

TRANSITIONAL JUSTICE FACT SHEET: MYANMAR

Socio-historical context

In 1948, Myanmar gained independence from Britain following the 1947 Panglong Conference. The Panglong Agreement promised ethnic equality within the Federal Union of Burma with Kachin, Shan, and Chin leaders. Despite the agreement, demands for ethnic self-determination and equality soon sparked armed conflict between ethnic armed groups and government forces. A military coup in 1962 escalated into a civil war that brought acute repression with widespread detention and torture of political dissidents, journalists, human rights activists, and anyone suspected of criticising the state. A series of authoritarian military governments ruled, suppressing opposition and movements for democracy. When a semi civil government was elected in 2011, peace talks were resumed with dozens of ethnic armed groups. Eight ethnic armed groups signed a Nationwide Ceasefire Agreement (NCA) under government stewardship.

The country's first democratically elected, civilian-led government in elections judged 'free and fair' 2015. Despite high hopes, Daw Aung San Suu Kyi's National League for Democracy (NLD) government inherited deep-rooted challenges, including constitutional empowerment of the military, repressive legislation, weak rule of law, and a corrupt judiciary, the military continues to carry out human rights violations in ethnic areas with impunity. Violence continues against many ethnic groups such as those in Kachin and Shan States. Many are suffering from a shortage of food because the military is blocking aid. The violence garnering the most international attention at present, however, is a large-scale systematic campaign against the Rohingya.

Civil society organisations (CSOs) working with survivors of torture, sexual violence, and other human rights violations have noted physical and psychological consequences. These include lasting physical injuries and psychological trauma that result in anxiety, difficulty sleeping, shame, guilt, depression, and isolation. Former political prisoners endure social exclusion, while victims of sexual violence experience stigmatisation in their communities. Disruptions to their livelihood exacerbate financial hardship in a country with few economic opportunities. Survivors lack access to health and medical care, psychological support, legal assistance and livelihood opportunities.

Transitional Justice Initiatives

There are not yet any meaningful transitional justice mechanisms in Myanmar. The current debate in Myanmar tends to confuse transitional justice and prosecutorial justice. It is important to emphasise that transitional justice is not solely about prosecutions, punishment, and perpetrators. Justice also involves the provision of reparations to victims, recognition and acknowledgment of the truth about mass violations, as well as legal and security reforms to guarantee non-repetition.

With the democratic transition in Myanmar came new opportunities and hope for reform, reconciliation, and justice. However, a few years later, the transition seems to be backsliding and hope fading.

Truth

Truth-telling and human rights documentation initiatives are being carried out by civil society organisations together with victims, families, and influential local religious groups. ND Burma and its members have been conducting systematic documentation of human rights violations and small truth-telling events since 2004.

In 2017, the UN Human Rights Council established an Independent International Fact-Finding Mission on Myanmar that published a report in August 2018. The Mission found patterns of gross human rights violations and abuses committed principally by Tatmadaw, Myanmar's military, but also by other security forces in Kachin, Rakhine, and Shan States that "undoubtedly amount to the gravest crimes under international law". The Mission called for the situation in Myanmar to be referred to the International Criminal Court or for an ad hoc international criminal tribunal to be created. It stated that Myanmar's top military generals, including Commander-in-Chief Senior-General Min Aung Hlaing, must be investigated and prosecuted for genocide in the north of Rakhine State, as well as for crimes against humanity and war crimes in Rakhine, Kachin, and Shan States. In the interim, it called for an independent and impartial mechanism to collect, consolidate, preserve, and analyse evidence of violations. It also recommended targeted individual sanctions against those who appear to be most responsible.

Justice

Most cases of human rights violations by the military are brought to military courts that lack transparency and accountability. Nevertheless, there has been some shift towards accountability. Uncharacteristically for military tribunals in Myanmar, where even verdicts are generally not made public, victims' families were sometimes permitted to observe the proceedings.

Reparations

The government has no reparations policy. However, civil society and victims' groups have taken the lead for some initiatives, including the establishment of the Reparations Working Group in 2015 that advocates for a state-led reparations programme. A recently-released report, "You cannot ignore us: Victims of human rights violations from 1970–2017" includes recommendations related to justice and accountability for human rights violations, actions to help victims rebuild their lives, and guarantees of non-recurrence. Besides the work of this working group, reparations have also come in the form of commemoration events that have been held for the war in Kachin State, and to remember the rape and murder of two Kachin teachers that happened in 2015. A 8888 Uprising Museum to remember the series of nationwide protests, marches, and civil unrest in Burma that peaked on 8 August 1988, is run by the 8888 Generation Peace and Open Society, a group of former student activists. Democracy activists built another 8888 memorial in 2016 in Taunggyi. Former political prisoners also unveiled a memorial in Bago City this year (2018) to mark the 30th anniversary of the 8888 uprising.

Institutional Reform

There is no significant policy related to institutional reform in Myanmar, and military violations against various ethnic groups continue.



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