Forgotten: Political Prisoners in the Context of Transitional Justice

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As Burma strives for democracy, the society must facilitate a process of reconciliation by resolving divisive issues that have impeded its growth for the latter half of this century. Specifically, the crimes of humanity committed since the State Law Restoration Council (SLORC) and State Peace and Development Council (SPDC) assumed power need to be addressed and accounted for. Transitional justice refers to this process, the fair and just treatment by an incoming government of crimes committed by the previous regime. Currently, there are a diversity of ideologies revolving around the concept of transitional justice and its bearing on a modern democratic Burma. Encouraging an expeditious shift to the new government, one school of thought supports a system of general amnesty and forgiveness for the military’s transgressions. Other critics see considerable value in publicizing the crimes against humanity and reproaching criminals for the victims’ benefit, as well as an impressionable society aching for new axioms of civil guidance. Although legally complex and morally arduous, much of the continuity, success and prosperity of Burma’s democratic nationhood depends on the proper treatment of this delicate issue.

The debate of political imprisonment and transitional justice encompasses a broad range of ideas and is a topic of immense fervency for those implicated in the cruelties of the former regime, as well as advocates for democracy and human rights defenders. As this article continues, the stories of many political prisoners will be told, bringing into the open the severity of the crimes and the need for a legal revision of these atrocities. The necessity for the crimes to be considered on an international scale

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will also be discussed, as well as the hypocritical Burmese laws which have allowed the violations to occur for decades. Although general amnesty may offer a simpler, more expedient means of addressing the SLORC and SPDC, and their behavior over the past forty years, the success and prosperity of the new government depends on the adherence to democratic principles in prosecuting all those involved in the junta’s crimes against humanity. Burma’s transitional justice depends on the implementation of fair, yet severe penalties and assessment of adequate retribution policies that will help both to heal victims and disassociate the incoming democracy from the outdated dictatorship.

What is a Political Prisoner?

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”
- Article 19, Universal Declaration of Human Rights

A political prisoner, often referred to as a prisoner of conscience, is one who has been penalized for peacefully demonstrating an ideology or set of beliefs contradictory to that of the government to which the individual may or may not subscribe. This includes possessing uncensored publications, videotapes, leaflets, and other popular forms of media and leading or participating in activities supporting viewpoints contradictory to the government. There are an estimated 2,500 political prisoners being held in jails throughout Burma, suffering as a consequence of their involvement in the Burmese struggle for freedom and democracy. Those sentenced have received trials that fall short of international fairness standards. Many have been denied legal counsel and the majority have been sentenced under vaguely worded and arbitrarily applied security legislation, which subjects rights and freedoms to greater restrictions than are necessary to meet requirements of morality, public order, and general welfare.¹ Many have been detained without trial or charge for several years. Others who have completed their sentences remain in detention, held there by executive decree under administrative detention laws and without recourse to legal appeal.

Transitional Justice

Political scholars and civil officials worldwide have advocated that while the democratic government is in a rudimentary stage and struggling for sure footing, issues of the past should be avoided. More effective is an op-
timistic outlook, focusing on future development. Energies should be devoted to building the new government, not assessing blame to those who may have been involved in past misconduct. They see the military junta as a continuing threat even when democracy has been established, a bomb of rebellion ready to detonate once identified and abashed. Prosecution would only fuel the junta's resentment, encouraging their re-mobilization and eminent revolt.\(^2\) As a fledgling government, Burma's new democracy would find difficulty maintaining their supremacy, collapsing under the grips of a tyrannical rule. In addition, supporters of this belief continue to advocate that any system of arrest and prosecution of junta officers will inevitably stretch over a long span of time, causing a general unrest and lack of confidence in the new society. Within this delay, the government will appear inefficient, losing the respect of an eager society laden with expectations. In a more philosophical context, there also exists a moral dilemma in the regards to the prosecution process. Specifically, many of the human rights violations occurring in the prisons were carried out by officers responding to the orders of a higher authority. An ethical decision is inevitable in determining exactly where the fault lies—within the leader who issued the barbaric acts, or the officer who followed their command.\(^3\) Separate statutes will have to be arranged according to the opinion of a trenchant legal counsel, though there exists no objective medium in which to judge the fairness and integrity of their verdicts. Furthermore, after years of oppression and misrule, it is certain that some factions of this emerging, patriotic union will possess a sense of vengeance in some capacity, along with an expectation for justice and retribution. Acting on this emotion would nearly parallel the ill-conceived punishments which the military generals themselves have consummated.

This lengthy catalogue of threatening scenarios has experts asserting impunity as the most sensible policy concerning political prisoners and their captors. The general amnesty would eliminate any premise that could place obstacles in establishing the strong democratic government, envisioned for years by Burmese civil society. In critics' eyes, moving on from the past towards a strongly secured future will ensure sovereignty and stability for Burma’s democratic leadership. They emphasize an onward effort, unclouded by a past that cannot be altered.

Opponents of this argument adamantly stand for the broad representation of all human rights violations committed by the SLORC and the SPDC, and the just punishment of all conduct violating international laws. This prosecution, they feel, retains and enforces democratic ideals and principles necessary for the success of the new government, and provides an early example and standard for civil society to follow. The disciplined adherence to democratic decrees needs to be evident in manifesting a
schism from the old regime. To acknowledge past injustices is to set a benchmark of law enforcement that will be perpetuated once the installation of the democracy has been completed. Burmese civil society craves a visible symbol of a new order entirely independent from the past administration. From experience they are completely cognizant that an altered name does not necessarily result in progressive reform. The failure to make an immediate assessment of foregoing abuses of law and life will leave an opening in which history could potentially be altered by those whose barbaric policies were the cause of this brutal era. Supporters of the past regime will seize on the opportunity to manipulate and modify the accounts of their time in power, weakening the legitimacy of the new government and their reasons for assuming leadership. Human rights violations need to be publicized in order to distinguish right from wrong and reasonable from preposterous, to stand as reminders of the dangers of misrule, and to prevent such horrors from repeating themselves.

In acknowledging the illegitimacy of the past government, bureaucrats and members of the public administration aligned with the SPDC must not be neglected, incurring treatment in accordance to their record of involvement with the policies of the dictatorship. Within these public evaluations, it is crucial that the government exercise extreme caution, acting in complete objectivity so as not to violate the very democratic ideals they claim as their foundation. The importance of this refinement process cannot be understated, as conflict is probable in the installation of democratic leaders to work with public officials that are sympathetic to past tyrannical principles. Perhaps the most compelling motivation to reach a just settlement is for the well-being of the victims, as well as the friends and family forced to watch their loved one’s suffering, helplessly sidelined by a manipulative military intelligence force. At the pinnacle of any efficacious society is an a devoted community of active individuals who take pride in their leadership and its impetus. Unhealed and deceived, victims have no reason to participate in a government that is so ineffectual towards the pain and struggle that they, their family, and their friends have endured for many years. A fair trial, conviction, and sentencing of the perpetrators would commence and carry on the healing process for many, affirming these victims’ faith in the new democracy to which they have subscribed. The identical treatment is expected if a victim has died while imprisoned. Fault should be assessed, the guilty aptly sentenced, and the victims’ families offered adequate reparations. This arrangement guarantees the families that justice has been served while offering a path on which closure can begin.

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**Imprisonment through the Eyes of the Dissident**

As Burmese Military Intelligence has extremely strict guidelines for information entering and leaving the country, there are no definite statistics on the number of prisoners currently serving sentences for crimes of conscience. While many human rights organizations estimate that a modest 1,300 prisoners are being held in Burma’s prisons, many activists inside Burma insist the actual figure is nearly twice as much. Currently there are 36 penitentiaries operating within Burma, 20 of which house the 2,500 political prisoners advocated by sources inside the country. Many international statutes exist detailing proper prison treatment for inmates—the *Standard Minimum Rules for the Treatment of Prisoners*, the *Basic Principles for the Treatment of Prisoners*, and the *Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment*. However, the routine torture, harassment, and health risks posed within their containment fall disgracefully short of these guidelines. It is because of these widespread violations—and the extent to which they are committed—that transitional justice has become such a significant issue.

Torture: The deliberate, systematic, or wanton infliction of physical or mental suffering by one or more persons acting alone or in order of authority, to force another person to yield information, to make a confession, or for any other reason.

– Tokyo Declaration on Torture, October 1975

U Zaw Min, a prominent activist with the Assistance Association for Political Prisoners-Burma (AAPP(Burma)) and a former prisoner himself, attributes the use of torture not exclusively to cause physical trauma to an individual, but also to destroy the human’s soul. “Torture is designed to break down the identity of a strong man or woman, turning a union leader, a politician, a student leader, a journalist, or a leader of an ethnic minority group into a non-entity with no connection to the world outside of their torture chamber.”

National monitoring of accommodation and treatment in Burmese Prisons began in 1999, when the International Committee of the Red Cross (ICRC) was allowed unrestricted access to all prisons, detention centers, and labor camps. Their findings were beyond belief. Torture, prolonged constraint, insufficient conditions of living, and inadequate medical care were common and widespread. Through personal accounts and interviews, prisoners revealed the varying ways in which they were tormented during their indefinite stay at the prison. Soldiers were witnessed to have used their boots, fists, and rifle butts, as well as metal pipes and bamboo sticks to beat prisoners, often while forcibly restrained in vulnerable positions. Casualties from these barbaric sessions were frequent and often long-term. Internal bleeding,
fractured skulls, dislocated limbs, paralysis, and death have all been reported as a result of the unrestricted beatings. Prisoners who have endured similar treatment and have since been released have reported severe joint pain, hypertension, afflictions of the respiratory and digestive systems, difficulty in walking or standing for long periods of time, and paraplegia. It is particularly these victims for whom reparations are indispensable. Damaged for life, nothing exists to restore their vision, hearing, or ability to walk, though with appropriate compensation, accommodations can be made to ensure their lives are as comfortable as possible. Punishment to those who inflicted such pain must be assessed to give the victim a sense of equity and reduce any potentiality of this savagery reappearing in the future.

Perhaps the most complicated cruelties to assess are those which leave no scar on the victim’s skin, no impediment in the manner in which they walk. After the cuts, bruises, and bones are healed, the effect the torture has had on a prisoner’s mind is immense. Psychological torture begins upon the arrest of a victim. They are hooded, then transported to prison, where a painstaking, often violent interrogation period begins. There have been several reports of rape and other sexual offenses during this time, as both officer and prisoner are isolated from the central compound. For many, experiences such as these induce guilt and humiliation that cannot be verbalized. Once released, their shame prevents them from recalling events or expressing their emotions. In 1990, Tin Tin Nyo, a well-known women’s leader, spent her interrogation period enduring the abusive behavior of the Military Intelligence officers, having been beaten after she was forced to remove her clothing. She refused to discuss any details of this event, nor did she seek psychological counseling upon her release. Harassment and other nuisances involving Military Intelligence and their post-release stalking followed, making her attempts for employment and further education futile. On December 31, 1993, she swallowed a bottle of insect repellent and died soon after. Instances of severe depression are widespread within the Burmese prison system, occurring as a response to environmental factors causing psychological and physical trauma. The severity of the prisoners’ psychological state goes unnoticed as prisoners are abundant and can be replaced very easily. Statistics from one jail indicate that the death toll was approximately 300 per month. Suicide accounted as the cause of death in over 60% of the cases.

While inmates are suffering through the harsh treatment of prison guards, they must also cope with deplorable living conditions. Jails are subjected to severe overcrowding, reaching rates which are unacceptable by international standards. Cells measuring 8 x12 feet hold a minimum of 3-4 prisoners on a regular basis. Prisoners eat and sleep in their cells and are
allowed to leave for only four hours per day. Their daily food allowance usually includes 1-2 servings of bean soup or vegetables, supplemented by a weekly serving of dried fish and a meager supply of water. Prisoners are forced to defecate in the cells, as there are no formal facilities provided for this purpose.

Political prisoners are not allowed to speak with one another. Reading and writing is also forbidden, as the possession of a simple scrap of paper is grounds for solitary confinement. When punished by this method, prisoners are forced to sit or stand astride in congested holding rooms, an iron bar placed between the shackles on their ankles restricting any movement. Although a chamber pot is available for personal needs, it is rarely emptied, leaving prisoners captive in their own urine and feces. The worst conditions reported were of confinement situations where prisoners were crammed into cells standing upright, their hands tied above their heads. In this position, they were forced to sleep and defecate while standing back-to-back with other prisoners. Mats, blankets, and other basic conveniences are denied— if prisoners have the freedom to move into a sitting position, they have only a contaminated concrete floor to sleep upon. The solitary confinement period lasts between one and three months, though some political prisoners have been restrained indefinitely. One of the worst cases reported was of Nyunt Zaw, a 24-year-old member of the All Burma Students’ Front (ABSDF), placed in detention in 1991. While in solitary confinement at Tharawaddy Prison, Nyunt Zaw had pleaded with prison authorities for the opportunity to see a doctor, but was repeatedly refused this basic right. In fact, he had developed heart disease and was suffering needlessly. In 1999, Nyunt Zaw died of a heart attack. Prisoners who peacefully complain or ask for redress in regards to the abuse they are enduring are severely punished and given additional prison terms. Currently, 50-year-old Myo Myint Nyein, a former political editor, is serving a fourteen year sentence in Tharawaddy Prison for smuggling reports of human rights abuses in Myanmar prisons to UN officials. Although he has developed several ailments in prison, he remains detained and untreated, suffering from gastritis, migraines, hypertension, and neurotic behavior.

Doctors are rare among the prisons, many lacking the credentials necessary to justify their title. In 2000, Insein Prison was documented as having one doctor per three thousand prisoners with a similar shortage of medical equipment. Kyaw Zwa Moe, a former inmate at Insein Prison, tells of his experience at the health clinic. “Two hundred or so patients would go to the outpatients’ clinic every day, only to find a notice reading, “Only 10 needles and 5 syringes available today.” Medical treatment is provided only when the illness of a patient has reached an acute
stage. Even at this point, an officer makes the final assessment on the needs of a prisoner. Officers rarely heed the advice of doctors who recommend cases to be sent to outside hospitals for further care. The most common diseases among the prisoners are gastrointestinal diseases (amoebic dysentery, bacillary dysentery, and diarrhea), jaundice (viral and amoebic hepatitis) and multiple forms of skin infections—all ailments which are nearly non-existent when the most simple of sanitary standards are followed. However, the unclean, semi-cooked foods, dirty kitchens, polluted surroundings, and poor water supply welcomes the transmission of infectious bacteria. Recently, HIV has become extremely prevalent and a cause of the rising death rate. A report in 2000 documented the health arrangements in Mandalay prison:

“There were 15 special cells (single and double rooms) for prisoners . . . infected with communicable diseases. There were many [venereal disease] and HIV positive patients, as well as some patients with leprosy. Many of these patients were forced to stay together. The hospital did not use disposable syringe needles. . . Mandalay prisoners also had to work at farms fertilized by urine and feces.”

Even health officials admit the danger and negligence inmates experience. At Insein Prison, Toe Tun, a member of the Democratic Society for a New Party (DPNS), was examined by the detention center’s Doctor Soe Kyi. Toe Tun believed that he was suffering from dysentery and had requested special meals of porridge and boiled water. Dr. Soe Kyi’s responded, “It is impossible to provide boiled water. We don’t even have boiled water to clean the needles at our hospitals.”

Though Mandalay Prison does have the luxury of officials who visit individual jail cells to assess the prisoners’ health, the practice has long been considered insufficient. “Our blood pressure and heartbeat were never tested and we never saw a doctor with a stethoscope,” reported one prisoner. Often, they are treated with the same medicines, irrelevant of their complaint or prognosis. Usually, the “antibiotics” consist of a low-cost, commercial pain-killer which offer little relief to ailments and allow more serious diseases to spread. Health officials have been inattentive and unheeding, minimizing afflictions that often require more attention. In February 1991, a prisoner recalled a Rangoon student’s treatment when the student had a toothache. “The doctor asked him, where does it hurt? The student replied, “my lower left jaw.” Doctor Soe Kyi smiled and said, “Okay, use your right side to eat food.” This type of behavior demonstrates a conscious negligence, and a continued laxity through the sarcasm that followed. The student was most likely one of many denied care.
who continued to be ridiculed after presenting their vulnerability. After they are refused treatment for serious conditions, these prisoners are further mocked and insulted.

Due to the lack of adequate medical care within their confines, prisoners depend on outside assistance, usually friends and family, for medical supplies. Technically, medications are allowed to be delivered during a family’s visit to their ailing loved one. However, even in this regard, Military Intelligence becomes implicated, aggravating the situation so that the families’ ability to reach the prisons is seriously hindered or prevented. “The regime intentionally tries to break the spirit of political prisoners by sending them to remote prisons far away from their families so that they suffer psychological misery and lack of support from their family.” Strategic military intelligence officers assign prisoners to jails in areas that their family cannot visit, due usually to the distance of travel and their financial restrictions. Wreaking emotional havoc on the families, they suffer without reason while their next of kin’s health deteriorates without the proper medication. Distanced and poorly informed, families face immense difficulties in maintaining contact with their imprisoned brother or sister, daughter or son.

“My heart was pounding when I walked through the main jail gate and as soon as I stepped through the gate my preconceived notion disappeared. I was greeted by a very distressful scene—women in shabby, dirty, patched clothes, carrying entirely naked children. From the look of these women it was obvious that they had been exposed to the sun, rain, and cold weather. I thought that their sun burned hair must never have been touched by any type of oil. These women, in fact, were there to visit their husbands who remained in the prison.”

Disconnected and helpless, these families continue to be harassed by military officers. Having already stripped the family of several fundamental rights, officers have additionally been witnessed committing serious criminal offenses. Breaking and entering is commonly reported while instances of robbery are also very prevalent. The military also places obstacles in the families’ lives by intervening in their educational, professional, and social spheres. Under the military’s threats, schools bar the families of prisoners from their institutions and employers must force such workers to resign. Families lose their jobs and opportunities for financial stability in the future, as well as any hope of providing their loved ones with the simple medical supplies their lives depend on. Intentionally impeded, the family must bear the frustration of being sidelined while their loved one’s health deteriorates. Simply stated, the prisoners die, needlessly, be-
cause of the military's merciless antagonism. This cruel practice entitles all implicated families to justice—compensation for the heinous practices committed by the military, as well as the physical and emotional pain the family has endured in striving to support the prisoner.

Once an inmate is released, they remain imprisoned within their daily lives. They are no longer being physically held captive, but their movements and activity are closely monitored by Military Intelligence. Officers wait for any incidence in which the individual, a continuing political threat, may be persecuted again. On especially momentous holidays and anniversaries, former prisoners are often detained and interrogated. The SPDC has many different ways of isolating the victim from society, especially within the economic and educational realms of their lives. The difficulty of one's assimilation into a new life has had dire consequences. Ma Khin Myo Myat was 24 years old when she finished her prison term, convicted and sentenced for participating in a peaceful rally for Aung Sang Suu Kyi. While her younger brother continued to work instead of going to primary school, Ma Khin searched for employment herself. Due to Military Intelligence surveillance, she was unable to obtain a job. She and her future employer were both threatened when she was offered any sort of financial opportunity. Meanwhile, she would be visited randomly by other officers, forcing her through interrogations which demanded personal information and encouraged her willing partnership and participation within the Military Intelligence agency. In 1992, the same year she was released from prison, Ma Khin Myo Mat committed suicide. Cases such as these are directly attributable to the SPDC, making it simple to develop legal cases and prosecute specific offenders under international law. Ma Khin Myo Mat had many friends that suffered as a result of her death, including a mother who was mentally ill herself. Compensation for her daughter's disdainful supervision could be used to cure her own illness, symbolizing the recognition of the military's serious misconduct.

Ex-prisoners incur a variation of political discrimination in their new society, unable to receive employment once they reveal their former political prisoner status. Those who choose self-employment to avoid this bias continue to face barriers. Visiting the workplace frequently, military officers deter business and physically distract and frustrate the individual while working. Often times, officers suggest the prisoner write pro-SPDC literature in regards to the prisons in return for freedom from the constant irritation of their surveillance. This behavior places an obvious divide between the SPDC officers and the civilian population. Removing the leadership from power and expecting immediate assimilation is a preposterous notion, resentment running deep. Given what the prisoners and families have been forced to endure, it is not surprising they remain embittered.
tered. “In this case, I am not a very good Buddhist,” admits Aye Chan, a professor in Burma and former prisoner. “I am supposed to get wisdom and I am supposed to forgive those who tortured me. Well, I’m sorry. I can neither forgive nor forget what I suffered in prison. My standpoint may be different than a young student leader. But I cannot forgive or forget.”

Injustice and Arbitrary Imprisonment

As has been the practice of the military regime since its beginnings, the SPDC has not allowed any opposition to their authoritarian rule, and has maintained an extensive network of Military Intelligence, police and government officials ready to detain anyone suspected of such dissent. The military in Burma has established and enforced laws curtailing civil and political freedom and utilized laws that allow it to crush any political threat. The SPDC’s laws and regulations criminalize freedom of thought, the dissemination of information, and the right of association and assembly.

The most outdated, frequently abused law is the 1950 Emergency Provisions Act, threatening a seven-year imprisonment sentence for any individual who “infringes upon the integrity, health, conduct and respect of State military organizations and government employees, spreads false news about the government, or disrupts the morality or the behavior of a group of people.” Furthermore, if that individual is found to “intend or cause sabotage or hinder the successful functioning of the State military organizations and criminal investigation organizations,” they may be imprisoned for life. By means of this statute, the SPDC detains, arrests, and violates anyone whose beliefs challenge those of the military government. Hundreds of political activists have been arrested and imprisoned under this premise, often for relatively insignificant activities. Ye Htut was a student with friends within ABSDF, though he himself was never a participant in the group’s activities. In 1995 he was found guilty by virtue of association, having sent copies of Burmese publications to friends abroad. He was imprisoned for seven years. In the same year, nine students began serving seven-year sentences for singing partial lyrics to a pro-democracy anthem. In 1998, U Nay Win was arrested for allegedly giving restricted information to the BBC and served 8 years for the crime.

In addition, the Emergency Provisions Act violates international standards on multiple levels. Article 5 of the International Covenant of Civil and Political Rights asserts that,

“There shall be no restriction on or derogation from any of the fundamental human rights recognized or existing in any State Party to
the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.”

Similarly, in Article 29, the UDHR affirms that the fundamental tenets of jurisprudence are equally protected:

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.”

The Emergency Provisions Act fails to elucidate a definitive stance on an individuals' rights and liberties. The law's draconian parlance leaves many opportunities for the junta to use this language in its favor, offering no veritable protection to an individual's freedom.

The 1975 Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts, often referred to as the State Protection Law, is perhaps the most criticized statute, inhibiting a citizen's axiomatic rights. The broadly compounded law grants the junta freedom to

“pass an order, as may be necessary, restricting any fundamental right of a person if there are reasons to believe that any citizen has committed or is about to commit any act which infringes upon the sovereignty and security of the State or public peace and tranquility.”

Coincidentally, this law was promulgated following a series of riots by students and workers. This law is best known for its implementation in the arrest of Daw Aung San Suu Kyi in July, 1989. Granting the junta a license to violate the rights of citizens, the law has been widely condemned for its broadly sweeping policies. In their criticism, B.K. Sen and Peter Gutter dissect each article to reveal the contradictions and hypocrisies that lie within. They highlight the law's illegality under international standards, systematically violating the Universal Declaration of Human Rights.

“In restricting the fundamental rights of citizens, the following principles shall be strictly adhered to: The restriction order shall be laid down by the Central Board only; Only necessary restriction of fun-
damental rights shall be decided; The duration of such restriction shall be kept to a minimum; In addition to regular review of the restriction order, earlier review of the order may be done as necessary; If sufficient facts for filing a lawsuit have been gathered, the person against whom action is taken shall enjoy the fundamental rights as provided in the Constitution, in so far as these rights have not been restricted; When any threat as described in Article 7 has ceased to exist, the restriction order shall be annulled immediately; Any person detained under this Law shall, after being released, not again be arrested and imprisoned on the same charges.²⁴ However, in Article 11, the UDHR assures for everyone a presumption of innocence until they are proven guilty in a public trial. Furthermore, as Sen and Gutter point out, “It is argued that if there is no full fact, the person against whom action is taken has to be released, not kept under detention— but this appears nowhere. In the absence of provision, natural justice applies. That which cannot stand trial, i.e. insufficient evidence, how can it be given legality by alternative of detention? The State Protection Law gives insufficiency of evidence a premium to hold a person’s liberty to ransom.”²⁵

They conclude in making the additional point that, although the State Protection Law includes a clause entitling an individual to the rights in the Constitution, this body of standards was suspended over 25 years ago. As a result, there are no additional privileges granted to the individual.

The Printers and Publishers Registration Law of 1962 was enacted soon after Ne Win seized leadership of Burma, granting the government the power to limit and control media entering and leaving the country. This law continues to be the primary means of censorship in Burma, requiring all books, magazines, periodicals, songs, and films to pass strict standards before they are released to the public. Accurately dubbed the Press Scrutiny Board (PSB), this agency also has the power to limit the amount of copies legally published and distributed. The decisions of the PSB are final and are not open to appeal. In 1975, the BSPP tightened restrictions once again, issuing specific guidelines in an attempt to lessen the uncertainties inherent in the system. The materials banned by the PSB include:

- anything detrimental to the Burmese Socialist Program, the ideology of the state or the socialist economy; anything which might be harmful to national solidarity or unity, security, the rule of law, peace, or public order; any incorrect ideas or opinions which do not accord with the times; any descriptions which, though factually correct, are unsuitable because of the time or circumstances of their writing; any obscene (pornographic) writing; any writing which would encourage crimes and unnatural cruelty.
and violence; any criticisms on non-constructive types of government work, any libel or slander of any individuals. Included within these statutes is the threat of a blacklist for those writers whose work is judged to be critical of the government. Fines and prison sentences for those found in violation of the law are particularly stringent—perpetrators can face anywhere up to 7 years in prison and be fined in excess of 30,000 kyat. The law continues to be amended on a regular basis or whenever its scope needs to be widened.

The Printers and Publishers Registration Law is in stark contrast to Article 19 of the Universal Declaration on Human Rights, which states:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”

Within every modification made since its original inception, the Printers and Publishers Registration Law has increased the extent to which it defies international law. This generalized ignorance which has pervaded many sectors of the regime has prompted the United Nations to condemn the arbitrary arrests and detentions which display a profound disregard for international law:

“…the absence of an independent judiciary, coupled with a host of executive orders criminalizing far too many aspects of normal civilian conduct that prescribe enormously disproportionate penalties and authorize arrest and detention without judicial review or any other form of judicial authorization, leads the Special Rapporteur to conclude that a significant percentage of all arrests and detentions in Myanmar are arbitrary when measured against generally accepted international standards.”

Truth and Reconciliation

There has been an increasing amount of political activity worldwide that indicates a global consensus on perpetrators of crimes against humanity. The establishment of the International Criminal Court and ad hoc tribunals for Rwanda and Yugoslavia are modern examples of the world’s sentiment that those guilty of gross human rights violations must be held responsible, even if their violations were committed in the distant past. For this to take place in Burma, the truth of the past forty years must be overtly displayed and those involved prosecuted. In order to extract the truth, Burma can model itself after other transitional governments that have constructed a means by which all the human rights violations are made evident and punished.
Burma, South Africa, and Cambodia all have experienced legal situations which are valuable in assessing current circumstances within Burma. The transitional governments of Guatemala and South Africa are particularly relevant, as both were involved in the creation of truth and reconciliation commissions to aid in the peace negotiation process. Through lengthy discussions, the agencies were created which ended in one case, the apartheid regime, and in others, civil wars. These cases have contextual conditions comparable to those of Burma. The Burmese military regime lies somewhere in between South Africa’s apartheid regime and Guatemala’s ruling government because of its ongoing military campaign against various resistance groups while heightening repression against urban based student and pro-democracy forces. In the study of both these countries, the basic goal was to favor national reconciliation. The working methods adopted by the two commissions were very different, but the spirit in which both worked and the considerable impact they had on their respective societies could inspire a process for truth and reconciliation in Burma.

South Africa

In the negotiations between the African National Congress and South Africa’s ruling party, the Truth and Reconciliation Commission was established on July 26th, 1995. Its mission was to bring peace and reconciliation between the peoples of South Africa and help with the reconstruction of society. Dullah Omar, the Minister of Justice articulated a vision which offered several guidelines for the country’s reconciliation. Among them were the idea or reconciliation instead of revenge, knowledge and acknowledgement instead of forgetfulness, acceptance by a compassionate state rather than rejection, the restoration of moral order and not violations of human rights, and the respect of the law.

The objective of the commission was to promote national unity and reconciliation in a spirit of understanding that transcended the conflicts and division of the past. The commission suggested several methods in catalyzing the process:

1) Establishing a complete picture of the causes, nature and extent of the gross violations of human rights which had been committed since March 1969 by conducting investigations and holding hearings;

2) facilitating the granting of amnesty to persons to make full disclosure of all the relevant facts relating to acts associated with a political objective and the order to comply with the requirements of this act;
determining and publicizing the fate of victims and restoring their human and civil dignities, allowing them the opportunity to voice their accounts of the violations, being sympathetic to their needs while assessing reparations

4) Making recommendations of measures to prevent the future violations of human rights, documenting this information as well as all activities and findings of the commission 29

Conducting a thorough and intensive investigation of the case, the Truth and Reconciliation Commission spent two and a half years presiding over hearings for the victims, the perpetrators, and the accomplices. In addition, over 20,000 witnesses were heard, projecting a broad perspective of experiences and opinions. The painful examination of conscience provided a catharsis for the society, offering an opportunity for the victims to publicly speak out, vocalizing the pain and suffering they endured. The investigation also allowed the individuals under prosecution to reveal their crimes, explaining their motives and periodically offering justification for their actions.

Guatemala

In Guatemala, officials modeled a commission after the Oslo Peace Accords. United Nations officials supervised an 18 month investigation of the crimes committed against humanity, questioning both victims and witnesses of human rights violations. Their accounts were complemented by a wide range of research, including CIA documents made available by the United States. Their goal was as stated:

"to clarify with objectivity, equity, and impartiality the human rights violations and acts of violence connected with the armed confrontation that caused the suffering among the Guatemalan people. The commission was not established to judge- but rather to clarify the history and the events for more than three decades of fratricidal war.”30

On February 12, 1999, “The Memory of Silence,” a 3,600 page report was made public at a ceremony attended by tens of thousands of emotional victims and their sympathetic supporters. The establishment of this formal account, recognized by the United Nations, created a space in which the victims’ stories and humiliation were told. The truth became exceedingly apparent, restoring a collective remembrance of Guatemala’s brutal past. The community was finally offered a path on which to reestablish relationships and begin their healing process. The authors of the account were aware of the shock the nation would suffer as a result of
hearing the depth and extent of the past violations, nevertheless, released
the explicit history to create an indispensable awareness. In order for rec-
ociliation to occur, the truth must be revealed. Only then could Guate-
mala establish a democratic state created by authentic justice.

Cambodia

In an attempt to facilitate the healing process for its civilian population,
the newly elected government chose a totally different method in dealing
with the Khmer Rouge. Though some of the leaders were placed on trial,
there was an ineffectual activity within the prosecution and sentencing in
the case. In an attempt to accelerate the country’s reconciliation process,
the government did little in the way of bringing back the past, represen-
ting the victims, or punishing the perpetrators. In lessening the signifi-
cance of the barbaric events occurring while the Khmer Rouge held
power, the government left an open avenue for which the same crimes
could happen again. Intimidated by threats of Khmer Rouge rebellion
and re-assumption of power, the government contained the issue within
the state, reluctant to involve international mechanisms within the case.
As a result, most of the leaders were released, the Khmer Rouge main-
tained a stronghold in Cambodia, and the majority of the population con-
tinued to be unhappy. Even with the transition of leadership to Hun Sen,
Cambodians remain dissatisfied. The implications of his past with the
Khmer Rouge keep him from representing the genocide on a national or
international scale. When the United Nations recently initiated an effort
to prosecute the mass murderers involved in the “Killing Fields,” the
Cambodian government suspended the trials and has disallowed any fur-
ther action to begin.31 Until the government changes its policy of impu-
nity for the crimes committed during the Khmer Rouge regime, the pros-
pect of reconciliation will remain grim, further delaying any meaningful
transition.

Remedy and Reparation

“A person is “a victim” where, as a result of acts or omissions that
constitute a violation of international human rights or humanitarian
law norms, that person, individually or collectively, suffered harm,
including physical or mental injury, emotional suffering, economic
loss, or impairment of that person’s fundamental legal rights.
A “victim” may also be a dependant or a member of the immediate
family or household of the direct victim as well as a person who, in
intervening to assist a victim or prevent the occurrence of further
violations, has suffered physical, mental, or economic harm.”
- United Nations Economic and Social Council
Once fair and just trials have ensued and guilt has been admitted and assessed, the door to emotional healing will begin to open. The rate and extent to which recovery takes place may depend largely on the retribution offered to the victims. Reparations are offered in many different forms, their gravity largely dependent on the decision of the courts in regards to the violations and the suffering they have endured. The construction of the reparations from perpetrator to victims can play a critical role in the healing process of victims and societies as a whole, and is a factor in preventing future violations. Reparation continues to be an essential element in the administration of international justice.

Many standards have been created for the retribution of victims of human rights violations over extended periods of time, and it is imperative that each victim is compensated individually with respect to the affliction(s) they have suffered. In many cases, money and other forms of reparation are useless—victims who have had the luck of emerging unscathed from their experience seek simply the perpetrator’s verbal declaration of wrongdoing, or their conviction of guilt and ensuing punishment. In other situations, the mental or physical damage incurred requires substantial monetary compensation for the treatment and rehabilitation necessary for the victim to resume a normal life.

The United Nations Economic and Social Council has outlined a set of guidelines specifically to be applied in the reparations and compensations of political prisoners and other victims of crimes against humanity. Among these standards are recommendations for those whose difficulties are not a result of physical or mental trauma. Due to their prolonged imprisonment, most victims holding jobs before their incarceration can no longer work in their former position, or even continue within their trained or previous profession. The social stigmatism revolving around political imprisonment is so prominent that employers will not hire ex-prisoners, causing financial repercussions for the prisoner and their families. Worse yet is the shame this provokes in the victim. A political prisoner under the dictatorial regime gets a pride of place only in the roles of heroes among democratic activists. In the specific case of Burma, the junta has convicted and sentenced the political prisoners under draconian laws and unfair trials. When the convictions are reviewed and set aside, it will be repudiation of these unlawful acts and vindication of innocence that will restore the dignity of political prisoners. In order to ensure this integrity, conscious steps must be taken to represent the arduous plight of the victim. Society needs to realize that the victim jailed for years was doing so to uphold basic principles, to liberate themselves and those around them, and to establish a life for everyone that is governed by democratic ideals. For these reasons, the victims should be celebrated among their
communities, while appropriate measures, including social reforms, also need to be implemented so that a more heroic view of the ex-prisoners is promoted. Perhaps these are the most difficult cases, as the reparations deemed necessary for a prisoner’s personal justice are out of their, or any court’s, control.

As Burma continues this plight towards democracy, it faces fundamental issues that must be resolved before the rule of the country is successfully handed over. The leadership needs to begin by addressing the human rights violations committed over the course of the junta’s rule. The challenge lies in finding the delicate balance between satisfying the families of victims but not provoking a negative military response. A judicial system must be set up to account for the prolonged, massive violations and respond to legitimate claims on the part of the victims. The continuity of a successful transition depends on bridging the gap between military and civil society. Many victims of the past atrocities have become convinced that among the causes of the continued violations is the fact that many of the perpetrators of the past crimes have not been held accountable for their actions, and that the actuality of their crimes remains hidden. In this way, the truth of the past 40 years has been denied, allowing the continued practice of unfair arrest and inhumane containment. It would be ludicrous to expect a victim to live alongside those they know to be responsible for their atrocities, yet have not acknowledged their guilt nor shown any sign of repentance.

The solution to this is to give victims and families a place to express their grief, humiliation, and stories of suffering causing the truth to be told and a collective remembrance to be established. Until this takes place, the search for justice will continue to divide the community of Burma rather than re-establishing relationships and contributing to a process of healing. Until and unless the truth is told and those who have committed human rights violations are held accountable, or unless those directly responsible and their accomplices confess their guilt, ask for forgiveness and give concrete signs of repentance, there can be no healing, justice, or real reconciliation. Without this, there is little hope for the future generations of Burma to survive in this moral crisis. “Forgiveness” in a political context is an act that joins moral truth, forbearance, empathy, and commitment to repair a fractured human relationship. Such a combination calls for a collective turning from the past that neither ignores past evil nor excuses it, that neither overlooks justice nor reduces justice to revenge. It insists on the humanity of enemies even in their commission of dehumanizing deeds, and values the justice that restores political community above the justice that destroys it.
Endnotes

* Danya Marshman graduated from Princeton University with a degree in an theology and religion. She currently works as a human rights researcher in Burmese affairs.

3. Ibid, p. 2
5. Tanya Glaser; summary: Jamal Benomar.
7. Name has been changed to protect the victim’s identity.
17. Ibid, p. 70.
22. Zuneta Liddell, pp. 56.
25. Ibid.
29. Ibid.