

**ILGA Asia and
C.A.N-Myanmar's
Submission of Inputs
for the report on the
Impact of thematic
reports presented
by the Special
Rapporteur on
Torture**

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Subject: Input to thematic report of the SR Torture to HRC49 (March 2022): “Impact of thematic reports presented by the Special Rapporteur on Torture”

This joint submission made by ILGA Asia, C.A.N-Myanmar, along with other local organisations in Myanmar¹, describes the nature and extent of torture and ill-treatment against LGBTI persons in Myanmar, reasons for its continuous prevalence, and observed changes and impacts in relevance to the two thematic reports A/73/207² and A/74/148³.

ILGA Asia is an umbrella organisation representing more than 170 LGBTI organisations in the Asia region to advance SOGIESC rights protection. ILGA Asia has been actively working in Myanmar since 2017 through a variety of projects, initiatives, and actions. In consultation with member organisations and key partners in Sri Lanka, in 2020, ILGA Asia published a country analysis⁴ updating the situation, challenges and progress of SOGIESC rights protection of LGBTIQ persons surviving through the COVID-19 pandemic.

- 1 Many local LGBTI organisations have provided support in gathering and contributing to the data/information on the ground that are used as inputs for this submission. Due to security and safety concerns, the names of these local organisations are undisclosed.
- 2 Seventieth anniversary of the Universal Declaration of Human Rights: reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/232/16/pdf/N1823216.pdf?OpenElement>
- 3 Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/214/44/pdf/N1921444.pdf?OpenElement>
- 4 Kaung Zaw Htet & Theo Maung, 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, 2021) <https://www.ilgaasia.org/publications/myanmar-lgbtiq-rights-report-2021>.

CAN-Myanmar organization

Civil Authorise Negotiate Myanmar Organisation (C.A.N-Myanmar) is a local Non-Governmental Organisation established in May 2011 in Mandalay with a vision to share knowledge about human rights both generally and in regard to specific marginalised populations, prevent the violations of human rights, and encourage the sharing spirit and personal accountability in Myanmar society. C.A.N-Myanmar maintains networks with over 50+ LGBTI organizations nation-wide to promote and protect human, civil and political rights of all people of diverse sexual orientations, gender identities and expressions, and sex characteristics through community capacity-building; awareness-raising; human rights documentation; local, regional and international advocacy; and policy advocacy.

I. Reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Myanmar, like many societies around the world, is deeply rooted in traditional and toxic masculinity and patriarchal practices. LGBTI people remain vulnerable in Myanmar as they are restricted and stigmatised. Because of this, LGBTI people face an increased risk of torture and ill-treatment. As such, the report (A/73/207⁵) of the Special Rapporteur is very relevant in the context of Myanmar.

Myanmar's legal system inherits archaic laws and legislation from the British colonial administration which 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 LGBTI people.

Although official information on prosecutions and conviction rates—especially regarding the use of Section 377 of the Myanmar Penal Code 1861⁶ 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 LGBTI 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 bail⁷. Concerns have been raised about the fact that his detention may be detrimental to his health. His status as a HIV-positive gay man became a subject of media sensationalism⁸.

5 Seventieth anniversary of the Universal Declaration of Human Rights: reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/232/16/pdf/N1823216.pdf?OpenElement>

6 Penal Code, 1861, Myanmar, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=61342&p_country=MMR&p_count=110.

7 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/>

8 Man files sexual abuse complaint against employer (The Irrawaddy, 13 March 2018), <https://www.irrawaddy.com/news/burma/man-files-sexual-abuse-complaint-employer.html>.

Apart from Section 377, Section 312 (A) and (B) and (C) of the Penal Code⁹ are rather vague, and particularly target transgender and transsexual persons—who can potentially be convicted of crimes for simply undergoing gender confirmation therapies/surgeries.¹⁰ 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 to a person’s physical, sexual and reproductive system.¹¹

Apart from criminalisation, there are laws which are not directly related to LGBTI people, but are abused to harass LGBTI people by law enforcement agencies. They are colloquially and collectively known among the LGBTI community as “Shadow Laws” or “Darkness Laws”.¹²

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 1899.¹³ Some of their provisions are vague and overly broad (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.

9 Ibid

10 Penal Code, Section 312 (A) and (B), 1861: “Whoever intentionally does sterilisation 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.”

11 Penal Code. section 312 (C), 1861: “Whoever voluntarily allows oneself to be sterilised 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.”

12 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 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.”

13 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.”

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.”¹⁴ For example, a report published by a LGBTI organisation revealed cases of transgender women from Lashio and Mandalay who were sexually harassed, threatened with arrest under this law; and were extorted for money and other precious belongings by the police in order to escape intimidation.¹⁵

In addition, several other criminal provisions have been used to harass, intimidate and detain LGBTI persons. They include the crime of “Public Nuisance”, under Section 268 of the Penal Code, and Section 320 of the Penal Code¹⁶ criminalising the act of “emasculatation”. The Suppression of Prostitution Act was enacted back in 1949 in Myanmar.¹⁷ 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.¹⁸ Under the Act, sex workers can face up to three years imprisonment or be detained in a “prescribed centre”, and individuals responsible for owning or managing sex work premises can receive up to five years imprisonment.¹⁹ Section 7 of the Act²⁰ enables the police to arrest sex workers merely on the basis of their reputation.²¹ 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.”²²

Law enforcement officers target LGBTI sex workers under Section 3(A) and (B) of this Act²³ 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.²⁴ 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.²⁵

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

15 CAN-Myanmar, *Voices Unheard: Human Rights situations of LGBTI in Upper Myanmar Region*, p 65-66.

16 Penal Code, 1861, Myanmar, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=61342&p_country=MMR&p_count=110.

17 Suppression of Prostitution Act, 1949, 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.

18 Suppression of Prostitution Act, section 3, 1949.

19 Push to decriminalize sex work, but stigma remains (IRIN 14 January 2014), <https://www.irinnews.org/fr/node/254301>

20 Ibid

21 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.

22 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.

23 Suppression of Prostitution Act, 1949, 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

24 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>

25 Sex Work Law- Myanmar (Sexuality, Poverty and Law Programme), <http://spl.ids.ac.uk/sexworklaw/countries>

Many LGBTI persons are subjected to arbitrary arrests. 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 LGBTI people to harass, bully and extort money.²⁶ 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.²⁷

Further, discrimination based on LGBTI identities contribute to dehumanisation of LGBTI persons and leads to their torture and ill-treatment. In Myanmar, LGBTI persons face discrimination in employment, education, and the health sector.

In the economic sector, LGBTI 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, reprimanded, called into human resources, and are even fired at times²⁸. Many LGBTI people are not granted equal rights, opportunities or remuneration like any other employees. LGBTI people are verbally, physically and sexually assaulted by their supervisors and fellow colleagues, and their employment institutions fail to defend their rights.²⁹ In June 2019, a former gay librarian of the Myanmar Imperial University committed suicide following a series of workplace bullying events and forced outing of his sexual orientation by his supervisor.³⁰ This case went viral and caused a national debate on the human rights situation of LGBTI people in the workplace and employment sector.³¹

In the education sector, LGBTI students in both basic and higher education levels are discriminated against by the staff—including school subject and homeroom teachers, principals, other members of staff—and their fellow students. Like in workplaces, many schools, universities and academic institutes, require LGBTI students to wear gender-conforming clothes only. Moreover, LGBTI students are oppressed, bullied, excluded or neglected by their fellow students—mainly based on the grounds of their SOGIESC varying from stereotypical gender norms.³² These acts can include physical and psychological violence, verbal abuse and sometimes, sexual harassment and exploitation. These practices have negative impacts on their physical and psychological well-

26 ILGA Asia interview with undisclosed organisations

27 ILGA Asia interview with undisclosed organisations

28 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.

29 Ibid.

30 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>

31 Sorrow, Demand for Change After LGBT Suicide (The Irrawaddy, 25 June 2019), <https://www.irrawaddy.com/news/burma/sorrow-demand-change-lgbt-suicide.html>

32 ILGA Asia interview with undisclosed organisations

being and social lives.³³ In 2019, about 60 transgender man students in No. 8 BEHS were called to principal office, and were subsequently punished and humiliated for their gender identity, forced to transition back to their cisgender state and act like women.³⁴ Discrimination and violence that LGBTI students face in schools have detrimental impacts on their learning including absenteeism, poor learning progress or even dropping out of schools eventually.³⁵

In the health sector, LGBTI people living with HIV are stigmatised and assumed as “spreaders of HIV and other sexually transmitted diseases”.³⁶ 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. Discrimination takes the forms of verbal abuse, physical or psychological abuse, and sexual harassment. LGBTI people living with HIV do not have sufficient access to clinics and physicians and HIV medications in rural and remote areas. For example, some LGBTI 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.³⁷ Because of the deep-rooted discrimination prevalent in the health sector, LGBTI populations continue to experience marginalisation and were prevented from accessing essential healthcare service during the COVID-19 pandemic.

Throughout the past few years, the government has taken some steps towards addressing discrimination of LGBTI persons like:

- a. 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 close to non-existent.
- b. Myanmar enacted the Child Rights Law to implement the Convention on the Rights of Child (CRC) on 24 July 2019. 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.

33 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.

34 ILGA Asia interview with undisclosed organisations

35 ILGA Asia interview with undisclosed organisations

36 ILGA Asia interview with undisclosed organisations

37 ILGA Asia interview with undisclosed organisations

However, these attempts do not go more than skin deep in the legal framework of Myanmar. The Constitution of Myanmar still doesn't mention SOGIESC as an explicit ground of discrimination. The effect of this can be seen in various other laws, like the recently drafted "Prevention of Violence Against Women" bill. It has been largely criticised by civil society actors and LGBTI rights defenders because of the vague and exclusive definition of "women" as "a biological female of any age". Enactment of this bill would deny the right of transgender and gender diverse women to be protected under this law.

Even worse, the human rights situation facing LGBTI persons and advocates has deteriorated after Myanmar's military, the Tatmadaw, orchestrated the coup on February 1, 2021. In Myanmar, the law enforcers have a history of using verbal, sexual, and physical abuse against LGBTQ people. Under the current environment of police and military impunity, the threat of being arbitrarily arrested and tortured has tripled among LGBTI anti-coup protesters. Reports from local LGBTI organizations have already indicated that many LGBTI activists are arrested, tortured, and killed due to their participation in the peaceful demonstrations and civil disobedience movement in the past 6 months.³⁸ Moreover, a recent report on situations of LGBTI persons in Myanmar, co-published by the Ministry of Human Rights and Ministry of Women, Youth and Children Affairs of the National Unity Government of Myanmar, also highlighted 12 cases of LGBTI fatalities; with 73 being arrested and/or charged under Sections 505 (a) of the Penal Code³⁹ and 65 still being detained—all of which involved severe ill-treatments and tortures against LGBTI people.⁴⁰

II. Relevance of the prohibition of torture and ill-treatment to the context of domestic violence

The report A/74/148⁴¹ is applicable for the issue of torture and ill-treatment against LGBTI people within the context of domestic violence, and is relevant to the context of Myanmar.

38 2021 Myanmar Crisis: Implications for LGBTQ People (Outright Action International, 2 March 2021), <https://outrightinternational.org/myanmar-crisis-implications-lgbtq-people>.

39 The Penal Code of Myanmar, "Section 505 : Whoever makes, publishes or circulates any statement, rumour or report, - (a) with intent to - cause or which is likely to cause, any officer, soldier, sailor or airman, in the Army, Navy or Air Force [**]1 to mutiny or otherwise disregard or fail in his duty as such; or (b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to two years, or with fine or with both.

40 "Situation Report of LGBTI people after Military Coup in Myanmar" (Ministry of Human Rights; Ministry of Women, Youth and Children Affairs, National Unity Government of Myanmar). Available at <https://mohr.nugmyanmar.org/wp-content/uploads/2021/06/LGBTIQ-Situation-June-30-2021-final.pdf>

41 Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/214/44/pdf/N1921444.pdf?OpenElement>

In Myanmar, LGBTI persons, children and youths of diverse SOGIESC face stigmatisation and discrimination among their conservative and traditional families. Diverse SOGIESC is often seen as ‘abnormal’, ‘deficient’ or ‘disordered’ while many parents, brothers and sisters and relatives of LGBTI persons accept only heteronormativity and cis-normativity. Homophobia and transphobia is deeply rooted and often manifests in a range of physical, emotional, sexual violence and economic abuses against LGBTI children and youths.⁴² Young gender non-conforming people experience various forms of torture–beating, caning, belting, punching, slapping, and more–by their parents or other family members⁴³. Some lesbians, transgender boys/men and transgender girls/women are forced into marriage by their parents with the intention to convert their sexual orientation and gender identity.⁴⁴ In some severe cases, these domestic and family violence cases have led to the suicide of the victims.⁴⁵ Additionally, transgender persons face intimate partner violence, sometimes even torture, physical and sexual abuse by their partners.⁴⁶

An online survey conducted by LGBTI organisations, showed that the rate of domestic violence and family violence exponentially escalated during the unprecedented times of the COVID-19 pandemic. In addition, LGBTI individuals, especially transgender persons, are often regarded as “mentally disordered”, “immoral beings”, “spreaders of sexually transmitted diseases”. These stigmas and prejudices prevent them from engaging in the socio-economic sector or becoming role models for society.⁴⁷ Transgender and gender-queer persons are also discriminated against and mistreated in public and private services and functions.

Despite these abuses and violence experienced by LGBTI persons and youth at the domestic sphere and other private settings, the Myanmar government has not taken any positive steps to prevent LGBTI people from those harms.

42 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.

43 Ibid at 16.

44 Ibid at 21.

45 Ibid at 23.

46 Ibid.

47 ILGA Asia interview with undisclosed organisations.