

Are transitional justice approaches effective in dealing with mass torture in Asia?

Lessons from the Field, Strengthening Our Approach

Regional Roundtable Discussion
Empowering Survivor, Strengthening Accountability for Torture
Jakarta, 5-7 April 2016





a visitor in front of photo exhibition



On 6 April 2016 AJAR (Asia Justice & Rights), with KontraS (Commission for the Disappeared and Victims of Violence) Indonesia, the NPC (National Peace Council) Sri Lanka, and Asosiasi Chega Ba Ita (AcBIT) co-hosted a regional conference to examine the question whether ensuring accountability for the widespread torture that has taken place in the past can contribute to the ongoing prevention of torture. Lessons from Indonesia, Timor-Leste, Myanmar and Sri Lanka were shared, with a focus on local and civil society-led initiatives as well as national policy changes designed to transform entrenched practices of torture.

Over 70 participants, including survivors, policy makers and NGO representatives, exchanged experiences and lessons learned, explored the links between past practices of torture and present challenges, and identified common issues and innovations in their pursuit of accountability for torture and empowerment for survivors.

Opening Remarks

In his keynote address, Dr. Anwar representing the Minister of Human Rights and Law, emphasized the need to redress the practice of torture in the past in order to strengthen accountability and prevention of torture at the domestic level. There is a dilemma for law enforcement with regards to justice for the perpetrators of torture in the past. We must distinguish an understanding in principle of the rule of law within the usual (ordinary) and the transition time. Dynamics in international law in the last two have focused on individual responsibility for international crimes. There is a gap in the paradigm of international criminal accountability arrangements through the mechanisms of international law and national legal policy that needs to be reduced in order to increase the value of the legitimacy of the policy to be issued by the state. Thus, the regionalization of human rights through ASEAN becomes significant, considering the theme of human rights protection in the region has become a central issue in the Southeast Asian regional politics today.

Opening the conference, AJAR President, Patrick Burgess emphasized accountability, arguing that “torture takes place in the dark, we must shine a light . . .” and empower victims and survivors to push for greater accountability, legal reform and much-needed legal aid. He outlined AJAR’s initiative to learn across four countries in transition, as an opportunity to identify the common challenges to account for mass torture in the past and prevent its recurrence in the future. Torture survivors across the region are rebuilding their lives with little support or acknowledgement from the state or their communities. In many cases, they continue to face discrimination and harassment. This is particularly true for women victims of sexualized torture. Further, impunity for past torture actively contributes to new cases of torture, as

security institutions still refuse to punish perpetrators. Transitions to democracy based on the rule of law take decades to achieve. Creating a space for mutual learning is critical to ensuring a successful transition.

In his keynote speech, Charles-Michel Geurts, Deputy Head of the European Union (EU) Delegation to Indonesia and Brunei Darussalam, noted, “the work against torture begins at home.” Speaking from EU’s own experience, where EU member states have moved from totalitarian states that have used torture towards more democracy. EU knows the importance and challenges to achieving accountability for torture. We have experienced this ourselves. Thus, strengthening the resolve of EU member states to ban torture and support efforts to prevent and prosecute torture. One key lesson is how important it is to have national mechanisms. Our own societies must be willing and able to expose your own situation to national and international mechanisms, using the UN Torture convention, to visit to places of detention, hospitals etc. AJAR’s project is necessary as torture exists. Torture is one of the worst violations that is still prevalent. It is important to work together, lawyers, civil society, human rights mechanisms, international and national initiatives to focus on eradication. This is a continuing priority of the EU.

Session One: Challenges for Human Rights Institutions in Strengthening Accountability for the Past and Preventing Torture in the Future.

The **first roundtable session** brought together policy makers from Indonesia and Timor-Leste, and experts on Myanmar law and politics, Sri Lanka peace building and reconciliation, and transitional justice in Asia.

Silverio Pinto Baptista, Ombudsman for Human Rights and Justice in Timor-Leste, outlined some of the challenges for transitional justice in that country. Setting the scene, Mr Baptista explained that under the Constitution of Timor-Leste the Ombudsman is identified as an “independent organ in charge of examining and examining and seeking to settle citizens’ complaints against public bodies, certifying the conformity of the acts with the law, preventing and initiating the whole process to remedy injustice.” Further, the Ombudsman’s office, PDHJ (the Provedor for Human Rights and Justice of Timor-Leste), is charged with promoting and protecting human

rights and promoting good governance. He pointed out, however, that while the PDHJ can make recommendations, it couldn't initiate cases to tribunal. Mr Baptista recalled that cases of torture were brought to the serious crimes hybrid tribunal, and that both truth commissions (Commission for Reception, Truth and Reconciliation, CAVR 2005 and Commission for Truth and Friendship, CTF 2008) made findings about systematic torture. However, many of the recommendations for victims of torture have yet to be implemented. Mr. Baptista lamented the lack of understanding in Timor-Leste of the concepts of victims and victims' families as well as veterans (former combatants) and their families. He advised that the national parliament had not yet made a decision on a reparations program for victims and posited that the national leadership in Timor-Leste favored reconciliation over transitional justice, noting that social assistance for veterans and their families (eg. scholarships, medical treatment and other support) was widely considered as 'reparation'.

Roichatul Aswidah of Komnas HAM, the Indonesian Commission of Human Rights, similarly pointed to the Commission's restricted mandate as a major challenge for strengthening accountability in Indonesia. Komnas HAM is mandated to make recommendations but has no legal power to ensure their implementation. She observed that 'torture' (as defined in CAT) is prohibited under Indonesia's constitution, but not yet included as an offence in the Indonesian penal code, noting however that Law 26/2000 on the Human Rights Court contains a provision on torture that does conform to CAT and specifically lists torture as a gross violation of human rights amounting to a crime against humanity. The law also provides for Komnas HAM to conduct inquiries into alleged cases of 'crimes against humanity' in Indonesia. Komnas HAM has included torture as crimes against humanity in its pro-justicia investigations. However, only three out of the ten cases have been followed-up by the Attorney General.

Komnas HAM is hampered in its monitoring and investigating functions however by a lack of access to detainees and inability to conduct unannounced visits, as well as limited resources. Consequently Indonesia remains marred by impunity for perpetrators of torture in the past while the scourge of torture as a "routine practice in the present" continues (particularly for police) amounting to systematic torture. Ms. Aswidah called the practice of torture a "silent crime" that is continuing across 4000 official and non-official detention centers in Indonesia.

For Myanmar and Sri Lanka, recent changes of government as well as increased international attention provide opportunities for refocusing reform after decades of routine use of torture, extra-judicial killings and forced disappearances by police and security forces. In both countries such abuses have been compounded by widespread



corruption and weak judicial systems largely serving and supporting those in power, and by entrenched impunity.

Mr Robert San Aung spoke about how Myanmar is only now in its starting point of transition, after 60 years of military dictatorship, where torture by police and military was a daily occurrence. A consequence of the dictatorship include a weak judiciary, judges & laws that are servicing those in power, widespread corruption, and the practice of rape with impunity. Currently, Myanmar's Human Rights Commission serves mainly as a mouthpiece of government. Mr. Aung highlighted the case of Ko Par Gyi, a journalist detained and fatally tortured. He is representing Ko Par Gyi's widow on this case and they are still waiting for justice. Mr. Aung highlighted three key issues around accountability for torture in Myanmar: political prisoners and student activists who are still in detention, how to strengthen check and balances for security sector; and a shift in institutional practice to mark the fact that the time for dictatorship is over. Myanmar needs regional solidarity and policy reform.

Sri Lanka expert, Joe William, described "a savagery that is part of the state structure". Mr. William noted that policies that enable torture are still in place, such as the Prevention against Terrorism Act (1987.) There is some progress in documenting torture as "isolated incidents", but impunity is also entrenched. The



past regime in Sri Lanka used torture and disappearances as a twin strategy for repression. Currently there is international pressure and a change of government. This is an opportunity to focus on national reconciliation, such as the co-sponsored UN resolution on transitional justice in Sri Lanka. But we must be wary. Whose truth? The people's truth, old or new government truths? At same time, we must continue to push for prosecuting war crimes for mass crimes, torture and rape

Summing up, Patrick Burgess noted a pattern of impunity across Asia with torture continuing to be used. In Asian countries where there has been a truth commission that included a focus on torture, the recommendations have not been implemented. He reflected on torture as a "crime of opportunity", stressing the vital importance of reducing the opportunity, both during conflict and in the criminal justice system generally. He highlighted the need to work together with the police and security sectors for accountability and professionalism, with emphasis on advancing police investigation skills to eliminate reliance on torture as a method of interrogation.

Participants agreed that with the era of dictatorships and authoritarianism at an end, now is the time to work together for greater accountability and openness, and for governments and civil society to set a course for transitional justice.

Session 2:

Mapping Where We Are - Civil Society's View

This session brought together civil society actors from Indonesia, Myanmar, Sri Lanka and Timor-Leste to explore similarities and differences between their respective countries regarding approaches to accounting for torture past and present, the current circumstances for torture survivors, and opportunities for transitional justice.

Haris Azhar of KontraS, spoke of the deep roots of violence in Indonesia, noting that while new policies and institutions had been created, a climate of impunity and a tolerance for the continuing practice of torture endure. A sense that democracy was being hi-jacked by New Order era political elites and perpetrators of human rights violations was shared.

On Sri Lanka, Ms. Sumadhu Weerawane from NPC spoke about how entrenched impunity and a deeply engrained cultural tolerance for torture (in many forms, including corporal punishment in schools) present ongoing challenges. She cautioned vigilance against the effects of Sri Lanka's complex legacy of violence shaped by ethnic conflict and terrorism. She was hopeful however, citing Sri Lanka's government supported TJ framework, truth commission, and a new witness protection law (*Assistance to and Protection of Victims of Crime and Witnesses Act, 2015*). She identified a number of opportunities for reform including: improving rule of law through legal and institutional reform; strengthening independence of institutions governing oversight and appointments, including the Police Commission, the Human Rights Commission and the Judicial Commission; reducing the military presence and engaging in demobilization; adopting a hybrid court system for specific violations to restore the faith of victims in the judicial process and to make a clean break from impunity; ratifying the Optional Protocol on CAT/ Convention for the Protection of All Persons from Enforced Disappearances and advocating through grassroots activism – ie. work with local partners on information dissemination campaigns on torture and the Victim and Witness Protection Act, giving a platform to victims to their stories with the media

She noted how creating spaces for victims of torture to speak out are a very critical element to strengthen empathy in the society. This is a first step to making real transformation.

In contrast, Nay Win from Myanmar Legal Clinic described the newly elected government's resistance to transitional justice and noted that despite the peace process, Myanmar still faces ongoing ethnic conflict and widespread torture. Participants stressed the urgent need for the NLD government to strengthen rule of law mechanisms and to establish an independent human rights commission and truth commission for torture survivors, noting that Myanmar had not yet ratified the CAT, nor had it defined torture in national law.

In Timor-Leste, Jose Luis de Oliveira from AJAR Timor-Leste spoke about the CAVR report finalised in 2005. The report revealed extensive human rights abuses during the period of Indonesian occupation. It documented 17,000 counts of torture. The vast majority of perpetrators were Indonesian military personnel as well as their locally recruited militias, who have yet to be brought to justice. Indonesians and East-Timorese are now working hard to normalise relations between their countries. As part of this process, bi-lateral cooperation to end impunity is essential. There is an urgent need to implement the CAVR's recommendations to rehabilitate victims of torture who continue to suffer now. At the same time, we are seeing Indonesian perpetrators returning to Timor-Leste to conduct business.

Session 3:

A Perspective on Efforts on Accountability and Healing: Lessons from the Field.

This session refocused the discussion on torture survivors themselves and explored some of the innovative methods they and other human rights defenders have been using to pursue justice and support healing.

Mi Mi Khine from the Wimutti Volunteer Group (WVG) in Myanmar reported on a groundbreaking program that strengthened women political prisoners through psycho-social support and truth-telling. She underscored how truth, acknowledgement of what happened, must be the foundation for trauma healing and taking the first step towards a genuine transition. WVG works to improve women political prisoners' understanding of Human Rights law and practice, including through a study of major HR instruments – CEDAW and UDHR, as well as concepts of transitional justice.



Ms. Sumarmiyati (KIPPER) and Ms. Bai Tualeka (LAPPAN) from Indonesia shared their experiences of expanding the social support networks for torture survivors. Creating the space and providing resources for a survivor-driven psychosocial care and self-care, has increased their meaningful participation in political events, and activism. Using participatory action research tools, they have attracted the interest of other former political prisoners, and organisers are keen to build on its success with expanded public advocacy campaigns highlighting TJ and reparation for survivors.

Manuela Pereira (ACBIT) from Timor-Leste also spoke about their use of participatory action research tools and its impact on their personal journeys of healing and empowerment. Gathering evidence and building strength to continue the struggle against impunity in their communities and their government, vulnerable women survivors in Timor-Leste have connected with victims of family violence to demand fulfillment of their rights and better government services. This initiative has been important to make visible the formerly invisible and vulnerable women survivors. They are now speaking out to demand their rights and access to services.

From Sri Lanka, Sundaran Mahendran (torture survivor) and Arulanandam Moses (Human Rights Office in Kandy), Sri Lanka shared lessons on the importance of community based healing, including an initiative to create “befrienders” to find solidarity with torture survivors and support families of victims. Befrienders are lay persons who learn about counseling and psycho-social support, who then take part in accompanying victims. This approach provides an important foundation to helping victims access other services, such as legal aid in detention. In Sri Lanka, the experiences of conducting exchanges between victims community has been important, connecting torture survivors with the families of the disappeared, as well as solidarity building with the Rohingya.

Session 4:

Reparations Initiatives for Torture Survivors

This session show-cased four case studies of ongoing efforts for providing trauma healing and reparations for survivors of torture, as well as ongoing challenges to stopping torture.

Lessons from South Africa’s Truth and Reconciliation Commission on torture, survivors and reform. Howard Varney, (transitional justice expert) spoke about how under apartheid in South Africa, the practice of torture was widespread, between

1960-1990. South Africa's TRC documented 80,000 cases of detention; for black males torture was routine. During the TRC's amnesty hearings, they disclosed 1500 complaints of abuse, including 90 cases of torture. The TRC found that torture was systematic and widespread, collecting 22,000 statements alledging torture. Today in the new South Africa why is the practice of torture not eliminated? South Africa's new constitution enshrines the freedom from violence, protection of human dignity in, but torture following arrests and detention is commonplace. There are efforts to reform, but now police has evolved into a paramilitary institutions. There are now more than 2300 police abuse complaints. Little have been done in terms of accountability and reparations. The government has but turned its back on victims. Now, twenty years after TRC, victims are preparing court case against the government on the broken promise of reparations. A small victory two years ago, the government granted bursaries and health care for victims, after years of hard advocacy work by victims.

A National Mechanism for Rehabilitation of Torture Survivors. Edwin Partogi, Commissioner from Indonesia's Witness and Protection Agency (LPSK) Since 2011, LPSK has provided protection for severe cases of torture, including one case that resulted in a successful conviction where the perpetrator was punished with 6 month imprisonment. LPSK pays special attention on torture, providing assistance to help victims recover. LPSK is also mandated to protect victims/witnesses in safe houses and through relocation. LPSK is mandated to facilitate the payment of compensation and restitution (paid by the perpetrator.) But this demand must be integrated in indictment. For victims of gross human rights violations, LPSK is mandated to provide medical psycho-social support, as well as health insurance for victims. This must be decided case by case. To date, hundreds of victims of torture from the 1965 case from Central & West Java, and West Sumatra have been able to access this assistance through LPSK.

How do we hold torturers accountable? A case study of Papua and East Timor.

Budi Hernawan, (Paramadina Graduate School of Diplomacy, Indonesia) conducted a comparative study showing similarities between experiences of torture in Papua and East Timor during Indonesian occupation. This includes that civilians (including women) are the main victims. State officials, particularly the military and police, are the main perpetrators, using techniques involves low cost and low skill methods. He sees that the long-term practice of torture is directly linked to the element of policy. Lessons taught from Papua and East Timor guide us to propose the following recommendations:

- a) The government should address the systemic problem of torture in Papua and Indonesia in general thoroughly;

- b) The government should provide reparation programs to the victims of torture in Papua and Indonesia in general by involving LPSK and Komnas Perempuan;
- c) The government should develop effective and adequate national torture preventive mechanisms by learning from the experiences of Papua and East Timor and by organising national public consultations intensively;
- d) The government should resume the unfinished agenda of security sector reform as well as the police reform in order to eradicate the legacies of “dwifungsi ABRI” and “Sishamkarata” doctrines and to maintain the highest standards of both individual and institutional accountability;
- e) The government should revise the Penal Code and Criminal Procedure Code to be in line with all international human rights instruments that Indonesia has ratified, particularly Convention Against Torture;
- f) The government should separate forensic doctors from the police institution so it operates independently in investigating allegations of crimes committed by state actors, particularly torture;
- g) The government should organise national and regional consultations in regards to the Bill of Truth and Reconciliation Commission as to incorporate lessons learnt from all past human rights abuses.



Can cities account for past torture and prevent repetition? The Case of the City of Palu, Central Sulawesi, Indonesia. Nurlaela Lamasitudju (SKPHAM Palu) shared her experience to create a localized reparations program in the city of Palu. SKP-HAM, a victim's organisation based in Palu, Central Sulawesi, has successfully collected more than 1,000 interviews of victims of the 1965 atrocities. In response to this work, the Mayor of Palu apologized to victims during an event organized by SKP-HAM Palu to mark the International Day on the Right to Truth (24 March 2012), and vowed to provide services to victims. In 2013, the Mayor issued a decree formalizing his apology and ordering the provision of government services to fulfill victim's right. This city decree is unique and groundbreaking. The first in the whole nation.

SKP-HAM Palu continued to work with the Mayor's office to implement this decree, amidst considerable resistance from the city bureaucracy and other groups. SKP-HAM applied pressure by working with national NGOs, Komnas HAM, and the Women's Commission to ensure that the city of Palu to implement its decree. Through this work about 500 victims have been able to access basic services, including funds to improve their house, health care and other forms of assistance. However, local initiatives are vulnerable to the tide of national politics. Without a national policy to provide an umbrella even the political good will of a reformist leader can be defeated.

In Closing

Galuh Wandita, Director of AJAR, was tasked to provide key lessons from the one day roundtable.

What we have learned from this regional process? How we can learn from practices of the past and try to heal and prevent torture? One key lesson is that **trauma healing and giving voice to survivors** of torture is critical. Victims need a safe space to gather together to talk of experiences. We see how victims are becoming empowered, pushing for accountability and finding solutions. Need to strengthen those with a voice. They are an important player in pushing for reform. We have developed strong participatory grassroots methods to facilitate trauma healing and empowerment. But these initiatives must be sustainable and ongoing. Working with survivors of torture is "not only act of courage, but (must be a) sustained act of courage... together with survivors"



The second lesson is that “torture takes place in the dark, we must shine a light...” The fight against torture needs to be put on the national agenda. It is currently pushed as a peripheral issue. Torture is so ugly that we can’t believe that in sophisticated democratic societies, it continues to exist. Entrenched practices lead to a lack of accountability, giving birth to those same practices. We also must work to change everyday forms of torture, acknowledging, “work against torture begins at home.” But we must also focus on governments in transition from authoritarian rule to democracy, continue to push for the building of accountability with an integrated approach.

This includes legal reform and legal aid. There needs to be a focus on pre-trial detention and law enforcement. Most current torture practices happened by the police when no lawyers are present. For example, in Indonesia, defendants can remain in detention for up to 110 days before they must be brought before a judge, allowing for torture to take place.

Our third lesson is the connection between the past and the present . Allowing impunity for past torture that was committed under an authoritarian regime or during conflict has an impact on current practice of torture. Our security institutions adapt and transform the practice of torture, if we as a society do not stand-up to say, enough. No more. In all four countries there is an increased “securitization mind-set” amongst law enforcers. In the face of the challenges brought about by terrorism and drug trade, the old way of working, the ends justify the means prevail.

Lastly, we end this gathering with a moment to remember the torture victims that did not survive. We dedicated our work to them, as they are our teachers who can teach us “to learn to live on earth as humans. ”

