

Impunity Inconceivable

Prologue

Elections, inauguration, succession, assassination all have one thing common. They all lead to a transition of leadership.¹ It will be a matter of time before the authoritarian leaders of Burma are bound to hand over power to a legally elected democratic government of the people's choice. Then the civilian authorities will have to face a painful dilemma of deciding whether to prosecute or give amnesty to those who are responsible for gross human rights violations during the past half a century. Burma's tragic story of human rights violations by the armed organizations, especially the Burmese army better known as *Tatmadaw*, are all well recorded by the international human rights monitoring groups including the United National and well known non-governmental organizations.²

The democratic and the nationalities groups opposing the military regime coupled with the families of victims may decide that justice must be done against the culprits of the past regimes in order to set a precedent, and also to serve as a deterrent against future crimes. But there are others who will suggest that national reconciliation is critical for a peaceful progress of democratization and that Burma needs to set a precedent by avoiding the "winner takes all" forms of justice, hence the best way to achieve with justice is to follow the traditional religious values of forgiveness via amnesty.³

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In order to examine this dilemma it is important to take into account some major events that have brought the international discussion of impunity to a decisive turning point. The first was the decision by an inter-governmental conference in Rome in July 1998 to establish an International Court of Criminal Justice⁴ and the second was the ruling by the British courts that former Chilean military dictator General Augusto Pinochet could legally be tried under foreign jurisdiction for crimes against humanity. And the third is the on going trial of Slobodan Milosevich of Yugoslavia. These will be the background against which the matter of impunity will be discussed.

This brings us into the complex legal, political and human problems surrounding the issue of impunity, and the efforts to establish and defend the rule of law in Burma where the State Law and Order Restoration Council, now the State Peace and Development Council, members have often stated that martial law is no law at all. Obviously, the judicial system that will be set up will face limitations in the effort to determine responsibilities in a situation of prolonged, massive violation of human rights and to respond to legitimate claims for justice on the part of the victims. But there is a growing public awareness that the granting or the *de facto* acceptance

of impunity for those holding political, military or economic power erodes the very basis of the social order and helps to nurture a "culture of violence".⁵

Significantly this discussion will go beyond the purely legal and political aspects and will have to explore the essential links between truth and memory, justice and reconciliation. It will endeavor to demonstrate that the strongest driving force of the struggle against impunity is the existential need of the victims to break out of a situation of silence, isolation, fear and falsehood, to know the truth, to recover a shared memory and thus to restore human dignity for the victims and accountability for the perpetrators.

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However, without the intentional attempt to create a space where the stories of humiliation and suffering can be told, where the truth can emerge and collective remembrance be restored, the search for justice will continue to divide the already divided community of Burma rather than re-establish relationships and contribute to a process of healing.

It is really paradoxical to learn that in the 21st century the present generation of Burmese continued to be victimized by terrible acts of massive human rights violations. Practices such as systematic torture, disappearance, forced labor, forced relocation, forced portering continue up to this day. These atrocities have been explicitly outlawed by international laws and the International Human Rights Declaration to which Burma is a signatory.

Many victims of the past atrocities have become convinced that among the causes of present-day atrocities is the fact that many of the perpetrators of past crimes have not been held accountable for their acts, and that the truth about their crimes often remains hidden. If that is the case, how can we learn from the past if we are denied such truth? Anybody who is in power will be bound to repeat those mistakes again. How can the victim live alongside those who they know to be responsible for atrocities, yet who have neither acknowledged their guilt nor shown any sign of repentance?

The Burmese often say "*Thae dae lu lae thae pyi Pyan lae shin hma ma hoke bu; shae hset bae lo loke ma lae ko bae sin sar ja so,*" meaning "forget the past, let the dead bury the dead let us think about the future". This simplistic answer, so often offered by those who have something to hide, has no healing power. It leaves no room for reconciliation.

Until and unless the truth is told, unless those committed of 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 in the Burmese society not to mention justice or reconciliation. If there is no real justice, no real repentance and no real reconciliation there is little or no hope for the succeeding generations of the people of Burma to survive in this moral crisis.

Interpretation of Impunity

The word “impunity” comes from the Latin word of *impunitas* meaning absence of punishment or *poena* (penalty).⁶ This notion of impunity began to take broader social context where massive violations of human rights were committed in the name of national security by the military dictatorships of the world. One can see that, as authoritarian regimes begin to give way to democratically elected governments, many military establishments decreed an amnesty for all those who held positions of responsibility in the outgoing regimes. More often than not, these newly elected parliaments, most of which are quite fragile, adopted these amnesty laws, fearing that former military ruler, who still retain powerful means might try to overthrow the new democratic institutions if any legal action were taken.

But they cannot silence the victims of torture and family members of persons who had been murdered or made to disappear under the former cruel regime. Throughout the world victims have remained determined that seeing truth and justice prevail is an essential precondition for national reconciliation, and a key element in the struggle for human dignity and against social exclusion in an age of globalization.

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The legal definition of impunity includes three key factors: the offence committed, the perpetrator of the offence and the denial of justice.⁷ The offence may involve gross and systematic human rights violations including torture, denial of civil rights such as denial of promotion to a person based on ethnicity, denial of political rights such as unlawful arrests and detentions without trial, denial of economic rights such as monopoly control over lucrative business opportunities, and denial of social and cultural rights such as dismantling of the historic sites,⁸ etc.

With respect to the perpetrator, that is the person officially responsible agent of the state, who may include military intelligence officers, police officers or individual carrying out any of the above-mentioned offences under the instruction of state offices, or with the complicity, connivance and approval or encouragement of the state authorities.⁹

Justice requires that the perpetrators of human rights violation be brought to account through a process that includes investigation of the facts, indictment, trial, sentencing and determination of reparation for the victim of the offence.¹⁰

Culture of Violence

Culture of violence was seeded in Burma during the course of independence struggle, where various nationalist groups staged armed resistance against the British colonial power, and then, Japanese fascist army. The organization of these resistance armies was rather unsystematic, and there were very few rules and codes of conduct applied to the behavior of its members. A tragic incidence happened when a unit from Burma Independence Army massacred the Karens (suspected of collusion with the British army) in the Delta area during their campaign against the British in 1942, which became a thorny issue between the BIA and the Karen populations further instigating Karen resistance against the central government in post-Independence period.¹¹ Since the incident, the problem has become not simply one of the deviant acts by certain individuals, but the legal system itself is weakened and systematically co-opted. Impunity for the soldiers became a norm.

Presently in Burma the armed forces personnel consider themselves above the law, above morality, unaccountable to anyone for any of their actions, no matter how serious they may be. This culture is somewhat similar to the culture of impunity, it has already been deep-rooted in the army psyche, a culture in which evil acts could be committed with no prospect of prosecution. This culture taught the soldiers that they are the only patriotic persons sacrificing their lives for the country and the rest of the civilian does not have a pale of patriotism and that everything what they do is right. Recently, this culture of violence was compounded by the fact that the Burmese army could not feed and supply its own soldiers who were asked to live off the land. These are the core causes of the gross human rights violations committed by the Burmese soldiers.

The struggle against impunity is an integral part of the protection and promotion of human rights itself. In other words is a struggle against the established pattern of violence committed by the armed forces. This will become a priority of human rights activists as they struggle to reconstitute themselves after the long periods of conflicts and dictatorship since 1962. This explicitly means that the protection of impunity for the perpetrators of the past crimes is in itself a principal barrier to **National Reconciliation**.

Dangers to Democracy

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Impunity denies the principle of equality before the law, one of the foundations of democracy and the rule of law. Impunity destroys the confidence of citizens in the authority and the role of the state and its ability to protect their rights. Impunity thus engenders social frustration, despair, resignation and apathy, while feeding aggressiveness, violence, the collapse of moral restraints and the rejection of all the Burmese values on which a cohesive

society relies. In other words it fosters a culture of violence devoid of ethical principles.

The silence imposed through impunity locks all the victims, both direct and indirect, into suffering and despair. Healing and social rehabilitation are made difficult if not impossible. In the absence of any form of justice, victims cannot break free of their hatred and desire for revenge, while at the same time, the perpetrators too—whether they remain unaware of, unrepentant for or burdened with their crimes, cannot recover their human dignity by acknowledging their guilt and paying their debt to society.

Impunity represents the triumph of falsehood, silence and oblivion. It violates and poisons the memory of individuals and of communities. Ideologies and doctrines that led to past criminal acts are neither condemned nor questioned; nor consequently, they hang like a *Sword of Damocles* over the heads of the victims and society as a whole. Thus impunity makes true reconciliation difficult if not impossible. By suppressing any meaningful contact between victims and those responsible for their suffering, it prevents any restoration of relationships, both between individuals and between groups.

Hence the one question to be asked by ourselves is that if ever impunity is granted will the conscience of the entire people of Burma remain haunted by mass and systematic crimes which have escaped judgment and which continues to live in the memory of the traumatized victims and peoples a permanent scar which time cannot remove. I am really afraid that if the present is unworthy of the past, the future will soon take its revenge.

The choices facing a new transitional civilian government will be excruciatingly complex and difficult. A decision to prosecute former rulers and their accomplices risks the danger of a new military coup d'état and terrible reprisals. For the sake of stability, is it not better to grant amnesty and to accept impunity in the hope that "***Thae thaw thu kya yin mae***" meaning time will heal the wounds. On the other hand what price will society have to pay for applying the logic of oblivion and cheap forgiveness?

It is understandable that a new democratic Burmese government, which will be still precarious and threatened from within does not wish to make the fight against impunity the battle they wage. But history has proved that the hypothesis put forward by the governments that building a peaceful society for the future is incompatible with righting injustices of the past to be an illusion in the long term. Peoples who bear the memory of past suffering and injustice are not prepared to open a new chapter of history before the previous chapter has been read and its lessons learnt. The United Nations World Conference on Human Rights in Vienna (1993) reads;

"history has proved that the hypothesis put forward by the governments that building a peaceful society for the future is incompatible with righting injustices of the past to be an illusion in the long term"

"The World Conference on Human Rights views with concern the issue of impunity for perpetrators of human rights violations, and supports the efforts of the Commission on Human rights and the Sub-Commissions on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue."¹²

The search for truth and the right to know, coupled with the need for justice are being recognized as much more than an academic exercise, an end to itself, but rather an essential to the very existence of human society. For unless steps are taken to restore the dignity of the victims and open the way for reconciliation through repentance and forgiveness, the atrocities of the past are almost certainly to be repeated.

Genuine Truth

In the world every government tries to present itself in a positive light especially of dictatorial regimes. But the Burmese military regime went to an extreme that it has tried to destroy the very concept of truth. To seek the truth, to tell the truth for those who have endured the dark times of repression or conflict, particularly needed in Burma. It is a vital and existential need.

For all those victims and families trying to live with a painful past which has left deep wounds in body and mind that relates to the truth has both personal and collective aspects.

(1) there is a need to tell the story of what has been experienced, and a thirst to know and to understand what really happened, why and how:

(2) there is a need to see the truth revealed about events which have wounded individuals and society, and to see history interpreted. In other words there is a need to establish historical clarity.

(3) there is also a need to recover or establish a shared memory which is intelligible to everyone, in order to be able to envisage a different future in full knowledge of the destructive effects of the past violations and humiliations.¹³

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If the truth has been broken or denied by granting impunity to those whom we know to be guilty, how will it be possible to restore or establish relationships of trust or confidence between individuals or groups?

Healing Process

Every healing process begins with a time for speaking and listening so that the victims can break out of the isolation and shame

imposed by those who have wounded them. They will have to escape from their obsessive fear, so that they can recover their capacity to live in relationship with others, with people who are able to hear them. This is especially important in cases of torture and rape.

"Scream as loud as you want and nobody will hear you" is the usual phrases often heard in *Insein* and *Ye Kyi Aing* torture camps, not to mention in numerous jails inside Burma. The tormentors were confident that the knowledge of their crimes would never go beyond the cell worlds. But if the healing process were to be launched by the new civilian regime, then the whole nation would be obliged to hear them. Only after telling, hearing and understanding can the reconciliation process begin. All those who have volunteers who help victims, be it doctors, psychologists, social workers or religious hierarchy, agree on the crucial importance of speaking and listening.

This will be a painful and most difficult process which some persons cannot and will not undertake, especially if the pain is too recent. Psychological and spiritual support is usually necessary to allow these memories to be expressed. Space and time are required to rely on a relationship of trust and real care. Workshops and special center must be set up and the people encouraged to speak about of what have really happened. "*When I listen to their stories I was moved to tell my own also*" was the usual phrase heard by human rights groups documenting in the border areas of Burma

Where is my...? Is the haunting question often asks by wives, parents, and children demanding to know the truth about what happened to their husband mother or father, brother or sister who was carried off one day and disappeared. They have never reappeared, living or dead. Will the new civilian government come up with a wall of silence or lies? Fearful of opening up the files which would reveal political responsibility for the odious practice of arranging human beings to disappear without trace, the authorities used to claim that they did not know or cannot confirm the truth.

If this is the case, one of the most tragic consequences is that it prevents those left behind from entering into the essential process of grieving. In a country like Burma where the majority of the people are Buddhist, paying homage to the dead and doing merit for the dead which we call *Hsun Thut* is one of the basic values of the community. To be prevented from carrying out the rites of mourning and doing merit for the loved ones is an outrage and offence not only to the immediate family but also to the entire society.

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The right of survivors to know extends beyond unveiling the secrecy about the fate of the disappeared and the dead. To overcome

the trauma and the lack of transparency, survivors need some form of official and public recognition of the facts and disclosure of who were responsible for causing the tragedy. They need to know that each of their personal stories will become part of the shared memory of the nation. This does not mean that the pain will disappear but at least the anxiety and despair caused by official silence and lies can perhaps give way to calm and healing. Even for those who will never obtain justice, access to the truth is an essential element of consolation

Truth and Reconciliation

Several transitional governments, e.g. Chile, Argentina, Bolivia, Haiti, Chad, Ethiopia, German Democratic Republic, Hungary, the Philippines, Uganda and South Africa have set up a Truth and Reconciliation Commission, to deal with the past. Often the mandates of these commissions have been compromised for the return of democracy. Usually the main points are:

- (a) to allow historical clarification of the facts about serious, massive or systematic human rights violations*
- (b) to create a climate for national reconciliation by morally condemning past crimes and abuses and acknowledging the victims*
- (c) to contribute to the education of the population by highlighting the mechanism which led to the horrors of the past:*
- (d) to respond to the victim's need for justice.*

“Three most outstanding examples worth studying are South Africa, Guatemala and Cambodia”

Can the new civilian government of Burma copy these processes? That is food for thought. While there is no universally applicable model for a truth and reconciliation commission, a study should be made what was done by the other governments. Three most outstanding examples worth studying are South Africa, Guatemala and Cambodia. Guatemala submitted a report in Feb. 1999 and South Africa in Dec. 1998. ¹⁴

Each of these commissions was set up as part of the peace negotiations which ended in one case, the apartheid regime, and in others, civil wars. These cases have contextual conditions comparable to the one in Burma. The Burmese military regime is somewhere in between South Africa's Apartheid regime and Guatemala's ruling government, because of its on-going 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 Case

In the words of Anglican Archbishop Desmond Tu Tu, Nobel Peace laureate of South Africa, "However painful the experience, the wounds of the past must not be allowed to fester. They must be opened. They must be cleansed. And balm must be poured on them so they can heal."¹⁵ In the negotiations between the African National Congress and the 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.

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From the massacre of Sharpeville in 1960 to the inauguration of Nelson Mandela as President on May 10th 1994, the Minister of justice Dullah Omar articulated the following vision

- ✧ Instead of revenge, there will be reconciliation
- ✧ Instead of forgetfulness, there will be knowledge and acknowledgement;
- ✧ Instead of rejection, there will be acceptance by a compassionate state;
- ✧ Instead of violations of human rights, there will be the restoration of moral order
- ✧ And the respect of law. ¹⁶

The objective of the commission is to promote national unity and reconciliation in a spirit of understanding that transcends the conflicts and division of the past by;

(1) establishing a complete picture of the causes, nature and extent of the gross violations of human rights which were committed during the period from March 1969, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives for the persons responsible for the commission of the violations, 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

(3) establishing and making known the fate or whereabouts of victims and restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;

(4) compiling a report providing as comprehensive an account as possible of the activities and findings of the commission... which contains recommendations of measures to prevent the future violations of human rights.¹⁷

"In the background of Burmese Buddhist, those who refused to acknowledge their wrongdoings must expect Karma or retribution from their religion that will take on its course."

The commission spent two and a half years conducting numerous public hearings to listen to victims, to those directly responsible and to the accomplices. More than 20,000 witnesses were heard. All observers agreed that this painful examination of conscience provided a real catharsis for the entire society. For the first time the victims testified publicly (most of the hearings were televised) about the suffering they had endured. Also for the first time some guilty individuals publicly revealed their crimes and tried to justify them. Some asked forgiveness and others did not. In the background of Burmese Buddhist, those who refused to acknowledge their wrongdoings must expect *Karma* or retribution from their religion that will take on its course. Whether this model can be copied with some modification to suit with Burmese Buddhist background is still yet to be decided.

Guatemala Case

In Guatemala a commission within the framework of the Oslo Peace Accords was established.¹⁸ Under the guidance of three experts, one from Germany and two from Guatemala, mandated by the UN, the Commission spent 18 months questioning victims and witnesses of human rights violations and consulting a great many sources of information, including certain CIA archives made available by the US government. The goal was

"to clarify with objectivity, equity and impartiality the human rights violations and acts of violence connected with the armed confrontation that caused suffering among the Guatemalan people. The commission was not established to judge- that is the function of the courts of law- but rather to clarify the history and the events of more than three decades of fratricidal war."¹⁹

The 3,600 page report, "*The Memory of Silence*" was made public on Feb. 12th. 1999 and the crowd of more than ten thousands who gathered for the ceremony received the presentations with shouts of joy and tears of emotion. At last the silence surrounding their suffering had been broken. For the first time, an official document vested with the authority of the United Nations, revealed the extent and the depth of the sufferings endured by hundreds of thousands of Guatemalans. The report did not mince words in exposing the exact causes of these violent acts and indicating who was responsible, both nationally and internationally, for these crimes. While no individual names were mentioned, the categories of people responsible, military, politicians, foreign mercenaries, guerrilla fighters are well enough to be identified for justice to take its course.

The authors of the Oslo Peace Accord believed that, despite the shock the nation would suffer upon seeing itself reflected in the mirror of the past, it was nevertheless necessary to know the truth and make it public. It was their hope that truth would lead to reconciliation, and furthermore that coming to terms with the truth would be the only way to achieve this objective.

There is no doubt that truth benefits everyone, both the victims and the transgressors. The victims whose past has been degraded and manipulated will be dignified and the perpetrators, through the recognition of their immoral and criminal acts will be able to recover their dignity. Knowing the truth will make it easier to achieve national reconciliation so that people may live in an authentic democracy, without forgetting that the rule of justice is the means of creating a new state.

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The Guatemalan declaration reads: “Thousands are dead. Thousands mourn. Reconciliation is impossible without justice. With sadness and pain we have fulfilled the mission entrusted to us. We place the report, this “memory of silence,” into the hands of every Guatemalan man and women of yesterday, today and tomorrow so they may be aware of the enormous calamity and tragedy suffered by the people. May the lessons of this report help us to consider, hear and understand others and be creative as we live in peace.”²⁰

The Guatemala government has yet to implement the recommendations seriously. Both national and international pressure are mounting to ensure that the work of the commission does not become just one more report to be filed away.

The Cambodian Case

Another interesting country is Cambodia where the culture and values are almost identical with the Burmese. How did the legally elected government treat the former Khmer Rouge? What is their healing process. Even though some of the leaders were tried, the Cambodian government did not hand over this task to the International Court of Justice as was done with Milosevich. This was more or less done for the sake of national reconciliation. The entire population of Cambodians seemed unhappy about it. The majority of the perpetrators of the Khmer Rouge were let go without persecution and the Khmer Rouge remain strong even though they were hated by the mass of the people. The current government of Hun Sen also does not seem desirable to pursue against Khmer Rouge because of his past connection with the group. This inertia stemmed partly from the initial reluctance of the new civilian government established right after the Paris Peace Accord. The government then was not very strong, and it hesitated over bringing those responsible for the genocide to justice because of the potential

threat posed by the Khmer Rouge forces. Recently, the Government of Cambodia decided to suspend the UN-sponsored efforts of seeking trials against the perpetrators of "killing fields." This reflects a sign of tension between national and international jurisdictions over the process, which has become a controversial issue in many other similar cases. It is still an on-going process and the story has not ended. The result was that there was no national reconciliation and the country could not go forward as it should have been.

Justice

Justice is central in all the complex and interwoven aspects of the struggle against impunity. If the people of Burma want to restore relationships which have been shattered by acts of violence they will have to work for justice. Without justice that is acceptable to the people, national reconciliation is simply a dream. Victims know that their suffering was not accidental. It has been carefully planned and executed. Hence the people will demand that those who set these policies, made these plans, carried them out or later covered them up be brought publicly to account before a court of law for what they have done.

Hence justice must be seen in concrete historical, cultural or religious contexts. It must be brought with Burmese civilization and Burmese values. Justice can be sought on two interconnected levels. First the victims need public recognition of the wrongs they have suffered and need to see those responsible, identified, named and held to account even though many would argue that justice at this level must also include reparations. The second is that society as a whole needs laws based on shared values, institutions to manage the rule of law and assurances from the authorities that the law will be equitably enforced.

But justice goes beyond the system of criminal law. If right relations were to be restored among individual or community structural injustices that keep rich and poor divided must be eliminated. This explicitly means that the economic and social systems itself must be reformed. Mutual respect and tolerance, forgiveness and repentance must be elevated to primary social values. When this justice system fails to respond or to exempt certain categories of criminals from accountability to the law then the credibility of the legal institution itself is threatened.

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Theoretically, all persons who were involved in planning, organizing and executing crimes against their fellow human beings should be brought to justice and required to give an account of themselves individually before the law. But what can be done when both victims and criminals numbers in the tens or hundreds of thousands as in Burma? No judicial system in the world today would have the capacity to assemble the necessary evidence on

such a number of individual cases; and in the most tragic of these situations the legal system itself is in a deplorable state, undermined by corruption and lacking competent personnel. Hence the mass trials with scarce evidence would be a mockery of justice. Under these circumstances it is obviously necessary to be selective. Jurists and human rights specialists broadly accept the idea of selectivity according to degree of responsibility. The Burmese public will also have to accept this legitimacy. Most will agree that the first to be called to account are those who actually devised, orchestrated and oversaw the implementation of these atrocities.

Obedience to Order

The obedience argument, it should be recalled, was the main line of defence of Nazi criminals like Adolf Eichmann. They argued that they had merely followed the orders of their superiors and were not therefore responsible for the consequence of their actions. Mgr Oscar Romero, the Archbishop of El Salvador, was assassinated by the military for having preached to the soldiers that they were not obliged to obey orders which went against the conscience or convictions.

Thus the struggle to overcome impunity leads to the question of what and how much is possible in a particular historical context. What must be done to repair the immediate damage? What might be left to a later and more propitious time? In the end, irrespective of the competence and integrity of national judicial systems, the answer to these questions depends on the political will of the authorities in place and on their political ability to resist the continuing power of those responsible for past atrocities. Of course "justice delayed is justice denied" if it moves too slowly. At the same, time wielding a swift sword is equally dangerous the pursuit of justice. A new government in power by an overwhelming political victory may have the means and power to satisfy the people's clamor for rapid trials. But it must also be careful not to mete out a form of victors' justice in a spirit of revenge.

"justice delayed is justice denied if it moves too slowly. At the same, time wielding a swift sword is equally dangerous the pursuit of justice."

In the case of Burma the goal can be achieved after a protracted pursuit of political negotiation can produce a compromise. This will depends very much on the balance of power between the new government and the military.

Justice is all too frequently bartered away to achieve a political settlement. Whether in international or domestic conflicts the practice of impunity has become the political price paid to secure an end to the violence of ongoing conflicts or as a means to ensure the tyrannical regimes change. In these bartered settlements, the victims' right become the object of political trade-offs and justice becomes, depending on one's perspective, the victim of *Realpolitik*.²¹

Although the contradictions between an ethical approach to the role of justice and the constraints of *Realpolitik* are almost inevitable, this does not mean that nothing can be done about impunity and that social healing is not a naive illusion. Something can be done. Even now there is a growing consensus that the most serious crimes against people cannot be tolerated nor left unpunished. Nationally and internationally, public opinion is in favor of accountability and against the granting of impunity to those who have committed crimes against humanity. To tackle this, civil society has to set up pressures at all levels and this will be the major task of the new civilian government.

Forgiveness

“One often hears the leaders requesting their subjects to forgive in order for the country to make a fresh start and to rebuild the country as quickly as possible. But if it was expressed wrongly if it became a way of putting moral pressure on the people who have survived, it could backfire.”

Often those who have suffered violence and humiliations or who have known the death and disappearance of loved ones find it virtually impossible even to think of forgiveness. How can one forgive without seeming to betray one's loved ones? How can one forgive those who refuse to admit the crimes? They are the source of anguished soul-searching on the part of the victims and their families and there is no simple answer to them. One often hears the leaders requesting their subjects to forgive in order for the country to make a fresh start and to rebuild the country as quickly as possible. But if it was expressed wrongly if it became a way of putting moral pressure on the people who have survived, it could backfire. Such an appeal would fail to appreciate the gravity of the people's trauma and the depth of the tragedy that had befallen to them.

Forgiveness is not a legal category. Forgiveness does not depend on the law and administration of justice, but rather goes beyond these to take into account not only the acts committed against the victim, but also his or her continuing trauma. It also includes the victims' relationships with those who have violated them and their loved ones.

Forgiving is not forgetting. Forgiving does not mean to ignore or erase the wrong that has been done: rather, it requires recognition both of the wrong and of the wrongdoer. In the end one may be able to forgive the criminal but one cannot forgive the crime nor the loss of the loved ones.

Forgiveness is an act of liberation. In forgiving, the victim decides not to allow himself or herself forever to be held hostage by the harmful effects of these actions. Forgiveness can free victims and their descendants from the tendency of the past to dominate the present and poison the future. Robert Schreier puts it as *“the decision to forgive is the ritual act which proclaims the survivor's freedom to choose a different future.”*²² Forgiveness is a deliberate choice not to resort to vengeance. It seeks to speak to the humanity of the one responsible for the forgiver's pain and suffering:

"An act of forgiveness must be understood as a complex process of unlocking painful bondage, of mutual liberation. While the perpetrators must be set free from their guilt and its devastating consequences, the victim must be liberated from their hurt and its destructive implications. This mutual liberation implies a process of catharsis, and this is the point which scares most people."²³

Forgiveness is part of the struggle for justice. Forgiveness does not forget the debt but rather cancels it. Thus it makes sense only when the debt is identified and recognised by the debtor.

The word "Amnesty" comes from the word "amnesia," meaning the legalizing of forgetting. It erases, in political terms, the wrongful acts and ignores the responsibility of wrongdoers. Often we found that politicians equate the granting of amnesty with forgiving. This creates an obstacle to genuine forgiveness. Obviously the government cannot act for the victims nor offer forgiveness on their behalf. Amnesty does not cancel the debt, it denies the existence of the debt.

"Forgiveness" in a political context is an act that joins moral truth, forbearance, empathy and commitment to repair a fractured human relation. 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, that insists on the humanity of enemies even in their commission of dehumanising deeds, and that values the justice that restores political community above the justice that destroys it.²⁴

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Reconciliation

Reconciliation is a word widely used by the Burmese politician, UN personnel, neighboring countries and so on, but it is still unattainable. While reconciliation seems to be a matter of urgency in Burma if the ongoing human rights violations are to be stopped. Reconciliation itself is a movement, a process of restoring broken relationships or re-creating right relationships between individuals and peoples. This will not automatically occur at the sound of the judge's gavel or following a confession by an offender or a plea for forgiveness. The process of reconciliation does not stop when the *status quo* is restored. It requires a radical break with the past. It seeks to heal not just the present rupture of relationships, but also the sources of conflict that were latent in previous, apparently harmonious relationships. Reconciliation fixes the fractured past and looks forward to moving on.

It is still to be seen how a new government might approach the matter. Faced with the powerful presence of the military and their associates who are the perpetrators of the past crimes, will a new civilian government sacrifice justice at the altar of internal

security – to which process they can give the name of “National Reconciliation”?

In a country like Burma where violence and civil war have raged for half a century the need for reconciliation is urgent. The wounds caused by violence affect every aspect of life. They concern individuals, ethnic or religious groups, men, women and children traumatized to the very depths of their being, communities divided, their perception of the others colored by fear, resentment or hatred. Moral references and value systems are also shattered. Not only are the principles of international humanitarian law ignored, but even the fundamental values and traditional cultures are not respected. Many human rights organization reported that the Burmese army had deliberately targeted women, children and old people. The aim of the conflict not only against the pro democracy forces but also against the ethnic minorities, according to the reports, have become no longer just to overcome but to humiliate or even eliminate the enemy by means of ethnic cleansing or genocide. There are no longer any life enhancing values that count.

The essential element for reconciliation is the relearning of how to live together in peace and mutual trust. The demand for truth, justice and reparation are not confined to the legal, political or social domains. The ethical and spiritual dimensions of these struggles are fundamental. One thing is sure and that is there can be no reconciliation without the re-establishment of the fundamental values that affirm the dignity of every human being and make life in society possible. At this level the religious faiths especially the Buddhist monasteries have a crucial responsibility.

Reconciliation cannot be imposed by decree as the military regime has done all these years. It has to be seen and desired as a vital necessity by the parties to the conflict. This desire for reconciliation, the hope that it is not only necessary but also possible, has to be backed by a broad vision of human relations transformed on a basis of shared values. Neither can reconciliation be achieved overnight. It must be built up step by step over time, in processes that are neither linear nor automatic, because they are set in the thick of human life, in specific and changing local circumstances.

“The four things absolutely necessary for reconciliation are no reconciliation without forgiveness, no reconciliation without truth, no reconciliation without justice and no reconciliation without peace.”

The four things absolutely necessary for reconciliation are no reconciliation without forgiveness, no reconciliation without truth, no reconciliation without justice and no reconciliation without peace. All these must go simultaneously and not one after another. The image of “mercy and truth” meeting and “justice and peace” kissing each other opens up a vision of reconciliation. Thus working for reconciliation means promoting through our words and actions, love, truth, justice and peace.

There can be no reconciliation without transformation. We cannot recommend any particular model of the reconciliation process for Burma but the experience of South Africa is worth mentioning. Nelson Mandela summed up its spirit in the *Le Monde* of Aug 7 1999 as

"The search for reconciliation has been a fundamental objective in our struggle to establish a government based on the will of the people and build a South Africa that belongs to all its people. The search for reconciliation was the spur that kept us going through the difficult negotiations on the ending of apartheid and the agreements arising from them. The desire to have a nation at peace with itself is the prime motive behind our programme for reconstruction and development. The Truth and Reconciliation Commission which worked from 1995 to 1998 was likewise an important component in this process. Its work represented a decisive in the journey that has begun.

The path of reconciliation touches all aspects of our life. Reconciliation demands the end of apartheid. It requires us to overcome the consequences of this inhuman system that survives in our behavior towards one another and in the poverty and inequality which oppress million of human beings. Reconciliation is essential for a vision of the future. South Africans have to remember their terrible past so as to be able to come to terms with it, forgiving when forgiveness is necessary, but never forgetting.

It was inevitable that a task of this scale, so recently started and calling for a process that will take years, would suffer some setbacks. Its success will depend on all sections of our society. The difficulty of integrating those who have committed serious violations of human rights should not be underestimated. But there are also many encouraging examples of great generosity, mercy and nobility of heart on the part of members of our community.

The best way of making reparation to the victims for their suffering, and the highest recognition of their commitment, is to transform our society into a living image of the human rights for which they fought."²⁵

To sum up Mandela's words: **reconciliation** needs a desire on the part of everybody, it must be gradually built up in a long term process, and it cannot be achieved unless every one is involved. Whether the Burmese counterparts can modify and copy this process depends on the new civilian government. Reconciliation by one half is not reconciliation. It can be only bilateral and multilateral.²⁶

No one can be reconciled against his or her will. People who do not want reconciliation cannot be reconciled by outside intervention. Violence can be stopped, there can be peace, tension can be reduced, but all these do not lead to reconciliation. In a country like Burma there are victims and criminal on both side of the conflict where yesterday's victims can become today's criminals and *vice versa*. The situation can be very complex. The restoration

"reconciliation needs a desire on the part of everybody, it must be gradually built up in a long term process, and it cannot be achieved unless every one is involved."

of relations between the victims and their aggressors and the reintegration of the latter into the national and local community will pose enormous moral, religious and practical difficulties. This cannot be minimised by good intentions alone.

Every citizen of Burma must understand that if a society is to be rebuilt on new foundations, the criminals must not be subjected to the same violence and torture they used against their victims. Insisting that the perpetrators acknowledge responsibility for their actions- by admitting to them in public or before a court of justice, is a way of reaffirming their dignity as responsible persons and hence opening the possibility for them to be reintegrated into society to play an active part in reconciliation. It also avoids the situation in which a whole ethnic or religious group is blamed for the crimes committed by a few. This is exactly the case when all Myanmar (Burman) are hated by the ethnic nationalities because of the crimes committed by the Burman dominated military.

Epilogue: Thingyan, the Water Festival

The Burmese New Year usually falls in the middle of April, the hottest time of the year. It is a very joyous occasion for every one irrespective of race, colour, creed or religion. As a young man, I used to participate by aiming my water jet pipe at the face of the revellers. For me it was fun but not for the person whose face was hit by the water jet. It was free-for-all during which everyone could tease everyone and nobody would get angry. The boys tease the girls and *vice-versus*.

“Thingyan’s origin is very different from what we are doing today. It is a time to wash away the impurities of the body especially to old people, as a form of merit. It was also a time for the people to ask for forgiveness that is willingly and readily granted as the Burmese Buddhist goes to the houses of elders and Kan Taw paying obeisance”

But *Thingyan’s* origin is very different from what we are doing today. It is a time to wash away the impurities of the body especially to old people, as a form of merit. It was also a time for the people to ask for forgiveness that is willingly and readily granted as the Burmese Buddhist goes to the houses of elders and *Kan Taw* paying obeisance. In other words all your sins and wrongdoing were washed away by water and you become a new person in a new year. This is the art and symbol of forgiveness that is equivalent to a Christian Water Baptism which means that all your sins are washed away in water as God forgives you your trespasses and become an entirely new person in Christ.

Most of the leaders of the ethnic nationalities, especially Karen, Kachin, Karenni, and Chin, are Christians and believes in forgiveness. Every Christian believe that the source of forgiveness and of the human being’s capacity to forgive is found in the loving, forgiving God. The Bible has clearly written, *“Father, forgive them for they do not know what they are doing”* Luke 23:24 God’s love both restores the victim and, in making of the victim a new creation, also makes forgiveness possible. It is in trusting God’s power to forgive and to restore the humanity of each and every person that the victims can

find the strength and have the courage to speak the word of forgiveness.

Sometimes I wonder whether the Burmese generals can pour the *Thingyan* water over the ethnic nationalities leaders, and whether the ethnic nationalities can forgive the Burmese soldiers. If the *Thingyan* water is cool i.e. if it represents a genuine repentance and forgiveness with a real *Thingyan* spirit followed by a changed heart and changed behaviour, and I am quite positive that it can finally lead to National Reconciliation.

Endnotes

¹ Our Daily Bread: March 2, 2001 *Change of Leaders*

² The Burma Fund, Background Information: Research Project on Transitional Justice in Burma, 2001.

³ Ibid

⁴ Declaration of the International Court of Justice

⁵ Genevieve JACQUES, *Beyond Impunity* pp vi vii

⁶ Refer to the English dictionaries

⁷ Jose Brnen, *Armestie et Impunite*, 1996 Lyons Human Rights Institute

⁸ Kengtung Haw, residence of a Shan Chief better known as Saopha's Palace, was destroyed by the SLORC to build a hotel in 1996.

⁹ Louis Janet, "Report to the UN sub commission for the Prevention of Discrimination and the Protection of the Minorities, 49th session aug. 1997 E/CN 4/Sub 2/1997/20

¹⁰ Genevieve JACQUES, *Beyond Impunity*, p 3

¹¹ If the commanders of the BIA who followed the heels of the Japanese army had brought to justice to the perpetrators of this human rights violations there would not have been any KNDO or KNU resistance against the central government following 1948 independence.

¹² Final Declaration of the Vienna Conference A/CONF 157/23/91

¹³ Genevieve JACQUES, *Beyond Impunity* p15

¹⁴ Both the South Africa and Guatemala Cases have been studied and compiled by U Zaw Oo and U Zaw Win Hlaing, yet the approach is not the same as the one this paper has taken.

¹⁵ Report of the Truth and Reconciliation Commission. 1998

¹⁶ Dull ah Omar, *To Remember and to Heal*, p 24

¹⁷ Muller Fahrenholz, *The Art of Forgiveness*. World Council of Churches, 1908, pp 85

¹⁸ Under the aegis of the United Nations the parties to the armed conflict was signed in 1994.

¹⁹ Richard Niebuhr, *Telling One Another Stories*, p 31

²⁰ Genevieve JACQUES, *Beyond Impunity*, p 27

²¹ M Cherif Bassiouni, "Searching for Peace and Achieving Justice" in *Law and Contemporary Problems*, Vol. 59 Autum 2000, pp 11-12

²² Schreiter, op cit

²³ Muller Fahrenholz op cit. p 25

²⁴ Shriver op cit. p9

²⁵ This is a translation of the French Newspaper *Le Monde* of 7-8-90

²⁶ Paolo Ricca "Reconciliation, Reconstruction" in *Review Mission* No 71, 1996

