

BURMA: Police torture of gay and transgendered people
By AHRC
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The Asian Human Rights Commission has been following with concern news of the police targeting of gay and transgendered people in Burma, or Myanmar, and has recently obtained detailed information on a number of cases of alleged arbitrary arrest, detention and torture of persons on the grounds of sexual orientation. The AHRC is troubled both by the manner in which this minority group appears to have been deliberately targeted by the police, and by the implications of these police abuses not only for the rights of minorities in democratizing Burma, but also for the rights of all people living there.

According to recent news reports, police in Mandalay have been conducting an operation against gay and transgendered people who have been congregating in certain public places in the city. Although the police claim that they are simply removing from certain areas anyone found to be causing a disturbance to the public, from all accounts it is clear that they have been specifically targeting gay and transgendered people.

For instance, on 7 July 2013 a group of around 20 ununiformed men—some police, others local administrators or other unidentified persons—descended on the area outside the Sedona Hotel in Mandalay and assaulted a group of gay and transgendered people there, pushing, hitting, handcuffing them and pulling off their garments in public before loading them on to a number of vehicles. Once in custody, police continued to abuse the group of 11 detainees, hitting and kicking them constantly, stripping them naked in the public areas of the Mandalay Regional Police headquarters, photographing them, forcing them to hop like frogs, forcing them to clean shoes and tables, to walk up and down as if on a catwalk, uttering obscenities at them, and otherwise physically and psychologically demeaning them. One of those detained said that a police officer interrogated her at length about her sexual activities and preferences, where she usually hangs out, and later tried to lure her to come back with him after leaving the police station.

Although many of those detained are later being released without charge, some have been threatened with, and others charged under, the 1945 Police Act, section 35(c), which stipulates that, “Any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account himself... may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months.” In one case, the details of which have been obtained by the AHRC, two accused each had to pay bribes of around 400,000 Kyat (about USD420) to be released from a case under this section lodged by the police in the Aungmyay-thazan Township Court. They were informed that for a lesser amount of money they could be held for just one week instead of the full three-month period.

Equally disturbing is that some of those who are being released are being forced to sign pledges beforehand that they will not go to public places as before or wear women’s clothing. A police spokesman, Police Major SoeNyein, told one news agency that the police were doing a public service in stopping the community from congregating, and that the police had “released them after educating them and obliging them to sign a pledge” the contents of which were not mentioned (7 Day Daily, 12 July 2013). In another report the same policeman is quoted as saying that, “We had to detain the fags because they were causing a disturbance to passers by at the moat, by doing and saying whatever they like... homosexuality is not in accordance with law. If people complain, we’ll take action” (Irrawaddy Burmese, 19 July 2013).

Not only are such assertions patently against the human rights of the victims of these police attacks, but they are also patently false: no law exists in Burma to prohibit homosexuality, or the congregating of homosexual people in public places, which is why police who pursue them are forced to use obscurely worded sections of antiquated, colonial-era laws under which they effectively act as the arbiters of public morality, distinguishing people who can give “satisfactory accounts” of themselves from those who cannot.

That the police in Burma have the authority to make such ambiguous determinations should be a cause for concern for anyone interested to see the country continue on its democratising path. If the police, who have learned their techniques under military government, have the authority to determine what does or does not constitute a public disturbance then the rights of minorities are going to continue to suffer abuse

—both because minorities who assemble in ways that the police do not like, as in Mandalay, can be subject to arbitrary arrest, detention and torture; and, because other gatherings that in fact constitute real, violent threats to public safety, like the mobs formed to attack Muslim shops and houses around the country in 2012 and 2013, are somehow not considered to be in violation of any law.

Indeed, the manner in which the police have cracked down on the transgendered community in Burma during recent weeks closely resembles practices of old against other minorities, in the days that groups of unidentifiable, ununiformed men would appear to drag off political protestors, striking workers or others whom the government deemed to be causing a public disturbance. The forcing of detainees to sign pledges before release too is a longstanding practice used in political cases, one that has no basis in law. And the notion that anyone can be made to stop being gay, any more than they can be made to stop being political, through the use of such techniques is as absurd as it is unlawful.

The accounts of the police abuses of the detainees in these cases also correspond with accounts of police abuses in all types of ordinary criminal cases. Every day, people in Burma are picked up without being told of charges and often without even knowing who is detaining them, let alone why. Many are told to come to police stations just to “answer a few questions” and only once in the premises learn that they are being arrested. After being detained, they are suffer forms of torture like those described in Mandalay: removal of clothes, sexual humiliation, slapping, hitting, forcing to stand or squat in stress positions for prolonged periods—all these are features of cases that the AHRC has documented for many years, and that continue to the present. Frequently, the violence is sufficient to kill the detainee, as in one recently issued appeal ([AHRC-UAC-098-2013](#)), and although such deaths inconvenience police, hardly ever is a policeman held criminally liable for what he has done to a person he has in his custody, no matter how egregious. Similarly, the requirement of payments to get out of cases lodged against accused persons is routine practice in all types of criminal cases. In this sense, the protections that minority groups deserve are the same protections that everyone in the country deserves, the abuses they suffer, also the abuses suffered by the general community. In short, the rights of this community not to be tortured or suffer cruel, inhuman or degrading treatment or punishment, not to be arbitrarily detained or charged with crimes that they have not committed, are the same rights that all people in Burma share in principle but not in practice.

The Asian Human Rights Commission has been informed that some of the gay and transgendered people detained and tortured in Mandalay intend to lodge complaints against their abuse with the authorities, including with the Myanmar National Human Rights Commission. It strongly supports the initiative to lodge complaints, and calls on all agencies that receive the complaints to treat them with the utmost seriousness, and to investigate them with a view to having criminal charges lodged against the police responsible for these offences. It also calls on the domestic media and civil society groups for their support for these complaints.

The AHRC also takes this opportunity to call for the government of Myanmar to join the UN Convention against Torture without delay, and pass a law for the prohibition of torture, since only through criminal prosecutions of torturers in accordance with international standards will custodial abuses of the sort that have been going on in Mandalay be brought to a stop. Simultaneously, it urges the legislature to amend the Police Act, section 30(c) and the equivalent section in the Rangoon Police Act, section 30D, so that the police do not have ambiguous and draconian authority with which to detain, abuse and extract money from anyone of their choosing who just happens to be out after dark.

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