homosexuality and Transgenderism in the Thai Buddhist Tradition*, in *QUEER DHARMA: VOICES OF GAY BUDDHISTS* 55, 56 (Winston Leyland ed., 1998).

77. Gilbert, *supra* note 66; See also Gilbert, *supra* note 63, at 256–57.

78. David Gilbert, *Queer Burma*, *OVERLAND* (26 July 2013), available at <http://overland.org.au/2013/07/queer-burma/>.

79. David Gilbert, *Fieldwork* April–May 2013.

group, purportedly on the grounds of her⁸⁰ sexuality.⁸¹ LGBT rights activists also report bullying and violence against SOGI minorities in Karen refugee camps on the Thai border.⁸² Amongst ethnic minority Kachin communities, patrilineal rules of inheritance exclude male SOGI minorities from inheriting ancestral lands and pressure female SOGI minorities into marriage in order to gain access to land.⁸³

V. HUMAN RIGHTS ABUSE OF SOGI MINORITIES IN MYANMAR

Although the Myanmar state has obligations under the Universal Declaration of Human Rights (UDHR),⁸⁴ which the United Nations Human Rights Council has extended to SOGI issues,⁸⁵ these ideals are far removed from reality. Social prejudices combine with existing discriminatory laws, abusive police practices, and systemic corruption in the legal system to perpetuate the violation of SOGI minorities' human rights in Myanmar. Together, they form the motivation for an emerging LGBT rights movement, as well as the issues this movement attempts to address.

-
- 80. While it is common for individuals to use both male and female pronouns, especially since the third-person pronoun in the Burmese language can lack gender specificity, this article uses gendered pronouns that refer to individual informants in a way that reflects how they most frequently referred to themselves during interviews and participant observation.
 - 81. Violet Cho, *Confronting Karen Homophobia in Burma*, NEW MANDALA, 8 May 2010, available at <http://asiapacific.anu.edu.au/newmandala/2010/05/08/confronting-karen-homophobia-in-burma/>.
 - 82. Letter from anonymous informant to David Gilbert (21 Nov. 2010) (on file with author); Lynette J. Chua, Interviews 30, 38, and 39 with anonymous informants (7 May 2013).
 - 83. Gilbert, *supra* note 66.
 - 84. Myanmar was admitted into the United Nations in 1948. It has acceded to three international human rights treaties: the Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3 (*entered into force* 2 Sept. 1990); the Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46 (1980), 1249 U.N.T.S. 13 (*entered into force* 3 Sept. 1981); and the Convention on the Rights of Persons with Disabilities, *adopted* 13 Dec. 2006, G.A. Res. 61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/RES/61/106 (2007) (*entered into force* 3 May 2008).
 - 85. *Report of the United Nations High Commissioner for Human Rights, Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity*, U.N. GAOR, Hum. Rts. Council, 19th Sess., U.N. Doc. A/HRC/19/41 (17 Nov. 2011).

A. Section 377 of the Penal Code

Myanmar criminalizes the sexual conduct of SOGI minorities.⁸⁶ In particular, Section 377 of the Penal Code, inherited from British colonial rule, states:

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.⁸⁷

Although the phrase “carnal intercourse against the order of nature” is not defined clearly in the Code, except to stipulate that penetration would suffice, similar provisions in other former British colonies have been interpreted to encompass oral and anal sex.⁸⁸ The lack of reference to force or involuntariness also means that it applies to consensual, adult conduct, whether in public or private. On the surface, the provision appears to cover heterosexual conduct as well; in reality, however, the law is used to target male SOGI minorities.⁸⁹ This official position reflects the popular Buddhist view of SOGI minorities as the result of karmic wrongdoing and justifies the treatment of SOGI minorities as criminal deviants.

However, legal persecution usually does not take the form of formal arrests or prosecution under Section 377.⁹⁰ The police more frequently invoke their wide statutory powers, which effectively amount to proxy laws against SOGI minorities. If the arrested person resists or protests during arrest, the police might then threaten to charge her with a violation of Section 377. As detailed below in Subsection B, the evidentiary threshold for these proxy laws is lower than that of Section 377, which requires evidence of carrying out the alleged sexual conduct. However, those arrested under proxy laws usually comply out of fear of escalating the charges to Section 377.⁹¹ This

86. In contrast, sex in pre-colonial central Burma, in spite of monkhood prohibition on sex, was relatively free from state regulation until the late eighteenth century. Ralph Fitch, *An Account of Pegu in 1586–1587*, 2 SOAS BULL. BURMA RES. 167, 176–77 (2004).

87. The Penal Code, ¶ 377 (1861) (Myanmar).

88. Douglas E. Sanders, *377 and the Unnatural Afterlife of British Colonialism in Asia*, 4 ASIAN J. COMP. L. 1, 7 (2009); Lynette J. Chua, *Saying No: Sections 377 and 377A of the Penal Code*, SING. J. LEG. STUD. 209, 215–16 (2003).

89. Sanders, *supra* note 88; see also *Naz Foundation v. Gov't of NCT of Delhi*, 160 DELHI L. TIMES 277, ¶¶ 6–7 (2 July 2009). Sexual reassignment surgery is not yet available in Myanmar, and overseas options are too costly for most people. One informant, who had sex reassignment surgery overseas, managed to change her sex on her identity card, but this was likely arranged through local authorities outside formal institutions. David Gilbert, Interview 7A with anonymous informant (8 Aug. 2012).

90. Public records such as court documents and police reports are not readily available or accessible. One informant said that one would need to bribe court clerks to gain access to documents at the courthouse. At the time of writing, the authors located only one § 377 conviction: The defendant told two of our informants who visited her in prison that she was arrested while on duty as an attendant at a public toilet known to be frequented by “opens” and was convicted and sentenced to five years in prison. Lynette J. Chua, Interview 31–1 with anonymous informant (12 May 2013).

91. Lynette J. Chua, *Fieldwork* 2012–13.

phenomenon reflects SOGI minorities' lack of understanding of Section 377, their inherent fear of police authorities after years of military rule, and the lack of rule of law in Myanmar.

B. "In the Shadows" Law Under Statutory Police Powers

Far more widely used to persecute SOGI minorities are Sections 30(d) and 35(d) of the Rangoon Police Act of 1899 and the Police Act of 1945, respectively—provisions colloquially known as "in the shadows" laws.⁹² Whereas the Rangoon Police Act covers today's Yangon Township, the Police Act extends to areas described in government notifications.⁹³ The two provisions are similarly worded and empower the police to arrest without warrant: The Rangoon Police Act allows for the punishment of "any person found between sunset and sunrise, within the precincts of any dwelling-house or other building whatsoever, or on board any vessel, without being able satisfactorily to account for his presence," while the Police Act of 1945 echoes these words without the specification of "between sunset and sunrise."⁹⁴ The wording is thus vague enough to enable police to target anybody they deem suspicious or undesirable. Combined with systemic corruption in law enforcement and the judiciary, persecution by way of "in the shadows" law is a more blatant form of human rights abuse that Myanmar's authorities commit against SOGI minorities, even though their maximum prison term of three months is less severe than Section 377's penalty.⁹⁵

Documented incidents of abuse of SOGI minorities vary in detail, but they exhibit recurring patterns: SOGI minorities are usually arrested at public venues popular among their community, or when they are walking or standing on the streets at night (hence the laws' notorious nickname). For example, in a December 2012 case in the outskirts of Yangon, an "open," Lin Lin, was arrested under Section 30(d) of the Rangoon Police Act when she was waiting at the traffic lights for a taxi to go home around 10:30 p.m.⁹⁶ The police claimed she was "in [a] darkened place"—in front of a

92. This phrase is a translation of the Burmese phrase used by the authors' informants [*maung yeik kôn hmu*]. Chua, *supra* note 91; Gilbert, *supra* note 66.

93. Secretary of Home Department Notification Nos. 303 (19 Mar. 1946), 421, 422 (22 May 1947).

94. Rangoon Police Act, ¶ 30(d) (Burma Act IV/1899) [hereinafter Rangoon Police Act]; The Police Act, ch. 5, ¶ 35(d) (Burma Act VI/1946) [hereinafter Police Act of 1945].

95. The police also use Penal Code, § 379, which is a provision on theft. Interview 31–1, *supra* note 90. As a "cognizable offence" according to Schedule II of the Criminal Procedure Code, it allows arrest without warrant under Police Act § 54. Another common proxy law is the Police Act of 1945, § 47, read with § 34(7) on drunkenness, which also empowers the police to arrest without warrant. Police Act of 1945, *supra* note 94.

96. Statement of Witness (Defendant), Second Police Corporal Nay Zin Tun vs. Lin Ko Ko (or) Lin Lin (2012) ("Lin Lin's Case"), Major Crime No. 982, Mingalartaungnyunt Township Court, Yangon Division. Court documents for this case were provided by informants.

high school—and “could not explain sufficiently the reasons why she was there,” and so suspected she was going “to commit a crime.”⁹⁷ At the time, Lin Lin was “dressed up like a *meinmalya*.” When the patrolling officers asked what she was doing there, she replied that she was a spirit medium on her way home;⁹⁸ the judge found this explanation to be inadequate and sentenced her to one month’s imprisonment with labor.⁹⁹

Lin Lin’s case is exceptional in that most “in the shadows” incidents involving SOGI minorities do not lead to trial.¹⁰⁰ Usually, in return for their release, the arrestees submit to the officers’ sexual demands or pay them off with monetary bribes to avoid longer jail time or prosecution under Section 377; or, the officers might release them after they are sexually assaulted or otherwise humiliated and abused in police detention.¹⁰¹ For instance, in July 2013, about twenty police officers arrested twelve male SOGI minorities at a popular “gay corner” around the old Mandalay palace moat at night. After taking them into custody, the police stripped and photographed the naked arrestees, hit and grabbed their hair or breasts, interrogated them about how they had sex with men and then forced them to frog hop, catwalk, polish officers’ shoes, and clean tables.¹⁰² For arrestees who had “guarantors” to post bail bonds, they were ordered to sign agreements never to visit the “gay corner” or wear women’s clothes.¹⁰³

These atrocities by the police go unpunished, as the victims want to avoid further entanglement with the law. The “in the shadows” cases that do enter the judicial process further demonstrate why SOGI minorities, like many other Myanmar citizens, fear and distrust a deeply corrupt and unjust legal system. Unlike Lin Lin in the Yangon case, most arrestees who make it to arraignment plead guilty rather than contest their charges. Even some activists and their legal aid lawyers advise them to do so, because the pleas help to shorten their sentences to fifteen days or one month.¹⁰⁴ The litigation

97. *Id.* Statement of Witness (Second Police Corporal Zaw Win Aung).

98. *Id.*

99. *Id.* Judgment.

100. *Id.* Lin Lin disputed the police’s claim that she was in a “darkened place” and argued that she was actually standing at the traffic lights.

101. Gilbert, *supra* note 66; Chua, *supra* note 91. According to Criminal Procedure Code § 61, the police have to release an arrestee after twenty-four hours if there is no evidence or “no case” against him or her. However, arrestees are often not released from detention after twenty-four hours nor processed in court, pursuant to Criminal Procedure Code § 167. Interview 31–1, *supra* note 90.

102. Press Release, Asian Human Rights Commission, *Burma: Police Torture of Gay and Transgendered People* (22 July 2013), available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-137-2013>; Zarni Mann, *Gay Rights Activist to Sue Mandalay Police for Alleged Abuse*, THE IRRRAWADDY, 16 July 2013, available at <http://www.irrawaddy.org/women-gender/gay-rights-activists-to-sue-mandalay-police-for-alleged-abuse.html>.

103. Lynette J. Chua, Fieldwork July 2013; Personal correspondence from anonymous informant to David Gilbert (11 July 2013) (on file with author).

104. Interview 31–1, *supra* note 90; Lynette J. Chua, Interview 34–2 with anonymous informant (12 May 2013). Gilbert, *supra* note 66.

process is costly to most SOGI minorities who are arrested, and the legal aid programs are not sufficiently funded to channel their resources into an extended courtroom battle for one case. After pleading guilty, the arrestee and his lawyer sometimes even must bribe the police, prosecutor, judge, or the judge's clerk to obtain a speedier sentencing date and shorter prison term. These bribes usually start from a total of 200,000 kyats (200 USD), depending on whether the bribers know of the arrestee's financial situation and demand accordingly.¹⁰⁵ In fact, the culture of bribery is so deeply seated, and interviewees' replies exhibit such a lack of differentiation between bribes and fines, that the authors sometimes had to clarify what the interviewees meant when they said they had made payment as the result of an arrest.

C. Other Forms of Legalized Assaults and Discrimination

In addition to the threat of Section 377 of the Penal Code and corrupt practices connected to "in the shadows" laws, other forms of legalized oppression are common. Female SOGI minorities who are gender nonconforming have been sexually assaulted by male family members or strangers. They rarely report these crimes to the police, as law enforcement does not take rape seriously and often blames the victims. Lesbian activists from Pyi report how some "tomboys" fear rape so much that they carry around contraceptive pills so they can consume them quickly to prevent pregnancy.¹⁰⁶ The subtext is that women in their culture not only lack legal protection from rape, but are also pressured into marrying their rapists out of "honor," especially if they become pregnant.¹⁰⁷

Furthermore, SOGI minorities who appear gender nonconforming suffer discrimination at public schools and the workplace. Myanmar's public schools require students to wear uniforms—girls in a feminine sarong and blouse, and boys in a male sarong and long-sleeved shirt. If a female SOGI minority wears a men's shirt over her blouse, her teachers would force her to take off the shirt.¹⁰⁸ Teachers also chastise gender nonconforming students. One activist, who is an *apwint*, used to be bullied by her male classmates, who pulled off her sarong and hit her. Her teacher ignored her complaints and

105. Interview 31–1, *supra* note 90.

106. Lynette J. Chua, Interview 33 with anonymous informant (18 Mar. 2013); Lynette J. Chua, Interview 35 with anonymous informant (9 May 2013).

107. Abortion is illegal in Myanmar, except when it is carried out in "good faith" to save the woman's life. The Penal Code, *supra* note 87, ¶ 312. In general, abortion is deemed to be unacceptable by the major religions in Myanmar, including Buddhism, Christianity, and Islam.

108. Interview 33, *supra* note 106; Lynette J. Chua, Interview 14 with anonymous informant (14 May 2013).

told her to sit with the girls—she decided to sit on the floor alone instead.¹⁰⁹ Conditions at school frequently deteriorate so badly for SOGI minorities that they drop out. This then leads to problems with securing employment, and even if they obtain a job, they face further discrimination in the workplace.

For those SOGI minorities who lack formal education qualifications, employment prospects are even more limited because of the lack of legal protection from discrimination. Lower-paying office, retail, and service jobs usually require employees to wear gender-conforming uniforms, posing yet another barrier for female SOGI minorities who do not, or cannot, appear “feminine.” Oftentimes, they opt to work in traditionally male occupations, such as construction, but as females, they receive lower wages than male coworkers.¹¹⁰ “Opens” also have difficulty finding employment, unless they are willing to pass off as straight, biological males. One “open” activist was fired from her job at a marketing company, accused of behaving too femininely.¹¹¹ Although she moved on to a local NGO, which was more tolerant,¹¹² the traditional livelihood options of “opens” are to work as hairdressers, beauticians, and spirit mediums, or in other occupations that provide them with self-employment or embed them in a friendlier community of similar individuals. Others turn to sex work, but those jobs often involve irregular hours or late-night commutes, exposing them to police abuse and the penalties of the “in the shadows” laws.¹¹³

VI. BUILDING AN LGBT RIGHTS MOVEMENT IN MYANMAR

In response to the human rights abuses perpetrated against SOGI minorities, a fledgling LGBT rights movement is emerging in Myanmar. As examined in Section III, however, Myanmar’s legal environment is unfriendly to collective organizing. Hence, the movement’s emergence involves a series of developments in which Burmese LGBT rights activists have overcome legal restrictions on civil-political liberties and authorities.

First, MSM CBOs’ partnership with HIV/AIDS INGOs carved out relatively freer and safer sites where SOGI minorities could coalesce and became key to seeding a base of grassroots constituents for the HIV prevention movement. After the first official record in 1988, HIV/AIDS infection rates climbed in Myanmar.¹¹⁴ Starting in the early 1990s, the epidemic became one of the few

109. Lynette J. Chua, Interview 15 with anonymous informant (14 May 2013).

110. Interview 33, *supra* note 106.

111. Lynette J. Chua, Interview 02 with anonymous informant (31 Mar. 2013).

112. *Id.*

113. Gilbert, *supra* note 66; Chua, *supra* note 91.

114. *Myanmar National Strategic Plan on HIV and AIDS 2011–2015*, Myanmar Ministry of Health, at 8 (2011). Overall, around 190,000 people were living with HIV in Myanmar, an estimated 15,176 people died of AIDS-related illness, and 7,000 more were newly infected in 2013. NATIONAL AIDS PROGRAMME, GLOBAL AIDS RESPONSE PROGRESS REPORT: MYANMAR 9, 13, 14 (31 Mar. 2012), available at http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_MM_Narrative_Report.pdf.

issues that the Myanmar state deemed to be less threatening and permitted INGOs to operate. Meanwhile, despite their lack of official approval under Law No. 6/88, many CBOs operated informally and non-legally, even during the military dictatorship. They included MSM CBOs that partnered with INGOs to carry out HIV/AIDS outreach, testing, and treatment programs. In 2006, a National Strategic Plan for HIV/AIDS,¹¹⁵ involving the Myanmar government, United Nations agencies, INGOs, and local NGOs,¹¹⁶ gave official acknowledgment to the importance of grassroots initiatives and explicitly specified the roles of CBOs and self-help groups¹¹⁷ as implementing partners that would receive funding and capacity building from INGOs.¹¹⁸ Because the INGOs had MOUs with government ministries, MSM CBOs consequently developed with indirect state sanctions.

Second, Burmese exiles and migrants in Thailand eluded the suppression of human rights discourse and collective organizing in their home country by building cross-border ties with the HIV/AIDS INGOs and CBOs to identify, recruit, and train grassroots leaders. Since the 1988 uprising, Thai-based Burmese have set up NGOs to fight for various causes in their home country.¹¹⁹ One student leader of the 1988 strikes founded a human rights organization in 2000 with a broad mission of education and training. As a SOGI minority who suffered from social prejudices growing up in Myanmar, he wanted to incorporate LGBT rights into the organization's programs.¹²⁰ In the late 2000s, he renewed contact with two old friends from Rangoon University. Unlike him, these two had remained inside Myanmar after 1988 and happened to be working for an HIV/AIDS INGO by the late 2000s, and they agreed to help. Between 2009 and 2011, they selected participants amongst the leaders of MSM CBOs and brought them to LGBT rights training workshops, gay pride parades, and IDAHO and TDoR celebrations organized by the human rights group in Thai towns and cities with significant Burmese populations.¹²¹

115. This replaced the Joint Programme for HIV/AIDS Myanmar that the United Nations created in 2002. To prevent donor money from going directly to the military junta, funding went to a principal recipient, known as Fund for HIV/AIDS in Myanmar (FHAM), which then funneled it to the Myanmar government's NAP. Lynette J. Chua, Interview S1 with anonymous informant (13 Dec. 2012).

116. *Myanmar National Strategic Plan on HIV and AIDS 2006–2010*, Myanmar Ministry of Health, at 1 (2006).

117. Although INGOs began to provide seed money to grow CBOs and self-help groups in the early 2000s under the Joint Programme explained in note 115, the Myanmar government largely ignored them and publicly acknowledged only local NGOs that were mostly professional bodies or faith-based groups. Interview S1, *supra* note 115.

118. As of 2012, there is a national network of 115 MSM groups. Letter from Network Secretary to David Gilbert (14 Aug. 2013) (on file with second author).

119. Unlike Thai citizens, Burmese cannot register foundations under the Thai Civil and Commercial Code, so Burmese human rights groups have largely operated through pragmatic arrangements with local authorities. Gilbert, *supra* note 66; *NGO law and Regulation in Thailand*, NGO REGULATION NETWORK, available at http://cci-ngoregnet.solutionsclient.co.uk/country_information_by_region/Asia_and_Oceania/Thailand.asp (last visited 25 Oct. 2014); HAZEL LANG, *FEAR AND SANCTUARY: BURMESE REFUGEES IN THAILAND* (2002).

120. Lynette J. Chua, Interview 32-1 with anonymous informant (22 Sept. 2012).

121. Lynette J. Chua, Interview 05 with anonymous informant (19 May 2013); Lynette J. Chua, Interview 26 with anonymous informant (21 May 2013).

The purpose was to create a “multiplier effect”—train and recruit grassroots leaders who would return to their communities in Myanmar to raise LGBT rights awareness and begin advocacy work for SOGI minorities. While the first few training workshops primarily tapped MSM communities, the sessions in later years extended to female SOGI minorities, to whom MSM community leaders were encouraged to reach out.¹²²

Third, the deft evasion of authorities during cross-border travel critically contributed to the safety and success of the movement’s early years, especially during 2009 and 2010. Prior to the political transition, human rights-related activities were taboo in Myanmar; transgressors risked state retaliation and imprisonment.¹²³ Given its founder’s background, the Thai-based human rights group could not have safely operated inside the country. The HIV/AIDS INGOs and partnering CBOs also risked being shut down if they explicitly engaged in human rights discourse. It was common for Internal Security officers to attend and monitor their workshops and seminars.¹²⁴ So the human rights group and their INGO contacts selected participants who were astute about handling the challenges of overseas travel, from obtaining passports to clearing security checks at the airport. At the departure gate, if questioned by immigration or “special branch” officers about their purpose for going overseas, they had to be careful not to inadvertently disclose their real intention of attending a human rights event or visiting a group affiliated with political exiles. The two INGO contacts prepared them to respond with a variety of reasons, ranging from beauticians’ training, to shopping and attending flower shows.¹²⁵ Arriving home at the airport, if they were unlucky, customs officers might randomly select their bags to check whether they had brought back prohibited items, such as human rights publications. The workshop participants who dared to bring home human rights posters and LGBT rights magazines hid them underneath sarongs or mixed them up with dirty underwear. Others played to negative stereotypes as flamboyant “opens,” and joked and flirted with officers.¹²⁶

The Thai-based Burmese LGBT rights activists achieved two effects with their LGBT rights events. First, they empowered participants by lifting their self-esteem and sensitized potential grassroots leaders to LGBT rights. Although most of these participants were CBO leaders, they too had regarded the discrimination and abuse as something SOGI minorities had to endure and accept. They also understood little of human rights, much less LGBT

122. Interview 26, *supra* note 121.

123. In September 2008, the number of political prisoners from civil society groups was around 800. ASSISTANCE ASSOCIATION FOR POLITICAL PRISONERS (BURMA) & UNITED STATES CAMPAIGN FOR BURMA, *THE FUTURE IN THE DARK: THE MASSIVE INCREASE IN BURMA’S POLITICAL PRISONERS* 5 (2008).

124. Lynette J. Chua, Interview 06-1 with anonymous informant (23 Sept. 2012).

125. Interview 26, *supra* note 121.

126. Chua, *supra* note 91.

rights. At most, they had heard vague references to the Universal Declaration of Human Rights (UDHR). Human rights were associated with political dissent and imprisonment. The LGBT rights workshops explained to them the meaning of the UDHR and the Yogyakarta Principles on SOGI. Trainers reframed indigenous understandings of SOGI issues into political identities in the form of LGBT and their grievances as human rights violations against equal protection and human dignity. Hence, the participants emerged with new ideas that their sufferings were not inherent to their sexualities, but were attributable to social prejudices and institutional discrimination.¹²⁷

Second, the heightened rights consciousness produced cognitive liberation, a change in mindset that they could alter their circumstances collectively,¹²⁸ and consequently galvanized participants to take up LGBT rights activism, starting with their own communities. After initial trainings, the Thai-based group chose participants who demonstrated leadership potential for further workshops on advocacy and basic organizational skills, such as report writing and bookkeeping. These people then returned home not only with newfound self-awareness and cognitive liberation, but also with practical skills and seed funding to realize the “multiplier effect.” Since 2009, LGBT rights workshop participants have expanded their original CBOs, from HIV/AIDS-related work and social support services, to LGBT rights education and advocacy. One participant set up a new lesbian advocacy and support group in Yangon. Others founded new organizations that described their objectives in terms of LGBT rights.¹²⁹

When Myanmar showed signs of political transition in 2010 and the prohibition on human rights gradually eased,¹³⁰ the years of investing in an LGBT rights movement inside Myanmar¹³¹—eluding legal restrictions and leveraging on cross-border connections to build a base for the movement—showed results. In 2012, with the new government’s complicity, the leader of the Thai-based human rights group returned to Myanmar after spending twenty-five years in exile. The political transition and his personal communications with the government and other contacts indicated that he would have tacit permission to carry out human rights-related activities, and so the time had come to bring the movement home.¹³² On 17 May 2012, SOGI minorities, for the first time, celebrated IDAHO in five cities and towns across Myanmar: Yangon, Mandalay, Monywa, Patheingyi, and Kyaukpadaung. With

127. *Id.*

128. DOUG McADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930–1950* (1982).

129. Gilbert, *supra* note 66; Chua, *supra* note 91.

130. Later participants who journeyed to Thailand reported relatively relaxed experiences at the airport. Those who went multiple times before and after the political transition also perceived a difference. Chua, *supra* note 91.

131. Interview 32-1, *supra* note 120.

132. *Id.*

the Thai-based group's funding and sponsorship of informational materials and IDAHO T-shirts, leaders of CBOs and former LGBT rights workshop participants gathered SOGI minorities in hotel ballrooms, restaurants, town halls, and office meeting rooms (in the smaller towns) to share information about IDAHO's origins, explain the UDHR and Yogyakarta Principles, and watch performances.¹³³ Local officials and leaders were also invited as guests or speakers.¹³⁴ In March 2013, the LGBT rights team of the Thai-based group completed their relocation to Yangon.¹³⁵ In May 2013, the team organized a meeting with their growing network of LGBT rights activists across Myanmar and coordinated the 2013 IDAHO celebrations with their network in seven towns and cities. At the Yangon IDAHO event, a member of the newly formed, independent Myanmar National Human Rights Commission made an opening speech. The organizers also held a media conference to launch a research report on Section 377 of the Penal Code, call for the law's repeal, and highlight human rights violations against SOGI minorities.

VII. CONCLUSION

At this stage, the efforts of Myanmar's LGBT rights activists are too embryonic to predict their success over time. They are optimistic, but remain vigilant about human rights advocacy. Having surveyed the social and legal conditions of Myanmar's SOGI minorities and explained the efforts of LGBT rights activists, this concluding section highlights future research directions by discussing the challenges of LGBT rights activists and broader lessons for political mobilization of human rights in Myanmar.

The immediate concern of movement leaders is the repeal of Section 377 of the Penal Code. At the meeting of LGBT rights activists from across the country in May 2013, they urged fellow activists to carry the same message of repeal at local IDAHO events.¹³⁶ However, the authors' extensive fieldwork shows that the most routine form of human rights abuse takes place through "in the shadows" laws—the Rangoon Police Act of 1899 and

133. *Id.*

134. Similar events were held across seven towns and cities to commemorate TDoR on 20 Nov. 2012. Gilbert, *supra* note 66; Chua, *supra* note 91.

135. Since the political transition, various Thai-based NGOs working on Myanmar-related issues have been relocating home. Besides access, funding is also motivating the move, as international donors are changing their funding policies to concentrate on Myanmar-based NGOs. *Burmese Refugees Hesitant to Return to Myanmar: NGO*, MYANMAR NEWS ARTICLES (27 July 2013), available at <http://myanmarnewsarticles.blogspot.com/2013/07/burmese-refugees-hesitant-to-return-to.html>.

136. Anna Leach, *All Around Asia, LGBT People Are Calling For Equal Rights*, GAYSTARNEWS, 17 May 2013, available at <http://www.gaystarnews.com/article/all-around-asia-lgbt-people-are-calling-equal-rights170513>.

the Police Act of 1945—while Section 377 assumes a background threat to force compliance upon arrest. Even movement leaders acknowledged that the instances of human rights abuse documented for their research report on Section 377 mainly involved proxy laws.

Certainly, it is appealing to focus on the repeal of Section 377. In former British colonies, such as India and Singapore, provisions similar to Section 377 and other anti-gay laws symbolize social disapproval of SOGI minorities, which justifies and perpetuates their marginalization.¹³⁷ These laws stand in the way of providing SOGI minorities with equal protection. Hence, Section 377's removal would represent a step forward for legal reform in Myanmar, testing its democratic and legislative processes under increasing international attention.¹³⁸

Repeal of Section 377, however, would be a limited step toward eradicating heteronormative and gender-conforming biases that are deeply ingrained and institutionalized. These prejudices do not simply stem from the existence of Section 377. Entrenched religious and cultural norms, such as notions of male superiority and the association of SOGI minorities with wrongdoing, remain a formidable challenge to social equality. Even if anti-discrimination legislation were to follow the abolition of Section 377, it is unclear whether, and how, laws can help prevent teacher abuse and peer bullying, increase employment opportunities, and encourage families to accept SOGI minority children. These subsequent questions, therefore, would test the power of law in a country where it has been deployed as an instrument of oppression and coercion.

Questioning the effectiveness of repealing Section 377 also raises the issue of abuse of authority. The use of proxy laws to persecute SOGI minorities is symptomatic of larger problems in Myanmar—the lack of rule of law and a corrupt legal system that routinely violates the human rights of marginalized social groups. While international attention has concentrated on major cases, such as the Rohingyas, internally displaced peoples, and forced labor and political imprisonment, the abuse that most Burmese citizens suffer comes from their everyday encounters with local state agents, such as police officers, clerks, and public school teachers. SOGI minorities constitute but one social group that falls victim to systemic corruption and legal arbitrariness, and that also lacks access to justice.¹³⁹ For Myanmar's nascent LGBT rights movement, another issue to consider is whether, and

137. Naz Foundation, *supra* note 89, ¶ 14; Chua, *supra* note 3; LYNETTE J. CHUA, *MOBILIZING GAY SINGAPORE: RIGHTS AND RESISTANCE IN AN AUTHORITARIAN STATE* (2014).

138. Myanmar will be the 2014 chair of the Association of Southeast Asian Nations (ASEAN) and will therefore host the ASEAN People's Forum, where human rights issues are usually raised.

139. The legal aid lawyers interviewed by the authors also deal with similar cases targeted at sex workers.

how, they should frame their battles as part of larger institutional reforms and even form alliances with other groups, such as women, people with disabilities, and ethnic minorities, who are also leveraging recent political openings to agitate for change.¹⁴⁰

The cultivation of an LGBT rights movement also raises questions about the impact of LGBT rights discourse on Myanmar's SOGI minority cultures. Critics such as Joseph Massad have criticized the discourse for universalizing "Western" identities with little regard to local context.¹⁴¹ Indeed, the building of an identity-based movement needs a population with a common identity category. The Burmese LGBT rights workshops often start with helping participants learn the words "lesbian, gay, bisexual, and transgender," and make sense of them in relation to Myanmar's indigenous SOGI taxonomy. However, the impact of LGBT rights discourse may be more nuanced than a binary of "Gay International" and "McGay."¹⁴² On the one hand, the emergent efforts of LGBT rights activists in Myanmar are attracting national and international attention to the status of SOGI minorities and forging a more robust movement by bringing men and women together under the banner of LGBT. On the other hand, Burmese LGBT rights activists stop short of questioning local Buddhist beliefs as a root cause of widespread social prejudices. Many of them still accept these beliefs; being aware of LGBT rights does not easily undermine such deeply rooted self-perceptions. The consequence may be a bifurcation of identity—although LGBT rights discourse and identities are deployed in the social movement context, indigenous understandings of belonging endure beyond and outside of it. This is a line of research inquiry that the authors are pursuing as they continue to analyze fieldwork findings and examine the movement's development.

More broadly, the movement's tactics and challenges raise questions about the future of political mobilization for human rights in Myanmar. While political space and the will to address human rights have increased, a hierarchy of priorities exists, with certain groups gaining more prominence and acceptance over others. For instance, the government has openly included prominent dissidents in formal political processes. It is also trying to address "official" ethnic minorities' rights through reconciliation efforts.¹⁴³ At the time

140. Aye Aye Kyaw, *Chairpersons of Some Lower House Committees Promise to Help in Promulgating the Disability Rights Law Promptly*, MIZZIMA, 2 Aug. 2013, available at <http://www.mizzima.com/news/myanmar/9775-chairpersons-of-some-lower-house-committees-promise-to-help-in-promulgating-the-disability-rights-law-promptly>; *Ministry Drafting Law on Domestic Violence*, MYANMAR TIMES, 4 Aug. 2013, available at <http://www.mmmtimes.com/index.php/national-news/7705-ministry-drafting-law-on-domestic-violence.html>.

141. JOSEPH A. MASSAD, *DESIRING ARABS* 171–80 (2007).

142. TOM BOELLSTORFF, *THE GAY ARCHIPELAGO: SEXUALITY AND NATION IN INDONESIA* 27–30 (2005).

143. However, these efforts exclude ethnic minorities who lack "official" status, especially the Rohingyas and Muslims. "ALL YOU CAN DO IS PRAY", *supra* note 27, at 34, 83; Bill Davis, *Massacre in Central Burma: Muslim Students Terrorized and Killed in Meiktila*, PHYSICIANS FOR HUMAN RIGHTS (2013), available at <http://physiciansforhumanrights.org/library/reports/meiktila-report-may-2013.html>.

of writing, the Ministry of Social Welfare, Relief and Resettlement is drafting a women's protection law—focusing narrowly on heteronormative, biological women—and a Disability Rights Law in consultation with their respective advocates.¹⁴⁴ The civil-political liberties of dissidents occupy international attention, “official” ethnic minorities have constitutional recognition, and the rights of women and persons with disabilities are consistent with international treaties to which Myanmar has acceded. Arguably, greater rights for these groups are more widely understood and come with less political liability.¹⁴⁵ In comparison, the rights of SOGI minorities are less understood and accepted. LGBT rights activists thus far have maintained a low public profile, worried that too much attention might result in reprisal from authorities and Buddhist conservatives, as well as the denial of LGBT groups' permission to organize altogether.¹⁴⁶ They confined their most visible events, IDAHO and TDoR, to by-invitation affairs in hotel ballrooms and other private spaces, thus reducing the impact of their messages.¹⁴⁷ These anxieties stem from the sobering reality that they lack not only priority over other groups, but also moral standing in a society whose Buddhist practices and beliefs commonly justify their ill treatment.

Despite legal reforms and political transformations, the Myanmar government remains conservative about issues it construes as concerning “morality.”

144. *Report on Discrimination Against Women in Nationality-Related Matters, Including the Impact on Children*, U.N. GAOR, Hum. Rts. Council, 23d Sess., U.N. Doc. A/HRC/23/23 (2013); *The Right to a Nationality: Women and Children*, H.R.C. Res. 20/4, U.N. GAOR, Hum. Rts. Council, 20th Sess., U.N. Doc. A/HRC/RES/20/4 (2012); see sources cited *supra* note 140.

145. The same cannot be said of Myanmar's Muslim minority. They are the target of a popular anti-Muslim Buddhist movement, which has been linked to a rise in hate speech, discriminatory boycott campaigns, and violence (reportedly involving some state complicity). At the time of writing, some monks are pressing the government to pass legislation restricting marriage between Buddhist women and non-Buddhist men, with a proposed punishment of ten years' imprisonment. Thomas Fuller, *Extremism Rises Among Myanmar Buddhists*, N.Y. TIMES, 20 June 2013, available at http://www.nytimes.com/2013/06/21/world/asia/extremism-rises-among-myanmar-buddhists-wary-of-muslim-minority.html?pagewanted=all&_r=0; Andrew Marshall, *Special Report: Myanmar Gives Official Blessing to Anti-Muslim Monks*, REUTERS, 27 June 2013, available at <http://www.reuters.com/article/2013/06/27/us-myanmar-969-specialreport-idUSBRE95Q04720130627>.

146. Gilbert, *supra* note 66. A recent example of a conservative nationalist backlash against visible LGBT activism was opposition to a 2008 gay pride parade in Chiang Mai, Thailand, by Thai activists from Rak Chiang Mai 51, a Red Shirt-affiliated group. Claiming that homosexuality threatened northern Thai culture, they shut down the planned march by intimidating participants, blockading the gathering place, and dismantling the stage. Burmese LGBT activists in exile were also taking part. Japhy Grant, *Thailand Gay Pride Festival Shut Down*, QUEERTY (23 Feb. 2009), available at <http://www.queerty.com/thailand-gay-pride-festival-shut-down-20090223/>.

147. Gilbert, *supra* note 66; Chua, *supra* note 91. Although the Yangon organizers of IDAHO 2014 staged an event in a well-known park accessible by members of the public, the area of the park that they occupied was privately operated.

Newly enacted laws on civil-political freedoms, such as the 2011 Peaceful Assembly Act, still impose restrictions on the basis of “public morality.”¹⁴⁸ The Parliament has also refused to reform the Suppression of Prostitution Act, which unfairly punishes sex workers.¹⁴⁹ As Myanmar continues to liberalize, it will have to confront whether, and how, to extend protection to people who are unpopular with religious and social conservatives—a challenge with which even established democracies continue to grapple.

148. Peaceful Assembly Act, *supra* note 45.

149. Nyein Pyae Sone, *No Changes to Burma's 60-Year-Old Prostitution Law, Police Chief Says*, THE IRRRAWADDY, 10 July 2013, available at <http://www.irrawaddy.org/democracy/no-changes-to-burmas-60-year-old-prostitution-law-police-chief-says.html>.