



Memorialisation as Related to  
Transitional Justice Processes in  
Burma/Myanmar: an Exploration

## Acknowledgments

We would like to thank the participants from Burma/Myanmar that attended the Asia Exchange Meeting ‘Memory for Change’, representing the following organisations: Assistance Association for Political Prisoners (AAPP), Civil Society Forum for Peace (CSFP), Network for Human Rights Documentation (ND-Burma), and the ‘88 Generation. This Country Exploration was made possible thanks to their commitment and hard work in preparing for the Exchange Meeting, in being proactive during the event as well as in providing feedback on their country before and after the Exchange.

This document is one of seven Country Explorations that served as a foundation for the Exchange report. The Exchange report itself looks into the state of affairs in the field of transitional justice in the participating countries, mapping out memorialisation initiatives and ways forward. This Country Exploration is based on documents produced by the participants prior and during the Exchange, was written by Sonja Meyer, fact-checked by Patrick Pierce, edited by Laura McGrew and validated by the country-group participants. Marina Oliver - Tomić, Annet van Offenbeek and Ralph Sprenkels provided additional editorial support.

Impunity Watch (IW), which coordinated this report, would like to thank both FORUM-ASIA and swisspeace for the constructive cooperation in organising this Exchange.

The Asia Exchange Meeting was funded by the Oak Foundation, Hivos, the Swiss embassy in Bangkok, the Asia Foundation, the Ford Foundation, the Dutch embassy in Jakarta and Misereor.

Cover photo by Associated Press (AP). Students of the ‘88 Generation mark the 25<sup>th</sup> anniversary of Burma’s uprising. Yangon, Burma, 8 August 2013.

## 1. Introduction

The series of Country Explorations on Memorialisation as Related to Transitional Justice Processes was elaborated collaboratively as part of the Asia Exchange Meeting ‘Memory for Change’, which was held in Bangkok, Thailand in November 2014. It consists of seven concise overview documents, each referring to one of the participating countries in the Exchange. The Country Explorations provide a contextual overview as well as an analysis of initiatives that find themselves in the realm of memorialisation and transitional justice in each country. They also offer ideas for ways forward concerning the enhancement of local, regional and international engagement on the subject. The Country Explorations feed into the comparative sections of the Asia Exchange Report. Different relevant initiatives and situations touched upon in the Exchange report are explained here in more detail.

## 2. History and Background

Burma/Myanmar<sup>1</sup> is currently emerging from more than five decades of isolation and military dictatorship. Since the 1962 military takeover, Burma/Myanmar remained a pariah state until international sanctions were eventually lifted in 2011. Fundamental freedoms have been routinely quashed and the military regime has sought to stifle any opposition within the country. State-sponsored human rights violations have become a daily routine, and thousands of journalists, activists, human rights defenders and Civil Society Organisations (CSOs) were and still are systematically targeted and arbitrarily imprisoned. Over the years, this has engrained impunity and fear into Burma’s/Myanmar’s society.

After currency devaluation in 1987, mass anti-government demonstrations escalated in 1988 and were violently dispersed by the army. An estimated 3,000 people lost their lives and hundreds were arrested. In the aftermath, the newly formed State Law and Order Council (SLORC) declared martial law and cracked down on any political activity. In 1990, SLORC refused to hand over power to election winner National League for Democracy (NLD) and instead continued their repressive rule. Major price increases due to the lifting of government subsidies on fuel sparked renewed mass protests in Yangon and other major cities in 2007. The military once again reacted with violent repression. The uprising was later termed the ‘Saffron Revolution’.

In 2008, the junta’s State Peace and Development Council (SPDC, successor of SLORC) adopted a new constitution to pave the way for a carefully controlled transition to a quasi-civilian administration. However, the constitution institutionalised the military’s dominance, and is criticised by many observers. One quarter of parliamentary chambers remain under reserve for the military, while the same amount of ministerial posts of interior, defence and border affairs must be held by serving generals. This gives immunity to members of SLOC and SPDC concerning the human rights violations they committed.<sup>2</sup>

<sup>1</sup> While both Myanmar and Burma are used as names for the country, and choosing one appears to be a political choice, IW has decided to use both names in this Exploration.

<sup>2</sup> ICTJ (2009) *Impunity Prolonged: Burma and its 2008 Constitution*, ICTJ, available at: <https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Impunity-Constitution-2009-English.pdf>.

Since being elected in November 2010, President Thein Sein's administration has initiated a number of political reforms in Burma/Myanmar. Notably, Nobel Peace Prize laureate Aung San Suu Kyi was released after almost 15 years of house arrest, and the NLD was allowed to legally register as a political party. After the by-elections in 2012, NLD members, including Aung San Suu Kyi, entered parliament. Some noteworthy improvements in the human rights situation have been made since President Thein Sein took office in March 2011: a number of political prisoners were released; forced labour was reduced in some areas and human rights violations in some conflict areas decreased. However, the list of continuing human rights abuses remains long, and the situation has even deteriorated in some regards: human rights defenders increasingly face judicial harassment; protests continue to be violently dispersed, sometimes even through the use of chemical weapons; new arrests have taken place; land confiscations with heavy business involvement continue; forced labour persists; ethnic discrimination and violence against the Muslim Rohingya has reached a new peak; sexual violence in conflict remains a widespread practice and reports of torture and extra-judicial killings are still frequent.<sup>3</sup>

In addition to the political conflict, the ongoing armed conflict between the central Burmese government and the largest ethnic groups fighting for autonomy and self-determination continues to pose a major obstacle to human and economic development. Even though armed conflict has reduced significantly in some areas, open fighting continues in Arakan (Rahkine) State; Chin State; Karenni (Kayah) State, Karen State; Mon State; Kachin State and Shan State. Tens of thousands of people have been displaced as a result. The government reached bilateral ceasefire agreement with 14 armed ethnic groups, except the Kachin Independence Army/Kachin Independence Organisation (KIA/KIO) and the Ta'ang National Liberation Army (TNLA).<sup>4</sup>

With elections scheduled for October 2015, the main government priority is to broker a nationwide ceasefire agreement. Ethnic armed groups led by the United Nationalities Federal Council (UNFC) established the Nationwide Ceasefire Coordination Team (NCCT) in 2013. This marked a first step towards a more concerted effort in peace negotiations. Since then, the government's Union Peace-Making Work Committee (UPWC) and NCCT representatives have held several rounds of negotiations which reached a deadlock in late 2014 due to continuing disagreements regarding the format of political dialogue and the set-up of the army. Ongoing clashes between the KIA and the government had led the group to temporarily withdraw from the peace talks. However, pending the approval from top leaders of the different rebel groups, the parties signed a draft agreement on 30 March 2015 outlining the framework for future political dialogue, establishing a code of conduct for the

<sup>3</sup> See: OHCHR (2015), *Report of the Special Rapporteur on the situation of human rights in Myanmar* A/HRC/28/72 (23 March 2015); Human Rights Watch (2015) *World Report 2015*, available at: <http://www.hrw.org/world-report/2015/country-chapters/burma>; Women's League of Burma (2014) *Same Impunity, Same Patterns: Report of Systematic Sexual Violence in Burma's Ethnic Areas*, available at: <http://womenofburma.org/same-impunity-same-pattern-report-of-systematic-sexual-violence-in-burmas-ethnic-areas/>; ND-Burma reports, available at: <http://nd-burma.org/sec/reports/>; Karen Human Rights Group reports, available at: <http://www.khrg.org/reports>.

<sup>4</sup> See: Myanmar Peace Monitor, available at: <http://www.mmpeacemonitor.org/peace-process/ceasefires>



military, and setting up joint monitoring committees.<sup>5</sup> Representatives from the rebel groups in Ko Kang, Northern Shan State, which is still embroiled in heavy fighting, did not attend the talks. Many observers remain sceptical about whether the ceasefire agreement can lead to an end to the violence.<sup>6</sup>

The Rohingya conflict between Muslim and Buddhist groups in Rakhine state has recently resulted in high levels of violence and displacement. Many of the Muslim Rohingya are stateless and considered Bengali by the majority population. In February, the parliament decided to grant Rohingya and other Temporary Residence Card holders the right to vote in the next elections. Opposition lawmakers, especially from Arakanese parties and NLD, strongly opposed this bill and called on the Constitutional Tribunal to review the decision. Clashes with Buddhist nationalists in Rakhine State and other religious attacks across the country prompted the government to revoke its decision only one day later. About 140,000 ethnic Rohingya are currently displaced. In December 2014, the UN passed a resolution urging the government to grant citizenship to the Rohingya group.

### 3. Transitional Justice Mechanisms

Burma/Myanmar's transitional justice context is complex. Challenges include: ongoing armed conflict between parties with different historical identities, which hold differing views of the past and needs for truth and justice; nationalist tendencies and religious tensions between Buddhist and Muslims, including frequent attacks on the Muslim Rohingya in the north of the country; the continued presence of perpetrators of past human rights abuses in government; widespread corruption and cronyism; and continuing abuses and arbitrary detentions by security forces. These challenges render any attempt to pursue comprehensive justice a tightrope walk. Since such attempts would have to touch upon the vested interests of military leaders, they might well jeopardise the volatile reform and peace process. With various conflicts still ongoing in many parts of the country, the 'peace vs. justice dilemma' is particularly pronounced in the Burmese context. Furthermore, as a result of the country's lengthy isolation, awareness and exposure of how other societies have addressed transitional justice issues is rather low.

The 2008 Constitution prevents any comprehensive steps towards accountability for past crimes within the judicial system. It states that 'no proceeding shall be instituted against the said Councils [SLORC and SPDC] or any member thereof or any member of the government, in respect of any act done in the execution of their respective duties.'<sup>7</sup> Interpretations of this clause differ - while some observers see it as blanket immunity for past violations including those who directly committed abuses, others argue that the immunity granted is narrower, applying only to the highest level officials of SPDC and SLORC, and not to other institutions

<sup>5</sup> BBC, *Myanmar army and rebels sign draft ceasefire agreement*, 31 March 2015, available at: <http://www.bbc.com/news/world-asia-32126918>. The exact content of the agreement is not available to the public. Most observers state that many of the contentious issues were shunted into the future.

<sup>6</sup> Zaw, A., *Signing the Ceasefire Does Not Mean Achieving Peace*, Irrawaddy, 27 March 2015, available at: <http://www.irrawaddy.org/interview/signing-the-ceasefire-does-not-mean-achieving-peace.html>.

<sup>7</sup> Myanmar Constitution (2008) Art. 445.

or members of the military regimes.<sup>8</sup> Furthermore, it is not clear if the immunity covers actions of the current government. In any case, the current constitution is inconsistent with international human rights law, which deems amnesties for genocide, crimes against humanity, and war crimes unacceptable.

As a first step in the pursuit of criminal justice, several cases of rights abuses were filed to the Supreme Court and the Human Rights Commission (HRC). For instance, the family of the Kachin woman Samlut Roija, who was abducted by the Burmese army in 2011, wanted to shed light on her fate and submitted the case to the Supreme Court.<sup>9</sup> Even though the case was rejected, it raised awareness on enforced disappearances among the national and international public. Brang Shawng, whose daughter was killed during armed clashes with the Burmese army in Kachin State filed a complaint with the Myanmar HRC. The case was rejected and he was charged with making ‘false charges’ against Burmese army officials. Civil society groups and the community have formed an informal investigation committee to document the testimonies of several witnesses.<sup>10</sup>

In the view of many observers, the government has so far failed to signal a substantial break with past practices of human rights violations. Civil society and the population at large hold little trust in the military’s willingness for real change. Both the military and armed opposition groups committed human rights abuses. Both used evidence of these crimes to delegitimise each other. Even though criminal justice plays a crucial role in working towards accountability and non-recurrence, other transitional justice mechanisms such as truth seeking, reparations, memorialisation initiatives and institutional reform can also contribute to establishing a culture of accountability. In his statement to the UN General Assembly in 2012, Office of the United Nations High Commissioner for Human Rights (OHCHR) Special Rapporteur [Tomás Ojea Quintana](#) called for broad consultations with relevant stakeholders to assess the feasibility and format of a truth commission.<sup>11</sup> In his September 2013 report, he urged ‘the parliament to take forward the initiative to establish a truth commission as a step towards ensuring truth, justice and accountability.’<sup>12</sup> Equally, national and international civil society groups have highlighted that exposing root causes of conflict and human rights

<sup>8</sup> “A close reading of the document shows that the immunity granted by the 2008 Constitution is narrower than typically stated in the media. (...) [T]his immunity is explicitly for “any member of the Government” and previous ruling “Councils” and their “member[s]”. (...) [T]he 2008 Constitution defines the Union Government as “(a) The President; (b) Vice-Presidents; (c) Ministers of the Union; (d) The Attorney General of the Union” (Art. 200). The impunity clause therefore could include these individuals and arguably also the members of the state and division governments. Many other people who could be considered members of the “regime” are not on this list. In addition, this provision does not say anything about the pre-SLORC period. It is unclear whether any domestic jurisprudence has fully tested the interpretation of this provision in the 2008 Constitution.” (E-mail correspondence with legal consultant of United Nationalities Federal Council, a coalition of ethnic armed groups).

<sup>9</sup> See FIDH (2014), *Burmese Government urged to investigate the enforced disappearance of Sumlut Roi Ja*, available at: <https://www.fidh.org/International-Federation-for-Human-Rights/asia/burma/16329-burmese-government-urged-to-investigate-the-enforced-disappearance-of> and ND-Burma (2015) *Report on Human Rights Situation in Burma (July-December 2014)*, available at: <http://nd-burma.org/reports/periodic-report/report-on-the-human-rights-situation-in-burma-july-december-2014/>.

<sup>10</sup> The group issued a report in December 2014, available at: [http://www.burmapartnership.org/wp-content/uploads/2014/12/REPORT\\_Who-Killed-JSI\\_6.Dec\\_14.pdf](http://www.burmapartnership.org/wp-content/uploads/2014/12/REPORT_Who-Killed-JSI_6.Dec_14.pdf). Also see ND-Burma (2015) *Report on Human Rights Situation in Burma (July-December 2014)*, available at: <http://nd-burma.org/reports/periodic-report/report-on-the-human-rights-situation-in-burma-july-december-2014/>.

<sup>11</sup> Statement by Tomás Ojea Quintana, Special Rapporteur on the Situation of Human Rights in Myanmar, 67<sup>th</sup> Session of the General Assembly, Third Committee, Item 60 (c), 25 October 2012.

<sup>12</sup> *Report of Special Rapporteur on the Situation of Human Rights in Myanmar, A/68/397*, 23 September 2013.



abuses through truth telling, and providing redress to victims and survivors has the potential to enhance civic trust and build confidence within and between communities.<sup>13</sup>

Current institutional reform efforts focus primarily on basic needs such as poverty reduction and the provision of basic infrastructure (such as the provision of electricity and water). Nevertheless, the military leadership has facilitated and allowed some measures to institutionalise peace and human rights. A HRC has been in place since 2011 but has so far failed to have any substantial impact on the human rights situation according to many NGOs.<sup>14</sup> In 2013, a constitutional review committee was formed which has so far not produced any significant amendments. Several parliamentary committees have been established, including a land investigation committee and a public complaint committee. Although opposition lawmakers criticise that only few cases submitted to the commissions are recognised by the government<sup>15</sup>, the commissions successfully provided relief to some communities affected by land grabbing. Despite ongoing land rights abuses, there have been some innovative collaborations between Members of Parliament (MPs), NGOs and community leaders advocating for compensation for victims of land evictions. In addition, the fact that parliament overruled objections from the Minister of Agriculture and Irrigation, concerning a mandate to look into cases that occurred before 2011, can be regarded as a significant step forward.<sup>16</sup> Various donors have started to support the Burmese government in moving forward with rule of law reform, increasing the capacities of the justice sector. However, capacity gaps continue to hinder an effective break with past practices and judicial independence remains weak.<sup>17</sup>

Security sector reform is one of the most sensitive policy fields for President Thein Sein. The military has initiated and controlled the transition process and has vested interests in upholding the status quo with no civilian control over the security forces, economic privileges for army members, and immunity from rights violations. Two major human rights reports have collected evidence against and have explicitly named sitting ministers as being responsible for Gross Human Rights Violations (GHRV) against ethnic minority groups. Violations include land confiscations, war crimes, and crimes against humanity.<sup>18</sup> Ethnic armed groups have heavily pushed for a reform of the military and the establishment of a Federal Army, an issue that has seen major controversy during the ceasefire negotiations.

In 2013, President Thein Sein announced the creation of the Committee for Scrutinising Remaining Political Prisoners, and pledged to release all political prisoners in Burma/Myanmar by the end of the year. More than 1,000 prisoners were released in the

<sup>13</sup> ICTJ (2014), *Navigating Paths to Justice in Myanmar's Transition*, available at:

<https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Development-Report-2014.pdf>.

<sup>14</sup> Snaing, Y, *NGOs slam performance of National Human Rights Commission*, Irrawaddy, 25 September 2014, available at: <http://www.irrawaddy.org/burma/ngos-slam-performance-national-human-rights-commission.html>

<sup>15</sup> Weng, L., *Govt Not Recognising Scale of Land-Grabs in Burma: Lawmakers*, Irrawaddy, 22 January, 2014, available at: <http://www.irrawaddy.org/burma/govt-recognizing-scale-land-grabs-burma-lawmakers.html>.

<sup>16</sup> Myanmar Times, *Reps ignore ministry on land-grab committee*, 30 July 2012, available at:

<http://www.mmmtimes.com/index.php/87-national-news/243-reps-ignore-ministry-on-land-grab-committee.html>

<sup>17</sup> Bertelsmann Stiftung (2014) *BTI 2014 – Myanmar Country Report* Gütersloh: Bertelsmann, available at:

[http://www.bti-project.org/uploads/tx\\_itao\\_download/BTI\\_2014\\_Myanmar.pdf](http://www.bti-project.org/uploads/tx_itao_download/BTI_2014_Myanmar.pdf).

<sup>18</sup> IHRC (2014), *Legal Memorandum: War Crimes and Crimes against Humanity in Eastern Myanmar*, available at:

<http://hrp.law.harvard.edu/wp-content/uploads/2014/11/2014.11.05-IHRC-Legal-Memorandum.pdf>; Global Witness (2015) *"Guns, Cronies and Crops. How Military, Political and Business Cronies have conspired to grab land in Myanmar."* available at <https://www.globalwitness.org/campaigns/land-deals/guns-cronies-and-crops/>.

following year. However, by the end of 2014, the Assistance Association for Political Prisoners (AAPP) held records of 81 political prisoners still imprisoned, a number that continues to increase.<sup>19</sup> Several dozen still await trial. Recent student and monk protests have also resulted in further arrests. The government remains unwilling to officially recognise the continuing existence of political prisoners, and has done nothing in way of reparations for former political prisoners following their release. In addition, hundreds of partly stateless ethnic Rohingya from Rakhine State are reported to be imprisoned for political reasons or face ethnic discrimination and deportation to Bangladesh.<sup>20</sup> AAPP's numbers do not take this population into account.

## 4. Memorialisation Initiatives

In view of the continued climate of intimidation and judicial harassment of human rights defenders and other civil society activists, space for memorialisation and truth telling remains constrained. Several CSOs have been documenting the stories of survivors and witnesses, compiling databases to lay the ground for more comprehensive justice initiatives. Operating both inside and outside the country, the Network for Human Rights Documentation Burma (ND-Burma) and their member organisations have been at the forefront of human rights documentation. In addition to periodic and thematic reports on human rights violations, the network uses witness accounts to raise public awareness through exhibitions, film documentaries and other public events. Truth-telling events are held to raise national and international awareness on the hardship that people went through during the repressive rule of the junta, and to remember major uprisings, ensuing violent crackdowns and human rights abuses. Similarly, other groups such as Women's League of Burma (WLB), Shan Women's Action Network (SWAN) and Karen Human Rights Group (KHRG) have documented the voices of villagers who face rights violations and repression, bringing them to public attention in commemoration and truth-telling ceremonies. Several survivors have published their memoirs providing detailed accounts of the crimes inflicted upon them.

In 2010, international rights group Nobel Women's Initiative and WLB jointly conducted the 'International Tribunal on Crimes Against Women of Burma' in New York. This provided a platform for 12 survivors to expose the horrifying atrocities inflicted upon women, as well as upon their families and communities, throughout decades of oppression. The tribunal aimed to be 'a catalyst for action', focusing on sexual violence, political violations, and social, economic and cultural violations. In its judgement, it found the Burmese government guilty of war crimes, crimes against humanity, and other human rights violations and issued recommendations to the Burmese government, regional governments and organisations,

<sup>19</sup> ND-Burma (2015), *Report on Human Rights Situation in Burma (July-December 2014)*, available at: <http://nd-burma.org/reports/periodic-report/report-on-the-human-rights-situation-in-burma-july-december-2014/>

<sup>20</sup> ICTJ (2014), *Navigating Paths to Justice in Myanmar's Transition*, available at: <https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Development-Report-2014.pdf>.



CSOs, as well as the international community and the UN to take action to effectively protect the people of Burma/Myanmar from such atrocities.<sup>21</sup>

Within Burma/Myanmar, '88 Generation Peace and Open Society and other CSOs have held annual commemoration events after the largest violent crackdown of student protests in 1988. CSOs have established a Burma Human Rights Day on 13 March - the date that saw the death of a young protester. This sparked further protests and violent responses by security forces around Yangon University. The following crackdown three days later is remembered as the 'Red Bridge Massacre'. These events used to be conducted in secret and risked sparking further reprisals and violent standoffs. For the first time in over two decades, two ministers donated funds for the commemoration of the '8888 Uprising', giving it unofficial government endorsement. In 2013, CSOs conducted a large commemoration event for the 25<sup>th</sup> anniversary of the famous student protests, with government participation. The group is also planning to establish an 88 Museum in Yangon. UN Special Rapporteur Thomás Ojea Quintana lauded the ceremony as contributing 'to a comprehensive public accounting of past human rights violations' and emphasised 'that a truthful account of past human right violations (...) is needed to inform continuing democratic reform and national reconciliation'.<sup>22</sup>

In 2014, Kachin groups were able to mark the 3<sup>rd</sup> anniversary of the breakdown of the ceasefire, and the beginning of renewed fighting between the KIA and the Burmese military, without major government interference. Women's groups have been particularly active in reminding the public of sexual and gender-based violence (SGBV), and ongoing practices of rights violations. Many groups have organised peace marches, pickets, truth-telling events and press conferences to give survivors of conflict a voice in public (see figure 1).

Similarly, groups of former political prisoners such as AAPP hold regular remembrance ceremonies to give survivors a forum through which to share their experiences of their long years of incarceration, and to commemorate deceased prisoners (see figure 2). Publicly memorialising uprisings, such as the September 1989 prisoner's strike, which resulted in large-scale torture and mistreatment of prisoners of the '88 generation, brings public attention to continuing practices of intimidation and judicial harassment. In addition, such initiatives support remaining political prisoners who reveal ongoing abuses in detention centres. In the absence of any state initiatives to provide redress to victims, a few CSOs are also raising funds to offer assistance and rehabilitation to survivors and their families, especially former political prisoners. Support includes psychological support, vocational training and livelihood support for those affected by state and armed group violence, arbitrary arrests and harassment.

<sup>21</sup> For more information see the final report of the tribunal: Noble Women's Initiative (2010) *International Tribunal on Crimes Against Women of Burma*, available at: <http://www.nobelwomensinitiative.org/wp-content/archive/stories/burma.pdf>.

<sup>22</sup> Quintana, Tomás Ojea, *Report of Special Rapporteur on the Situation of Human Rights in Myanmar*, A/68/397, 23 September 2013.



Figure 1: Truth-telling event ‘Elimination of Violence Against Women Day’ in Myit Kyi Nar, Kachin State, 25 November 2014. (Source: Kachin Women Association-Thailand (KWAT))



Figure 2: AAPP conducting a truth-telling event with former political prisoners from NLD, Pegu Region, 2014. (Source: AAPP)

Twenty years after brutal internal purges erupted among members of the All Burma Students’ Democratic Front (ABSDF) in 1992, survivors and victims’ relatives have started to speak out. The organisation established a Truth and Justice Committee in 2012 to investigate the killings and torture of alleged government spies within the ABSDF and issued a formal apology. The investigation results were released in March 2015. Government documents

that could have shed light on who actually was a spy and who was not were not accessible. For this reason it was not possible to determine who became a victim of false accusations. However, the report does acknowledge the occurrence of torture and killings, identifies perpetrators, and urges them to officially apologise.<sup>23</sup> The government has been reported to take advantage of this process in order to discredit opposition voices.

The fact that the military leadership in Burma/Myanmar allowed various memorialisation events and unofficial truth projects to proceed is generally highlighted as the primary success in pursuing Truth, Justice, Reparation, and Non-Recurrence (TJRNR) in times of transition. Calls for public and governmental acknowledgement are prominent themes in all memorialisation activities. While some memorialisation initiatives at the national level have been tolerated by the political leadership, truth-telling events in rural areas continue to be a sensitive topic, since survivors in these areas do not gain as much international exposure as survivors in urban areas. For this reason, NGOs tend to avoid sensitive terminologies such as 'justice' and 'human rights'. In addition, some memorialisation initiatives also cause discussions about what type of memorialisation and how much of it is desirable. These matters are particularly pressing in the current context of ongoing peace negotiations and attempts to achieve national reconciliation between the different political parties.<sup>24</sup>

## 5. Lessons Learned and Good Practice

Perceptions of violence and injustice differ significantly among different relevant stakeholders. Different positions are noticeable for example between different ethnic groups, between urban and rural population, between exiles and non-exiles, and between nationally oriented and internationally oriented groups or organisations. With the diversity of interests and actors involved, both a variety of approaches and mechanisms as well as a high degree of flexibility are needed when it comes to working on transitional justice. Additionally, the existence of significant variation in regional and local contexts - as well as in experiences of violence and harm - has to be taken into account. Memorialisation initiatives can serve as an important first step in this process, facilitating dialogue and deliberation about which approaches are most suitable for which groups and experiences. The case of Burma/Myanmar illustrates the difficult choices that transitional justice actors have to make when pursuing TJRNR in contexts of ongoing violence. In addition, the Burma/Myanmar context proves particularly challenging due to the complexity of conflicts and actors and the diversity of harmful experiences (government vs. opposition, different ethnic groups vs. central government, Buddhists vs. Muslims, land grabbing, etc.).

Burma/Myanmar remains one of the poorest countries in the world, and leveraging support for transitional justice is difficult in such an environment. Even though dealing with the past

<sup>23</sup> Myanmar Times, *Striving to restore dignity by admitting past wrongs*, 30 March, 2015, available at: <http://www.mmTimes.com/index.php/national-news/13798-striving-to-restore-dignity-by-admitting-past-wrongs.html> and Nyein, N., *ABSD Report finds torture leaves questions in killing of its own*, Irrawaddy, 16 March 2015, available at: <http://www.irrawaddy.org/burma/absdf-report-finds-torture-leaves-questions-in-killing-of-its-own.html>.

<sup>24</sup> See for example, Myat Min, K., *Suu Kyi apologized for Prome NLD Event Showing Army Brutalities*, Irrawaddy, 3 March 2015, available at: <http://www.irrawaddy.org/burma/suu-kyi-apologizes-for-nld-prome-event-showing-army-brutalities.html>.

has the potential to contribute to improving livelihoods and ensuring stability and reconciliation, it is often seen as a luxury that can only be afforded once other developmental challenges are solved. Large parts of the population tend to focus on 'moving on', addressing daily economic needs, and seeing questions of justice as jeopardising their efforts in achieving social and economic stability. CSOs inside the country are gradually starting to find space to facilitate deeper public discussions on transitional justice needs in order to attain social and economic justice. However, it remains difficult and sometimes dangerous for activists to carry out political work. Also, returning exiles are still facing problems when attempting to return to Burma/Myanmar. Given the continued climate of fear and intimidation, organisations working on transitional justice inside Burma/Myanmar usually operate on a low profile under the guise of 'peacebuilding', strictly avoiding public reference to sensitive issues such as claims for justice and accountability.

Some rights groups, such as the Civil Society Forum for Peace and ND-Burma, started facilitating discussions about possible forms of and pathways to justice and accountability. In a joint letter, several NGOs have urged actors such as NCCT to include transitional justice demands in the ceasefire negotiations.<sup>25</sup> Given that rights violations (especially SGBV) have been perpetrated by ethnic groups and the military, it is likely that the parties involved in the conflict will push for amnesties and silence public recognition of past and present abuse.<sup>26</sup> This is where civil society plays a crucial role – to ensure that victims' voices are represented and not sidelined in high-level political negotiations.

Initiatives addressing the political issue at the national level – where there is more exposure to the scrutiny of international rights groups and governments – have seen a greater scope of action than rural initiatives focusing on SGBV, forced labour, and the use of child soldiers. To close the gap between rural communities and urban communities, or between local activists and exiled human rights defenders, bottom-up approaches and strong community participation are particularly important in the Burmese context, ensuring that multiple narratives are heard and differing levels of systematic violations are addressed. While some issues have been exposed through truth telling and commemoration, other more sensitive issues such as the large-scale abuses against Rohingya Muslims in Rakhine State are not addressed by any form of memorialisation yet.

The fragmentation of victims' and rights groups and the multitude of violations makes concerted efforts challenging. Actors inside and outside the country are still in the process of building up trust. The scope of action regarding memorialisation and social justice differs greatly. Rights groups inside the country have to carefully balance justice claims with peacebuilding and staff security considerations. CSOs in areas on the Thai border and on other borders enjoy greater political space to bring up claims for accountability. Such groups are now starting to establish offices inside Burma/Myanmar and face the challenge of continuing their quest for justice without putting activists working in the field at risk.

---

<sup>25</sup> Yan Naing, S., *Civil Society Pushes for Transitional Justice*, Irawaddy, 24 November 2014, available at: <http://www.irawaddy.org/burma/civil-society-pushes-transitional-justice.html>

<sup>26</sup> In 2013, the government renounced an international declaration ruling out amnesties for sexual violence. See: ICTJ (2014) *Navigating Paths to Justice in Myanmar's Transition*, available at: <https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Development-Report-2014.pdf>.



In addition to their value as mechanisms to provide acknowledgement to survivors of human rights violations and their families, memorialisation initiatives can - in the complete absence of formal transitional justice mechanisms - contribute to paving the way for further comprehensive justice initiatives as opposed to merely complementing them once in place (Cambodia and Timor-Leste are examples of this). The documentation of survivors' and victims' stories prepares the ground for potential future judicial and non-judicial investigations and therefore needs a long-term perspective. Even if the cases referred to the judiciary in Burma/Myanmar are rejected at this point, submissions provide another means to raise public awareness on past and present atrocities, enhancing civic awareness and complementing bottom-up judicial reform. They prove that it is a misperception that the Burmese population does not show an interest in addressing past human rights violations.

The Burmese example underlines the importance and challenges of documentation in times of transition. In terms of sequencing, memorialisation processes (as opposed to memorialisation initiatives as an end product) can serve as a tool to raise awareness of victims' rights among affected populations, help voice public demands for justice and accountability, provide an entry point for social dialogue and gradual change, and provide recognition to survivors of abuses.

## 6. Ways Forward

The transitional justice process in Burma/Myanmar is in its fledgling stages. Space for memorialisation at the institutional level is extremely limited. Thus, initiatives remain confined to the unofficial, civil society level. International exposure and support can help to expand this scope and preserve the memory of those who have been affected by atrocities. In addition, international support is needed to safely repatriate exiles and to ensure the protection of those who work on bringing the transitional justice process forward.

Since the general population is largely unaware of transitional justice concepts and possibilities, awareness-raising and outreach activities are particularly important. In addition, regional and bottom-up approaches are needed to ensure broader participation. CSOs have gradually become more vocal in publicly raising demands for justice. Continuing to facilitate public dialogue on the needs and expectations of victims, and integrating these into memorialisation activities will allow the process to become more responsive, needs-oriented and participatory.

Expanding reparations and rehabilitation initiatives is one of the priorities stated by many CSOs. Against a background of widespread poverty, including elements of economic reparation on the agenda for memory initiatives is important. A broader acknowledgement of how violence and conflict have impacted in the livelihoods of those affected has the potential to leverage the support for TJ among the population. A strong attention for economic justice and compensation is necessary to comprehensively address the needs of victims and survivors.

Even if formal transitional justice processes were in place, it is likely that these would be heavily constrained by the political interests of government leaders as well as leaders of ethnic groups. In contrast, local memory work can help produce more deeply grounded

community-based narratives, less vulnerable to political manipulation. Coordination and networking between different civil society groups allows the bigger picture of human rights abuses at various levels to be revealed.

So far, neither NCCT nor UPWC have taken up transitional justice issues in their ceasefire negotiations. The Working Group for Ethnic Coordination's draft framework for political negotiations explicitly mentions 'National Reconciliation' and the '[c]reation of mechanisms to address and readdress historical injustice against ethnic nationalities'. In addition, it provides an entry point for civil society to advocate for more comprehensive justice measures.<sup>27</sup> Civil society has an important role in continuing to reveal rights violations and push for more comprehensive measures to address them. The oppressive legal framework and ongoing acts of intimidation prevent many activists from operating on a higher profile and addressing questions of justice and accountability more explicitly. The constitutional review process is of major importance for any further steps in promoting transitional justice. Combining local-level initiatives that help to dignify victims and provide crucial individual support by breaking the silence with more centralised advocacy efforts can gradually expand the scope of action for human rights defenders in the transitional justice field.

---

<sup>27</sup> WGEC (2013) *Draft Framework for Political Negotiations*, available at: [www.burmalibrary.org/docs15/Draft\\_Framework-op.pdf](http://www.burmalibrary.org/docs15/Draft_Framework-op.pdf)



## Acronyms

AAPP = Assistance Association for Political Prisoners

ABSDF = All Burma Students' Democratic Front

AP = Associated Press

CSFFP = Civil Society Forum for Peace

CSO(s) = Civil Society Organisation(s)

GHRV = Gross Human Rights Violations

HRC = Human Rights Commission

KHRG = Karen Human Rights Group

KIA/KIO = Kachin Independence Army/Kachin Independence Organisation

KWAT = Kachin Women Association-Thailand

MP = Members of Parliament

NCCT = Nationwide Ceasefire Coordination Team

ND-Burma = Network for Human Rights Documentation Burma

OHCHR = Office of the United Nations High Commissioner for Human Rights

SGBV = Sexual and Gender-based Violence

SLORC = State Law and Order Council

SPDC = State Peace and Development Council

SWAN = Shan Women's Action Network

TJRNR = Truth, Justice, Reparation, and Non-Recurrence

TNLA = Ta'ang National Liberation Army

UNFC = United Nationalities Federal Council

UPWC = Union Peace-Making Work Committee

WLB = Women's League of Burma

This publication has been made possible by



Impunity Watch (IW) is a Netherlands-based, international non-profit organisation seeking to promote accountability for atrocities in countries emerging from a violent past. IW produces research-based policy advice concerning processes intended to enforce victims' rights to truth, justice, reparation and non-recurrence (TJRNR). IW works closely with civil society organisations in countries emerging from armed conflict and repression to increase their influence on the creation and implementation of related policies. IW runs Country Programmes in Guatemala and Burundi, while also undertaking specific and comparative research in other conflict-affected countries on particular aspects of impunity.

Contact us:

## Impunity Watch

't Goylaan 15  
3525 AA Utrecht  
The Netherlands  
Tel: +31.302.720.313  
Email: [info@impunitywatch.org](mailto:info@impunitywatch.org)

[www.impunitywatch.org](http://www.impunitywatch.org)

©Impunity Watch 2015

