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Special Issue

Anticipating the Struggle against Everyday Impunity in Myanmar through Accounts from Bangladesh and Thailand

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Abstract

Work done internationally to address impunity concentrates on removing blanket amnesties and establishing commissions of inquiry into past atrocities. Everyday impunity—the impossibility of bringing state officers to account for routinized violent crimes against other individuals—gets less attention, even though its effects on public life are insidious. Studying the 2014 killing of a journalist, we identify modes for the production of everyday impunity in Myanmar that emerge from earlier periods of unmediated military rule but that today are coming to resemble practices in neighbouring countries. Accounts from Bangladesh and Thailand reveal how impunity can persist in new political conditions, producing insecurity and hampering efforts for more inclusive forms of government. We close by urging scholars to remain attentive to their responsibilities in the face of impunity, calling on them not to participate in projects that have the effect of concealing violent crime by state officers, and denying victims justice.

Key words: impunity, Myanmar, Burma, Bangladesh, Thailand

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1. Prologue

In September 2014, a freelance journalist and erstwhile political activist, 49-year-old Ko Par Gyi travelled to the eastern frontier of Myanmar, or Burma, to document and report on recent fighting between government troops and a splinter unit from an anti-government armed group active in the region. He was last seen being loaded onto an army vehicle in the town of Kyaikmayaw, in Mon State. It took over 3 weeks for his wife, Ma Thandar, to learn he was dead: shot, the defence ministry said, while trying to escape from an encampment on the outskirts of a rural village.

Ma Thandar, a former political prisoner and experienced advocate for civil rights, was not going to settle for the army's story. After initiating a campaign that drew a response from the country's president and attracted international interest, she succeeded in getting officials to dig up her husband's body from the shallow unmarked grave where soldiers had hastily buried him. But the recovery of a body does not mark the end of the struggle against impunity. It merely demarcates the moment at which a single fact—the victim's death in custody—is rendered undeniable. With this fact established, the struggle against impunity begins in earnest.

2. Everyday Impunity and Insecurity

Impunity constitutes 'the impossibility, de jure or de facto, of bringing the perpetrators of violations to account—whether in criminal, civil, administrative or disciplinary proceedings—since they are not subject to any inquiry that

might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims' (Orentlicher 2005:6). Impunity occurs when state agents are insulated against laws to which they would otherwise be subject, whether because of specific provisions to exempt them from punishment, explicit sanction for violations in certain situations, or because of institutional weaknesses (Jorgensen 2009:386). It is sustained by political arrangements or juridical procedures to conceal, excuse or forget the crimes of state officers. To address impunity, state agencies must investigate, prosecute, try and punish perpetrators; provide victims and survivors with effective remedies to receive reparations; make the factual truth of crimes known; and take steps to stop their recurrence.

In this article, we are concerned in particular with everyday impunity. By everyday impunity, we refer to the impossibility of bringing state officers to account for criminal acts committed in the course of their ordinary duties or in their private lives, acts for which they would be prosecuted, tried and punished were they civilians. Although these acts can take many forms, we concentrate on heinous violence committed on another individual. Impunity and excessive violence are intrinsically related (Caldeira 2000:153). The ever-present possibility that state officers might commit acts of violence for which they will not be held accountable produces conditions of permanent insecurity for subject populations. People confronted with this possibility tend to talk about insecurity 'as an everyday occurrence rather than an unusual or spectacular event' (Lemanski 2012:66). Such insecurity is localized and individualized, visceral and grubby; the impunity that accompanies and partly constitutes it is not exceptional or distant, but ordinary and close by.

Everyday impunity is related to but distinct from impunity for acts of spectacular violence, such as when soldiers, police and paramilitary personnel shoot, kill, abduct and unlawfully detain protestors amassing in public places. Most work carried out internationally on impunity is concerned with events involving large numbers of casualties and high-level decisions, and with efforts to overturn amnesties, establish commissions of inquiry, pursue the truth and preserve the memory of what has happened in the past, particularly in periods of waning political repression and nascent democracy (Jeffery 2014). Although work on impunity for spectacular, large-scale violence is profoundly important, here we deliberately adopt a research strategy that takes routine violent state practices seriously. This strategy requires of us that we engage 'with everyday forms of security practice, with competing rationalities of governing (in)security and with local agency' (Hönke & Müller, 2012:392), so as to identify and understand the many unexceptional ways that impunity is reproduced and normalized. It also requires that we attend to how official responses to disparate, seemingly unrelated acts of violence by state officers and their proxies are not arbitrary or ad hoc but are indicative of general arrangements for political domination.

To be clear, we are not ignoring or understating the importance of studying impunity for extraordinary crimes, or the necessity of pursuing top office holders for atrocities carried out on their orders or under their authority. Rather, we see an urgent need to combine such studies with work that examines how impunity enjoyed by a political elite is imbricated with everyday practices to absolve state officers and their proxies for criminal violence. We are arguing for a more sophisticated approach to the topic, which recognizes that measures to protect senior figures from being called to account for gross wrongdoing have an intimate relationship with impunity for everyday violence by subordinates.

We limit our discussion to impunity enjoyed by soldiers and members of state-run paramilitaries. Of course, these personnel are not the only ones who act with impunity in Myanmar, Bangladesh and Thailand. Police officers, proxies for state agents and civilian officials also enjoy impunity for crimes. But in Myanmar especially, military impunity is most deeply embedded, given the peculiarly significant place of the army in all aspects of

political and economic life. For individuals in that country hoping to hold soldiers accountable for ordinary violent crimes, the obstacles —structural and habitual—are particularly formidable.

Failure to address the problem of military impunity in Myanmar will diminish the quality and potential of the country's incipient political transformation. Impunity impedes progress towards democratic change because it reminds people that where soldiers or paramilitary personnel commit crimes, it is pointless, and possibly dangerous, to pursue demands for redress. If formal transitional justice projects get off the ground in Myanmar, as they should (Holliday 2014), they could be undermined by the failure to hold state actors accountable for crimes performed and known publicly: where individuals witness soldiers committing crimes but not being punished, they will hesitate to complain because of fear or low expectation of redress (Cheesman & Fernando 2016). They will also be less likely to have confidence that the political changes announced in the media and through the ballot box will be durable or meaningful.

3. Comparative Study of Insecurity through the Optic of Impunity

People living in Myanmar have endured more protracted and aggressive military rule than the inhabitants of nearby countries. Nevertheless, their encounters with politically active soldiers are hardly unique. The populaces of 2 adjacent countries, Bangladesh and Thailand, have had similar experiences. Presently, Thailand is under military rule. In Bangladesh, the relationships between key politicians and army factions have a strong influence on party politics. Armies in all 3 countries have accumulated enormous material capital, licit and illicit, with which they pursue projects that make civilians insecure.

Whereas in Bangladesh and Thailand military, paramilitary and civilian institutions compete for access to political and economic resources, in Myanmar up until recently, the army aggrandized its own institutions and personnel. Today, times have somewhat changed. But Myanmar's 'turbulent transformation' (Farrelly & Chit Win 2016) does not consist in a withdrawal of soldiers from political and economic spheres. Rather, the army has signaled its intent to remain in these domains, while opening up new offices and opportunities for civilians and military proxies—bringing it closer to extant institutional arrangements in its neighbours.

If Myanmar's transformation is bringing it closer, in terms of the role of the military and the security of its inhabitants, to Bangladesh and Thailand, then what can we learn through accounts from the latter 2 countries of relevance to the former? Specifically, what can comparison with Bangladesh and Thailand tell us about the prospects of holding soldiers in Myanmar accountable for their crimes? To answer this question, we must not only study acts of criminal violence that have gone unpunished but also consider efforts to hold perpetrators accountable and prevent the recurrence of violence (Haberkorn 2015a). As we are here concerned with efforts to challenge and end impunity, we are necessarily concerned with the processes by which it is produced and consolidated through the failure of accountability (Haberkorn 2013). Hence, study of acts of violence alone will not suffice. We also need to trace the processes of impunity, and sequences of events in specific cases, to understand how impunity is produced, and consider how it might be stopped. To that end, we return to the case of Ko Par Gyi, and some more general comments on how impunity is produced in Myanmar, before making comparisons with Bangladesh and Thailand.

4. The Killing of Ko Par Gyi, and After

Soldiers in Myanmar enjoy impunity for a range of day-to-day acts of criminal violence in both non-combat and combat settings. In Ko Par Gyi's case, military personnel stationed at a pier for river transport nearby an area of armed combat observed him as he got onto a motorcycle taxi and notified police and militia stationed nearby, who waylaid him (*Police Captain Tin Oo v. U Par Gyi* a.k.a. *Aung Naing*). Because the personnel had no firm

evidence that he was involved with one of the armed groups fighting against them, the police were legally required to take him to their nearby station for questioning. Instead, a captain from Light Infantry Battalion 208 arrived with a unit of soldiers, and saying that Ko Par Gyi was a member of an armed group active in the area, took him away in one of their vehicles. Rather than being detained in a formal facility where his wife and friends could locate him and come to meet him, where he would have had access to a lawyer and a doctor, Ko Par Gyi was abducted to an unknown location. Insofar as the army captain who took Ko Par Gyi away did not feel bound to laws pertaining to the manner in which a person is arrested and detained, impunity was inscribed into the case from the moment of the journalist's arrest.

One or more soldiers killed Ko Par Gyi and disposed of his body in scrubland shortly thereafter. We now know that the soldiers were attached to Light Infantry Battalion 210 and the killing probably happened in the evening of 4 October 2014. But at the time, Ko Par Gyi's family and friends knew nothing. It was not until a couple of weeks later that Ma Thandar and others were able to come to Kyaikmayaw, in search of answers about his disappearance. At the time, they thought he was still alive. On 19 October, Ma Thandar went to report him as missing at the police station where he ought to have been held and met with military personnel, as well as officials of the Mon State government. None of them mentioned that Ko Par Gyi was already deceased (Ma Thandar 2014). Only on 24 October did the Ministry of Defence issue a short statement to the effect that Ko Par Gyi had been an information officer holding the rank of captain in a splinter unit of an armed group and that he had been shot as he had tried to escape (MNHRC 2014).

The army did not deny having detained the deceased, as it has in other cases, such as in the rape and disappearance of a young mother whom soldiers abducted from farmland in an area of armed conflict in the country's north. Predictably (Cheesman 2010), a habeas corpus application on her behalf failed when the military insisted that it had never had her in custody (*U Dau Lum v. Lt-Col. Zaw Myo Htut*). In Ko Par Gyi's case, because of the manner in which he was detained in the middle of a town, witnessed by civilian bystanders, complete denial would not have been plausible.

Nevertheless, the army did make 2 other moves productive of impunity. First, it concealed the death in custody until weeks after the event, when the publicity around the case reached a point that made a comprehensive cover-up untenable. It did so not only through the work of the unit on the ground, which quickly buried the victim's body, but also with the involvement of superior officers and possibly also with the complicity of a number of other institutions—because the police and local officials would by this time have learned of the journalist's death. The longer the lapse in time between his death and the truth being made known publicly, the more opportunities the army had to despoil the case, and confuse, complicate and conceal the facts.

Second, in announcing the death, the military turned the victim into a guilty party, characterizing him as a member of a rebel unit; a valuable detainee who in the days leading up to his death had helped the military to recover 3 guns, munitions and explosives. This characterization situated the case in a different discursive space from the one it would have occupied had the killed man been represented as an innocent. And although the allegation would not hold up under scrutiny, it enabled the military to influence and shape the debates about what happened to Ko Par Gyi that followed.

One feature of Myanmar in recent years that distinguishes it from preceding decades is the rapid proliferation of print media outlets, which have thrown their support behind a host of advocacy campaigns, from protests against the Letpadaung Hills copper mine, to the student rallies for amendment of a new national education law. So when Ma Thandar and friends of Ko Par Gyi began campaigning to recover his body and demand justice, newspapers and weekly periodicals quickly joined the call. Ko Par Gyi and his wife were well known and liked, and for many activists and journalists, his killing was not just news; it was personal.

Responding to the campaign, the military—perhaps not having anticipated the amount of publicity that the case would receive—announced that the missing man was dead. Nevertheless, police initially refused to open an inquiry into the killing, before reluctantly agreeing to do so (AHRC 2014a). The country's president weighed in, calling on the Myanmar National Human Rights Commission to conduct its own investigation. It responded accordingly. Other institutions got the message that in this case they could not stand idly by and be seen to do nothing. And so on 5 November, a team of police, military and civilian personnel walked into the brush of Mon State to watch as medical officers dug up Ko Par Gyi's body.

If the struggle against impunity consists in part of the right to know the truth of what has happened, then the emptying of a remote, unmarked grave represents a small but important landmark—both literal and figurative—in the fight to hold the army in Myanmar accountable for its crimes. It also signals the novelty of the political space in which people in Myanmar today find themselves. Only a few years earlier, the digging up under the watchful eyes of civilian officials, police, doctors and lawyers of the body of a person whom the military had killed under mysterious circumstances in an area of armed conflict would have been inconceivable. But the distance between the body uncovered and the truth uncovered is great, and from the truth uncovered to the holding of perpetrators to account, still greater. And it is in these remaining distances that the effects of impunity are most pronounced, as the perpetrators move from denial of basic facts to acknowledgement of some facts but denial of responsibility or accountability.

According to people who witnessed the exhumation and saw the body later, including the lawyer for Ma Thandar, the remains—which had not significantly decomposed in the dark soil and humidity of the late rainy season—still showed signs of torture. Some said they saw knife cuts on the chest and scars from a roller having been run up and down the shins: a known torture technique in Myanmar (Cheesman 2015:146, 153). Furthermore, human rights defenders following the case claim to have spoken with medical examiners who said off the record that they think Ko Par Gyi had been shot by firing a pistol upwards from underneath his jaw (San Aung 2014; Kyaw Su Mon 2014). As officers are issued pistols, the examiners' statements led the human rights defenders to the view that a mid-ranked soldier executed the detainee.

However, when the national human rights commissioners released their investigation findings in December 2014, they endorsed the army's version of the story, describing Ko Par Gyi as having been shot when he attempted to seize a weapon from a soldier on guard while he went to urinate (MNHRC 2014). Furthermore, their report explicitly stated that the investigators received no evidence of torture. They also suggested that Ko Par Gyi had been well treated while in custody, eliding the fact that his detention was from the beginning unlawful.

Rather than constituting a firm step towards the end of impunity, the commission's report succeeded in producing more ambiguity and uncertainty about the forces at work in this case. From its reading of events, Ko Par Gyi's death was the result of an unfortunate sequence of unintended mistakes and procedural errors, not malicious intent. The mistakes of the army and police lay in not keeping him at an official facility but instead transferring him to the custody of a mobile column—a transfer that was justified in the belief that he was a fighter for an anti-government group and could help the column to recover weapons—and in not fully and correctly documenting his arrest and subsequent death, investigating his identity or making the facts known as early as possible.

Yet for these mistakes, the commission also laid blame on the deceased. While observing that he was recognized among professionals as a freelance journalist and was not a member of an armed group as the army alleged, it implied that the soldiers and police who initially detained Ko Par Gyi were not to know better. He was not properly accredited, the commission said, nor had he met senior journalists in the areas of the country where he was doing his work, who supposedly could have intervened quickly on his behalf to assist in getting him released. Furthermore, he had been in the

company of anti-government fighters and also allegedly was carrying a fake identity card. Such cards are commonplace among people travelling in the frontier regions of Myanmar, a country where identification records are yet to be fully computerized. But by highlighting the alleged possession of a fake identity card, which the journalist may have needed to save his life on more than one prior occasion, the commission could also conveniently redistribute responsibility for the death of Ko Par Gyi between perpetrators and victim, thus mitigating the blame laid on the killers, and casting doubt among the victim's family and friends that they will ever obtain justice for his death.

5. The Production of Everyday Military Impunity in Myanmar

At the end of March 2015, a court in Kyaikmayaw opened a postmortem inquest into Ko Par Gyi's death, and began hearings in April. Neither Ma Thandar nor her lawyer was notified, and it was only on the third hearing that she was able to come to the court to listen to the proceedings (Verbruggen & Naw Say Phaw Waa 2015; Ne Min 2015).

From the outset, the case was damaged by contradictory accounts of different officials and witnesses, and through the roles of medical examiners and the Myanmar National Human Rights Commission in endorsing the army's version of how Ko Par Gyi was killed. This mode for the production of everyday impunity in Myanmar is familiar, even if some of the specific actors in this case were new to their roles. Doctors and government officials in Myanmar have a track record of assisting police and military personnel to displace allegations of abuse in custody. In July 2014, for example, a doctor put the death of a rickshaw driver detained by the police in Bago, north of Yangon, down to alcohol poisoning, even though his body was covered in bruises evidently caused by assault in custody (AHRC 2014b). The year before in Pyay, in the north of Bago Region, police had attempted to compel a doctor to reach the same conclusion of alcohol poisoning for another death in custody. The doctor resisted their pressure and reported the extensive injuries she found on the body. Nevertheless, a lower court concluded that the injuries were self-inflicted due to withdrawal from alcoholism. A superior court judge overturned the finding on appeal from the prosecutor's office (*Republic of the Union of Myanmar v. Inspector San Lin*), but absent of explicit instructions, the matter went no further.

In Ko Par Gyi's case, on 23 June 2015, the court hearing the postmortem inquest concluded its inquiry by at last receiving testimony from soldiers, including the 2 men who allegedly killed him. The soldiers admitted that they had shot him, but stuck to their story that he had fled. Around half an hour after receiving their statements, the judge closed the inquest with a finding that the death was unnatural and had occurred while the deceased was in army custody. On the surface, the court's finding would appear to be a blow against entrenched military impunity in Myanmar. But for Ko Par Gyi's case, it made barely any difference. The purported facts as recorded and reiterated by the court corresponded with the contents of the human rights commission's earlier report and had been anticipated by the army. And so far as the outcome is concerned, a finding of an unnatural death in custody does not automatically translate into further judicial action. The express purpose of the inquest is only to 'come to a finding as to the cause of death' (Criminal Procedure Code, s. 176), not to issue directions on how to proceed—hence the lack of progress in the aforementioned case.

Even if a police officer seizes the initiative and opens a criminal inquiry against soldiers who stand accused of killing civilians, structural impediments make the likelihood of success practically nil. Army officers troubled by assertive complainants resort to aggressive methods to rebut serious and persistent allegations. They threaten complainants or coerce them to accept payments in exchange for dropping their complaints. In some cases, they lodge counter-complaints against the individuals who have challenged their versions of events. The father of a teenage girl killed in 2013 by stray gunfire lodged a complaint against the unit commander responsible for

the shooting, who in turn filed a criminal charge against the father for making a false accusation (Cheesman 2015:238–9). The counter-complaint acknowledged that the girl had died because of gunfire but denied that the military had been negligent. In February 2015, a court convicted the father but ordered him to pay a fine in lieu of prison: a strategic outcome serving to deliver a message that the army's word ought not be challenged—at least, not by an ordinary citizen—but one also calibrated to avoid a public backlash at a time that the military is more interested to avoid bad publicity than it was previously.

The concern of the commander over the allegations against his unit in the above case might have had more to do with his own reputation than with the prospect that he or his subordinates might actually be held responsible for their conduct other than within the usual disciplinary channels. The Myanmar army effectively reserves the right to decide on all matters involving soldiers, down to the lowest levels. Even in the most flagrant ordinary criminal cases, where troops are acting outside of operations and not under command, the army has little tolerance for civilian interference in what it deems its internal affairs. When 3 low-ranked men absconded from their base to rob a young couple and murder one of them near a popular riverside lookout in Pyay in 2013, they were quickly apprehended, and the police initiated criminal proceedings (AHRC 2013). An officer from the battalion came and took them into military custody. Instead of permitting a criminal trial, the battalion conducted a court martial that was closed off from the families. The court martial found the men in violation of their code of conduct for leaving the base without permission and reportedly sentenced them to short periods of detention within the base—although civilian lawyers could not get access to the army's records of what did or did not take place, so even these basic details could not be confirmed.

Consequently, it ought to have come as no surprise to lawyers in Ko Par Gyi's case that in May 2015 while the postmortem inquest was still underway, the military preempted the court's findings by announcing that it had already court-martialled 2 soldiers and acquitted them of wrongdoing for the detainee's death (MNHRC 2015). The military's announcement effectively closed the door on any efforts to have a criminal case opened in civilian court even before they had begun. It also eminently lightened the responsibility of the inquest judge, who now could rest easy in the knowledge that a finding of custodial death would be consistent with the army's own position but also would not have any further ramifications. The army, after all, had justified its position on the grounds that the matter was under military jurisdiction, because the personnel involved were on active service at the time. In other words, they killed in the performance of their duties: a justification for killing that echoes strongly with the experiences of people in Bangladesh and Thailand.

6. Echoes from Bangladesh

The use of lethal force is usually overlooked in public and applauded in private in jurisdictions where courts are chronically slow and the police inefficient (CHRI 2007). Consequently, since independence in 1971, governments in Bangladesh have resorted as a matter of policy to proactive and premeditated extrajudicial killing of perceived enemies. While the scale and nature of police and military involvement in killings has varied over time, the unwillingness and in some cases inability of governments to hold personnel accountable has been constant (D'Costa 2012). Successive governments in Bangladesh, like their counterparts in Myanmar and Thailand, have diminished human rights safeguards ostensibly as a matter of necessity. Enhanced police powers, they have insisted, are required to counter threats effectively, especially in counterterrorism operations. 'Tough' policing requires recourse to illegal methods (CHRI 2007:38).

In the wake of 9/11, with state-security propaganda in full swing, the government led by Begum Khaleda Zia of the Bangladesh Nationalist Party launched Operation Clean Heart and deployed more than 40,000 military personnel to fight crime. From 16 October 2002 to 9 January 2003, soldiers and other personnel

arrested and held around 11,000 people, many of them illegally. Some 58 individuals died while in detention, supposedly of 'heart attacks' (Cheesman 2006:30); others suffered permanent disabilities due to torture while in custody. The government then passed the Joint Drive Indemnity Act 2003 in contravention of international law, to shelter the armed forces and paramilitaries from prosecution for actions during these 86 days. Sheikh Hasina came into power in 2009 promising to put an end to violent excesses, but impunity has not abated in the period since.

One of the most visible manifestations of impunity in Bangladesh is the Rapid Action Battalion (RAB), an elite anticrime and counterterror unit consisting of the military and police. Ever since its establishment in March 2004, RAB has operated virtually outside the purview of the law. According to Human Rights Watch, RAB was allegedly involved in more that 550 killings between 2004 and 2009 alone (HRW 2009:3). Local human rights groups have documented in excess of a thousand killings. Observing RAB getting away with murder, the police adopted the same methods, and several hundred killings have been attributed to them over the past decade. According to Ain o Salish Kendra, a leading human rights organization in Bangladesh, 1,002 people died in custody between 2004 and 2008 (Sarkar 2014). More recently, state agencies caused 154 deaths in 2014, of which RAB was responsible for 37, including 3 in custody, and the police 91, including 11 in custody. Violence during the election period in 2015 and afterwards resulted in 64 deaths between January and March, of which the media reported 18 'crossfire' deaths by RAB and 39 deaths caused by the police that included 'crossfire', 'encounters', 'shoot-outs', 'gunfights', 'heart attacks' and in one case, allegedly throwing a suspect under a train. The unregulated use of lethal force in these cases and others could, if properly investigated, turn out to be extrajudicial killing (Cheesman 2006); however, proper investigation remains wanting.

Children, journalists, labour rights advocates, political activists, unarmed protesters and disadvantaged civilians have all become victims of these so-called crossfire and fake encounter killings (D'Costa 2016). For instance, Limon Hossain, a 16-year-old college student, was in the fields near his village in March 2011 when members of RAB accused him of being a criminal and shot him at point-blank range (ALRC 2014:90–2). Doctors amputated his leg to save his life. On the same day as the amputation, RAB—using a similar technique to the counter-complaint method of army and police personnel in Myanmar—implicated Hossain in an arms case and also accused him of obstructing officers from carrying out their duties. RAB produced a worn-out revolver and a used bullet cap as evidence against him, recorded his age as 25 years, and attempted to frame both Limon and his father as members of a criminal gang (Ahmed 2011). Amputated, Limon was dragged to court for the hearings. Meanwhile, although his family filed complaints in April 2011 against 6 RAB members, no charges were laid. The High Court granted Limon bail for 6 months in response to public interest litigation (ASK 2013). The court directed the government to ensure that he would receive proper medical treatment.

Yielding to pressure from human rights groups, in July 2013, the home ministry decided to withdraw the cases filed against Hossain. Police secretly submitted a final report on the case to a court on 14 August 2012, suggesting that they found no evidence and witnesses against RAB personnel. Limon's mother then filed a no-confidence petition against the final report, which was later rejected by a Senior Judicial Magistrate's Court on 13 February 2013. Fifteen months later, in October 2014, the local court dropped the last criminal charge of obstructing justice against Limon. In an interview, Limon reflected that 'The verdict has proved that I am innocent. But I am not relieved. I will be happy when the RAB officials responsible for shooting me are brought to justice' (Kallol 2014). Limon's case was widely publicized, resulting in some responses from the state. However, as in the Ko Par Gyi case, it is indicative of how both state officers and their targets have deeply held assumptions about the

working of everyday impunity for routinized violations of human rights.

In a more recent case that has captured national attention, on 27 April 2014, 7 individuals, including the Narayanganj city panel mayor Nazrul Islam and senior lawyer Chandan Kumar Sarker, were abducted from the Dhaka-Narayanganj link road. Their bodies were found floating in the Sitalakhya River a couple of days later. Following widespread media coverage, RAB formed an internal investigation team and submitted its report to the Attorney General in December 2014. The probe team, led by Additional Director General (Administration) Aftab Uddin, blamed 3 sacked officers from RAB unit 11 for the abductions and killings, saying they acted on their own. According to the report, RAB headquarters and its intelligence wing tried to rescue the victims but failed because the RAB-11 chief, Lieutenant Colonel Tareq Sayeed Mohammad, concealed information from headquarters. But in statements before a Narayanganj court, the accused trio repeatedly said they committed the crime because it was difficult to disobey an order from a high official.

Everyday impunity in Bangladesh results in large part not from formal provisions to protect perpetrators, or not only from such provisions, but also from an archaic regulatory arrangement that serves to protect members of the armed forces from prosecution (D'Costa 2014). Even after allegations of extrajudicial killings have been confirmed, at most the RAB officers responsible are punished with dishonourable discharge. None of the officers in the case of Limon Hossain have been criminally punished. As in Myanmar and to a lesser extent, Thailand, Bangladesh lacks institutions to ensure rigorous investigation and fair adjudication of suspected ordinary offenders in regular cases, let alone when military men are the accused. In addition to the poor quality of investigation, the lack of fairness in procedure and the long duration of trial, victims and their families often do not have access to the legal aid necessary to defend a case successfully.

In this regard, the government of Bangladesh has not lived up to its commitments under international law. For instance, while the country ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998, it has entered a reservation to Article 14, which imposes an obligation on state parties to pay fair and adequate compensation to victims of torture. It has not ratified the Optional Protocol, which allows in-country inspections of places of detention. At the same time, it has not amended domestic law to bring it into line with the convention and thereby address impunity. The Criminal Procedure Code, which Bangladesh shares in its substantive contents with Myanmar by virtue of the 2 countries' common colonial past, establishes measures that superficially are aimed at minimizing the use of violence in apprehending and interrogating detainees, but neither it nor any other extant law in Bangladesh prohibits the use of torture. As we now explain, the same is true of Thailand.

7. Resonances with Thailand

Although mechanisms for civilian oversight of the military in Thailand are better established than in Myanmar, and arguably, Bangladesh, significant obstacles to justice persist, in particular in cases of torture, enforced disappearance and custodial death. Torture officially is frowned upon; however, state agencies have a long history of using torture during armed conflict, such as in counterinsurgency, as well as in routine activities. As in Myanmar and Bangladesh, torture is not a criminal offence in domestic law, even though like Bangladesh, Thailand is a state party to the Convention against Torture. In the 8 years since it joined the convention, military and police personnel have continued to use torture, and no legislature in Thailand has yet passed a law to bring the country into compliance with its international commitments.

The uneasy place of torture within the Thai polity is reflected sharply in the work of judicial institutions and lends particular characteristics to everyday impunity that in many respects resonate with the story of Ko Par Gyi. The case of the torture and murder of

Imam Yapa Kaseng in the southernmost part of Thailand both illustrates this unease and yet simultaneously suggests how the factual truth, if not accountability, might be recovered (Haberkorn 2015b).

In contrast to Thailand's other 74 predominantly Buddhist provinces, the majority population in the 3 southernmost provinces is Muslim. These provinces and the central state have related to one another through cycles of violence since the late 19th century, when the centre brought the region under its control. The latest round of violence began in January 2004, with a series of attacks by insurgents on state installations. In response, the government declared martial law, and the premier decreed emergency regulations in effect from mid-2005. Taken together, these 2 instruments provide the authorities with a range of powers, including powers for arbitrary search, seizure, arrest and detention on the basis of a vague suspicion. Between them, martial law and the emergency decree permit up to 37 days of detention before a formal complaint has to be brought against a person. Detainees have no right to a lawyer, no right to a statutory equivalent of habeas corpus and no right to see their families. During this period, detainees exist outside formal institutional arrangements and —as in the case of Ko Par Gyi—are held in non-standard places of detention where they are at increased risk of torture, extrajudicial killing and disappearance.

Early in the morning on 19 March 2008, Imam Yapa Kaseng, the 59-year-old imam of Baan Kor Tor village in Narathiwat Province was arrested along with 6 other individuals. Army Special Task Force 39 then detained Imam Yapa in a 6-wheel police truck parked within Wat Suan Tham, a Buddhist temple compound used as an temporary army base—a practice of army deployment in the south of Thailand that has parallels in civil war affected regions of Myanmar. After arrival at the temple, soldiers repeatedly took Imam Yapa from the truck to interrogate and beat him. Barely 2 days after his arrest, Imam Yapa died from injuries sustained while being assaulted.

Section 150 of the Criminal Procedure Code of Thailand mandates that individuals who die in state custody have a postmortem inquest. But as in Myanmar, the findings of an inquest do not necessarily translate into judicial proceedings to hold perpetrators to account. Accordingly, on 24 December 2008, the Narathiwat Provincial Court ruled in Imam Yapa's case that 'The cause of death is that the deceased was physically assaulted by state officials. His ribs were broken and he sustained a pneumothorax on the right side of his chest. This occurred while he was in the custody of soldiers who were performing their civil service duties.' The court both assigned, and refused to assign, responsibility for the imam's death. The particular form of the ruling, which articulates torture as a duty—an explanation cited in other cases of injurious and deadly violence by state officials in Thailand—is of special relevance to our comparison with Myanmar. Rather like the report of the human rights commission in Myanmar, which eschewed the placing of blame on soldiers for the death of Ko Par Gyi while refusing to absolve them of responsibility, the court's ruling both facilitated impunity and also created space to recover the truth of what happened to the victim.

Again as in Ko Par Gyi's case, working with human rights lawyers and activists, Imam Yapa Kaseng's family sought accountability through the institutional avenues available to them: the Civil Court, Criminal Court and the National Anti-Corruption Commission. The Civil Court process was the first to come to a conclusion. On 20 July 2011, pre-trial mediation secured 5.2 million baht (about US $173,000) in damages and compensation for Imam Yapa Kaseng's family, and an apology from the Ministry of Defence and the Royal Thai Army. The Ministry of Foreign Affairs lauded this ruling as evidence of success in fighting impunity for torture and other forms of state violence (MFA 2009). But Imam Yapa's family launched a criminal case as well. In contrast to the civil case, it was dismissed in September 2010, on the basis that civilians cannot bring charges against soldiers for actions carried out while on duty: a determination that has parallels with the language of impunity in Myanmar and Bangladesh. The anti-corruption

commission, which investigates all incidents of wrongdoing by state officials, has not completed its inquiry.

While the awarding of sizeable compensation —and the regret expressed by 2 state entities that rarely apologize—in the case of Imam Yapa is significant, everyday impunity remains fundamentally untouched. The ruling did not lead to the holding of individual perpetrators to account, nor did it result in any institutional change. The Thai military continues to torture detainees, among them, at least 28 individuals held in its custody following the 22 May 2014 coup (iLaw 2015).

But even if accountability does not unfold within the postmortem inquest file, the truth of what happened to Imam Yapa Kaseng does. A clue to the presence of this factual truth is the perverse acknowledgement in the ruling that state officials might be duty-bound to torture. The court made this ruling on the basis of testimony provided by the other men detained with Imam Yapa, as well as the physician who carried out the autopsy. The imam's fellow detainees provided a detailed timeline of the interrogations and tortures he endured before dying. They recalled the condition of his body each time he returned to the truck where soldiers detained them together. Unlike in the case of Ko Par Gyi, where suspicions remain over actual cause of death, the physician who examined Imam Yapa's body was unequivocal that the imam had died because of being hit with a blunt object until his ribs were broken and his right lung collapsed. The doctor further noted that his injuries resulted from being hit repeatedly with a wooden or other hard object. He also noted marks that were likely although not conclusively from cigarette burns, and fresh bruises and lacerations all over the body.

In contrast to the doctor's testimony, the accounts of the 5 soldiers who had custody of Imam Yapa were—like the Myanmar military's description of Ko Par Gyi's death—marked by confusion, obfuscation and a lack of concrete information. By the time of the inquest hearing, the army had already punished all 5 with unspecified violations of the code governing their conduct as soldiers and civil servants and had transferred them to a camp outside the 3 southernmost provinces. The nature of their testimony during the inquest hearing may have been enough to protect them from further criminal proceedings, but the statements of the examining physician and others detained with Imam Yapa mean that a sliver of truth survived. This sliver of truth is a sharp counter to the assertion that torture can be conceived as part of the duty of soldiers. And it is the slivers of truth that keep alive the hopes of people in Thailand, as well as in Myanmar and Bangladesh, that they will one day be able to challenge and overcome the impunity that soldiers enjoy for heinous crimes committed in the performance of their everyday tasks.

8. On the Responsibilities of Scholars

In her book on the recovery of secret police archives in Guatemala, Kirsten Weld (2014:88) writes that well after the end of conflict and dictatorship, 'progressives of every stripe continued to face persecution. The military remained an influential source of political and financial clout, and a reconstituted police force only exacerbated its predecessors' reputation for viciousness and corruption. Impunity reigned; everyday violence, sometimes perpetrated by state security forces, terrorized and distracted the population.'

In many respects, this characterization of conditions in Weld's country of study corresponds with the conditions of Myanmar's turbulent transition. In certain respects, it also corresponds with conditions in Bangladesh and Thailand. Clearly, if the political changes in Myanmar since 2012 give cause for optimism, then the lessons from other countries recommend the optimism be cautious. But equally clearly, conditions in Myanmar have changed sufficiently to enable people to say and do things in response to military impunity that they would not have been able to say or do before the turbulent transformation began. As Nicholas Farrelly and Chit Win (2016) point out, one way or another political power in Myanmar has been rearranged—or at least, is undergoing some kind of rearrangement. This rearrangement has observable consequences in everyday life. More and more people are voicing grievances. But the continued political

and economic power of the armed forces coupled with a corresponding absence of trustworthy, institutionalized legal avenues to have grievances heard and addressed (Cheesman 2014) ensure that the struggle against everyday military impunity in Myanmar will, like in Bangladesh, Thailand, Guatemala and so many other countries around the world, be protracted and difficult.

Under these circumstances, what can scholars do? For one thing, we can take everyday impunity seriously. We can document and discuss torture, abductions and killings that occur at the hands of state officers so as to write against the insecurity that these practices produce, and from which they are reproduced. Because impunity relies on the concealment and denial of factual truth, and the forgetting of what has gone before, to write about the modes by which impunity is produced is one way to challenge it (McCoy 2012). Of course, writing will not itself bring soldiers responsible for crimes to justice, make habitually repressive policing and bureaucratic institutions more democratic or lead to the end of armed conflict. But it can draw attention to how much more work remains to be carried out politically for people in countries where impunity is widespread and systematic to be secure against potentially fatal interventions of state agents into their lives.

At minimum, scholars have a responsibility not to enable impunity by participating in projects that succeed in concealing rather than in revealing the crimes of state officers and denying struggles against insecurity and injustice. Such projects often go under the rubric of security but involve the writing of accounts on conditions in a given country from the perspective—and sometimes with the involvement—of government officials and military or police personnel who are responsible for producing insecurity. By giving an appearance of objectivity and academic credibility to what may be a highly partisan and deeply conservative reading of the circumstances, scholars do further injustice to those people who suffer from crimes committed with impunity. They also fail in their primary task: to find out, stand guard over and interpret factual truth (Arendt, 2006:256–7). Scholars may not choose to join in projects to challenge everyday impunity and collaborate in work for political change, as we do. But at very least, they have a professional responsibility not to lend 'the authority of their theoretical reflection and the substance of their empirical research' (Fassin 2012:6) to misrepresentations of violence and falsifications of facts. These practices are the very ones upon which the production of impunity ultimately depends. As scholars, we have a responsibility not to be complicit in them.

9. Notes

The section in this article on Thailand is based largely upon Haberkorn (2015b). In addition to sources cited, information on the Ko Par Gyi case is based upon personal communications with the lawyer representing his wife in the postmortem inquest, and with human rights defenders following the case.

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