

Myanmar: Remove barriers to justice for killing of journalist Ko Par Gyi – New ICJ Report

6 May 2020

In a report published today, the International Commission of Jurists (ICJ) called on the police and prosecutorial authorities in Myanmar to re-open the investigation into the death of journalist Ko Par Gyi in military custody in September 2014.

The report documented the many barriers that have prevented justice from being served in this case, as well as other cases of gross human rights violations in Myanmar.

The ICJ called on the Union Parliament to repeal or amend the 1959 Defence Services Act and other legislation that effectively provides immunity to military personnel accused of serious crimes. These and other barriers have been described at length in the ICJ's 2018 report on [Achieving Justice for Gross Human Rights Violations](#).

"More than three years ago, the police abruptly ended their formal inquiry into the killing of Ko Par Gyi, without providing any justifiable legal rationale for its closure," said Frederick Rawski, ICJ Asia Pacific Director. "In the intervening years, we have seen what happens when this culture of military impunity goes unaddressed."

In the report, *An unlawful killing: How Ko Par Gyi's death highlights barriers to justice in Myanmar*, the ICJ evaluated the various investigations into the death and identified three key obstacles to justice in the case:

- the existence and operation of national laws like the 1959 Defence Services Act that shield security forces from public criminal prosecutions, serving to deny victims and their families the right to truth about violations;
- sub-standard investigative practices that are vulnerable to political pressure and lacked independence, and simultaneous, separate and uncoordinated investigations that resulted in an unsystematic and ineffective approach to investigating the case; and
- a lack of transparency that denied the family their right to access information concerning the violations and accountability processes.

Ko Par Gyi was detained by police in Mon State and transferred to military detention on 30 September 2014. He died four days later in military custody. A deeply flawed inquiry carried out in military courts, pursuant to the 1959 Defence Services Act, resulted in the acquittal of the soldiers allegedly involved. Those same provisions are commonly used to transfer cases involving military personnel from civilian to military court. Under international standards, military courts should not be used to try military personnel or others for gross human rights violations and crimes under international law.

"It is no surprise that an international investigative mechanism has been established to look into alleged serious human rights violations in Rakhine and elsewhere in Myanmar," said Rawski. "Myanmar's legal framework does not provide adequate safeguards to ensure independent investigation into and prosecution of serious human rights violations. What happened to Ko Par Gyi's case illustrates that all too clearly."

The UN Human Rights Council has established an Independent Investigative Mechanism for Myanmar (IIMM) to collect evidence and prepare files for criminal prosecution of the most serious international crimes and violations of international law committed in Myanmar since 2011.

Key recommendations in the report include:

- *To the Executive and the Union Parliament:* amend the 1959 Defense Services Act to align it with democratic principles, the constitutional guarantee of equal legal protection, and the State's international law obligation to protect the right to life, including by prosecuting serious violations.
- *To the Tatmadaw:* apply standards and procedures in military courts that conform to international law, ensure all crimes perpetrated against civilians are tried in the civilian judicial system, and reform rules of engagement to explicitly instruct soldiers to protect life, consistent with international law.
- *To the Myanmar Police Force and the Union Attorney General's Office:* align investigative procedures and practices with international law and standards.
- *To the Myanmar National Human Rights Commission:* take an active and broad interpretation of the MNHRC mandate to address serious human rights violations including those which have gone before courts.
- *To UN Member States and international organizations:* ensure any organizational support to security forces is contingent on and enables demonstrable commitments to prevent and punish violations by its members.

This report was produced as part of the ICJ's [Global Accountability Initiative](#), which aims at combatting impunity and promoting redress for gross human rights violations around the world through the entrenchment of the rule of law

Contact:

Frederick Rawski, ICJ Asia Pacific Regional Director, (Bangkok), t:+66 64 4781121, e: frederick.rawski@icj.org

Kingsley Abbott, Coordinator of the ICJ's Global Accountability Initiative, t: +66 94 470 1345; e: [kingsley.abbott\(a\)icj.org](mailto:kingsley.abbott(a)icj.org)

Background:

Ko Par Gyi

Ko Par Gyi had been travelling to his daughter's graduation ceremony in Chiang Mai, Thailand in September 2014 when police arrested him in Myanmar's southeastern province of Mon State. He had been covering hostilities between Myanmar's military, the Tatmadaw, and the non-State armed group the Karen Democratic Benevolent Army (DKBA). Soon transferred into military custody, he was detained, interrogated, and possibly tortured. On the fifth day in custody he died, and soldiers unceremoniously buried his body in a shallow grave. For 20 days the killing was concealed from his family and the public.

After several weeks, the Tatmadaw announced that Ko Par Gyi had been killed in a botched escape attempt, and that he was at fault for his own death. Its statement claimed that Ko Par Gyi was a member of the DKBA, implying that he was participating in hostilities, not covering them as a journalist. This version of events was called into question by Myanmar's National Human Rights Commission (MNHRC), which recommended a full police investigation and a trial in a civilian court. The recommendation was never implemented.

Several other inquiries also failed to provide accountability or redress. Police inquiries continued for some time, and an inquest into the death was held in the township court in closest proximity to the initial arrest. During this inquest, but separate to it, the Tatmadaw revealed that the two soldiers involved had been secretly acquitted of wrongdoing six months earlier by a military court. The inquest lost momentum and police formally ceased inquiries in March 2016.

The Defence Services Act

The Defence Services Act enables cases involving soldiers to be heard in military courts, even for serious human rights violations such as culpable homicide (section 304 of the Penal Code). Section 71 of the Act provides that soldiers who have committed an offence under non-military criminal law shall be liable and subject to the prescribed penalties, *but subject to* section 72 of the Act. Section 72 stipulates that personnel on "active service" who commit serious human rights violations can be tried by a military court rather than by ordinary courts. Section 3(a) broadly defines "active service," with the effect that military personnel are typically considered to be on active service and thus subject to courts-martial rather than trial in ordinary courts, including for serious human rights violations. State institutions and individuals are restricted from appealing the decisions of these courts.

International Law Obligations

Under international law, all States are duty-bound to respect and protect the right to life. Myanmar's international law obligations flow from the United Nations Charter, treaties and customary international law. The rights to not be arbitrarily deprived of life, and to be free from torture and other ill treatment, constitute customary international law that is never subject to derogation, even during an armed conflict or public emergency. Investigations and prosecutions of potentially unlawful killings should be undertaken in accordance with international law and standards including the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and the revised Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), which require that investigations be prompt, effective and thorough, independent and impartial, and transparent.