

STATE KILLING IN BURMA

(Abuse of) The Legal System and Approaches to Treasonous Offences

The *Penal Code* of Burma (also known as Myanmar) provides for the death penalty, by way of hanging, for murder and related offences, mutiny (by members of the armed forces), and high treason. Judicial death sentences are still imposed in Burma, despite the fact that no death sentences have been carried out in decades. Burma is hence regarded as abolitionist in practice.

Death sentences continue to be imposed in cases instigated by the military for the purpose of stifling political dissent and inciting fear in order to prevent the expression of anti-government (or pro-democracy) sentiment. Offences such as "treason" (and its counterparts under the 1950 *Emergency Provisions Act*), are interpreted so as to encompass a broad range of behaviour construed as anti-government by the military junta. Therefore a person expressing a political opinion unsupportive of the military rule (however subtle) may be charged with and convicted of an offence, or in the case of the *Penal Code*, a capital offence.

Provision for the death penalty is particularly problematic in a country such as Burma, where the military controls each arm of government, including the courts, hence eliminating the possibility of a fair and open trial according to law and fundamental standards of justice. The junta can control the outcome of trials; judges hold no tenure and are appointed by the military and ordered to follow the instructions of the military in the discharge of their functions, particularly in political cases. There are frequent reports of the intimidation of judges (who face sacking, arrest or other reprisal) in order to secure outcomes in particular cases. It is reported that judges sometimes read prepared "judgments" provided by the military. Therefore, an absence of reliable (or any) evidence to support a serious criminal charge is no hindrance to a speedy conviction. The law providing for capital punishment is thus used as an overt and unashamed means of political oppression.

Beyond the erosion of the judiciary, it appears that lawyers are similarly prevented from effectively fulfilling their responsibilities as their clients' advocates. Reports indicate that a defence lawyer is not in a position to defend a client against a crime such as treason — the lawyer's role is limited to attempting to mitigate the inevitable sentence. Many lawyers report they cannot plead as to their client's guilt, nor can they challenge any issue of law in court. Lawyers perceived to be anti-government, as a result of raising statutory defences or too vigorously defending their clients, risk arrest and reprisals by the State.

The unabashed politicisation of the legal process and erosion of the rule of law is further demonstrated through serious deficiencies in the criminal trial process including the failure of the State to abide by its own laws regarding criminal procedure, evidence and the proof of each element of a crime. Political trials are shrouded in secrecy, being held inside prisons to avoid publicity and outside acknowledgement of issues such as the denial of legal representation for defendants or blatant evasion of procedural and evidentiary requirements in the courtroom.

The continuing existence of the death penalty in Burmese legislation is therefore compounded by the standards of justice throughout the entire legal process, and the overt politics underlying criminal prosecutions. Importantly, even where the death penalty is not carried out, its continued use in sentencing at first instance constitutes nonetheless an effective instrument of intimidation and repression.

Extrajudicial Summary and Arbitrary Execution, and the Obsolescence of the Judicial Death Penalty in Burma

Beyond the formal judicial death penalty lies the disturbing rate of extrajudicial, summary and arbitrary execution carried out by the State. Whilst Burma is regarded as *de facto* abolitionist, persons are commonly killed at the action of the State.

Political Opponents and Ethnic Minorities

Summary and arbitrary executions (as well as widespread torture, including rape) are reported frequently, drawing significant and damning international attention. There are widespread reports of villagers being terrorised by the military, often resulting in summary executions, particularly where villagers protest or fail to comply with orders. This occurs commonly — and has done so for decades — in ethnic minority communities, most prominently in the eastern Karen state.

Most recently, and drawing significant international attention, was the summary and arbitrary killing (by shooting and severe beating) of civilian protestors including students, monks, journalists and other peaceful advocates of reform, following the sudden removal of government subsidies on fuel and natural gas in 2007. (Note that whilst the public outcry was triggered by the overnight 500% increase in these commodities, the protestors ultimately used the opportunity to also express longstanding frustrations with the governance of the country and its repressive military rule.) Following the protests, the military hunted down those believed to have contributed to the protests (and escaped reprisal), storming homes and raiding monasteries. Those found inside were met with a variety of summary punishments including arrest, detention, beatings, torture and execution.

Killing During Incarceration

The number of deaths in prison is extremely high. This is unsurprising given the squalid prison conditions including, for example, serious overcrowding (such that prisoners stand shoulder-to-shoulder and cannot lie down), starvation, lack of access to toilets and other exposure to disease resulting from unsanitary conditions, or from denial of access to mosquito nets in order to prevent the spread of infection by insects. Moreover prisoners have no access to medical treatment based on need, and are commonly subjected to serious physical attack including what appears to be systematic torture and violent “interrogation”. An alarming number continue to die in custody.

Therefore, even those enduring short terms of imprisonment for non-capital offences commonly do not survive their incarceration. It can be suggested that this is an intentional corollary of imprisonment: the most serious penalty may be inflicted, in a notably torturous manner, whilst avoiding the need for due process, findings of guilt for serious offences, or explicit acknowledgement of the imposition of a death sentence.

Hence a one or two year sentence imposed for a minor offence can effectively result in an unofficial and unreported death sentence (and certainly has done so).

Forced Labour and Related Killing

The *Penal Code* provides for two types of imprisonment — rigorous (that is, with hard labour), and simple. A significant proportion of prison inmates are handed over to the military for forced labour in appalling conditions, the performance of which has killed (and continues to kill) many. It appears however that many prisoners are forced into dangerous labour irrespective of whether their sentence was rigorous or simple, and that ordinary villagers — not accused of any crime — are conscripted to the same duties and may suffer the same fate. This conscription occurs most commonly in rural ethnic communities already targeted and routinely terrorised by the military. Reports contend that villagers have been arbitrarily charged with crimes for the purpose of rounding up military porters.

Those forced to labour in these conditions frequently die from overwork, starvation, physical abuse including torture, and a lack of medical treatment. Sometimes death ensues from the very nature of the work, which may involve carrying unbearable loads (as well as being starved and abused), and being forced to act as a human shield or “human minesweeper” in military operations. Many are summarily executed along the way or attacked and left to die if they cannot keep up the pace. It is reported that escapees are tortured upon recapture and summarily executed. Similarly, those who cannot perform the labour are commonly beaten, tortured and summarily executed.

Conclusions

Clearly the serious and innumerable deficiencies in the legal system create not only a potential for, but an assurance of, an entirely politicised process in which the most severe penalties apply for those who question the military leadership. The imposition of the death penalty, even if not carried out, appears in itself to be an effective threat against the population. Moreover, obviously the *de facto* abolition of the death penalty is not due to an attitudinal opposition to State killing or the violent suppression of political dissent (on the part of the military), but rather, the discovery of a more efficient means of executing civilians (summary and arbitrary as it may be) with total impunity and without the inconvenience of public and formal legal processes and accountability. Similarly, the horrendous conditions of imprisonment allow for young, healthy (and if it matters, innocent) persons to die during even short terms of imprisonment.

Importantly this means that whilst the number of persons formally executed in Burma may have remained as low as zero for decades, this is only because an inordinate number of people have been executed by the State in a variety of other ways, none of which can be characterised as resulting from recognisable legal processes. As there is no record of or inquiry into these deaths, and as expected, a complete absence of reliable information available from the military, the number of persons so executed is practically impossible to quantify.