

Anti-discrimination and personal safety of LGBTI people

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The Myanmar and Malaysian Context

My talk will be divided into two parts:

Part 1- providing you a snapshot of the context

- Short background on Myanmar and Malaysia

- Brief sharing of findings of our report on SOGIE Discrimination, to be launched on 8-9 Nov 2019

- To highlight the lack of protection mechanisms for LGBTI Persons in Myanmar and Malaysia

Part 2-Challenges when we are approaching the conversation of anti-discrimination law and protection for LGBTI Persons

Every Malaysian knows about 'sodomy'

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Chronology of Datuk Seri Anwar Ibrahim's sodomy trial



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Being 'gay' and 'sodomy' became a political image for many Malaysians

- Many Malaysians were forced to reconcile their understanding of what it meant to have a potential Prime Minister with 2 allegations of sodomy (he is currently rumoured to be the Prime Minister-in-waiting)
- Many Malaysians were willing to look 'past' these allegations and most human rights organizations (E.g. HRW, Amnesty International, ICJ) called these allegations 'trumped up political charges'. Malaysians agreed
- Due to Malaysia's deeply homophobic sentiments, the conversation surrounding Anwar Ibrahim's sodomy cases tended to sidestep the actual problem with Section 377 of the Penal Code: the continuous threat it posed to everyone that potentially 'engaged' with carnal intercourse against the order of nature, stigmatizing LGBTIQ people in Malaysia.

Malaysians may never be 'free' from political homophobia- Sex clips smear

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More sex clips implicating Malaysian minister Azmin released



The Malaysian Insight

‘Carnal intercourse against the order of nature’-Penal Code Malaysia

Carnal intercourse against the order of nature

377A. Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature. Explanation—Penetration is sufficient to constitute the sexual connection necessary to the offence described in this section. Punishment for committing carnal intercourse against the order of nature

377B. Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping

377 C. Committing carnal intercourse against the order of nature without consent, etc

‘Unnatural offences’-Myanmar Penal Code

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Our research on SOGIE Discrimination in Myanmar

- Myanmar is in the global spotlight for its grave crimes that may amount to crimes against humanity, war crimes and genocide for the conflict in Rakhine State, Kachin and Shan State
- The issues of impunity: lack of accountability, endemic corruption and the rule of law that is seen in the conflict areas also impacts the situation of LGBTQ (we did not find I or A) people in Myanmar and this area is often ignored.
- We documented the experiences of 70 people across 9 townships in Yangon, Mandalay, Shan State, Magwe Region, and we found people from the LGBTQ community willing to speak to us.

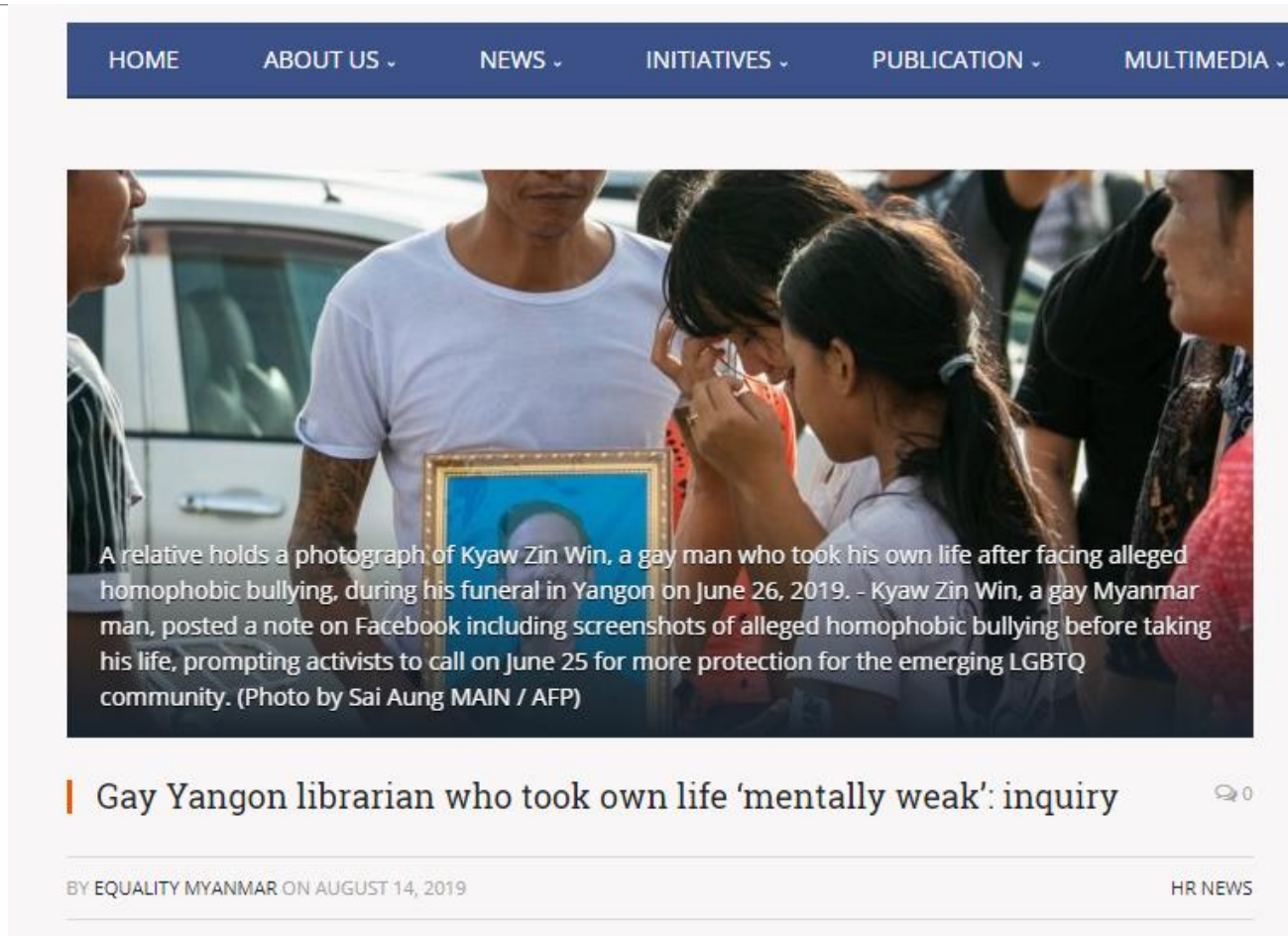
Snippet of our findings

- Police officers have invoked Section 377 to enter LGBTQ people's homes; accuse them of 'unnatural sex'; take them into police custody; and to subject them to abuse.
- Law enforcement officers often threaten to press charges under Section 377 in order to extort money or coerce LGBTQ individuals into performing sexual acts

Snippet of our findings

- Section 30 of the Rangoon Police Act and Section 35 of the police Act are both colloquially referred to as the “Shadow Laws” or “Darkness Laws.” These names, which are commonly used throughout the country, derive from the fact that under vaguely defined circumstances, the laws criminalize the act of LGBTQ being found outdoors during night-time
- LGBTQ People tend to avoid the police, the court at all times because of the ‘lack of trust’
- Our report launches on the 8th of November: let’s stay in touch!

Language of reporting by the NHRI in Myanmar on the suicide of an 'outed' librarian'



Challenges to confronting violence

- In both Malaysia and Myanmar, there is the mainstream culture of demonizing the personhood of LGBTI people.
 - Our Myanmar report found that police conducted 'raids' in Myanmar in areas that were hotspots for LGBTQ people because they were perceived as criminals.
 - In Malaysia, religious leaders have said LGBTQ People cause 'natural disasters' (pink news 2018)
- Concern: any anti-discrimination law may not take into account sexual orientation, gender identity/expression

The stigma and the need for better protection

- Currently, it can be said that Myanmar and Malaysia, despite there being cultural and religious differences, we can see the perpetuation of stigma and impunity by state actors and non-state
- Coupled with the lack of responsiveness of state mechanisms when bullying, crimes occur against LGBTI people

The stigma and the need for better protection

- These issues need to be addressed from the root causes, because the reform of the legal system and decriminalization is only part of the solution.
- We require more long term and comprehensive approaches to improving public awareness and knowledge
- Criminalizing 'hateful utterances' in the Myanmar and Malaysian context may be dangerous because both countries are notorious for policing speech and social media and may use these laws for their own political mileage instead (e.g. the Sedition Act)

Conclusion

Conclusion: we need comprehensive legislative protections and anti-discrimination efforts in place, however, a larger effort is needed to create change in Myanmar and Malaysia, laws alone are not enough