Seeking Justice for Previous Human Rights Abuses and Democratic Transition in Burma

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As a political transition unfolds after a period of violence or repression, a society is often confronted with a difficult legacy of human rights abuse. In attempting to come to terms with past crimes, both judicial and non-judicial accountability mechanisms have been considered to seek justice for such violations. One common concern, is whether there is a proper mechanism that will facilitate a transitional period towards democracy, reflective of the collective consensus of a society plagued by atrocities and cruelties that will accomplish justice for previous human rights abuses without damaging the possibilities of reconciliation? In seeking to prosecute individual perpetrators, offer reparations to victims of state sponsored violence, convene truth commissions, implement institutional reforms, or remove human rights abusers from positions of power, a society in political transition often confronts extremely difficult challenges when addressing its past. Burma will have to face this reality: of a democratic transition without neglecting the injustice that victims suffered under its current oppressive regime.

Justice is a fundamental component of the human rights cause. Without a measure of respect for the victims of serious abuse, the society will lack stability and thus a weak ground to lay the law. Without justice the next generation would be unable to accept the past and move forward. It would be unfair to those individuals who have suffered atrocities and have been misplaced from their homeland seeking refuge from a regime that denies individuality, neglects ethnicity, withholds freedoms and oppresses humanity. It would be unjustified to those who long for the peace
and freedom that has been robbed from their lives. This is one reason why it is necessary to deal with previous human rights abuses. Justice should not be abandoned as a realistic option. Many believe that seeking justice may harm the democratic transition and that the current regime may not relinquish power in fear that they would be humiliated. Perhaps an ideal approach to retrospective justice would be one based on a collective understanding of the past and some form of reconciliation where political needs may dictate. One thing remains certain; blanket amnesty for perpetrators of human rights abuses in Burma will place the society at risk of falling under such abuses again.

Military Rule:

In 1962, the Revolutionary Council, under General Ne Win, created the Burma Socialist Program party (BSPP) and published its first ideological statement entitled, “The Burmese Way to Socialism.” This publication, expressed opposition to the Constitution because, “it had defects, weaknesses, and loopholes that kept the nation from realizing its goals of socialism and national unity among all of the people.” With this as a premise, a new constitution was adopted in 1973 with additional centralized powers that securely established BSPP’s position as the only legal political party in the country.

This period of military rule faced popular unrest. Workers often staged violent strikes during 1974 and 1975 and students stood up in opposition to the regime. As a result, the military government launched a campaign against the forces of ethnic minorities, the Burma Communist Party, and curtailed freedom of association, press, and assembly under the one-party government. In March 1988, students and local people in Rangoon united in protest against the military government seeking political change from dictatorship to democracy. This was one of the most serious protests of the times, which resulted in the death of students from the Rangoon Institute of Technology (RIT). The riots lasted twelve days, and the government closed the universities and promised to investigate the deaths. When the students returned in June, they requested answers about their missing colleagues and demanded the arrests of those responsible for the deaths and injuries. The police and the military responded to the protest with force, which resulted in the arrest of hundreds of students and the deaths of many. Once again the universities were closed.

The sentiment is that many of the young students who rose and chanted for democracy did not really understand its meaning or the implications of such a transition. The students knew, however, that “democracy” implied the right to choose the next leadership and thus, the end to the oppressive military rule.

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pressive military rule. This movement of resistance and social unrest led the military to declare martial law and to establish a new dictatorship, called the “State Law and Order Restoration Council” (SLORC). As its leader, General Saw Maung suspended the 1974 constitution. This move was justified by the military as a temporary need to restore law and order, improve economic conditions and organize multiparty elections. When the elections did take place in 1990, however, the National League for Democracy Party defeated the SLORC, by approximately 82% of parliamentary seats. This party was founded by Daw Aung Suu Kyi, who was placed under house arrest for six years after the election was declared void by the SLORC. They were surprised by the election results and began to kill, torture, imprison, and chase away all NLD party members. Additionally, they continued to oppress the minority groups and many innocent people into forced labor in the war zones.

The military government refuses to turn over control to the elected party until a new constitution is drafted. In 1993, to aid the NLD in this process, SLORC established a convention entitled, “Convening of a National Convention.” The convention was initiated with 702 delegates of whom 106 of the participants were elected representatives. The remaining members included peasants, intellectuals, national races, and service personnel selected by SLORC. Even after years of periodic meetings since 1993, a constitution is yet to be written. To improve the image of the military regime, in 1997, the SLORC was renamed the State Peace and Development Council. In spite of its name, the SPDC continues to be the world’s worst human rights violator. The United Nations Human Rights Commission has condemned their acts of torture, murder, rape, forced labor, and political imprisonment.

Today a new generation of Burma still waits for the government to allow a parliament to form and for a peaceful transfer of government to take place. This transition, however, cannot occur without addressing the issue of seeking justice for previous human rights abuses. The debate on transitional justice can support or damage the current dialogue process of Burma. The main concern is whether a genuine national reconciliation can be achieved without seeking justice for the victims.

Experience of Other Countries and Lessons for Burma:

It is important to note that the experience of every transitional society is different. It is imperative, however, to examine other countries that have set procedures to deal with the question of impunity. The human rights movement has made real progress in dealing with perpetrators of the most heinous crimes. International criminal tribunals have been estab-
lished to prosecute authors of genocide in Rwanda and the former Yugoslavia. It was also not so long ago that General Augusto Pinochet was arrested for crimes against humanity. It is on these pillars of national and international action, that Burma should examine the question of why it is necessary to deal with previous human rights abuses and not grant blanket amnesty for perpetrators.

If Pinochet had not been arrested in England in 1998, democracy may still be only a dream for the Chilean society. His arrest by the British police renewed debate about the legacy of the military government and awakened hopes of justice for many victims. Those who collaborated under his dictatorship began to come forward and shed light on the horrific events. Although Pinochet was sent back to Chile for health reasons the legendary immunity had been totally shattered. The Chilean court disregarded the 1978 military self-amnesty and ruled that the prosecution of ongoing “disappearances” were not barred, because the crime continued as long as the fate of the victim was concealed. The court lifted Pinochet’s senatorial immunity and found him liable for prosecution for his role in the “Caravan of Death,” a military group that executed and “disappeared” seventy-five political prisoners after the 1973 coup. Ultimately, Pinochet was formally indicted and placed under house arrest. This case serves as inspiration to those who have been victims of human rights abuses to challenge transitional justice arrangements that allow crimes to go unpunished. After the creation of the United Nation tribunals for Yugoslavia and Rwanda, and the 1998 vote to establish an International Criminal Court, Pinochet’s arrest in London reflected and strengthened the international movement to end impunity.

Unfortunately, transitional societies have not always been successful when addressing the issue of retrospective justice. South Africa serves as a good example. The successive government preoccupied with dealing with the problem of the crimes committed by its predecessors, failed to give adequate attention to international law and proceeded to punish or, conversely to forgive in the context of international law alone. South Africa had two options when confronted with the question of amnesty for perpetrators of human rights abuses: conditional or unconditional amnesty.

Apartheid was recognized as a crime against humanity by resolutions of the United Nations General Assembly, the 1973 International Convention of the Suppression and Punishment of the Crime of Apartheid, and the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. In spite of this recognition, South Africa’s response to crimes of apartheid was approached from
a peculiar perspective. The situation was no longer a threat to international peace and the establishment of an international criminal tribunal under Chapter VII of the United Nations Charter was unjustifiable.\textsuperscript{26} As a result, the negotiators opted for conditional amnesty and an interim constitution was drafted after months of negotiations.\textsuperscript{27} This draft contained no provision for amnesty, until a postscript to the constitution on the subject of amnesty was drafted.\textsuperscript{28} This addendum institutionalized a policy of reconciliation and a need for understanding:

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offenses associated with political objectives and committed in the course of conflicts of the past. To this end, Parliament, under this constitution, shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty will be dealt with at any time after the law has been passed.\textsuperscript{29}

In 1995, the Promotion of National Unity and Reconciliation Act \textsuperscript{34} that enforced this policy of conditional amnesty was enacted.\textsuperscript{30} This act identified reconciliation, amnesty, reparation and the search for truth as its principal goals and provided for the creation of a Truth and Reconciliation Commission.\textsuperscript{31} The Commission’s scope of inquiry was limited to acts constituted to be criminal under the law of apartheid. This decision was attributed to two separate factors. First, a desire to avoid suggestions that South Africa was engaged in a form of “Victor’s Justice” directed exclusively at the vanquished and secondly, that the new government was determined to demonstrate a commitment to legality and the rule of law by avoiding the retroactive invalidation of apartheid’s offensive laws.\textsuperscript{32} The “gross violations of human rights” in respect of which amnesty was to be granted included the international crimes of torture and crimes against humanity.\textsuperscript{33} Thus these crimes would remain unpunished.

The process of the Truth and Reconciliation Commission have been challenged as a political compromise between the broad amnesty that the apartheid leaders sought and the desire of the African National Congress to promote a peaceful transition. The problem with the South African model was that although it merits respect for bringing perpetrators forward it fell short of any “real” justice. However, the international community embraced the democratically elected government of South Africa and the abandonment of apartheid and accepted its “Truth Commission” as a substitute for justice.
The laws of apartheid have been recognized as expressions of power that failed to comply with the inner morality of the law. South Africa’s truth and reconciliation model avoided denunciation of these laws and thus failed to restore faith in the legal process. Truth commissions provide exposure of past occurrences and prevent perpetrators from being unconditionally exonerated. The disadvantages, however, seem to tip the scale against this mechanism. Dictators have often justified human rights violations in their pursuit of power or in the implementation of a political ideology premised on the perceived advancement of a people’s welfare.34

**Prosecutions:**

Prosecutions for human rights abuses raise many difficult questions. Although truth commissions can be viewed as a mechanism for seeking justice, the prosecution of perpetrators may be the best response. However, for practical reasons or on the basis of sound policy this may not always be the best option. Trials of government officials and military regimes can help to lay a foundation that no one is above the law and to demonstrate that democracy does not condone such behavior. Prosecuting human rights abusers can enhance the establishment of the rule of law and can serve to create a tradition of respect and adherence that will aid in the development of a democratic institution.35 Prosecutions can also function as a deterrent for future oppressive behavior.36 It can facilitate for the compensation of victims since their identity, the nature of their injuries, and their perpetrators are disclosed.37 Most importantly, prosecutions can help to heal societal wounds by creating a mechanism where victims can seek justice.

The argument against prosecutions has been motivated by practical considerations.38 Some countries do not have the power, popular support, legal tools, or conditions necessary to prosecute effectively, while others are too weak to prosecute powerful defendants.39 Thus, the lack of an adequate judiciary or the interposition of a suspect military justice system may taint prosecutions that do go forward or delay prosecutions for such extended periods as to undermine their credibility or popular support. One possible remedy is to ameliorate these problems by focusing on fixing the judicial mechanism of a society. Perhaps they will understand that in their context of their experiences this process may be unavoidable.

The current debate of transitional justice in Burma and its consideration of amnesty for perpetrators are a fragile topic. Refusal to grant blanket immunity can lead to opposition in the transition to democracy and reinforce the continuance of the military regime. Avoidance of reparations and justice to victims can create significant damage to a transitory coun-
try. A successor government in Burma has the obligation to deal with the legacy of human rights abuses. Prosecution is an ideal approach to seek justice, however, it should not be viewed as the only means to end impunity. Burma must not ignore other important initiatives designed to aid victims, rebuild societies and defend democracy.

**Endnotes**

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2. Ibid.
3. Ibid.
5. Ibid.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid.
10. Ibid.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Ibid.
16. Ibid.
17. Ibid.
20. Ibid.
21. Ibid.
22. Ibid.
24. Ibid.
25. Ibid., p. 275.
26. Ibid., p. 276.
27. Ibid.
28. Ibid.
29. Ibid., p. 277.
30. Ibid.
31. Ibid.
32. Ibid., p. 279.
33. Ibid.
34. Ibid., p. 280.
36. Ibid.
37. Ibid., p. 84.
38. Ibid.
39. Ibid.