



Civil society engagement with UN human rights mechanisms on sexual orientation, gender identity and expression, and sex characteristics (SOGIESC)

MYANMAR

ABOUT THE COUNTRY BRIEF

This country brief charts efforts by lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) activists to raise issues related to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) within UN human rights mechanisms. This brief is based on a review of engagements with various mechanisms, including a desk review of civil society submissions and national-level discussions and individual interviews with activists and stakeholders. The discussions took place over the first half of 2016, with additional data gathered on review cycles. **The objective is to provide baseline information for LGBTIQ activists to help maximize their engagement with UN human rights mechanisms.**

UNIVERSAL PERIODIC REVIEW

1ST CYCLE (2011)

The joint submission of ARC International, ILGA, and ILGA-Europe drew attention to the Section 377 of the country's Penal Code which punishes "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animals". The submission noted further that, citing the UN Working Group on Arbitrary Detention, "arrests for consensual homosexual conduct are, by definition, human rights violations". They recommended that the Human Rights Council "urge Myanmar to bring its legislation into conformity with its commitment to equality and non-discrimination, and its international human rights obligations, by repealing all provisions which may be applied to criminalise sexual activity between consenting adults of the same sex."¹

There were no references SOGIESC issues during the Working Group review.²

2ND CYCLE (2015)

Kaleidoscope Australia Human Rights Foundation (KAHRF) submitted stakeholder information to the second cycle review on the protection of the rights of LGBTIQ persons in Myanmar. They observed that criminal charges under Section 377 of Myanmar's Penal Code were rare "in respect to consenting adults" but that "Myanmar law enforcement officials continued to perpetrate discriminatory and abusive acts against LGBTIQ people through various other indirect laws". They also cautioned that "Myanmar's lack of international treaty ratification means the human rights of LGBTI persons remain vulnerable." Among others, the submission recommended that the country "amend section 348 of the Constitution to include sexual orientation and gender identity and gender expression among the grounds upon which a person cannot be discriminated against", and "ratify the key international human rights treaties".³

The Myanmar LGBT Network was part of the Burma-Myanmar UPR Forum which submitted a joint report, although this report did not address SOGIESC issues.⁴ However, one of the advocacy factsheets prepared by the Burma-Myanmar UPR focused on SOGIESC, writing that "Myanmar's non-existing supportive legal framework, failure to ratify international treaties, and societal misconceptions based on cultural beliefs and traditions, contribute to violent acts and discrimination against the LGBTI community." The factsheet reported numerous cases, such as the arrest of LGBTI people on accusations of "public disturbances" and of the abuse of a transgender woman "where officers rubbed and squeezed her breasts and made them to wear men's clothing. It offered various recommendations, including to "stop abusing of the use of the Myanmar's 1945 Police Act, to intimidate, humiliate, persecute and violate the fundamental rights of LGBTI (lesbian, gay, bisexual, transgender, intersexual) individuals" and to "amend the Peaceful Assembly and Peaceful Procession Act Law, in particular the requirement for prior permission, so that civil society groups can carry out their activities without interference and harassment."⁵

In its submission to the review, the UN Country Team referred to SOGIESC in under "People living with HIV and other affected populations". The submission wrote that transgender people, alongside men who have sex with men, sex workers, and people injecting drugs "are subject to frequent harassment, victimisation and difficulties created by law enforcement officer." Similar to other submissions, it mentions Section 377 of Myanmar's Penal Code and writes that its provisions "stigmatizes homosexuals and further prevents them from accessing their fundamental rights." One of its recommendations is for the government to "undertake further assessments, systematic recording and documentation of bullying, harassment and discrimination based on gender and sexual orientation of a person."⁶

1 ARC International, ILGA, and ILGA-Europe, 2011. Submission in the UPR review of Myanmar. Retrieved from http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MM/JS2_JointSubmission2_eng.pdf.

2 UN Human Rights Council, 2011. Report of the Working Group on the Universal Periodic Review: Myanmar, A/HRC/17/9.

3 Kaleidoscope Australia Human Rights Foundation, 2015. Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in the Republic of the Union of Myanmar. Retrieved from: <http://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1915&file=EnglishTranslation>.

4 The Burma-Myanmar UPR Forum, 2015. Joint Submission to the 2015 Working Group of the Human Rights Council. Retrieved from <http://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1943&file=EnglishTranslation>.

5 The Burma-Myanmar UPR Forum, 2015. Information on the Status of the Human Rights Situation in Myanmar. Retrieved from: https://www.upr-info.org/sites/default/files/general-document/pdf/upr_advocacy_factsheets_-_myanmar2015.pdf.

6 UNCT Myanmar, 2015. UNCT Myanmar Submission to UPR. Retrieved from https://www.upr-info.org/sites/default/files/document/myanmar/session_23_-_november_2015/unct_myanmar_upr23_mmr_e_main.pdf.

The recommendations related to SOGIESC did not enjoy the support of Myanmar and were “Noted”:

Australia

Repeal or revise the “Protection of Race and Religion” laws and Section 377 of the 1861 Penal Code to ensure the rights of women, religious minorities and the lesbian, gay, bisexual, transgender and intersex community are protected.

Spain⁷

Amend article 377 of the Penal Code to ensure that only non-consensual sexual relations between persons of the same sex are punishable.

At the adoption of the UPR working group report by the Human Rights Council in March 2016, ILGA delivered a statement in consultation with NGOs working on SOGIESC issues in Myanmar. Among others, they said in the statement that “LGBT identities are not recognized by society in Myanmar and the government continues to allow local police forces to crack down on transgender and gay people in different cities throughout Myanmar.” One of their recommendations was for the government to “stop police operations that target gay people and transgender women, with the objective to detain and ‘educate’ them, even though they have not committed any crime.”⁸

TREATY MONITORING BODIES

MYANMAR HAS RATIFIED⁹ THE FOLLOWING INTERNATIONAL HUMAN RIGHTS TREATIES:

01

Convention on the Elimination of All Forms of Discrimination against Women

02

Convention on the Rights of the Child (with 2nd Optional Protocol)

03

Convention on the Rights of Persons with Disabilities

There have been no references to SOGIESC issues during treaty body reviews of Myanmar.

⁷ UN Human Rights Council, 2015. Report of the Working Group on the Universal Periodic Review: Myanmar, A/HRC/31/13.

⁸ International Lesbian and Gay Association, 17 March 2016. [Statement delivered for the 31st Session of the Human Rights Council on Item 6: UPR Myanmar.] Retrieved from: http://old.ilga.org/documents/ITEM6_UPR_OUTCOME_MYANMAR_STATEMENT_ILGA.pdf.

⁹ UN Office of the High Commissioner for Human Rights, n.d. Status of Ratification. Retrieved from <http://indicators.ohchr.org/>

SPECIAL PROCEDURES

In his 2014 annual report, the Special Rapporteur on the situation of human rights in Myanmar urged the parliament to “ensure that new legislation combats and does not increase discrimination against women, racial, ethnic and religious minorities, the lesbian, gay, bisexual, transgender and intersex community, persons with disabilities or other groups and is in full compliance with the obligations of Myanmar under the convention on the elimination of all forms of discrimination against women, the convention on the rights of the child and the convention on the rights of persons with disabilities.”¹⁰

OTHER POSITIONS AT THE UNITED NATIONS

Myanmar voted against the inclusion of a reference to sexual orientation and gender identity in the 2010 resolution on extrajudicial executions at the General Assembly. Myanmar also voted to delete sexual orientation and gender identity from the resolution in 2012, and abstained in 2014.^{11,12,13}

Myanmar abstained when the UN General Assembly in December 2016 voted on a resolution to “defer consideration of and action on” the mandate of the Independent Expert on Sexual Orientation and Gender Identity (IESOGI).^{14,15}

10 UN Human Rights Council, 2014. Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, A/HRC/25/64.

11 UN General Assembly, 2010. 65th Session, 71st plenary meeting, A/65/PV.71.

12 UN General Assembly, 2012. “Amendment to draft resolution A/C.3/67/L.36” as contained in document L.68 (list of votes). Retrieved from http://www.un.org/en/ga/third/67/docs/voting_sheets/L68.pdf.

13 UN General Assembly, 2014. Amendment to draft resolution A/C.3/69/L.47/Rev.1, A/C.3/69/L.64. Retrieved from http://www.un.org/en/ga/third/69/docs/voting_sheets/L64.L47Rev1.pdf.

14 APCOM (December 21, 2016). Another Victory of the UN Rejecting Another Effort to Suspend the Mandate of Independent Expert on Sexual Orientation and Gender Identity. Retrieved from: <https://apcom.org/2016/12/21/lgbtiq-regional-organizations-asia-pacific-welcome-decision-ungas-5th-committee-meeting-safeguard-mandate-independent-expert-sexual-orientation-gender-identity/>

15 UN Human Rights Council, 2016. Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/32/L.2/Rev.1.



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ASEAN SOGIE Caucus (ASC) is a regional organization of human rights defenders from various countries in Southeast Asia. ASC advocates for the promotion, protection and fulfilment of the rights of all persons regardless of their sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The organization aims to support capacities of local activists to engage with domestic and international human rights mechanisms. The organization envisions a SOGIESC-inclusive Southeast Asian community, and advocates for the human rights of all persons regardless of SOGIESC to be respected, protected, promoted, and fulfilled.

The country briefs are outputs of a regional research project with UNDP and ASC which examined civil society participation in UN human rights reporting mechanisms. Support for the regional research project and country briefs was provided by UNDP and Arcus Foundation.

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