

## **Myanmar lawyers and lesbian, gay, transgender, bisexual, inter-sex and queer activists discuss Sexual Orientation and Gender Identity & Human Rights law with international experts**

The International Commission of Jurists hosted a workshop on “Sexual Orientation and Gender Identity and International Human Rights Law” in Yangon on 14 and 15 May 2016.

The workshop was the first of its kind in Myanmar to bring together such a varied group of people to discuss the topic of Sexual Orientation and Gender Identity (SOGI) and international human rights law. The event drew together a diverse group, including more than 50 lawyers from different parts of Myanmar, along with lesbian, gay, transgender, bisexual, inter-sex and queer (LGBTI) activists, members of the Myanmar National Human Rights Commission, and regional academics and lawyers and international experts.

Discussions in the workshops focused on national and regional experiences concerning the decriminalization of consensual same-sex conduct, efforts by civil society, parliament and the judiciary to review the constitutionality of relevant legal provisions criminalizing same sex conduct, the use of proxy laws to harass and intimidate LGBTI communities, and the need to repeal Section 377 of the Penal Code (of the old British colonial penal code, still in force in many former colonies) that criminalizes same-sex acts..

In opening the workshop on 14 May 2016, Aung Myo Min, Executive Director of Equality Myanmar, who returned to Myanmar in 2012 after years in exile in Thailand, remarked that despite efforts to facilitate a broad range of human rights training and advocacy programmes for grassroots organizations, political parties and communities, several challenges remain. Challenges include a lack of protection for transgender women under the law, LGBTI communities facing non-equality and discrimination, prevalent bullying in schools on grounds of one’s SOGI, and a lack of awareness of basic human rights.

ICJ’s Senior Legal Adviser Carlos Lopez stated the importance of discussing the importance of how international laws and standards, including the International Covenant of Civil and Political Rights and the International Covenant of Economic, Social and Cultural Rights, apply in national contexts.

During the two-day workshop, participants focused on reforming Section 377 of the Myanmar Penal Code, as the criminalization of same sex conduct constitutes a breach various human rights guarantees, including the right to equality, non-discrimination and privacy, as protected under Myanmar’s Constitution.

ICJ’s National Legal Adviser Daw Zar Li Aye shared her experience of cases where members of local LGBTI communities were targeted, if not under Section 377, then by the Rangoon Police Act and similar proxy laws. She is one of the very few Myanmar lawyers to take on cases relating to LGBTI rights in the country.

U Hla Myat from Colours Rainbow shared his organization’s research on discrimination, rape and suicides associated with the LGBTI communities, pointing to the severity of the problem in the country. He requested the Myanmar

government to provide for more security for paralegals undertaking LGBTI cases and provide more education to parliamentarians about SOGI rights.

U Nyan Zaw, a member of the Myanmar National Human Rights Commission, stated that there was an urgent need to sensitize members of the police force, mostly former army officers, to words like "homosexuality." He admitted that even members of the MNHRC did not know that the "I" in LGBTI stood for "inter-sex."

Vani Sathisan, ICJ's International Legal Adviser, shared the ICJ's work on SOGI issues, including documentation of the LGBTI rights violations globally, advocacy before regional human rights system and United Nations treaty bodies and the UN Human Rights Council, and encouraging national legal systems to align themselves with international human rights law and standards. She highlighted the Yogyakarta Principles and international jurisprudence from the Inter-American Court of Human Rights, Convention against Torture, and the Committee on the Rights of the Child, and stated that international human rights law recognizes sexual orientation as being included in 'sex' as prohibited grounds of discrimination as it is directed against a core characteristic of human personality that is immutable and thus impermissible to force people to renounce or modify it.

Amritananda Chakravorty, a lawyer from Delhi-based Lawyers' Collective, shared her experience in India litigating against Section 377, stating that the law is an obstacle to the full expression of sexuality and sexual desires of the LGBTI community which has been stigmatized. She remarked that the terms used in the law are so vague that they have been subject to arbitrary and selective interpretation by the Courts.

She highlighted the landmark decision of the Delhi High Court, which had earlier ruled that Section 377 was unconstitutional because it discriminated against people in the LGBTI community. This decision was later reversed by a bench of the Indian Supreme Court, but that reversal itself is now the subject of a very rare curative petition.

Dr. Lynette Chua from Singapore shared how Section 377A specifically targets male to male conduct and singles out gay people and conveys the message that homosexuality is not acceptable by mainstream society. She remarked that even though civil society has evolved into debating this issue publicly, including through public 'gay pride' rallies such as the "Pink Dot", certain religious groups continue to oppose decriminalization and the repeal of the law. The judiciary has remained deferential to parliament, with the Court of Appeal ruling in a constitutional challenge case, that it cannot question parliament's purpose to keep the law as a symbol of public morality.

The workshop also included the screening of two documentaries. "This Kind of Love", directed by Jeanne Hallacy, views Myanmar's political transition through the journey of one activist, U Aung Myo Min, who takes the issue of human rights - and LGBTI rights - to the forefront of the political debate in Myanmar.

The second documentary, "She Is a Male", featured the story of a transgender person in Myanmar and the discrimination and other challenges she continues to face. The filmmaker and protagonist of the film were present to answer questions from the participants.

The participants discussed and proposed suggested next steps that they hope to pursue to push for ending discrimination on the basis of sexual orientation and

gender identity in Myanmar. Possible steps included working with the government, with help from the MNHRC, on providing guidelines for protecting LGBTI rights; working alongside the Gender Equality Network, women and child rights groups to discuss broader legal reform to address lacunas in the domestic laws relating to rape and child sexual abuse; advocating a consistent message to review and reform existent laws relating to health, inheritance, housing, education, among others, to ensure that nobody is discriminated on the basis of their sexual orientation or gender identity..

In closing the workshop, Vani Sathisan shared the ICJ's Practitioners Guide 4 on SOGI and IHRL in both Burmese and English languages calling for the lawyers and activists to continue to work with the ICJ to implement relevant law reform to protect and promote the rights of the LGBTI in Myanmar. The participants expressed their gratitude and appreciation to the ICJ for an important discussion on this topic, stating their willingness to support ICJ's work on SOGI and human rights law.

Read also:

[ICJ Practitioners' Guide 4 on Sexual Orientation and Gender Identity and International Human Rights Law](#)

[ICJ Practitioners' Guide 11 on Refugee Status Claims Based on Sexual Orientation or Gender Identity](#)

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