

THE INCREMENTAL RESTRICTION OF THE DEATH PENALTY IN MYANMAR: A STEP TOWARDS ABOLITION?

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Myanmar's political and legal institutions are engaged in a constitutional conversation which has created an incremental approach to restricting the death penalty. This dialogue has historically focused on the internal mechanisms expressing the evolving constitutional competences of the President, the parliament (Pyidaungsu Hluttaw) the courts, and the Myanmar National Human Rights Commission (MNHRC). Since 1988 the military government has ceased imposing executions but allowed the capital judicial process to impose death sentences, and following the adoption of the Constitution in 2008, the hybrid military and civilian governance of Myanmar has continued the de fact abolitionist position with the non-imposition of executions. This internal process has revealed an incremental restriction of the punishment, which it is argued is also reflected in Myanmar's engagement with the international community on the death penalty. This is most significantly experienced in the country's shift in perspectives in the UN General Assembly's biennial vote on the Resolution on the moratorium on the use of the death penalty, and in the first two cycles of Myanmar's Universal Periodic Review.

This paper argues that there are identifiable incremental stages to Myanmar's restriction of the death penalty, which are:

- (a) 1947-1988 that includes a fully functioning Burmese capital judicial system and the imposition of executions in the era of an absence of an international commitment for global abolition;
- (b) 1989-2013 the maintenance of a partially functioning Myanmar capital judicial process with a rejection of the multilateral initiatives and international principles promoting global abolition; and,
- (c) 2014 to 2020 the maintenance of a partially functioning Myanmar capital judicial process and an abstaining from affirming the multilateral initiatives and international principles promoting global abolition.

Whilst it is by no means a forgone conclusion that the next incremental step towards abolition will be taken—and there could be a step backwards—the passage of time will tell whether the argument will come to fruition that following the Myanmar National Human Rights Commission's Workshop on the Death Penalty in 2017, the current constitutional interaction on the death penalty can reasonably allow for the next incremental stage to be take in:

- (d) the process for an official moratorium to transition this de facto abolitionist position into a de jure domestic legal abolition, and then for Myanmar to positively engage with the international efforts promoting global abolition.

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