

RAINBOW TEARS

Understanding Drivers of
Domestic and Family Violence
Experienced by LGBTIQ in Myanmar

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OUTRIGHT
ACTION INTERNATIONAL
Human Rights for LGBTIQ People Everywhere



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Acknowledgement

This report is the study of domestic and family violence among LGBTQI and about the situation they faced with their family members or relatives whom they are living together with. With the support of OutRight International, Equality Myanmar in collaboration with the LGBT Rights Network conducted a survey among Lesbian, Bisexual, Transgender women, Transgender men through interviews in Yangon and Mandalay. The word 'domestic violence' used to be interpreted as women who are subjected to violence, whereas LGBTQI are too often left out of this conception. As a result, LGBTQI have been overlooked from the support and protections that are made available to victims of domestic violence.

To fill the gap in awareness and understanding, this report documents and analyzes situations of domestic violence faced by LGBTQIs in Myanmar. It is to be used for continuing advocacy to duty bearers, in collaboration CSOs for ensuring access to legal protections and social support, as well as generating wider critical awareness among the general public.

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Violence can occur anywhere, either at home or outside. Likewise, victims of violence, no matter who, must be protected. Therefore, let us cooperate together to eliminate domestic violence against LGBTQIs and all persons.

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Violence can occur anywhere either at homes or outside of homes. Likewise, victims of violence, no matter who, must be protected in realization that domestic violence is a common threat to all human society.



Executive Summary

This report analyzes situations of domestic violence faced by LGBTIs in Myanmar, and presents actions needed in order to eliminate domestic violence.

Domestic violence is a form of violence which has long prevailed and is still prevailing not only in Myanmar but also in other regions across the world.

The term was initially “Domestic Violence Against Women” since the violence involves acts that are committed against the women by their intimate partners, however, LGBTI+ persons are also victims of such violence.

Arguably, although domestic violence in Myanmar can be criminalized and charged by the Penal Code, there is no specific law preventing domestic violence. Despite the recent draft bill of “Protection of Violence Against Women” including definition for “domestic violence”, it has not been practically enacted. And even if the bill is enacted with the current draft version, it will not inclusively protect transgender women because the definition of “woman” by the bill does not recognize “woman who was born as a man but identifies oneself as a woman and behaves and lives like a woman”.

Studies of domestic and family violence among LGBTI shows they mostly face psychological and physical violence by their family



members or relatives whom they are living together with. Primarily, domestic violence is caused by unacceptability of different sexual orientations, attempts to convert such differences in their sexual orientations, and punishments for having different sexual orientations, especially gender non-conforming transgender persons. Beside family violence, the study also observed domestic violence committed by the intimate partners who are living together. Despite domestic violence among LGBTIQ being a prevailing issue, insufficiently little attention and effort have been put into addressing it. Currently in Myanmar, even the issue of “domestic violence against women” is still being seen as a private matter that should not be externally interfered with. Amidst these circumstances and weak community awareness and acceptance towards LGBTIQ persons, there is a pressing need to recognize this matter as a human rights issue and promote preventions and resolutions.

Myanmar has Section 377 of the Penal Code currently enacted, renowned as the “Unnatural offence”. This section is widely used as a tool for oppression, to arbitrarily arrest, bully and extort money from LGBTIQ persons. Provisions contained in the section are vague and have been used to justify arrests or charges against people as warranted. Criminalization of homosexuality under the section makes LGBTI vulnerable and reluctant to report issues of domestic violence and seek legal projections. They do not enjoy access to justice.

Social perception characterizing difference in sexual orientation

as a “disgusting and ungraceful” trait creates psychological discouragement of LGBTI persons. As a consequence, this forms barriers against LGBTIs in accessing counselling from other people.

Criminalization in the legal sector and prejudiced discriminations in the society are preventing LGBTI persons who experience domestic violence from gaining access to legal aid. Many LGBTIs who experience domestic violence in their home no longer live with their family and live separately outside. They have to earn a livelihood despite their incomplete education due to discrimination. The most severely affected group are transgender women. Most lesbians live together with their family members in fear of endangerment they would potentially face outside of their homes. LGBTI living together with their families face constant worries and fears throughout their stay at home. Their attempts to avoid confrontations with their families gradually isolate them from their family members. Loneliness follows afterwards.

The world-threatening COVID-19 pandemic which started in Myanmar in March 2020 has had a devastating impact on social and economic welfare of the general public. Daily social life and routines significantly changed due to the pandemic. Many has to stay at home under health instructions and orders. People are put under stress as they face these new challenges. And domestic violence significantly increased as a consequence of stress. It was found that LGBTI persons who are not accepted by their families even under normal circumstances have to counter more disapprobation and violence by their family members. It was also

documented that domestic violence among intimate partners increased as a result of economic and social drawbacks during COVID-19.

Initiatives for the protection of domestic violence against LGBTI persons should include both legal approach and an approach to change public perceptions. Not only Section 377 which enables arbitrary arrests of LGBTI persons must be abolished but also the definition of “woman” in the Prevention of Violence Against Women (PoVAW) Bill must be redefined to inclusively protect transgender women. Only then fears that LGBTI face to seek legal aid at the risk of criminalization will be eliminated. Duty-bearers can be held accountable only when the specific legislation is enacted to address the issue.

On the other hand, it is required that the relevant government agencies and all the departmental staffs are sensitized and made aware of sexual orientations, gender identities and gender expressions. They need to be explicitly trained to provide legal protections and services without discrimination. Providers of psychosocial counselling services also need a thorough understanding on situations of domestic and family violence that LGBTI persons face, as well as social norms and beliefs surrounding domestic violence issues. This will contribute to ensuring provision of genuine and quality psychosocial counseling and other services for LGBTI without discriminations.

Violence can occur anywhere either at homes or outside of homes.

Likewise, victims of violence, no matter who, must be protected in realization that domestic violence is a common threat to all human society. Therefore, legal protections and counseling need to be ensured for LGBTI and education should be given through school curriculums, employing dynamic and holistic tactics, to support human rights practices among general public.

Objective and Scope

The purpose of this research is to document the experience of domestic violence against LGBTIQ members of society and analyze the root causes of this phenomenon. It draws on the experience of 62 members of the LGBTIQ community from Yangon and Mandalay, and it examines the impact and drivers of domestic violence. The report includes a discussion on Myanmar law, socio cultural perspectives, and international standards. The report concludes with recommendations for various stakeholders in government and civil society to address the problem of discrimination against the LGBTIQ community and domestic violence in Myanmar.

Research methodology and findings

In the first step, 10 data collectors from Upper Myanmar and Lower Myanmar were invited and explained about the objectives of this study. Two focal persons from Myanmar LGBTI Rights Network served as supervisors for those data collectors. Preparations were completed to conduct the research with the lesbians, bisexuals, transgender women and transgender men

in Mandalay and Yangon regions. This study did not include gay persons.

It is acknowledged that each of the following categories differ in sexual orientation and gender identities. In this research, they will be collectively referred to as “LGBTIs”.

The research team collectively prepared the questionnaires to be used to interview targeted LGBTIs. The data collectors were then instructed and trained regarding the utilization of the survey questionnaire. The data collectors took 2 months to complete the data collection task. Primarily, the data collectors documented domestic and family violence associated with physical, psychological and sexual abuses against lesbians, bisexuals, transgender women and transgender men.

The team reached and engaged with a total of 62 respondents for interviews during the data collection phase which took place from February to March 2020 in Upper Myanmar region. There were 30 respondents from Mandalay region and 32 from Yangon Region respectively (Table 1).

Table 1. Sexual orientation or gender identity and location of respondents

	Yangon	Mandalay
Lesbian	2	3
Bisexual women	4	4
Transgender men	11	12
Transgender women	14	12

Among 62 respondents, only 4 mentioned about their family members knowing and accepting their sexual orientations whereas 34 respondents mentioned about their identification of sexual orientations being rejected by their family members. Eighteen respondents mentioned that their family members knew slightly about their sexual orientations and 10 respondents were not aware whether their family members knew their sexual orientations or not (Table 2).

Table 2. Family’s awareness of respondents’ sexual orientation or gender Identity

Known and accepted by the family	4
Rejected by the family	34
Slightly known by the family	18
Unaware of family’s knowledge	10

In analyzing the forms of domestic violence (Table 3), it was found

that verbal abuse is one of the most frequently occurring type of violence, experienced by 43 respondents. Nineteen respondents mentioned that they have experienced physical assaults. Forty respondents mentioned they have experienced both verbal and physical abuse.

Table 3. Forms of violence experienced by respondents

Verbal abuse	43
Physical abuse	19
Both	40

Data on the types of perpetrator groups of domestic violence ((Table 4) show that the respondents experienced violence against them committed by their family members and relatives mostly, enumerating for 50 respondents. Nine respondents faced intimate partner violence. 3 respondents mentioned to have experienced violence committed by the relatives they were living together with.

Table 4. Perpetrators of violence experienced by respondents

Violence by the family members and relatives	50
Violence by intimate partners living together	9
Violence by relatives living together	3

It was found that a total of 12 respondents received psychosocial counseling support needed due to domestic violence, whereas

the other 50 did not (Table 5).

Table 5. Psychosocial counseling received by respondents

Received psychosocial counseling	12
Not received psychosocial counseling	50

In further examining the respondents who did not receive psychosocial counseling, 18 respondents mentioned they were not aware about the psychosocial counseling services within their environment. Nineteen respondents were those who, regardless of knowing the need to receive psychosocial counseling services, did not report due to the lack of such service programs within their environment whereas the rest 25 did not because they were afraid.

Table 6. Reasons for not seeking psychosocial support

Unaware of psychosocial counseling services	18
Did not report due to the lack of such service programs	19
Afraid to access despite being aware of the service programs	25

Background Context

LGBTI persons and legal frameworks

The Constitution

Constitution is the covenant which binds the government and the people. The Constitutions of each state specifically provisions the fundamental rights entitled by the citizens and the government is accountable to ensure the enjoyment of these rights by every citizen without discriminations. The 2008 Constitution of Myanmar specifies that *“the Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth”*¹. However, the article does not include people who face discrimination contemporarily such as people with disabilities and people of diverse sexual orientations and gender identities, LGBTI. Therefore, the 2008 constitution of Myanmar appears not to prohibit discrimination against its citizens on the grounds of disabilities and sexual orientations. Such an absence implies that the government does not recognize people of disabilities and diverse sexual orientations and that it is not responsible to protect discriminations against people of such identities. This arguably contradicts the principles of equality and non-discrimination prescribed as basic principles under Chapter (1) of the Constitution.

The Penal Code

Myanmar’s Penal Code does not specify criminalization of different sexual orientations directly. Nonetheless, Section 377 states:

1 <https://www.constitutionaltribunal.gov.mm/sites/default/files/constitution/pdf/2014/Apr/Constitution%202008Myan.pdf>



“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 not extend to ten years, and shall also be liable to fine.”²

According to the Section, any unnatural offence is a criminal act. Despite the lack of clear and specific definition of “carnal intercourse against the order of nature” in the section, it expressly means that any homosexual intercourse, whether on a voluntary or involuntary basis, is an act deserving conviction. Such expression subsequently stipulates that the law itself conveys people of different sexual orientations as “abnormal persons against order of nature”.

Some previously colonized countries with similar laws had abolished the criminalization of homosexuality between two consensual adults. This was observed in India in 2018³; in Trinidad and Tobago in the same consecutive year⁴; and in Botswana⁵ and Angola⁶ in 2019. In Myanmar, Section 377 has not been abolished despite the advocacy of human rights activists. This section regarding the criminalization of different sexual orientation not only has impact on judiciary aspects but also on the psychological and emotional security of each LGBTI individual. Being considered

2 https://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf

3 <https://timesofindia.indiatimes.com/india/all-you-want-to-know-about-section-377/articleshow/65689176.cms>

4 <https://economictimes.indiatimes.com/news/politics-and-nation/how-trinidad-and-tobago-played-a-key-role-in-indias-ongoing-lgbt-hearing/articleshow/64991216.cms>

5 <https://mg.co.za/article/2019-06-11-botswana-high-court-ruling-a-victory-for-countrys-queer-communities/>

6 <https://news.un.org/en/story/2019/01/1031292>

and treated as criminals, LGBTIs face disproportionate multi-sectoral discriminations in societal, economic and other sectors. To date, there has been no constitutional challenge regarding the Penal Code 377.

United Nation's Special Rapporteur on the situation of Human Rights in Myanmar recommends the abolishment of Section 377 because it infringes the right to privacy, right to equality and non-discriminations.⁷

At the same time, the vague provisions of Section 377 of the Penal Code enable members of Myanmar Police force and law enforcement officers to orchestrate arrests and charges at their own discretions, by defining the article on their own wills. Under the topic "Carnal intercourse against the order of nature", the majority of LGBTIs are brutalized, bullied, extorted money, abused of power and are subject to unlawful actions.

Similar to the obsolete and outdated Penal Code 377, other Police Acts also continue to threaten LGBTI persons. Some Police Acts grant members of the Police force with unlimited powers to scrutinize, search and arrest. The most significant laws are 1889 Police Act 30 of Yangon region and nation-wide effective 1945 Police Act 35.⁸

7 Report by the Special Rapporteur on the situation of human rights in Myanmar, 18 march, 2016, UN Doc:A/HRC/31/71 annex page 27

8 https://www.burmalibrary.org/docs15/1945-Police_Act-en.pdf

LGBTIs and Myanmar's socio-cultural perspectives

From a social perspective, LGBTIs are recognized and accepted only by a few families. Among the 62 respondents interviewed, only 4 mentioned that their family knew and accepted their sexual orientations whereas 34 mentioned being rejected. Eighteen respondents mentioned that their family knew about their sexual orientation slightly whereas the rest 10 respondents did not know about their family's knowledge on their sexual orientations.

Condemnation and discrimination against LGBTI are more prevalent than public recognition among society. Even among LGBTIs, gay and transgender persons are more widely rejected.

These situations are prominently supported by influential religious doctrines and beliefs. Buddhism, as it is widely practiced in Myanmar, implies that one becomes gay and transgender due to their misfortunes and karma. It is often taught that a person becomes gay or transgender in punishment of the adultery they committed in the past lives.⁹ Believing it is their karmic retribution for past misdeeds, LGBTIs are often deemed as inferiors among society.

In addition, the Art and Entertainment sector portraying LGBTIs as mockable characters that exhibit clownish behaviors encourages negative impressions towards LGBTI persons by the general

⁹ Gilbert, David, "Categorising Gender in Queer Yangon" in Sojourn, Journal of Social Issues in Southeast Asia, Vol.28, No.2, 2013

public. The presentation of LGBTI as unfavorable and exaggerated characters, as individuals to make jokes about by Myanmar's film, video and entertainment industry encourages to joke about, mock and bully LGBTI persons.¹⁰

In society where a law is supposed to be reliable for the public and law enforcement officers are supposed to be people's helpers, the ability to reinterpret law and utilize provisions at one's own discretion has created the impressions of police as money-extorters and abusers in the eyes of most LGBTIs. They have lost trust in law enforcement. Unlawful actions committed against LGBTI by law enforcement staffs have undermined their trust and willingness to depend on the judiciary mechanism.

Public perceptions and opinions can influence the legislations and vice versa, the legislation can exponentially impact the traditional cultural norms and prejudices. If a law itself is discriminatory, this negatively reinforces prejudices among the societies.

Section 377 and the above-mentioned laws not only discriminate against LGBTI persons legally but also have detrimental impacts on the society. In essence, Section 377 renders LGBTIs as individuals with moral deficits. It represents and reinforces the stereotyping of LGBTIs as those undeserving to be a part of the society or of social acceptance. LGBTIs are considered as those with abnormal sexual deviations and are separate from the common society. Moral disgust LGBTIs becomes strongly rooted among members

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Tone Chin Hmon Chin Thee Khan Bar, Synergy, August 2020.

of society, preventing them from empathizing and helping LGBTIs who are victims of domestic and family violence. Therefore, LGBTI victims of domestic violence face multiple barriers in accessing social, legal, and other support.

Domestic or family violence

Domestic violence or family violence means a form of violence committed by the partners close to a person (or) his or her family members. Although it is regarded as a form of violence against women because women are the victims of such violence primarily, anyone can experience domestic or family violence.

A study shows that in Myanmar, 17% of married women aged between 15 to 49 experience physical or sexual violence by their spouse at least once in their lifetime.¹¹

Besides women, domestic violence is also occurring among children, elderly, LGBTIs and people with disabilities by their family members. This study will emphasize on domestic and family violence committed against LGBTIs.

Domestic and family violence and international human rights standards

Equality is a human rights principle enshrined in the United Nations' covenant. The United Nations' covenant specifies that "Everyone is entitled to all the rights and freedoms without discriminations of any kind of race, sex, language and religion".

11 UN Women, 2016

The preamble of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations on December 10, 1948, states that, “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Article 1 and 2 of Universal Declaration of Human Rights specifically states equality. Article 1 states that, “all humans are born free and equal in dignity and rights” and article 2 states that “no distinctions of any kind such as color, sex, religion, gender or other opinion”. While UDHR is not necessarily a legally binding document over all the state members, it carries moral obligations for them. Therefore, governments are solely responsible to eliminate all forms of discriminations, especially to prevent and protect people from violence resulted as a consequence from all forms of discriminations.

The convention on Elimination of all Forms of Discrimination Against Women (CEDAW) adopted in 1979 is widely known as a significant treaty to ensure women rights. Since violence against women occurs based on discriminatory opinions and prejudices towards women, the state parties have obligations to prevent all forms of violence against women including domestic violence. All the 10 ASEAN countries, including Myanmar has ratified CEDAW convention.¹²

As domestic violence occurs in a private setting, society is prone to perceive it as a private or family matter. However, the General

Comment of the Committee on Elimination of All Forms of Discrimination Against Women regarding the domestic violence against women read as follows:

“Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.”¹³

According to the General Recommendation No.19 of CEDAW¹⁴, *“family violence impairs the enjoyment by women of the right to life, a woman’s right.”* Deaths of women across the globe due to domestic and family violence is surprisingly increasing.

The report submitted to the United Nations’ in 2008 by the Special Rapporteur on torture, and other cruel, inhumane or degrading treatment or punishment, Manfred Nowak, quoted for the first time ever that *“domestic violence constitutes a form of torture”¹⁵.*

13 https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf

14 https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf

15 Report of the Special Rapporteur on torture, and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. A/HRC/7/3 Jan 2008

While there is an ongoing debate around the relevance of the context, the importance of the quote reinforced the concept of the prevention of torture being a mandatory obligation and implementation for every state over time.

Therefore, all the states, including Myanmar, hold ultimate obligation to guarantee equality before the law and equal access to legal protection for women. States are obliged to ensure that their constitutions and criminal laws address domestic violence, and that domestic violence is prevented by an enactment of specific legislation.

Domestic and family violence and legal frameworks in Myanmar

Among South-east Asian nations, domestic violence is regulated through law in 8 countries, excluding Brunei and Myanmar. In Myanmar, there is no specific legislation for the prevention of domestic violence, however, it can be criminalized as an act of torture by the Penal Code or Criminal Law which has been in place for many years. According to the criminal law, torture can be criminalized under the following Sections.¹⁶

- Section 323 states that “whoever voluntarily causes hurt shall be punished with imprisonment which may extend to one year”.
- Section 324 states that “*whoever voluntarily causes hurt by means or any instrument which, used as a weapon of*

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https://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf

offence, is likely to cause harm shall be punished with imprisonment which may extend to three years.”

- Section 325 states that *“whoever voluntarily causes grievous hurt by means of instrument which is likely cause harm, for example sharp objects, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.”*
- Section 326 states that *“whoever voluntarily causes grievous hurt by means of instrument for shooting, stabbing or cutting, or instruments which, used as a weapon of offence, is likely to cause harm, or by means of weapons such as knives, explosive substance, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

Moreover, non-consensual sexual intercourse between married spouses is criminalized.

- Section 376 reflects that *“whoever commits rape or attempts to rape against his married partner shall constitute marital rape. Marital rapes can be charged under Section 376 and shall be punished with imprisonment which may extend to 2 years or fine or with both.”*

Despite Myanmar being a state party to CEDAW, there has been no national law specifically protecting women. Therefore, the CEDAW committee has urged the government of Myanmar to protect

women by enacting legislations on prevention of violence against women. Women Rights activists and human rights activists have also urged to develop and enact a specific violence prevention legislation. The draft bill was first developed in 2013 and in late 2019, a bill titled, “Prevention of Violence Against Women Bill” emerged. The bill was announced in a government gazette for public review on January 15, 2020. The bill encompasses the term “violence against women” and “domestic violence” in its definitions. According to the bill, ‘violence’ is defined as *“According to this law, violence means an act which causes discriminations against women; physical abuse, psychological abuse, sexual abuse or economic abuse; by means of threatening, or bullying or by other means.”* ‘Domestic’ violence is defined as *“Violence committed against women by any of her close family members or partner in marriage.”*

If this law is enacted accordingly, domestic violence against women will be prevented. However, this law will not protect transgender women because the law defines women as *“a female human being of any age”*. This definition was derived from the Penal Code which stipulates that women are those who were biologically born as women. Hence, transgender persons are not covered by the definition.

Domestic and family violence and Myanmar’s socio-cultural framework

In Myanmar society, domestic violence is something that happens

between family members of a household. Correspondingly, there are strong beliefs that domestic violence is an internal issue to be dealt with and which is not suitable for other external people to interfere. Teachings are still deeply rooted in society that family matters should not be disclosed to other people outside the family, nor should external people should interfere and mediate other people's family matters. Such prejudice are barriers for the victims of domestic violence to access justice. Many victims of domestic violence do not want to disclose their encounters due to the presumptions that disclosure of family business to other people may bring embarrassment and shame to the family and destroy the reputation.

Moreover, normalization of domestic violence as a regular phenomenon between family members, marital spouses, or intimate partners weakens the willingness of responsible persons to take actions, or even the victim of the violence, to reports such incidents. Many cases, even reported, are silenced, with persons involved refusing to accept that domestic violence is something that requires resolution or actions.

LGBTI persons suffer doubly from their experiences of domestic violence. The social disdain underpinning society and the widespread hatred towards LGBTIs have significantly reduced the opportunities for LGBTI persons to access help, or benefit from any affirmative actions. Instead, they are additionally subjected to victim-blaming. Society is inclined to just blame LGBTI persons, castigating them as sexual wrong-doers, or even encouraging the

perpetrators to commit violence.

Misunderstanding about sexual orientation has had adverse impacts on LGBTIs. A respondent who is currently living as a woman shared her experience of being punished for living as a woman when she was young.

“I knew myself. I only wanted to wear women’s clothes. At first, my mother and father didn’t realize. Afterwards, they began to notice and then they scolded me, beat me. But the scolding only lasted a while, and I still wear my ‘pasoe’ [a cloth worn by males] like a ‘hta-main’ [a cloth worn by females] in their absence. And then my father put me into an ordination as a Buddhist monk, informing the High monk that I had that habit of wearing clothes like a woman. I was frightened of the monk so I had to stay disciplined.¹⁷ But I couldn’t leave the ordination. As usual.”

Because Buddhism’s teaching in Myanmar that homosexuality is a sin and a karma from the past life, some parents try to convert their children’s sexual orientation through religious teachings or enforcing heteronormative social norms and standards.

Religious leaders also teach that differences in sexual orientation goes against the religious teachings and an act of sin that God does not like. A transgender man shared his feelings of not wanting to go to such religious facilities ever again.

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Interview with respondent, Case 34

“My parents scolded me for not behaving like a woman at home. I was frustrated and came to the church, only to get a lecture from the pastor, saying God does not like and forbids homosexuality, between men or women. Family members who knew about my orientation would give me that mocking look. I feel so down and depressed, wanted to run away. I never went to the church again after that.”

Analysis: Drivers of domestic and family violence according to this study

Family and social environment unable to accept difference in sexual orientation

It was found that all of the respondents interviewed for this study had experienced violence committed by either one of their parents, siblings and relatives or intimate partners living together with them. It was found that the victims had started experiencing violence since their adolescence due to their differences in sexual orientations. Especially, LGBTIs are mostly physically and verbally abused when they opened up about their sexual orientation or had their sexual orientation exposed and revealed somehow. These predominantly included scolding, getting disowned by family their family, or publicly shaming. A 30 years old transgender woman from Yangon region shared that violence decreased as she was able to support her family financially, yet she was often scapegoated and blamed for her difference in sexual orientation.

“Since childhood, my parents did not accept my identity. They tried to change me using a lot of different ways. I got scolded. Beaten up. When I was young, I was scared and I tried to change myself. But practically, you can’t. So finally, I was out and open. When my father first saw me in woman’s dress, he beat me and called upon my brother to punch me in the face some more.”¹⁸

A 20 year old lesbian from Mandalay region mentioned that she did not have problems at first since her family was not aware of her sexual orientation due to her gender-conforming expression. However, her families started to psychologically abuse her when they found out she was having a same-sex girlfriend.

“As I was living like a woman that I am, my family did not know that much. They had no problems. Then I came into a relationship with another girl. But she was a transgender man. My family thought she was just my friend. Then someone came to our house and divulged about our affairs. At first it was like raining hell fire. My family were labelling me as a hell-goer or an inferior, lacking human value or having a mental disorder, among many others. I couldn’t take no more of their scolding so I cut off communication with my partner a while, yet I was always caught in their attention for blaming. All those cursing and names. They were very rude when they were angry.”

Punishment for differences in sexual orientation

Most respondents, who were physically and psychologically abused by family members for being feminine and soft or masculine and tough, mentioned that they experienced violence since childhood. A lesbian shared her story about being punished for her gender non-conforming expressions and behaviors.

"I did not know much when I was young. I was always playing with other male friends. My mom started forbidding it when I was around 11 or 12, insisting that I only play with girls. I didn't want to play what the girls played. My mom would beat me if I hung out with boys. My sisters would also rat me out to my mother. One day she put me in my room without food for not listening to her. She only let me out when I promised to stay and behave like a girl. The rest of my brothers and sisters called me "Baw-pyar" [derogatory slang, literally meaning 'penis-vagina'] whenever they are angry."¹⁹

The rest of the respondents also highlighted their experiences of violent physical torture and verbal attacks resulting in psychological harm since childhood, due to their lack of masculinity or femininity in alignment with their assigned sex. A transgender woman from Mandalay shared her experience accordingly.

"My parents were cool. But my elder brothers weren't. They would always humiliate me and torture me. Being the youngest brother and feminine, I was always their object of harassment and humiliation. Whenever I wear my 'pa-soe' [a cloth worn by males] like 'hta-main'[a cloth worn

by females], they would rip the clothes off of me, leave me naked and make me shout 'I am a man'. I was hitting my teenage years so I felt very embarrassed. What's worse is that they made me do it in front of their friends. As I imagine and identify myself as a girl, this tortured me and put me through shame. Whenever my brothers were home, I did not go out anymore. One day, I thought nobody was in the house and was putting on my make-up in front of the mirror, and my middle brother saw me and knocked me in the head and I fell onto the ground. And he ratted me out to my eldest brother who threatened to kill me if he ever saw me again wearing clothes like a woman. Since then I never have come face-to-face with them. I only felt relieved and happy when I started living with my friends."

Coercive control over intimate partners

Respondents living together with their partners revealed "coercive control" as a reason among others for occurrence of intimate partner violence. Controls and restrictions come into place when their partners feel jealous and worried about them. Obsessive and controlling tendencies, combined with other social problems, can sometimes lead to physical assaults and violence. A transgender man living together with his female partner shared his experience accordingly.

"I loved her so much. And I am insecure. I don't want to leave her. With those worries, I started to tell her what to do and what not to do. I did not want to make her upset

but actually, my love for her was deep. Sometimes she refused. Lately our financial situation is not going very well and I feel stressed. I lost my mind and hit her, but I didn't mean to. Then I felt sorry and had to apologize her. My quick reactions would often lead me overboard. Then I realized I was wrong when I calmed down.”²⁰

Stress amidst COVID-19 pandemic

The COVID-19 pandemic that started in Myanmar in March 2020 and threatened the world was no longer only a health problem and changed the way of people's living completely. Death tolls have spiked across the globe due to the pandemic, with huge impacts on economic and social settings. Consequently, the government began imposing restrictions, that were justified by their attempts to the prevent spread of the disease. The general public gradually began to face the consequences of the imposed restrictions on public gatherings and travels. Regular income-generating businesses collapsed. This severely impacted on individual and family incomes. Many people were put under grave, severe stress. There were 47 documented cases of suicide attempts during the three months period between March 23 when COVID-19 started to hit Myanmar and June 22, 2020 alone.²¹

Low-income workers reportedly encounter economic downfalls and hardships most. Despite Myanmar government's supports

20 Interview with respondent, Case 31

21 COVID-19 and Myanmar, ISP-Myanmar Special Series, 4th issue. 8 July, 2020

for families with basic incomes during the pandemic, it is running inadequate as time follows.

Transgender women in Myanmar mostly make their living as cosmeticians or as spiritual mediums (*Nat Ga Daw*) – professions largely stereotyped and generally accepted for LGBTI by Myanmar society. Most LGBTI solely depend on these traditionally accepted professions. In Myanmar, the government started to impose regional restriction orders in relation to the prevention of COVID-19 in March 2020, the period of time when most transgender women enjoy their economic season with make-up and spiritual medium businesses. Banning of gatherings and festivals due to COVID-19 especially has adverse impacts on those who make use of these seasons for annual income and accruing savings. A 37 years old transgender women spiritual dancer described her difficulties accordingly.

“Being a spiritual dancer and having no session for worshippers, so, which Nat or spirit would come and safeguard me now, right? No festivals due to COVID. No gatherings. Nat Ga Daw is supposed to host and organize worshipping sessions with music and traditional orchestra to make incomes only during this season. For the rest of the time, there are only a few persons who come to have their fortunes read. Not regular. We make use of this specific time to save money for the whole year. Now we have been hanging by a thread for six months. No ‘incoming’ but only ‘outgoing’ money. Not capable of doing any other business, I am just sitting like a duck under the spirit statue

*I have. It's starting to make me sell basically everything I own.*²²

A 23 years old Make-up artist from Yangon region shared her economic hardships during COVID-19 accordingly.

"Indeed, these are very difficult times. No one can save us. It is a time for every make-up and hair artist to cry helplessly. Previously during this time of the year, I even have to hire staffs to meet the customer demands. There were many service inquiries at my beauty salon; for home-call service; make-up for donation, wedding, convocation, ceremonies ect. This COVID-19 has completed turned things upside down, no more ceremonies. No customer would come to the salon to get a hair-cut or shampoo because the place is a high risk of virus transmission. This not only makes my life difficult but also for my staff. I could not financially support my partner since I have no income and he's mad about it. Thank god he's not one of those physical persons who would beat or something. But still, things are not okay."

Government authorities imposed curfew orders in some areas. Those who failed to follow the rules and violate the curfews were also apprehended and prosecuted. In 2020 early September alone, hundreds of people were arrested for breaking curfew orders imposed in Yangon region.²³ These curfews especially affect nightlife workers. Transgender sex workers are also amongst

²² Interview with respondent, Case 22

²³ <https://www.healthproducts.com.mm/wuhan-virus/item/3232-more-than-600-curfew-violators-prosecuted-in-rangoon.html>

them. Many of these sex workers are staying outside with friends together due to family issues and pursuing any kind of job they can to best make their living.

“I am doing this work because I just can’t or don’t know how to do other jobs. We have always been targeted by the police under ‘Darkness’ laws and Anti-prostitution laws. Now there is this new tool called ‘prevention of communicable diseases’ or something. They are making more arrests. Now people who come to arrest us are not just only police but also local administrators, and we can’t buy our way to escape like before. And more people come to know what we do for a living. And transgenders getting prosecuted catch the reporters’ attention more. The same type of person gets arrested but ‘trans’ people make the headlines more the next day on Facebook social media. I have to go out at night and work to feed my mouth, at the risk of getting arrested and humiliated.”²⁴

Stay-at-home orders and economic crisis are eventually leading many people to severe psychological stress. As a consequence of not being used to ‘new normal’ life and psychological stress, domestic violence rate exponentially increased during COVID period. Daw Htar Htar, a founder of Akhaya Women Group based in Yangon, mentioned that domestic and family violence occurs due to the actions committed as an escape from stressful minds caused by the economic and family livelihood crisis, and stay-at-home preventive measures during COVID-19.

“We have doubled and tripled more reported cases. Women suffer most. Domestic violence is already an existing underlying issue – like an underground disease. COVID-19 just made it more visible.”²⁵

Daw Hla Hla Yee, director of Legal Clinic Myanmar said that domestic/family violence cases significantly increased and that there were up to 45 reported domestic violence cases in March 2020 alone. She mentioned that there was a 40% increase in the cases of domestic violence compared to the list received in February before COVID-19 hit Myanmar.²⁶ A study suggests that the unemployment rate among LGBTI persons in Myanmar increased during COVID-19 period. The reasons for unemployment include laid-offs due to job cut-offs, cessation of suspension of businesses and the government’s COVID preventive measures and orders.²⁷

It was found that domestic and family violence not only occurs within ordinary families but also increases among LGBTI families and intimate partners due to the aforementioned reasons. A member of an organization providing psychosocial counseling for LGBTI persons gave the following account.

“In the past, there were only 2 or 3 people who sought counseling on a monthly basis. The inquiries are mostly about health issues. Taking blood-tests or obtaining medications, prescriptions. But lately, there have been a lot of mentions like ‘always getting scolded at homes.’

25 <https://www.rfa.org/burmese/news/domestic-violence-07032020055410.html>

26 Domestic violence increased by nearly 40% during COVID, The Irrawaddy - Burmese Edition, June 10, ၂၀၂၀ •

27 The Online Survey Data of LGBT + Unemployment Under COVID 19 Outbreak in Myanmar. Rainbow Alliance – LGBT Youth Empowerment Program. May, 2020

Some people have problems between intimate partners, more fights, more reports due to physical attacks. Even though they did not inform us directly, there have been a lot of opening up about such family internal matters amongst themselves.”²⁸

A transgender woman explained that even though her family members and partner living together with her were treating her nicely when she was financially sound before, their behaviors changed rapidly amidst COVID-19 economic hardships.

“Before this, I opened a salon shop. I also did out-call services. Back then I was able to cover expenses for home and give pocket money for my man and it was fine. Although there was no complaint when I was financially sound and able to support my family, my brother and sister began to make a fuss when this financial hardship hits. They are having more anger towards me. Like my cooking is bad or I’m useless. A brother who lives off of my support just started to beat me up the other day, because I am not making money like before.”²⁹

A lesbian living together with her partner also shared about stressed intimate relationship issues. She has been living together with her transgender man partner for almost 4 years. She mentioned that they lived together despite the parents’ disapproval and have been through rough patches together. She lost her income because of the shut-down of garment factories due to COVID. She

28 Interview with respondent, Case 59

29 Interview with respondent, Case 58

said that they had quarrels about home expenses lately and that she was even beaten up at times.

“We were very happy in the past. Since COVID, the garment factories have shut down. We try to stay cost-efficient and make ends meet our best in a hostel apartment we rented to live together. But gradually there is no income and there is no guarantee when I will get the job back, so there are many unpleasant things. He asked me to go back to my parents’ home. I left home because of him. And what would they say if I go back home now? I try my best to be okay. I understand he’s upset but he’s a man of anger and sometimes, he gets physical. He beats my whole body when he gets angry. So many cursing too. But then when he calms down, he would apologize me. I am very sick of us living together now.”³⁰

Domestic and family violence issues faced by LGBTI persons

Most human rights violated due to domestic and family violence include tortures, degrading and inhumane treatment. Persons living together with LGBTIs or their families and relatives commit such actions in the home. Moreover, domestic violence also undermines right to freedom and right to privacy. Control, intimidation and coercion attached with the violence can hamper the enjoyment of the right to privacy and the right to freedom of the victim of the violence.

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Interview with respondent, Case 61

Physical and psychological stress

There is a saying in Myanmar that “Home is a place of love, care, warmth and safety”. However, LGBTIs in Myanmar do not enjoy acceptance of their family but rather face violence from them and hence the saying is further from the truth. LGBTI persons, from being discriminated to being subjected to violence by their parents and siblings, do not feel safe but instead live in fear. For closeted LGBTIs, fear of potential violence for having their sexual orientation exposed to their family always overwhelms their mind.

A 20 years old bisexual woman is seen as an ordinary woman by her family. Her family recognizes her heterosexual boyfriend. However, her family did not realize that she has a same-sex lover as well. She opened up about her feelings.

“My family is okay about me having a boyfriend. Not much of a word. They just remind me to stay disciplined and not to lag behind in my education. But I also have a same-sex woman partner. But my parents thought she was just a friend. They didn’t know. My sister was a bit doubtful and she asked before “what’s the deal between you guys?”. If my parents figured out about it, they wouldn’t accept. My father has a habit of grabbing and hitting someone when he gets angry. And I’ll be damned for sure. It’s only a matter of when or who’s going to tell him. It keeps me worrying.”³¹

Isolation from family

The respondents mentioned that they lived separately from their family in fear of getting their sexual orientation exposed to their family and being subjected to violence after their sexual orientation gets exposed. A 19 year old transgender woman shared the following.

“I try to stay away from them as much as possible. I don’t want to be spoken at or get beaten. They do not like the way I am. I stopped having dinner or watching TV together with my family. I have my meals only after they are done. I stay in my room as much as possible. If I can’t stay isolated, I try to find people like me to have conversation. Try to stay outside as much as possible. So, my family is like a team, and I’m on my team. We’re separated, I guess. I do not feel the warmth and love anymore.”

Such fears have forced many transgender women to move out of their homes as soon as they can make their own money and stand on their own feet, and to move outside and live together with their friends and make their own living. However, lesbians and transgender men usually try their best to stay with their family members. This is because they are more worried of being looked down and ridiculed by the society.

Not relying on legal laws anymore for they are not protecting

Moreover, domestic violence relates to “everyone’s right to equal protection by law”. Domestic violence is regarded as an internal family affair, without recognizing it as a criminal case. Therefore, when seeking legal aids for domestic violence, there are many cases where the complaints are not recognized, complaints are not filed, complaints are nullified and resolved by traditional and customary methods. Such means of resolutions fail to equally protect the victims legally.

Regarding this issue, a lesbian who used to be beaten up by her partner shared about her challenges in seeking help.

“Even when ordinary couples fight, there is a saying in our society, ‘not to meddle between three things’ or ‘husband and wife are like teeth and tongue’, implying they will be okay each other soon. This makes a person in homosexual relationship even more disadvantaged in seeking help. If I seek help, they would ask “are you guys together?”, “how to you do it as a couple?”, and asking inquisitively in detail. Like we’re strange, they’ve never heard of it so they don’t know how to help. Police will probably give the same response. What’s worse is being unnecessarily exposed about my homosexual relationship to the strangers and getting humiliated. This is the result at the end.”³²

Lack of legal access

In addition, there are many challenges regarding access to justice. Since Section 377 criminalizes consensual and non-consensual ‘unnatural’ intercourse, the respondents are frightened to report at the risk of getting criminalized because they are LGBTI. Since the provisions of the law are unclear and vague, it leaves rooms for members of the police force to use their unchecked powers at their own discretion. Due to such authorities, police often bully LGBTI persons and this undermines the public trust over the police force. A volunteer pointed out that LGBTIs do not report to the police when they experienced domestic violence according to this reason.

“Let’s say we can report, but where? Police! Police, who uses Section 377 to threaten us, to charge us. These LGBTIs do not trust that the police, who extort money by threatening LGBTI to charge for same-sex relations, will help when they experienced violence. If unlucky, the complainant is probably going to be asked for money for having same-sex which is against 377. So, who would want to report the police?”³³

A 24 year old transgender woman echoed this sentiment below.

“If I go and report because my man hit me, I will need to explain why I was living with him, what the relationship between I and him is and why he hit me. Imagine how the cops will react if I say we are couples, spouses. Just think of how they are going to treat me. They would charge me

some more, by using more legal codes. A friend used to tell me before that they tend to look down on trans people and extort money and hence, won't help you file a case.”³⁴

Another reason for not wanting to report domestic violence case is to avoid hurting the perpetrator because the perpetrators are their parents, siblings and lovers. The respondents do not want their family members being charged and taken actions against for their reporting. It was found that the respondents do not want to seek legal aid, worrying that other relatives and society would blame them if they report the perpetrators who are their parents or relatives.

Lack of knowledge on services and lack of will to seek help

A victim of domestic violence will undoubtedly experience psychological and physical harm. However, if the victims of domestic violence are LGBTI persons, they do not want to travel to the places providing health care and services in fear of public humiliation. This will mean that the right to highest attainable psychological and physical health care services is rejected.

Most LGBTI persons who experience domestic violence do not know where to seek legal aids and psycho-social counseling services. Most of them only know about HIV-health related counseling services. They are also afraid to contact and report. A 21 year old lesbian shared the following.

³⁴ Interview with respondent, Case 46

"I want to talk to someone when I get very sad. I have heard of psychological counseling. But to my knowledge, they are for patients related with HIV. I don't want to give the wrong impression that I am related to that disease somehow if I go out and seek counseling help. I am also embarrassed. If they understand me, that's fine but what if they don't? That will just make things worse."³⁵

Fleeing from home

Half of the respondents have fled their home or at least attempted to flee from home because of the ill-treatment they faced. Many transgender respondents fled away from their home since high-school student-hood and lived together with their friends, without completing their education. According to the information from the respondents, most of the transgender persons fled from their homes since their youths (14-18 years old). However, lesbians tend to choose living together with their families instead of fleeing away from home.

Conclusion

According to the findings of this study, domestic violence is prevalent among LGBTI persons in Myanmar. And the perpetrators are mainly their family members and intimate partners, with violence mostly involving physical and psychological violence. However, in Myanmar society which generally accepts domestic violence as an internal family affair, there are very few willing to help protect the LGBTI victims of domestic and family violence.



In Myanmar, the Prevention of Violence Against Women (PoVAW) Bill has been drafted to include domestic violence as a form of violence. While this can be considered as an improvement, the bill do not recognize transgender persons in its definition of “woman”. If the bill is passed and enacted accordingly, the law will not grant protections for transgender persons.

Recommendations

- To develop and enact a specific law on Domestic and family violence in Myanmar and protect all victims of such violence without any distinctions or discrimination.
- To ensure that the definition of “woman” in PoVAW law includes “transgender persons” to provide equal legal protections and aids.
- To abolish the Penal Code 377 which criminalized same-sex intercourse between two consenting adults.
- To abolish 1899 Yangon Police Act 30 and 1945 Police Act 35, which allows arbitrary arrests.
- To enact anti-discrimination legislation prohibiting all forms of discrimination
- To effectively prevent arrests, charges and refusal of access to justice on a discriminatory basis
- To ratify key human rights treaties including International Covenant on Civil and Political rights (ICCPR) and to respect, protect and fulfil the rights of the citizens in accordance with international standards.

- To guarantee the safety and privacy of and right to fair trial of LGBTI persons.
- For the Myanmar National Human Rights Commission to develop policies, statements and reports addressing violence on the grounds of sexual orientation, gender identity and expression and investigate cases of such violence properly.
- To ensure effective actions to bring justice against perpetrators of domestic violence
- To train government departments and staffs responsible for human right protections on sexual orientation, gender identity and expression.
- To train service providers of psychosocial counseling and other services on sexual orientation, gender identity and expression for better understanding, so that they can deliver effective services.
- For the government to raise awareness of human rights and sexual orientation, gender identity and expression (SOGIE), by various means and including by incorporating it into school curriculums.

