At an impasse: How decade-long dictatorship, systemic oppression and social conservatism empowered (or fueled) discrimination and, stigma towards LGBTI people in Myanmar

ILGA ASIA

At an impasse:
How decade-long dictatorship, systemic oppression and social conservatism empowered (or fueled) discrimination and, stigma towards LGBTI people in Myanmar

This publication is commissioned by ILGA Asia - the Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, representing more than 170 LGBTI organizations in East, South, Southeast, and West Asia. The document has been produced in consultation with member organisations and key partners as suggested by member organisations in the country. Permission to quote or otherwise use the information has been provided by the informants.

The analysis in the report is intended to recommend ILGA Asia to produce a strategic plan for 2021-2025. Positions in the report lie with the participants of the consultations and interviews, and do not reflect the values and viewpoints of the collective network.

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Executive Summary

This study shows that many LGBTIQ persons are subject to violations of human rights set forth in Universal Declaration of Human Rights – mainly “freedom from discriminations”, “freedom from torture and degrading treatments”, “right to recognition as a person before the law”, “right to equality before the law”, “freedom from arbitrary arrest and exile”, “right to marriage and family”, “freedom of belief and religion”, “right to desirable work”, “right to education” and “right to participate in cultural life of community”.

Despite domestic legal frameworks enacted to implement international human rights conventions such as CEDAW and CRC, many LGBTIQ persons in Myanmar also do not enjoy the rights enshrined in those conventions including those mentioned under other international human rights law such as ICCPR and ICESCR.

Homophobia and transphobia are deeply rooted and are often followed by a range of physical, emotional, sexual violence and economic abuses against LGBTIQ youths. An online survey conducted by LGBTIQ organizations showed that the rate of domestic violence and family violence exponentially escalated during the unprecedented times of the COVID-19 pandemic. Transgender and gender-queer persons are also discriminated against and mistreated in public and private services and functions.

In the economic sector, many LGBTIQ people are not granted equal rights, opportunities, or remuneration like any other employees. LGBTIQ people are verbally, physically and sexually assaulted by their supervisors and fellow colleagues, and their employment institutions fail to defend their rights.

In the education sector and learning institutions, LGBTIQ students are oppressed, bullied, excluded, or neglected by their fellow students and learners – mainly based on the

grounds of their SOGIESC. These acts can include physical and psychological violence, verbal abuse and sometimes, sexual harassment and exploitations. These practices have negative impacts on their physical and psychological well-being and social lives.

In the healthcare sector, LGBTIQ individuals, especially transgender persons and LGBTIQ people living with HIV who are stigmatized and assumed as "spreaders of HIV and other sexually transmitted diseases." They are mistreated especially by the caregivers – doctors, nurses and aids and other staff – in healthcare/medical institutions or facilities such as private, public, or governmental hospitals and clinics. Furthermore, LGBTIQ people living with HIV do not have sufficient access to clinics and physicians and HIV medications in rural and remote areas.

Clergypersons and other religious community members exhibit behaviors of rejection against LGBTIQ people, especially trans people in their religious activities and even on religious grounds in some cases. Some are treated as inferior sub-humans or are forced to conform to cis-gender norms. In some other cases, discrimination in the religion or belief sector is associated with "conversion therapy" that aims to cure homosexuality or bisexuality to return to the state of heterosexuality.

The dimension of lobbying activities of LGBTIQ organizations in Myanmar primarily diverges on legal reforms and implementation; leading the advocacy for the amendment of section 377 of the Penal Code, along with other LGBTIQ organizations across the country. Some organisations would engage directly with international human rights mechanisms. These include submission of shadow reports to UNHRC's UPR mechanism, submission of thematic reports to CEDAW committee, and collaboration with UN agencies in Myanmar – such as UNICEF, UN Women and UNDP – to support LGBTIQ-related data and information.

Myanmar's major emerging LGBTIQ organizations are established through voluntary basis and informal settings. Despite that the needs required to form a stronger alliance have been identified, varying capacities and experiences of LGBTIQ organizations remain a barrier to form stronger alliances.

Respondents from the research also firmly believe that the National Youth Policy, which has defined “LGBTIQ youth” as “groups to be prioritized”, is a beacon that will lead to more government accountability and public awareness on sexually diverse minorities. Increased popularity of LGBTIQ social media influencers, celebrities and icons have opened the eyes of the public on sexual orientation and gender identity. Respondents also mentioned that increased tolerance and acceptance of the general public on LGBTIQ people in urban populations would create more flexibility to advocate for LGBTIQ rights in the future.

Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on Elimination of All Forms of Discriminations Against Women
CRC	Convention on the Rights of Child
CBO	Community-based organization
CLOES-DTRUM	Coalition of LGBTIQ organizations Under Electoral Sector for Democratic Transitioning of the Republic of the Union of Myanmar
DUNS	Data Universal Numbering System
GAD	General Administrative Department
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTIQ	an umbrella term for Lesbian, Gay, Bisexual, Transgender, Intersex and Queer persons
MSM	Men Who have sex with men
MPs	Representatives/Members of the Parliament
NGO	Non-governmental organization
NLD	National League for Democracy Party
PLHIV	People/persons living with HIV
PoVAW	Prevention of Violence Against Women Law (Myanmar)
PRIDE	Partnership for Rights, Inclusion, Diversity and Equality
SOGIESC	Sexual orientation, Gender Identity, Gender Expression and Sex characteristics
SRHR	Sexual and Reproductive Health Rights
STD	Sexually transmitted diseases
TG	Transgender people
UNHRC	United Nations' Human Rights Council
UPR	Universal Periodic Review

Background

Introduction

This report encapsulates contextual information and updates on issues around LGBTIQ rights movements in Myanmar.

> ***Since February 1st, 2021, a military coup has taken place in Myanmar and has declared a year-long state of emergency; following a general election which then State Counsellor Aung San Suu Kyi's NLD party won by a landslide.[1]***

Purpose of the study

Envisaging to provide ILGA-Asia with sufficient information about the overall situation of the LGBTIQ community, advocacy priorities and stakeholders analysis in the targeted country, several consultations took place during this study.

Survey methodology

In the initial stage, the country consultants developed semi-structured survey interview questionnaires in collaboration with the lead consultant of ILGA-Asia.
The study utilized purposive sampling and qualitative approaches by targeting key personnel or managerial level staff members of LGBTIQ organizations in Myanmar to participate as responding informants.

Scope of Study

This study approached organizational leaders and activists from 28 LGBTIQ organizations from four regions and three states in Myanmar from November to December 2020. Participating organizations include both country members and non-members of ILGA-Asia in Myanmar.

[1] Jana Naujoks and Myat Thanda, Pulling the strings: Masculinities, gender and social conflict in Myanmar, r Ko, pg 5. https://themimu.info/sites/themimu.info/files/documents/Report_Pulling_the_string

This report provides contextual information on the situation of LGBTIQ rights movement in Myanmar without insightful analysis on the specific success or level of impact. However, information gathered from this document could be used for the development of the strategic plan so that LGBTIQ groups, organizations and activists can devise their subsequent actions.

Societal context

Myanmar restricts and stigmatizes sexually diverse minorities and LGBTIQ people based on the religious, cultural and customary norms. Myanmar, like most societies around the world, is also deeply rooted with traditional and toxic masculinity and patriarchal practices; male individuals are often reckoned as more valuable and more powerful human beings and more likely to take on leadership roles compared to women.[2] These assumptions lead to the prejudice that transgender men and women are either foolishly trying to forfeit their privileges as men or trying to become someone they are not, and are hence considered mentally disoriented or shameless.

Moreover, deviated sexual orientation is often mistakenly presumed to be a phase that is going to be "corrected" later on in life, or that it can be converted back to the "normal" conditions with certain types of "cure". Such assumptions fuel the mocking, oppression, discrimination, stigmatisation and blame of and against LGBTIQ people, while subjecting them to violence in some situations. LGBTIQ youths often face domestic/family violence or bullying — either by their siblings or by classmates/teachers , at school — not to mention discrimination by the general public and individuals in different aspects of their lives. Besides these horrible situations, LGBTIQ people are further discriminated against and suppressed in different sectors of society. The incitement of physical, psychological and sexual violence against LGBTIQ people lead them to become victims of substance abuse and HIV/AIDS, resulting in the loss of valuable human lives and resources.[3] Some specific laws in Myanmar are perceived to target LGBTIQ people by suppressing/threatening their existence, self-identification and well-being, and to punish them for their so-called

[2] CAN-Myanmar, Voices Unheard: Human Rights situations of LGBTI in Upper Myanmar Region report, p 65-66. https://can-myanmar.org/wp-content/uploads/2020/07/Report.pdf
[3] The Constitution of Myanmar, 2009. https://www.mlis.gov.mm/lsScPop.do?lawordSn=14220.

provocative abnormalities. These kinds of laws include the Penal Code (section 377), the Police Act 30 (C)/(D), the Rangoon Police Act 35(C)/(D) etc (*see more in Section 1.3*).

In addition to limiting and restricting their access to justice, the failure to recognize LGBTIQ people as equal citizens by the State, and their own lack of legal awareness and knowledge, is fuelling the increasing inequality, injustice and insecurity for LGBTIQ citizens in Myanmar.

Myanmar LGBTIQ and Prevailing laws and legislations

Myanmar practices a legal system where obsolete laws and legislations inherited from the British colonial administration still prevail. Although these laws are rarely enforced, members of military and law enforcement officers have been employing these provisions to intimidate, harass, and arrest LGBTIQ people. Many LGBTIQ persons are subjected to all forms of mistreatment by criminal laws and are not fully protected by the justice system in Myanmar. Some of these laws include the notorious section 377 of the Penal Code, the Police Act, among others.

Repressive Laws

The 2008 Constitution

The most fundamental protections and freedoms of citizens of Myanmar are enshrined in its 2008 Constitution.[4] Chapter VIII of the Constitution expounds the "Fundamental Rights" of Myanmar citizens. Most importantly, in addition to sections 347 and 353 of the Constitution, section 348 provides that citizens shall not be discriminated against based on their "race, birth, religion, official position, status, culture, sex and wealth." Notably absent from this list are express provisions against discrimination based on the SOGIESC of Myanmar citizens.

The ruling government of Myanmar promised constitutional amendments during its succession during the 2015 general election, and is now making efforts to amend the Constitution.[4] Myanmar's Union Parliament preliminarily

[4] Myanmar parliament approves Constitutional Amendment Committee (The Irrawaddy, 9 August 2019), https://www.irrawaddy.com/news/burma/myanmar-parliament-approves-constitutional-amendment-committee-report.html

approved the Charter Amendment Committee's report which included nearly 4,000 recommendations for various changes to provisions of the nation's Constitution.4 However, it did not include amendments of Article 348 addressing non-discrimination based on sexual orientation and gender identity in the proposed Constitution.

The 1861 Penal Codes

Section 377

This provision of the Myanmar Penal Code is almost identical to what was section 377 of the 1860 Indian Penal Code.[5] Whilst the similar section 377 has been abolished in India, section 377 in Myanmar does not only continues to affect individuals who are accused of violating it; but its mere retention in the Penal Code is a powerful symbol that lends false legitimacy to prejudices against individuals based on their real or imputed sexual orientation or gender identity/expression. Section 377 criminalizes same-sex activity between consenting adults as "an unnatural offence".

Although official information on prosecutions and conviction rates – especially regarding the use of section 377 to prosecute consensual, same-sex relationships – are difficult to access, there have been several cases that caught the attention of the general public. One of the cases that went viral involved an alleged sexual assault by U Aung Myo Htut, a well-known LGBTIQ Yangon-based human rights activist, on his restaurant employee. The accused was arrested in March 2018, charged in the South Okkalapa Township Court under section 377 with allegedly committing 'unnatural intercourse', and was then denied bail.[6] Concerns have been raised about the fact that his detention may be detrimental to his health. His status as a HIV-positive gay man found its way to media headlines.[7]

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[5] Section 377, Indian Penal Code: Unnatural offences — "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

[6] Two people have recently been charged under Section 377, a law advocates say was rarely enforced (Equality Myanmar), https://equalitymyanmar.org/myanmar-is-arresting-people-for-being-gay-under-colonial-era-sodomy-law/

[7] Man files sexual abuse complaint against employer (The Irrawady, 13 March 2018), https://www.irrawaddy.com/news/burma/man-files-sexual-abuse-complaint-employer.html.

Up until the period of writing this report in 2020, there have been reported cases of more than 17 arrests under section 377 of the Penal Code in Mandalay and as many as 50 cases in other areas including Yangon.[8]

Sections 312 (A), (B) and (C).

The definitions and scope of purpose in sections, 312 (A) and (B) and (C) are rather vague, and particularly threaten transgender and transsexual persons – who can potentially be convicted of crimes for simply undergoing their sex transitioning (sex reassignment therapies/ surgeries).[9] The requirement to obtain a recommendation from a government-appointed institution is an obstacle since there is no known medical institution in Myanmar specifically working on gender affirmation, and self-led transitioning runs the risk of criminalisation since it involves voluntary changes in a person's physical, sexual and reproductive system.[10]

"Shadow" and "Darkness" Laws

Certain colonial-era laws in Myanmar, which provide for a wide ambit of police powers for the "prevention and detection of crime"; i.e. section 30 of the 1899 Rangoon Police Act and section 35 of the 1945 Police Act, which are colloquially and collectively known among the LGBTQ community as "Shadow Laws" or "Darkness Laws", are a primary example of criminal laws that propagate mistreatment based in whole or in part on SOGIESC grounds.[11]

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[8] CAN-Myanmar, Voices Unheard : Analysis of Human Rights Situations of LGBTI in Upper Myanmar Region, https://www.can-myanmar.org/
[9] Penal Code, sSection 312 (A) and (B), 1861: "Whoever intentionally does sterilization by surgery to a [woman in 312(A) and man in 312(B) respectively] shall, unless such sterilization is certified by the Board appointed by the Government in this to be necessary for reasons of physical or mental health, be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine."
[10] Penal Code. section 312 (C), 1861: "Whoever voluntarily allows oneself to be sterilized by surgery, unless such sterilization is certified by the Board appointed by Government on this behalf to be necessary for reasons of physical or mental health, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine."
[11] Rangoon Police Act, section 30, 1899: "Apprehension and punishment of reputed thieves and others. 30. (a) Any person found armed with any dangerous or offensive instrument whatsoever, and who is unable to give a satisfactory account of his reasons for being so armed; (b) any reputed thief found between sunset and sunrise lying or loitering in any bazaar, street, road, yard, thoroughfare or other place, who shall not give a satisfactory account of himself; (c) any person found between sunset and sunrise having his face covered or otherwise disguised and who is unable to give a satisfactory account of himself; (d) any person

These laws exist both at the union and state level, as codified in section 35 of the Police Act 1945, and section 30 of the Rangoon Police Act 1899.[12] Some of their provisions are vague and overbroad (e.g., failing to specify what constitutes as a "satisfactory account" for "being found in a public place between sunset and sunrise") and are therefore open to serious abuse. Law enforcement agents too easily invoke these provisions to harass, arrest, and even bring spurious charges against LGBTIQ people. The fact that these laws are colloquially referred to as the "Darkness Laws" and the "Shadow Laws" reflects their arbitrary nature. These laws give law enforcement officers a wide latitude to arrest LGBTIQ persons during the evening and night-time hours. Indeed, many arrests are carried out with spurious and vague accusations such as "you are in the dark, you have an agenda to do something."[13] For example, a report published by a LGBTIQ organization revealed cases of transgender women from Lashio and Mandalay who were sexually harassed, threatened with arrest under this law; and were extorted money and other precious belongings by the police in order to escape from the scene.[14]

In addition, several other criminal provisions have been used to harass, intimidate and detain LGBTIQ persons. They include the crime of "Public Nuisance", under section 268 of the Penal Code, and section 320 of the Penal Code criminalizing the act of "emasculation".

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found within the precincts of any dwelling-house or other building whatsoever, or in any back-drainage space, or on board any vessel, without being able satisfactorily to account for his presence therein; and (e) any person having in his possession, without lawful excuse, any implement of house-breaking – may be taken into custody by any police-officer without a warrant, and shall be liable to imprisonment which may extend to three months."

[12] Police Act, section 35, 1945: "(a) Any person found armed with any dangerous or offensive instrument whatsoever, who is unable to give a satisfactory account of his reasons for being so armed; (b) Any reputed thief found between sunset and sunrise remaining or loitering in any bazaar, street, road, yard, thoroughfare or other place, who is unable to give a satisfactory account of himself; (c) Any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account of himself; (d) Any person found within the precincts of any dwelling-house other building whatsoever, or in any back-drainage space, on board any vessel, without being able satisfactorily to account for his presence therein; and (e) Any person having in his possession, without lawful excuse, any implement of housebreaking, may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months."

[13] In the shadow (ICJ 2019), https://www.icj.org/wp-content/uploads/2019/11/Myanmar-In-The-Shadows-Advocacy-Report-2019-ENG.pdf

[14] CAN-Myanmar, Voices Unheard: Human Rights situations of LGBTI in Upper Myanmar Region, p 65-66.

Suppression of Anti-prostitution Act 1949

The Suppression of Prostitution Act was enacted back in 1949 in Myanmar.[15] Section 3 of the Act provides offences for soliciting, living on the earnings of prostitution, procuring persons to engage in prostitution, owning or managing a brothel or renting premises for use as a brothel, and aiding and abetting prostitution.[16] Under the Act, sex workers can face up to three years imprisonment or be detained in a "prescribed center", and individuals responsible for owning or managing sex work premises can receive up to five years imprisonment.[17] Section 7 of the Act enables the police to arrest sex workers merely on the basis of their reputation.[18] An amendment to the Suppression of Prostitution Act 1949 was enacted in 1998 to broaden the definition of "brothel" to include "any house, building, room, vehicle, vessel, aircraft or place habitually used for the purpose of prostitution or used with reference to any kind of business for the purpose of prostitution."[19]

However, law enforcement officers target LGBTIQ sex workers under section 3(A) and (B) of this Act to allegedly detain, arrest and investigate them. Some transgender women who worked as HIV Health Education social workers whom were found with condoms and/or lubricants, were threatened to be prosecuted under this law.[20] Such accusations made against transgender women have been outlawed since the passing of an administrative order in 2011 that no longer permitted the use of condoms as evidence in the enactment of this law.[21]

Draft Prevention of Violence Against Women Law (PoVAW)

In an effort to domestically implement CEDAW that the government of Myanmar ratified, it has been drafting

[15] Suppression of Prostitution Act, 1949.
[16] Suppression of Prostitution Act, section 3, 1949.
[17] Push to decriminalize sex work, but stigma remains (IRIN 14 January 2014), https://www.irinnews.org/fr/node/254301
[18] Pyoe Pin. National HIV legal review report: review of Myanmar's legal framework and its effect on access to health and HIV services for people living with HIV and key affected populations, UNDP, UNAIDS, 2014, pg 34.
[19] The Law Amending the Suppression of Prostitution Act, 1949 (Law No. 7/98), https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=72889&p_country=MMR&p_count=86&p_classification=01.04&p_classcount=5; accessed on 19 March 2021.
[20] Interview with respondent Code MDY5001 – Voices Unheard (Analysis of Human Rights situations of LGBTIQ in Upper Myanmar Region) (CAN Myanmar, 2020), https://can-myanmar.org/wp-content/uploads/2020/07/Report.pdf
[21] Sex Work Law- Myanmar (Sexuality, Poverty and Law Programme), http://spl.ids.ac.uk/sexworklaw/countries

the “Prevention of Violence Against Women” Bill and has officially announced it on the national gazette, Kyay Hmone, since 25 January 2020 for public review. It has been largely criticized by civil society actors and LGBTIQ rights defenders because of the vague and exclusive definition of “women'' as “a biological female of any age''. Enactment of this bill with no further revision to the definition of “women'' will deny the right of women with different sexual orientation or gender identity to be protected under this law.

Protective Legislations

National Youth Policy

Myanmar introduced the National Youth Policy on 6 January 2018 to serve as a guideline for the welfare and development of young people. The policy included non-discrimination of youths based on sexual orientation and gender identity. However, the actual implementation at the ground level has been rather non-existent.

Child Rights Law

Myanmar enacted the Child Rights Law to implement the Convention on the Rights of Child (CRC) on 24 July 2019.[22] It prohibits all forms of violence and discrimination against children based on citizenship, race, ethnicity, origin, color, sex, language, religion or belief, position, standard, class, disability, and sexual orientation.[23]

[22] Myanmar fully committed to child rights development. https://www.globalnewlightofmyanmar.com/ myanmar-fully-committed-to-child-rights-development/
[23] Pyidaungsu Hluttaw Law No. 22/2019 - Child Law (Burmese), http://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/national-league-for-democracy-2016/myanmar-laws-2019/pyidaungsu-hluttaw-law-no-22-2019-child-law-burmese.html

Human Rights Violations Against LGBTIQ persons in different sectors of Myanmar

This study shows that many LGBTIQ persons are subject to violations of human rights set forth in Universal Declaration of Human Rights – mainly "freedom from discriminations", "freedom from torture and degrading treatments", "right to recognition as a person before the law", "right to equality before the law", "freedom from arbitrary arrest and exile", "right to marriage and family", "freedom of belief and religion", "right to desirable work", "right to education" and "right to participate in cultural life of community".

Despite domestic legal frameworks enacted to implement international human rights conventions such as CEDAW and CRC, many LGBTIQ persons in Myanmar also do not enjoy the rights enshrined in those conventions including those mentioned under other international human rights law such as ICCPR and ICESCR.

According to the respondents, the following sectors are the areas in which most human rights violations against LGBTIQ persons occur.

Social Sector

LGBTIQ persons and youths of diverse SOGIESC face stigmatization and discrimination among their conservative and traditional families. SOGIESC is often reckoned as 'abnormal', 'deficient' or 'disordered' while many parents, brothers and sisters and relatives of LGBTIQ persons accept only heteronormativity and cis-normativity. Homophobia and transphobia are deeply rooted and are often followed by a range of physical, emotional, sexual violence and

economic abuses against LGBTIQ youths.[24] Young LGBTIQ persons with gender non-conformity experience various forms of torture – beating, caning, belting, punching, slapping, etc. – by their parents or other family members.[25] Some lesbians, transmen and transwomen are forced into marriage by their parents with the intention to convert their sexual orientation and gender identity.[26] In some severe cases, these domestic and family violence cases led to the suicidal actions of the victims.[27] Transgender persons face intimate partner violence, sometimes even torture, physical and sexual abuse by their partners.[28]

An online survey conducted by LGBTIQ organizations, showed that the rate of domestic violence and family violence exponentially escalated during the unprecedented times of the COVID-19 pandemic.

In addition, LGBTIQ individuals, especially transgender persons, are often regarded as "mentally disordered", "immoral beings", "spreaders of sexually transmitted diseases". These stigmas and prejudices prevent them from playing lead roles in the socio-economic sector or becoming role models for society.[29] Transgender and gender-queer persons are also discriminated against and mistreated in public and private services and functions.

Economic Sector

LGBTIQ people are being discriminated against in workplaces on the grounds of their SOGIESC. LGBTIQ people are forced to wear gender-conforming uniforms only. They are not allowed to dress or express themselves according to the gender they identify with. Those who refuse to follow the rules are scolded, blamed, called into human resources, and are even fired at times.[30]

Many LGBTIQ people are not granted equal rights, opportunities or remuneration like any other employees. LGBTIQ people are verbally, physically and sexually

[24] CAN-Myanmar, Home of Hells : LGBTI and Domestic Violence/Family Violence in Myanmar, p. 13, https://can-myanmar.org/wp-content/uploads/2020/03/Home-of-Hells_EngVer-1.pdf.
[25] Ibid at 16.
[26] Ibid at 21.
[27] Ibid at 23.
[28] Ibid.
[29] ILGA Asia interview with undisclosed organizations.
[30] CAN-Myanmar, Home of Hells : LGBTI and Domestic Violence/Family Violence in Myanmar, p. 95, https://can-myanmar.org/wp-content/uploads/2020/03/Home-of-Hells_EngVer-1.pdf.

assaulted by their supervisors and fellow colleagues, and their employment institutions fail to defend their rights.[31] In June 2019, a former gay librarian of Myanmar Imperial University committed suicide following a series of workplace bullying and forced outing of his sexual orientation by his supervisor.[32] This case went viral and caused a national debate on the human rights situations of LGBTIQ people in the workplace and employment sector.[33]

Education Sector

LGBTIQ students are discriminated against by the staff in charge – school subject teachers and homeroom teachers, principals, other members of staff and their fellow students. LGBTIQ students are oppressed, bullied, excluded or neglected by their fellow students and learners – mainly based on the grounds of their SOGIESC.[34] These acts can include physical and psychological violence, verbal abuse and sometimes, sexual harassment and exploitations. These practices have negative impacts on their physical and psychological well-being and social lives.[35] Discriminations and violence that LGBTIQ students face in schools have detrimental impacts on their learning – decreased motivation to go to school, declined progress in learning or even dropping out of schools eventually.[36]

Health Sector

LGBTIQ individuals are discriminated against in the healthcare sector based on their sexual orientation and gender identity. This is especially true for transgender persons and LGBTIQ people living with HIV who are stigmatized and assumed as "spreaders of HIV and other sexually transmitted diseases".[37] They are mistreated especially by the caregivers – doctors, nurses and aids and other staff – in healthcare/medical institutions or facilities such as private, public or governmental

[31] Ibid.
[32] Daniel Avery, Bullied Gay librarian posts heartbreaking Facebook message before dying by suicide (Newsweek, 26 June 2019), https://www.newsweek.com/gay-suicide-myanmarr-1446185
[33] Sorrow, Demand for Change After LGBT Suicide (The Irrawaddy. 25 June 2019), https://www.irrawaddy.com/news/burma/sorrow-demand-change-lgbt-suicide.html
[34] ILGA Asia interview with undisclosed organizations
[35] CAN-Myanmar, Home of Hells : LGBTI and Domestic Violence/Family Violence in Myanmar, p. 87, https://can-myanmar.org/wp-content/uploads/2020/03/Home-of-Hells_EngVer-1.pdf.
[36] Lashio Tomboy and Lesbian Group, Discriminations Against LGBTIs of Lashio Township in Education Sector.
[37] ILGA Asia interview with undisclosed organizations

hospitals and clinics. Discrimination is often associated with verbal abuse, physical or psychological abuse and sexual harassment. LGBTIQ people living with HIV do not have sufficient access to clinics and physicians and HIV medications in rural and remote areas. For example, some LGBTIQ patients who choose to inquire about private or public services were asked to pay twice the fees for the same services that heterosexual people normally receive.[38]

Religion and Belief Sector

Homosexuality is often taught as a 'sin' in the religious doctrines in Myanmar – Buddhism, Christianity and Islam. According to the teachings of Buddhism, people become LGBTIQ in this life because they had committed adultery in their past lives. All forms of deviated sexual orientations apart from heterosexuality are condemned in all of such religious cultures. Such condemnations are followed by the discrimination committed against LGBTIQ believers or non-believers by religious actors or organizations.[39]

Types of discriminatory practices include direct discrimination against LGBTIQ persons through verbal, physical or psychological abuse, or indirect discrimination such as spreading misinformation about sexual orientation or gender identity or expressions and/or directing hate speech against LGBTIQ persons among the general public by religious actors and clergymen.[40] Clergypersons and other religious community members exhibit behaviors of rejection against LGBTIQ people, especially trans people in their religious activities and even on religious grounds in some cases. Some are treated as inferior sub-humans or are forced to conform to cis-gender norms.[41] In some other cases, discrimination in the religion or belief sector is associated with "conversion therapy" that aims to cure homosexuality or bisexuality to return to the state of heterosexuality.[42]

[38] ILGA Asia interview with undisclosed organizations.
[39] CAN-Myanmar, Home of Hells : LGBTI and Domestic Violence/Family Violence in Myanmar, p. 91, https://can-myanmar.org/wp-content/uploads/2020/03/Home-of-Hells_EngVer-1.pdf.
[40] ILGA Asia interview with undisclosed organizations
[41] ILGA Asia interview with undisclosed organizations
[42] Controversial "Christian Conversion Therapy" to cure homosexuality published on Facebook. https://www.facebook.com/mediaforchrist.saiaye/videos/323368161739452/

Art and Cultural Sector

Popular media and entertainment culture contribute to the negative stereotyping of LGBTIQ people in Myanmar, and the portrayal of gay characters in films is particularly harmful. The characters tend to exhibit clownish behaviors, in which their gender nonconformity is made comically grotesque. It is common at the end of the movie for them to change their mind and become straight, reinforcing the notion that being LGBTIQ is ultimately a choice.[43]

In late 2017, the Myanmar Motion Picture organization started banning movies and films with negative representations of LGBTIQ people. However, the ban has been softened in recent years and more and more movies and films with negative stereotypes and representation of LGBTIQs are being released.

Justice sector

As mentioned in the previous chapter, many LGBTIQ persons, especially gay men with feminine gender expressions and transgender women, are subjected to arbitrary arrests under Darkness Law and section 377. Some of the victims are subjected to various forms of torture including physical abuse, verbal abuse and sexual assaults during detention. Police and law enforcement officers target vulnerable LGBTIQ people to harass, bully and extort money.[44] Many of such arbitrary arrests took place under a local law enforcement operation called "Peace and Tranquility projects" where police hunt for cases to meet their target quota.[45] According to a LGBTIQ organization , they provided legal aid and assistance to 815 cases involving LGBTIQ people from 2015-2018.[46]

Respondent organizations identified that prevalence of such abuses is due to the lack of legal awareness by LGBTIQ communities; and awareness of SOGIESC and LGBTIQ human rights by law enforcement officers.[47]

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[43] https://frontiermyanmar.net/en/myanmars-lgbt-community-between-old-laws-and-enduring-stigma
[44] ILGA Asia interview with undisclosed organizations.
[45] ILGA Asia interview with undisclosed organizations.
[46] Human Rights Violations Against LGBT Community, Trend Analysis-2015-2018 (Colors Rainbow 2019), https://www.colorsrainbow.org/wp-content/uploads/2020/01/Trend-Analysis-2015-2018-English-for-Web.pdf
[47] ILGA Asia interview with undisclosed organizations.

Rights Movement Strategies

Strategies and Approaches

Advocacies

A total of 60% (17 out of 28) of the LGBTIQ organizations interviewed have their own three-year or five-year advocacy strategic plan. These strategic plans mainly focus on public advocacy and law/policy advocacy for LGBTIQ rights.

All respondent organizations mention their engagement in public advocacy activities that are targeted for both LGBTIQ and non-LGBTIQ communities. They fundamentally consist of public awareness-raising on SOGIESC; legal

awareness; gender-based violence; and human rights of LGBTIQ persons. They conduct these awareness-raising activities through organizing sensitization programs; publication and dissemination of informative, educational and communicational (IEC) materials, which include flyers, reports and LGBTIQ-related magazines. They are also present on social media networking platforms, especially Facebook where they engage in online advocacy communications such as broadcasting Rainbow News and LGBTIQ content-writing etc. LGBTIQ organizations also mentioned organizing trainings, workshops, and public events including IDAHOT, TDOR, International Day of Human Rights, 16-day activism, FAB LGBTIQ queer events and &PROUD LGBTIQ film festivals, etc for larger public advocacy outreach. Some LGBTIQ organizations even have their own "public theatre performance groups" or "talent groups" that put on public theatrical performances to raise public awareness on LGBTIQ issues.

In the education sector, some university students-led organizations[48] in Yangon and Mandalay fight to raise in-campus SOGIE awareness for non-discrimination and equality of LGBTIQ students.

Lobbying

Local

The dimension of lobbying activities of LGBTIQ organizations in Myanmar primarily diverges on legal reforms and implementation. LGBTIQ organizations lead the advocacy for the amendment of section 377 of the Penal Code, along with other LGBTIQ organizations across the country. These lobbying activities consist of face-to-face dialogues and meetings with parliamentary committees such as the Committee on Fundamental Rights of the Citizens, the Public Affairs Management Committee, the Bill Committee, and other relevant bodies.[49] Organizations would engage with Myanmar's policy-makers and legislators at both the Union and Subnational levels to push for the amendment of section 377.

Some organizations are leading the drafting of an anti-discrimination law that protects LGBTIQ persons from civil society actors, in collaboration with many other

[48] ILGA Asia interview with undisclosed organizations.
[49] ILGA Asia interview with undisclosed organizations.

grassroots LGBTIQ organizations and networks in Myanmar, and lobbying activities at the Union level parliament by engaging in advocacy and policy dialogues with relevant parliamentary committees to highlight LGBTIQ human rights situations.

International

Some LGBTIQ organizations directly engage in international human rights mechanisms. These include submission of shadow reports to UNHRC's UPR mechanism, submission of thematic reports to CEDAW committee, and collaboration with UN agencies in Myanmar – such as UNICEF, UN Women and UNDP – to support LGBTIQ-related data and information. Other organizations[50] indirectly collaborate with leading LGBTIQ organizations to engage in such international human rights mechanisms.

Except for these organizations, the majority of LGBTIQ organizations in Myanmar do not engage in international human rights mechanisms due to the lack of knowledge, networking and technical resources, including inadequate communication and language capacities.[51]

Service Provisions

Community and social services provided by LGBTIQ organizations can be categorized into targeting two groups of issues – health and rights.

Some organizations transitioned from HIV/AIDS voluntary workers into more organized CSOs and increased their capacities and became non-governmental organizations (NGOs), or community-based organizations (CBOs). Many LGBTIQ rights activists began their activism with HIV/AIDS awareness campaigns and services in the late 1990s and early 2000s. Some LGBTIQ activists joined HIV/AIDS campaigns in the late 2000s while there were underground human rights awareness programs.

As such, regarding health issues, some LGBTI organizations[52] collaborate with the National AIDS Program, while many other CSOs and NGOs provide STDs and HIV/AIDS-related healthcare services for LGBTIQ people living with HIV. Other organizations focus on reproductive health

[50] ILGA Asia interview with undisclosed organizations.
[51] ILGA Asia interview with undisclosed organizations.
[52] ILGA Asia interview with undisclosed organizations.

education and healthcare services.[53]

Other NGO and CBO LGBTIQ organizations strive to provide either project-based[54] or volunteerism-based psycho-social counselling and referral services – including basic nutritional support, temporary drop-in shelters and medical support – for LGBTIQ survivors of gender-based violence; and domestic and family violence. Some organizations raise funds by crowd-funding and provide cash and in-kind humanitarian support and donations for COVID-19-impacted LGBTIQ people in need.

LGBTIQ organizations[55] also provide project-based pro-bono legal aid and paralegal services to arbitrarily arrested LGBTIQ persons. Such services roughly include legal counselling, legal advice and legal representation.

Forming Alliances

Since 2011, Myanmar LGBTIQ groups have emerged publicly and organized public events to raise awareness on SOGIESC, empowerment initiatives through human rights and legal training programs, organizational management and leadership training, legal aid for LGBTIQ individuals, healthcare services and legislation. In doing so, LGBTIQ organizations begin to collaborate with other CSOs for public advocacy and training programs. For example, they participated in the Myanmar Youth Policy drafting processes and the evaluation of Prevention of Violence Against Women (PoVAW) Law with women's rights organizations and raise their concerns as a collective voice.[56] CSOs no longer see LGBTIQ groups as silo organizations but perceive them as partners.

ALGBTIQ network was founded in November 2012 to strengthen LGBTIQ rights movements in Myanmar by bringing different LGBTIQ organizations across the country into one platform. It currently holds around 20 member organizations from three states and seven regions of Myanmar, including most of the organizations interviewed for this report.[57]

[53] ILGA Asia interview with undisclosed organizations.
[54] ILGA Asia interview with undisclosed organizations.
[55] ILGA Asia interview with undisclosed organizations.
[56] ILGA Asia interview with undisclosed organizations.
[57] ILGA Asia interview with undisclosed organizations.

Aiming to empower political participation and engagements of LGBTIQs in Myanmar, "Coalition of LGBTIQ Organizations Under Electoral Sector for Democratic Transitioning of the Republic of the Union of Myanmar (CLOES-DTRUM) Network" was established in 2018. The network comprises over 30 LGBTIQ member organizations from six regions and four states in Myanmar, and works on LGBTIQ-inclusive political and electoral capacity building through civic, voter and election education, and on election monitoring and observations.[58]

In the healthcare sector, the biggest coalition of 64 LGBTIQ organizations work on SRHR and HIV/AIDS-related healthcare.[59]

Prioritized Issues

Regarding issues prioritized for the future, respondent organizations mentioned "the amendment of the Penal Code's section 377" and an "enactment of some form of anti-discrimination legislation that protects LGBTIQ people" as their key aspiration for the upcoming years.[60]

Other organizations articulated that they would like to witness prohibition of discrimination based on "sexual orientation and gender identity or expression" on the basis of Article 34 in the 2008 Constitution. Other respondents shared that they would like to see "Out and Open" LGBTIQ parliamentary representatives" who will amplify their voices and vouch for LGBTIQ rights.[61]

Other organizations aspired for equality of LGBTIQ people in the social, health, education, employment and justice sectors. Some organizations also specified "non-discriminatory, equal, sufficient and effective SRH and HIV/AIDS-related health-care" for LGBTIQ persons in Myanmar.[62]

[58] ILGA Asia interview with undisclosed organizations.
[59] ILGA Asia interview with undisclosed organizations.
[60] ILGA Asia interview with undisclosed organizations.
[61] Ibid.
[62] ILGA Asia interview with undisclosed organizations.

Barriers and Opportunities

Myanmar's major emerging LGBTIQ organizations are established through voluntary basis and informal settings. Despite that the needs required to form a stronger alliance have been identified, varying capacities and experiences of LGBTIQ organizations remain a barrier to form stronger alliances.

Some pioneer organizations have more experience while others are emerging CBOs. These experienced organizations were established along the Thai-Myanmar border in the mid 2000s while carrying the empowerment and human rights training underground. Since 2013, many CSOs including the currently leading LGBTIQ rights organizations have set up their bases/offices in Myanmar. Due to their experience, their internal mechanisms and policies are well established; thus, this type of organization receives more funding, more resources for national and international advocacy work. These differences, on a negative note, create conflicts among different LGBTIQ players since smaller LGBTIQ organizations tend to see bigger organizations as gatekeepers of donor funds.

The vast majority of LGBTIQ organizations are still informal CBOs that were formed within the last three to five years. Most of the founders of these emerging CBOs were trained by LGBTIQ organizations that had been established earlier. Some of these emerging LGBTIQ groups have limited capacity such as networking skills, project management and knowledge of human rights issues. Moreover, the scope and nature of work also differ from organization to another. This also prevents LGBTIQ organizations from active collaboration in a certain form of advocacy; for example, some organizations work on legal issues while others focus on health issues.

Internal challenges

Many LGBTIQ organizations in Myanmar unanimously mentioned “insufficient funding” or “financial incomes'' as one of their key barriers in implementing their strategies or activities.[63] The challenge of fundraising and organizational management especially extends to smaller LGBTIQ organizations. Most of the newly emerging organizations function on a voluntary basis without professional background on non-profit organizational skills and experiences. These organizations rely on others that are well established with a well-developed internal structure, policies and organizations processes. Very few organizations have managed to attract donors’ attention on a small scale of grants.

Small volunteer-based organizations, self-help groups and grass-root organizations sometimes face difficulties securing members’ commitment. Since these organizations run on their own small funds or no funds at all, they cannot offer attractive remunerations for their volunteers.[64] This has huge impacts on the human resource capabilities and workforce. Some organizations mentioned a lack of their own office venue to properly run their operations and activities.[65]

External challenges

Respondent organizations mentioned that government offices and public servants still had prejudice and stigma against MSMs and especially towards the trans community. Trans people’s identities are not accepted or recognized, and are being forced to fit in cisgender norms. MPs seem to show lack of interest in LGBTIQ issues during the advocacy meetings and even mentioned once they would prioritize other meetings instead if they had known that the advocacy meeting was about LGBTIQ issues. Members of Law enforcement and police force also do not cooperate and collaborate with LGBTIQ organizations when being invited to attend meetings or workshops.[66]

The shrinking civic space in Myanmar has tremendous impacts on LGBTIQ organizations. Despite the 2014 Law

[63] ILGA Asia interview with undisclosed organizations.
[64] ILGA Asia interview with undisclosed organizations.
[65] ILGA Asia interview with undisclosed organizations.
[66] ILGA Asia interview with undisclosed organizations.

Relating to Registration of Associations stating that the organizations' registration is voluntary and optional, most CSO organizations still get questioned even if they are legally registered when they attempt to obtain permissions from local administrative governments to organize activities. Moreover, LGBTIQ organizations cannot engage in Union level advocacy unless they are legally registered. Some LGBTIQ organizations registered and shared that the registration process was unnecessarily prolonged by certain scrutinization and a requirement to obtain recommendations from the relevant line ministry, and there is no known official ministry working for LGBTIQ issues in Myanmar. When LGBTIQ groups attempt to register, they are often asked by authorities to change their "provocative" organizational names, vision/mission and objectives and avoid the direct use of LGBTIQ. Most registered LGBTIQ organizations were only allowed under human rights/ equality/ gender/ or healthcare service categories.[67] Moreover, some donors even require registration as a mandatory criterion to apply for grants which makes it even more difficult for small local CSOs to receive funding. Small LGBTIQ CBOs cannot access some funding due to the requirements of DUNS registrations from the government-affiliated donors and agencies such as embassies.[68] Language capacities substantially barricade local LGBTIQ CSOs from engaging in international advocacy and programs.[69]

Opportunities

Respondents firmly believe that the National Youth Policy, which has defined "LGBTIQ youth" as "groups to be prioritized", is a beacon that will lead to more government accountability and public awareness on sexually diverse minorities.[70] Increased popularity of LGBTIQ social media influencers, celebrities and icons have opened the eyes of the public on sexual orientation and gender identity. Respondents believe that this could reinforce an additional momentum in Myanmar's LGBTIQ rights movement.[71] Respondents also mentioned that increased tolerance and acceptance of the general public on LGBTIQ people in urban populations would create more flexibility to advocate for LGBTIQ rights in the future.

[67] ILGA Asia interview with undisclosed organizations.
[68] Ibid.
[69] ILGA Asia interview with undisclosed organizations.
[70] Myanmar's 2020 General Elections Results in Numbers – A big win for NLD (The Irrawaddy, 11 November 2020), https://www.irrawaddy.com/elections/myanmars-2020-general-election-results-numbers.html
[71] ILGA Asia interview with undisclosed organizations.

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ILGA Asia is the Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, representing more than 170 member organizations in East Asia, South Asia, Southeast Asia and West Asia.

Our vision is a world where Asia is a safe place for all, where all can live in freedom and equality, be properly informed in the nature of sexual orientation and gender identity & expression and sex characteristic (SOGIESC) rights, have access to justice, and diversity is respected.

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