

**Flygtningenævnets baggrundsmateriale**

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|------------------------------------|----------------------------|
| <b>Bilagsnr.:</b>                  | <b>251</b>                 |
| Land:                              | Myanmar                    |
| Kilde:                             | ILGA                       |
| Titel:                             | State-sponsored Homophobia |
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|                                    |                            |



# MYANMAR

## Provisions in force

- ▶ **Penal Code** (Act No. 45/1860, Revised Edition).

*carnal intercourse  
against the order of  
nature*

### Section 377.

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.

## Human rights situation

According to activists, LGBT people, especially transgender people, are targeted under Section 35c of the Police Act, also known as the “Darkness Law”, which allows authorities to detain someone whose face is covered or otherwise disguised.<sup>1</sup>

In 2016, a transgender woman was abused by the police and raped while held in a male prison after she was detained under this law.<sup>2</sup> Due to the restrictive political landscape, citizens have little recourse against police abuse or to challenge the constitutionality of such laws.<sup>3</sup>

In December 2018, activists criticised the film industry for spreading misinformation about the LGBT community by perpetuating harmful stereotypes.<sup>4</sup>

In 2019, Pride Week was held in Yangon, with a pride boat parade and a “drag olympics”.<sup>5</sup> This followed the success of the Proud LGBT Festival in

previous years, with over 5,000 participants attending in 2018.<sup>6</sup>

In past years, LGBT NGOs, such as Colour Rainbow, have been able to organise events (for example, a queer film festival and International Day Against Homophobia, Biphobia and Transphobia (IDAHOT) celebrations).<sup>7</sup>

### National Human Rights Institution

The National Human Rights Commission was established in 2011 and given force in 2014. One commissioner attended the UN Asia-Pacific conference on Human Rights, Sexual Orientation and Gender Identity in 2015.<sup>8</sup> It has been reported that though the commission is set up as an independent body, it does not appear to operate as such.<sup>9</sup> Furthermore, some members of the commission are allegedly homophobic.

<sup>1</sup> Lae Phyu Pyar Myo Myint and Nyein El El Htwe, “Prejudice and progress: a snapshot of LGBT rights in Myanmar”, *MM Times*, 1 June 2017.

<sup>2</sup> James Nickerson, “Myanmar’s abused, intimidated LGBT people long for acceptance in new era”, *Reuters*, 16 November 2016.

<sup>3</sup> Arvind Narrain, “The struggle against Section 377 Myanmar Penal Code: A viewpoint from India”, *ARC International*, 14 February 2019.

<sup>4</sup> Ruby Ye, “Myanmar movies give misinformation about LGBT people, LGBT rights activist says”, *Mizzima*, 29 December 2018.

<sup>5</sup> Libby Hogan, “Myanmar LGBT Pride Out in Force, But Laws Lag Behind”, *VOA News*, 29 January 2019.

<sup>6</sup> Nandar Aung and Myo Satt, “A loud and proud success”, *Myanmar Times*, 29 January 2018.

<sup>7</sup> “Myanmar’s biggest LGBT event returning to Yangon”, *Frontier Myanmar*, 23 January 2018; Lae Phyu Pya Myo Myint, “‘LGBT is an identity’: International Day against Homophobia, Biphobia and Transphobia”, *MM Times*, 22 May 2017.

<sup>8</sup> Asia Pacific Forum, *Promoting and protecting the rights of LGBTI people in Asia and the Pacific* (2015); “Myanmar’s abused, intimidated LGBT people long for acceptance in new era”, *Reuters*, 15 November 2016.

<sup>9</sup> Alice Muthoni Murage and Ohnmar Nyunt (Alison), “LGBTI people in Myanmar: second-class citizens”, *Heinrich Boll Stiftung*, 1 June 2017.

## UN voting record

Myanmar was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC SOGI resolutions in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Myanmar abstained during the vote to adopt the LAC amendment to remove Operative Paragraph 2,<sup>10</sup> and abstained during the vote to adopt the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Likewise, Myanmar abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

## International advocacy and supervision

### *Universal Periodic Review*

Sexual orientation and gender identity were not mentioned in Myanmar's 1<sup>st</sup> cycle UPR in November 2010.

In its 2<sup>nd</sup> cycle UPR in November 2015, two recommendations were made to repeal Section 377 by Australia and Spain. It appears that the delegation offered no response to these, other than 'noting' (rejecting) them.<sup>11</sup>

Myanmar's next UPR is in November 2020.

<sup>10</sup> Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

<sup>11</sup> *Report of the Working Group on the Universal Periodic Review: Myanmar*, A/HRC/31/13, 23 December 2015.