

Lesson Series 60

Militarization and human rights in Asia

Summary

This lesson series discusses the concept of militarization, which exists in differing degrees in various countries of Asia. In particular, the lesson examines the impacts of militarization on human rights and social structures. The lesson also comprises a table comparing the different political, legal, social and moral premises of democracy and militarism.

In a region where violence, instability and repression is rising, the study of two opposing systems of governance can facilitate discussion on the effective protection of human rights and rule of law.



Theme: Militarization and human rights in Asia

The Issue

The surge in violence, repression and instability in numerous countries around Asia in recent times has taken its toll on rule of law, democracy and the basic human rights of citizens. States are becoming increasingly militarized, utilizing force as a means of social control and punishment. There are many justifications spouted for the necessity of militarization: national security, armed conflict, economic growth or weak governing institutions. In actual fact, militarization causes further harm and instability to society, whether on political, economic or social levels. Violence begets violence; the use of force can never be a legitimate or effective way to govern and develop society.

The Lessons

Lesson 1 will discuss militarization and its consequences on human rights and social structure in different Asian countries.

Lesson 2 will compare the legal, political and other premises of militarism and democracy.

Cover illustration: Cartoon depicting the three organs of state power in Burma. Translated from Burmese.

Lesson 1

This lesson will explore the concept of militarization and its impacts on society and human rights.

A. What is militarization?

Various levels of militarization can be seen in the different countries of Asia, from outright military dictatorships such as in Burma, to military rule in certain areas of Thailand and India, to the arming of civilians in the Philippines. What all these have in common is **the notion that the use of force is necessary to the effective ruling of a population**. Such a notion is in fact the premise of militarization. Not only is force used to resolve policy issues, but those wielding this force, army or police, also hold a certain status, power in society. This power comes at the expense of rule of law mechanisms and democracy, as well as the realization of human rights.

It must be noted that the mechanics of militarization are not always put in place by the state. In fact, there are instances where it is the absence of the state in certain parts of its territory that allow for militarization by militant groups, such as in Nepal prior to the end of its monarchy in 2008. A similar situation can be found in the Indian state of Manipur today, where underground militant groups terrorize the local population due to the absence of effective rule of law mechanisms.

The use of force as a mode of social control is not new to the region. The history of Asia is riddled with feudalism and colonialism, both of which had violent and repressive periods. The independence of Asia's colonized states came at a time when the concept of 'national security' was quite prolific (first as an anti-communist ideology, and later to create conditions for economic globalization). Under such circumstances, many newly formed governments made use of their military and police to control their populations. They adopted repressive measures arguably for the sake of economic growth, but in fact designed to silence dissent and opposition.

Under the pretext of national security, governments armed themselves and waged war against their own citizens. By incorporating national security into legal frameworks, whether as 'emergency' regulations, anti-terrorism laws or state/public security provisions, little room is left for dissent. Moreover, many of the relevant terms are ambiguously defined and the laws give discretionary powers to certain institutions/bodies. An earlier HRCS lesson describes the emergency legislation enacted in Bangladesh in 2007, and the resulting repression and human rights abuse [see HRCS Lesson Series 52: Militarization and human rights in Bangladesh]. Beginning May 2008, the South Korean government used a variety of laws to crack down on tens of thousands of protesters

upset by the government's decision to begin importing questionable beef from the United States. Subsequently, to give the government more leeway in prosecuting individuals, new laws were enacted while old ones were amended [see Jose Ney, 'Democracy in South Korea: Mature society versus immature system', *Ethics in Action*, vol. 2 no. 4, August 2008]. Similarly, the governments of Burma and Thailand have been busy arresting and prosecuting citizens for their commitment to free speech under regressive pieces of legislation [see Awzar Thi, 'Censorship and cyber-thought crimes in Bangkok and Rangoon', *Ethics in Action*, vol. 3 no. 2, April 2009].

Apart from the use of legislation, militarization also makes its presence felt in other aspects of political and social life. Under the guise of 'community organization and development', the Philippines army has assisted the government in identifying groups and individuals opposed to various construction or development projects. The targeting of individuals fighting for labor or housing rights in this way is particularly worrying in a country with high numbers of extrajudicial killings. Soldiers come and live in certain communities for three months, as they did in Pulong Santa Cruz, Laguna province. They then carry out house-to-house surveys regarding people's activities. Sometimes curfews are imposed as well [see Bruce Van Voorhis, 'Sowing fear in the Philippines', www.upiasiaonline.com/Human_Rights, 19 March 2008].

The Indian government, meanwhile, has encouraged the arming of civilian groups—such as the 'Salwa Judum'—as a strategy against anti-state movements. Not only has this failed in its counterinsurgency objective, but it is resulting in an increase in extrajudicial killings and impunity amongst law enforcement agencies.

B. The impact of militarization on society

Militarization makes its mark not only on political and legal systems, but also on social behavior. Its impacts range from the loss of legal protection to kidnapping, the undermining of civilian policing to the lack of respect for women. These impacts are invariably detrimental to the protection and promotion of human rights.

Un-rule of law

Militarization puts rulers and their supporters above the law. Once there is a certain group of people for whom the law does not apply, the law slowly loses its authority and sacredness. In turn, this leads to more people for whom the law does not apply; more instances where the law is ignored. The regulations and norms by which a rule of law system functions, are all ignored or perverted. In many instances, existing laws are misinterpreted to the advantage of those in power, while harsh laws are enacted to punish and suppress dissent. The law can therefore no longer be used to protect individual rights.

The loss of legal protection and the redundancy of lawyers

Under a rule of law system, many safeguards to individual rights are built into the legal structure. The practice of arrest and detention for instance, is subject to specific procedures to prevent any abuse of power. To further ensure that these procedures are followed, lawyers are legally entitled to intervene on behalf of the individual. An individual may not be aware of all relevant legal provisions, or may be afraid to assert her rights in the face of state officers with the power to use force. Effective interventions by lawyers are therefore an essential component of protection.

When a society becomes militarized, the lawyer's role is minimized and may even completely disappear. This was noted in the March 2009 report of the UN Special Rapporteur on the situation of human rights in Myanmar: "None of the prisoners with whom the Special Rapporteur spoke had been represented in the court by legal counsel. Many of them did not even know the definition of the word 'lawyer'."

Although Burmese lawyers may wear black coats and ties like their counterparts in former British colonies, in reality they have little capacity to protect their clients. In effect, lawyers in Burma are a mere decoration. Their incapacity leaves their clients at the mercy of those who arrest and detain them. The situation of the role and authority of lawyers in Burma differs only slightly from other Asian countries, where lawyers complain of being ignored for a variety of reasons.

In particular, the increase in militarization drastically reduces the legal space available for consulting lawyers. Emergency regulations and anti-terrorism laws allow for long periods of detention with limited access to lawyers. Often the possibilities for bail under such laws are also limited, leaving lawyers with little to do in the way of court applications. Moreover, courts themselves do not have the power to adjudicate on the legality of such detentions.

Not only does militarization increase the possibilities of—and decrease the safeguards against—arrest and detention, it also dispenses with fair trial in large areas of the law. In particular, those charged with offenses under 'special laws' are given no trials at all. Guilt and innocence is decided not by the courts, but by the police, military and other parts of the defence establishment. The disposal of fair trial again limits the space for lawyers to protect individuals, however unfairly they may be treated.

The realization that the decision makers in society are now the military, police and other related authorities inevitably leads to widespread corruption: the relatives of a detainee for instance, may try to obtain his release by paying bribes to officers involved in the detention. Lawyers willing to engage in such behavior are then more sought after than those depending on their professional skills. In fact, many lawyers complain that before seeking their assistance, would-be clients inquire into their connections with various authorities.

The absence of a legal profession capable of effective protection serves to enhance militarization. Authorities therefore take extraordinary steps to attack and intimidate lawyers. Many lawyers appearing in cases against the ruling regimes are killed or suffer other grave attacks. Lawyers around Asia have had grenades thrown into their homes, their offices set on fire, or their names listed in government websites as traitors for making representations in courts on behalf of alleged terrorists.

Obstacles to the realization of contract and tort

Civil law requires that dealings on properties and transactions be based on contracts. When militarization undermines the law and courts can no longer inspire confidence to hold individuals to what they have agreed, the certainty of contracts is in question. The performance of obligations then becomes dependent on who has greater force or authority at their disposal; in other words, those with police or military connections.

The same can be said regarding the law relating to tort. The system of compensation for negligent actions on the part of the state or private sector acts as a deterrent when effectively implemented. When those in power are beyond the challenge of the law, negligence cannot help but spread. A public health system left in the control of individuals not subjected to legal scrutiny can lead to negligence in the purchase of medicine, storage of medicine, the treatment of patients or record keeping relating to treatment.

Judicial corruption

Complaints about corruption within the judiciary are heard throughout Asia. The increase of such complaints coincides with the increased use of emergency and anti-terrorism laws. In actual fact, it can be said that the greater the military domination, the greater the possibilities for corruption.

The link between militarization and the increase of corruption among the judiciary is related to the undermining of the separation of powers. Under militarization, not only does the power shift to the executive, but the executive itself begins to come under military pressure. This change undermines the judiciary. Even though externally the courts may exist as before, internally there are substantive changes.

As with lawyers, those judges used to strict professional habits may find themselves making room for more ambitious and adventurous individuals ready to forsake justice for their own interests.

Civilian policing undermined

In militarized societies, civilian police forces are often called upon to assist the military. This assistance can range from joint procedures to operating secret death squads. In any case, civilian policing habits are gravely undermined. Searching a home under normal criminal law for instance, requires police to obtain a warrant from a magistrate, to use minimum force, and to maintain the necessary records. Military searches on the other hand,

are of a different nature. They include heavy arms and personnel, and inhabitants are told to surrender or be fired upon. Military operations are often accompanied by impunity, while police actions are controlled by law. When the police begin to work within a military environment, they will also acquire a taste for impunity.

Routine criminal investigations—a key function of the police—are among the first to deteriorate under militarization. This is largely because the police are often required to create obstacles in cases where the state itself is directly or indirectly involved: they are told to disrupt complaint receiving mechanisms, to intimidate witnesses, or to tamper with official records. They may even receive instructions—from political sources or their own superiors—not to investigate. Police officers also become too busy in other operations to carry out criminal inquiries, such as providing security to politicians.

All this serves to land honest officers in conflict, while generating the attitude that the pursuit of integrity is nothing but a way to get in trouble. Ultimately, police officers learn to use their uniforms as a means to make money; their powers of arrest, detention and the filing of charges are commonly abused to earn some profit. They also begin to associate with criminals, benefitting from the prostitution and drugs industries. In this way, the police themselves pose a serious threat to the citizens they are meant to protect.

Breakdown in social structures

Kidnappings

Kidnapping is a widespread problem in several Asian countries, including Sri Lanka and India. The extent of the problem in India is suggested by a 2007 photograph of a group of young children in the state of Bihar holding placards with slogans such as, “Kidnapping Uncles, do not kidnap us”.

In both Bihar, India and Sri Lanka, businessmen, professors and many other persons have been kidnapped for ransom. Kidnapping occurs for revenge or intimidation, and is also used as a political tool to harass or blackmail individuals wishing to leave certain political parties or engage in ‘disloyal’ activities. Frequent kidnappings of this manner create a certain psychological state amongst society. People become wary of independent thought, free speech, or even any initiative to assist others, in the fear of being kidnapped.

Frequent kidnappings are a symptom of the breakdown of social relationships as well as the institutions of rule of law and democracy. In these circumstances, kidnappings will be accompanied by extrajudicial killings, physical harassment of all types, the grabbing of private property, and illegal occupation of land.

The loss of importance of the individual

When the Sri Lankan secretary of defence was questioned about the assassination of well-known journalist Lasantha Wickrematunge by a BBC correspondent, his quick response was, “When thousands are being killed, does the killing of one person matter?”

When media reports of killings are heard daily for years, sensitivity is diminished. One more killing does not seem to make any difference. If a society is to remain sane however, threats to the right to life must evoke outrage. The loss of such outrage signifies an extremely negative transformation, both morally and psychologically. It also creates further space for killings to occur.

Any rule of law system is formed around the importance of the individual. Every wrong against an individual is of prime importance in the development of civil and criminal law. To define an act a crime means that it is a wrongful act against an individual, and society will offer just retribution. When these crimes are no longer matters for serious reflection, this can only signal the abandoning of criminal justice.

Once criminal justice is abandoned, society is left in a situation where no collective control can be exercised on people's behavior. Individuals can no longer rely on collective support or protection, resulting in the emergence of extrajudicial punishments. Mob justice is one such punishment, where people themselves decide on the punishments for alleged culprits of any offense. Proof of guilt and proportionality between crime and punishment are of little significance in these cases. More important is a sort of psychological satisfaction that something is being done against crime, which will intimidate others.

Another form of extrajudicial punishment meted out by the police or military is where persons are killed during or after their arrest. In different countries, this practice has different names—encounter killings, crossfire killings or self-defence killings.

Just as the life of an individual ceases to be a matter of importance, so threats to private property are also of no importance. Theft and land grabbing are common complaints in Asia today.

Diminishing respect for women

Militarized environments expose women to serious forms of dehumanization. On the roads and at checkpoints, women are often humiliated by vulgar language and behavior. The atmosphere is one of male domination, with the corresponding images of men enhancing their power with guns.

Rape also becomes a common feature. The military allows a permissive atmosphere with regards to women to encourage men and youth to stay put in their assigned locations and duties. Encouragement of sexual adventures is also part of 'keeping up morale' among the armed forces. Many stories of girls abducted for sexual abuse and later killed are heard in the region.

Apart from suffering such direct abuse, women must also deal with problems affecting their loved ones, such as their husbands, fathers, brothers and sons being killed or attacked. Women heading families are a common feature in militarized societies. Under these circumstances, women face a twofold punishment. First, in a society where economic powers are unfairly vested in men, their loss severely affects the economic life of women. Second, women must also bear the emotional loss of arbitrarily losing their men-folk.

Public debates regarding conflict and civil war in Asia rarely touch on their impacts on women. As a result, a considerable amount of suffering is unrecognized and undocumented, even as it leaves a social impact.

Loss of memory, language and attitudes

Once collective consensus on basic social norms and standards has been destroyed over a lengthy period of militarization, significant damage is caused to society's memory and language. This is well demonstrated in the experience of South Asia.

Many Asian societies no longer have a concept of a public officer who will not abuse power. While this can be somewhat attributed to abuse of power under feudal and colonial rule, significant losses have occurred from achievements made in the 19th and 20th centuries. Many juridical notions developed after enlightenment in Europe were brought to Asia and refined, including the development of jurisprudence and legal practices on the basis of rational principles rather than the whims of those in power.

Such development requires enormous effort in any society. It involves the education of generations of people on these notions, as well as the practices required to uphold them; educating civil servants, intellectuals and the population as a whole is no small matter. The introduction of these systems in most Asian countries happened during colonial times, or with colonial influence. Inevitably, colonial interests conflicted with a rational system of justice and rule of law, which meant that only partial changes occurred.

This meant that post-independence, new ruling regimes had to undertake several unaccomplished tasks if they wanted to see the functioning of effective justice and law systems. However, the new governments faced such overwhelming responsibilities that they paid little attention to the development of a rational system of justice. Instead, they were consumed by the need to win popular votes. In the contest for power, they lost sight of society's long term interests.

The first casualty of emerging crises within the new nations was the limited system of justice administration. Modifications to the system in order to deal with immediate problems largely resulted in the removal of basic protection mechanisms and the erosion of rule of law foundations. The subsequent emergence of militarization undermined already weak justice systems that could not withstand the pressures of the military.

The failure of certain practices in society will inevitably lead to a lack of knowledge about them. When the judiciary no longer stands against the wrongdoings of the executive, people will forget what the independence of the judiciary, or the separation of power means. In the same way, words and concepts lose their original meanings. With the change of relationships, there is also a change in the meaning of words. 'Judge' may begin to signify someone who rubberstamps the diktats of the government and a cynic who allows justice to be subjected to the rules of the marketplace. A 'policeman' can be seen as a social menace, someone willing to engage in immorality

without suffering any consequences. A 'trial' can become a mockery, a show trial. Legal procedures, once held as strict rules ensuring fair play, are now trivialities to be dispensed with by anyone, at anytime.

The loss of the memory of a rationally functioning justice administration is accompanied by a change in the associated language. This will affect social attitudes. People will begin to lose respect for relationships based on laws. The acquisition of goods and power by whatever means, emerges as a legitimate social ideal. The crudest forms of selfishness cease to be considered socially denigrating.

Questions For Discussion

1. Discuss the concept of militarization. What can lead to a society's militarization?
2. How militarized is your society? What are the manifestations and impacts of militarization?
3. Discuss the relationships between any/all of these:
 - a. Rule of law
 - b. Violence
 - c. Democracy
 - d. National security/anti-terrorism laws
 - e. Corruption

Lesson 2

This lesson will examine the different premises between democracy and militarism, and discuss how militarization can be overcome.

A. A comparison between systems of democracy and militarism

	<u>Democracy</u>	<u>Militarism</u>
Political	<ul style="list-style-type: none"> • The source of legitimacy in a democracy is a constitution based on the separation of powers, under which an elected government will rule. <p>This is true even when the government does not abide by all the basic principles of liberal democratic constitutionalism.</p> <p><i>While it is not necessary for a constitution to be manifest as a written document, most modern constitutions are found in written documents.</i></p> <ul style="list-style-type: none"> • The separation of powers provides a check and balance mechanism to ensure that different government institutions function as they are meant to. • Accountability and command responsibility are concepts innate to the system; political institutions, public bodies and all government officials are expected to 	<ul style="list-style-type: none"> • The source of legitimacy in a militarized society is the capacity to use force. <p><i>The use of force is not subjected to any overriding rules or monitored by any institutions. If there is a constitution at all, it is a document upon which the military ruler or clique can incorporate whatever they wish.</i></p> <ul style="list-style-type: none"> • There is little/no separation of powers. Everything is under the direct or indirect control of the military/ruling regime. There is hence nothing to limit the powers exercised by the rulers. • Accountability exists only to the rulers. Beyond that, no standards are followed, no actions regulated.

Democracy

abide by the relevant standards.

Legal

- In a democracy, the entire system is subjected to the rule of law. This implies that:
 - Laws arrived at by consensus are above everything else.
 - The implementation of the law is subjected to a process laid down in the law itself.
 - The rulers, like everyone else, are subjected to this law and process.
- Rule of law institutions are established to be impartial and independent.
- Criminal justice and fair trials are sacred in their importance to the effective and harmonious governance of society. In particular, criminal justice allows for:
 - Distinctions between guilt and innocence;
 - Punishments proportionate to crimes.

Social

- Equality is the ideal basis of societal relationships and reason is the basis for institutional arrangements. This works to provide the perception of norms, dispute management and justice.

Militarism

- Under militarism, the ruler is above the law. This means that carrying out his orders need not be subjected to any process; the ruler can decide on whatever way his orders are implemented.
- Rule of law institutions are taken over by the rulers and used as rubber stamps for their orders and regulations.
- Criminal justice is no longer sacred, as society is not to be governed by legal concepts. This means that punishments are no longer proportionate to crimes, removing the distinction between guilt and innocence. Fair trials are therefore no longer necessary.
- Power and force become the basis of relationships and there is a gradual displacement of reason from all institutional arrangements. Options for resolving disputes thus become limited, effecting violence as both the means and the ends.



Democracy

Militarism

Social

- Policymaking is done through the building of consensus, involving the exchange of ideas, opinions and perspectives of different interest groups. All attempts at resolving problems thus incorporate the freedom of expression and the right to information. Coercion is kept to the minimal, while its elimination remains the ideal.

- Facts are established upon proof and reason, on which basis decisions are made. All discourse centers around the struggle to reduce the distance between what is imagined/speculated and what is proved.

- There is a constant search for truth and a re-invention of language to improve society. Words are given meanings consensually to minimize friction between diverse interests.

Moral/ Ethical

- The utmost respect for life and prevention of murder is the ideal moral foundation of democracy. For decision makers, all other considerations, including security, are secondary to the preservation of human life.

When people's options are restricted, they are forced to participate in militarization.

- Policymaking is separated from the needs and views of the public; there is no freedom of expression or right to information. Instead, blatant propaganda is initiated by the rulers to create the impression of artificial consensus. Coercion is the order of the day and all dissent is brutally silenced.

- Facts and figures lose significance, creating a 'no-fact zone'.

- The distinction between truth and the absence of truth is made relative, to the extent that all rules of language and discourse become irrelevant. Words have whatever meaning given to them at any particular moment.

- Under militarization, the absolute prohibition against murder and respect for life ceases to be significant. In fact, murder becomes a lesser evil; gradually, murder becomes a way to settle disputes and to threaten individuals.

Moral/
Ethical**Democracy**

- All life is valued highly and special measures are taken to protect and empower women and other vulnerable social groups. The concept of guardianship holds considerable moral weight, whether relating to that of parent-child or state-citizen.

The protection of persons in police custody for instance, is an important norm and its violation is considered morally demeaning, to be subjected to sanction.

- Corruption is seen as an abhorrent practice, something to be avoided at all cost, in all areas of life. Legal and other measures are therefore taken to promote transparency, weed out corrupt practices and punish those involved in them.
- Individuals seeking reforms are encouraged, as is their potential to address society's ills. The state and society provide platforms for dissenting ideas and proposals.
- Fostering confidence and solidarity amongst society is the aim of moral and ethical discourse.

Militarism

- The cheapening of life extends to other areas such as personal and family relationships. In particular, respect for women is eroded, resulting in their contemptuous and violent treatment. The same is meted out to other marginalized and vulnerable social groups. In fact, domestic or private violence is simply a reflection of the public violence occurring in a militarized society.

- Corruption is a way of life. Once political and other rulers do away with rule of law safeguards, corruption becomes intertwined in all aspects of daily behavior. It becomes a means to gain power, make money and manipulate persons.
- Individuals seeking reform and improvement are uncertain of where to begin or whom to rely on for support. This is particularly so as there are no official or legal avenues for expressing dissenting views.
- Distrust towards others is the norm.

Democracy

- Special attention is given to the weak and marginalized, to improve their chances of competing with those in more powerful positions.

The ideal for individuals seeking reform is to be mostly involved with these groups of society.

Militarism

- Powerlessness becomes the excuse for compromise, no matter how morally unacceptable.

B. Overcoming militarization

Steps to move society past militarization can include the following:

- Raise key issues relating to the rebuilding of public and legal institutions as well as the various repressive laws in operation. While public confidence in justice mechanisms may have been lost, there can be no recovery from militarization without them.
- Develop databases and information centers for the purpose of documenting all incidents of human rights abuse. Not only is this documentation a record of history, but it can eventually serve as a means for legal and other redress. Nobel laureate Elie Wiesel recalled the advice of rabbis at the height of the holocaust: to record everything people see happening to others or themselves. The literature that survived through this provided the basis for later reflection, and helped the recovery process legally, socially and spiritually. The Diary of Anne Frank is a remarkable piece of such literature.
- Foster the capacity to understand individual and collective shock and shame suffered under these circumstances. In the aftermath of WWII in Germany, people suffered various illnesses, resulting in the famous book, *The Inability to Mourn: Principles of Collective Behavior* by Alexander Mitscherlich and Margarete Mitscherlich. Individual and social recovery was found to be dependent on the capacity of people to admit their plight and mourn, and thereby find the path to recovery.

Questions For Discussion

1. In your opinion, what are the key premises of both democracy and militarism? How do they differ?
2. Discuss how these differences are manifested in your society.
3. Discuss ways to address militarization; to move towards democracy and rule of law.

