



Transitional Justice Asia Network (TJAN)

TWO DECADES OF TRANSITIONAL JUSTICE IN ASIA: A VIEW FROM THE GROUND

Banda Aceh, Indonesia, 26-28 March 2018

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TRANSITIONAL JUSTICE
ASIA NETWORK



BACKGROUND

Over the past two decades, the field of transitional justice (TJ) has developed into a worldwide movement, providing important, but partial and imperfect answers to the question of what should be done about mass violations in order to achieve justice, sustainable peace, and prosperity. Impunity and a lack of accountability for crimes committed by the elites and security forces are the norm across the Asia region, making the kinds of TJ interventions that have taken place in Latin America and Europe difficult to achieve. Nevertheless, Asian nations have drawn from international experience and utilized a range of transitional justice mechanisms including courts, truth commissions, institutional reform initiatives, and some limited form of reparations programs.

To better understand the role of transitional justice mechanisms in the Asian context over the last twenty years, Asia Justice and Rights (AJAR), in partnership with KontraS Aceh, Legal Aid Institute Banda Aceh, Transitional Justice Asia Network, and the Tifa Foundation convened a three-day workshop entitled “Two Decades of Transitional Justice in Asia: A View from the Ground.” Thirty-five experts and stakeholders from Indonesia, Timor-Leste, Myanmar, Philippines, Thailand, Cambodia, Nepal, and Bangladesh gathered together to share their experiences and to discuss key lessons, challenges, and strategies for strengthening accountability in Asia. Participants also had the opportunity to learn more about the Aceh peace process and the Aceh Truth and Reconciliation Commission (TRC) through a reception at the residence of the Aceh governor where representatives from the peace talks spoke and through a field visit to the Aceh TRC and the Aceh Museum of Peace.



Welcoming Remarks

Afridal Darmi, the Chairman of the Aceh TRC, welcomed participants to Banda Aceh. He emphasized that the responsibility for truth-seeking in Aceh needs to be passed on to the next generation, which did not experience life during the conflict: “We need to share this paradigm, especially for young people who will join the authority in government, military and bureaucracy.” Meanwhile, Darmawan Tri Wibowo, the director of the TIFA Foundation, highlighted that the task of the Aceh TRC is undeniably daunting. However, he also underscored that “Aceh should not be our one-time exception, but it should be a cornerstone [for seeking truth for past human rights violations in Indonesia].” The president of AJAR, Patrick Burgess, followed, formally welcoming participants on behalf of AJAR and its partners to the workshop. He then raised several questions to the participants: “After twenty years, what have we done? Have we progressed on transitional justice and on accountability? Are we going backwards? Has our work prevented mass atrocities from happening? Are those who already suffered from mass atrocities healing?” Patrick noted that this workshop is an opportunity for participants to reflect on these questions, share their experiences, and learn from the experiences of others to take an honest look on the practices of transitional justice over the last twenty years in Asia. Following a brief break, Nurdin SH, representing the office of the Aceh governor, Irwandi Yusuf. In the statement, Irwandi stated that as a legal product, the government of Aceh supports the local TRC. The importance of prosperity in securing lasting peace and peace in Aceh is an ongoing process but one that can serve as an example for the world.



The shifting landscape of transitional justice in Asia

Patrick Burgess led the first session, which was intended to provide an overview of the role and impact of transitional justice in Asia over the last 20 years. He noted the importance of focusing on the successes and challenges of transitional justice mechanisms over an extended period of time since so often practitioners, experts, and stakeholders are forced to focus on the short-term. He then reflected on some of the experiences and practices of transitional justice in Asia. He compared the case of South Korea with that of Indonesia in 1965, which had much to do with the Cold War. Several improvements throughout Asia and the progress that has occurred in countries such as Sri Lanka, Aceh, East Timor and with entities such as the International People's Tribunal 1965 and the people's tribunal established concerning sex slavery perpetrated by the Japanese during World War II. Although Patrick admitted that the experiences in Asia might not proceed quickly, if there is a reform within the domestic politics in five to ten years, the evidence of past human rights violations is already collected. An important lesson from the practice of transitional justice in Asia is that, where the government is not particularly interested in transitional justice, the families of victims and civil society can find creative ways to promote transitional justice. Patrick referred to the experience of Aceh, in using the local bylaw under Law of Governing Aceh (LoGA) to establish its TRC. Shortly after the tsunami, the government used the Islamic mechanism of *diyat* to assist the victims of conflict financially.

A discussion followed in which several aspects of transitional justice in Asia and the process for evaluating success and failure were discussed. Panhavuth from Cambodia raised some of the criticisms and challenges faced by the hybrid court-trying generals of the Khmer Rouge. The court shows the lack of trust that exists between the public and national officials. Pornpern (Noi) from Thailand also shared her observation that Thailand has become more negative in the last decade. Her home country used to be the hub and headquarters of transitional justice meetings, before the military coup four years ago. Non-state actors are also involved in committing mass human rights violations, and that such circumstances should be included in further discussion. Similarly, Farzana from Sri Lanka is also stated the situation in Colombo, where just recently violent attacks against the Muslim community took place. However, the situation in Sri Lanka is much better than two decades ago. She emphasized that to struggle for a good place, where people can anticipate justice, is a constant struggle.



Truth as the foundation for rebuilding society & reforming institutions

Evi Zain, a commissioner on the Aceh TRC present her experience working to secure truth in Aceh. In her presentation, “Truth as the Foundation for Rebuilding Society and Reforming Institution”, Evi introduced the aims of the Aceh TRC. She stated that, by revealing the truth, civil society would be able to push for reform and demand improvement of the institutions that were involved in past human rights violations. However, she also noted that the work of the Aceh TRC has not yet been fully supported by the executive government of Aceh. Despite this shortcoming and some of the other challenges faced by the Aceh TRC, the TRC has managed to engage in statement taking and is just starting to study its data.

The next presentation entitled “20 Years Transitional Justice in Indonesia; From a Women’s Human Rights Perspective” was delivered by the deputy chairwoman of Komnas Perempuan, Yuniyati Chuzaifah. She elaborated in detail on the work being done to end the circle of violence and the commission of human rights violations against women in Indonesia. After two decades, there indeed has been important progress, such as an oral statement of apology and condemnation from the national and local political authorities to the victims of the 1965 tragedy and the provision of health service support by the National Commission on Human Rights (Komnas HAM) and the Witnesses and Victims Protection Agency (LPSK). What remains a challenge for Komnas Perempuan is the discontinuity in commitment from the government to pursue justice due to the political situation and election. After twenty years, the conflict might seem to be finished on the surface, but it remains unfinished at the domestic level. She also emphasized the importance of using a cultural approach, not only to gain recognition from the wider public, but also to transmit the dark pages of history to the next generation.

Howard Varney, a transitional justice expert from South Africa underlined the task that needs to be done in order to have a guarantee of non-recurrence. First, it is important to reform the law and constitution. Otherwise, transformation will only be temporary. Second, if there was any armed group, it needs to be demobilized and disarmed. It is also important to analyze what caused the underlying violations to take place. Howard suggested considering matters such as land, ethnicity, tribalism, access, or control of natural sources. It is fundamental to understand the structural causes because in order to achieve justice, one needs to design a toolbox based on the particular case.

Reaching for justice

In this session, Panhavuth Long from Cambodian Justice Initiatives Legal Monitoring Group presented the case of Cambodia and questioned the benefit of the hybrid tribunal. First, he noted that in Cambodia, people call the tribunal as “national court with international involvement.” He also noted that there is no unified legacy because it is a dual system. Panhavuth noted that 60% of the current population of Cambodia was born after 1999 and didn’t experience the atrocities of the Khmer Rouge regime. They do not trust stories from the elderly. However, after 2006, the history of past human right abuses is included in the curriculum taught in schools. Panhavuth underscored that the lesson learned from Cambodia is not to delay the justice process because perpetrators may die and victims may lose their memory. He also emphasized that it is critical to prepare a proper budget and be well prepared from the beginning.



Pornpen Khongkachonkiet from Cross Cultural Foundation in Thailand showed a short movie entitled “Deep South” to provide an overview of the conflict involving Malay-Muslims from Pattani in southern Thailand. She noted that, since the conflict escalated in 1970, no commission has been set up. On the national scale, key issues include the lack of access to justice and the lack of social support services for the victims. More specifically, some obstacles are that there is no access to lawyers in southern Thailand and people mostly have poor legal literacy. The election law approved early this year might sow further tension in which media freedom will be limited and the political gathering of five or more persons will be prohibited. Such conditions would only worsen the situation in southern Thailand.

Putri Kanesia from The Commission for the Disappearances and Victims of Violence (KontraS) Jakarta explained the history of the reformasi (reform) era in Indonesia. She emphasized that the fall of Soeharto brought important changes for democracy, particularly when laws on the freedom of the press and human rights were issued, along with the establishment of Komnas Perempuan, Komnas HAM, and LPSK. Since 1998 onwards, Komnas HAM has led the investigation of human rights violations from the 1965-1966 tragedy, the mysterious shootings in 1982-1985, the Wasior and Wamena tragedy, and the tragedy of Simpang KKA and Jambo Keupok, both in Aceh. Putri also noted that a national law on TRC was issued in 2004 but later annulled by the Constitutional Court. This made civil society and human rights activists eager to find other ways to pursue justice.



Group work on key lessons and emerging principles

During the last session of the first day, participants are divided into four groups to discuss four different questions.

Group A: *How did the process/democratic transition result in a commitment to transitional justice?* It is necessary to have strong public awareness and solidarity among civil society. If one could get an influential person to support peace and change, it could be really powerful.

Group B: *Has recognition of truth contributed to the reform of institutions or the rebuilding of society?* The group referred to the cases of Thailand, South Africa, and Kenya where reform was not part of the recommendations. In the case of Timor-Leste and Sierra Leone, it was due to the support of the government.

Group C: *What are the building blocks for the successful prosecution of serious crimes?* Nine building blocks: 1) Political will, both on the part of the government and the actors within the court, including civil society, 2) Personal jurisdiction, 3) Funding, 4) Competent and independent judiciary, 5) Strong regulations and rules, 6) Clarity regarding available evidence, 7) Transparency, 8) Victim and civil society participation, and 9) Legal aid.

Group D: *What needs to happen to allow victims to participate in the long struggle for TJ?* The group referred to the case of Timor-Leste, where group discussions involving victims, a cultural approach utilizing art and other aspects of culture to support victims, and registration to the national victims' committee helped promote victim participation.

Group E: *How has the women's movement contributed or hindered efforts to pursue accountability for gender-based violence?* When it comes to gender-based violence, particularly in Asia, it is related to the patriarchy that is embedded also in the institution. In Sri Lanka, the TJ mechanism itself is not women-friendly so civil society is advocating for change. In the case of Myanmar, there is no formal mechanism related to this issue because the number of sexual violence allegations is very low. That is not necessarily because there were few but because society prevents the victims from speaking out about their experiences. However, much can be learned from the experience of Komnas Perempuan and KKPK on this issue.

Repairing the irreparable—social assistance vs. reparations



Mofidul Hoque from the Center for the Study of Genocide and Justice, Liberation War Museum in Bangladesh described the national history of Bangladesh. Shortly after the emergence of Bangladesh in 1971, “Operation Searchlight” was launched, which caused the death of 3 million Bengali people and was considered one of the worst genocides of the 20th century. Only in 1973 were the people of Bangladesh able to establish the International Crimes Tribunal act in the parliament, but the trial was postponed due to the political tension caused by national politics in 1975. Mofidul highlighted the power and potential of people and their memories, which resulted in the establishment of the People’s Tribunal in 1991. Five years later, such people’s initiative began to manage the reparation and rehabilitation centre and commemorate the history by founding the Liberation War Museum. An annual celebration, “Freedom Festival,” is largely supported by the young people, and an oral history program was initiated as a mechanism to transmit the memories of the elderly to the younger generation. Stories recorded by the younger generation are submitted to the museum.

Joviana Guterres from AJAR Timor-Leste provided the information on the establishment of Centro Nacional Chega! (CNC - National Centre of Chega!), an institution recently created to follow up on the recommendations of the CAVR, which ran from 2001-2005.

She also elaborated on the findings of CAVR, which identified the Indonesian military and pro-integration militia as perpetrators in 92% of the cases in East Timor. The Chega! report included recommendations to create a national reparations program, to engage in memorialization, to pursue tribunal processes, to disseminate CAVR's findings to support cultural transformation, and to establish an institution to focus on transitional justice.

Suman Adhikari from Conflict Victims Common Platform (CVCP) in Nepal presented on the experience of his victims' association in Nepal. CVCP emerged due to the lack of political will and transparency in the work of the local TRC. According to Suman, the local TRC did not have a long-term goal, and only those who have political access can get more compensation.

In the Aceh context, Afridal Darmi, the chair of the Aceh TRC explained reparations as a form of Islamic mechanism, known as *diyat*, prior to the establishment of the local TRC. The *diyat* actually became controversial in 2009 because the victims agreed to receive three million rupiah in installments. Some expected to receive more, and others decided to accept the amount. Furthermore, there is a special scheme of scholarship and medical treatment for the victims as well.



Peace and reconciliation

Farzana Haniffa from the Consultations Task Force on Reconciliation Mechanism in Sri Lanka provided an overview of the recent tension in Sri Lanka and how the media represents the situation as somewhat peaceful. In 2009, the war ended with 40,000 civilians killed. After the election in 2015, the general public expected change, but what happened next was otherwise. The government of Sri Lanka, supported by the UN, committed to establish transitional justice mechanisms in 2015, which recommended four mechanisms: Office of Missing Persons; a Truth, Justice, Reconciliation and Non Recurrence Commission; an Office for Reparations and a Judicial Mechanism with Special Counsel. Following that, the Consultations Task Force on Reconciliation Mechanism was established in 2015. The government reduced the report to only one recommendation – the creation of a special court with foreign judges. Although the Office of Missing Persons was just established, there is no truth commission.

Raissa Jajurie, a former member of Bangsamoro Transition Commission Philippines stated that transitional justice is part of the agreement between the Moro Islamic Liberation Front (MILF) and the government of the Philippines, signed in October 2012. Prior to this, the Philippines also experienced conflict between the communist group, its splinter group, and the government. The peace agreement between the MILF and the government of the Philippines underlined the mandate to work in a transitional justice network by establishing a commission. The commission conducted “The Listening Process” and a “Study Group” to understand the root causes of the conflict. The analysis from this process underlined that the root cause was the imposition of a monolithic Filipino identity. The state government focused on diverse ethnic groups in particular areas, such as Mindanao and Sulu, that view themselves as having existed prior to the creation of the nation and nation-states. A set of recommendations was made, and they address the legitimate grievances of the Bangsamoro people, historical injustice, and human rights violations. The recommendations also include reviewing past school curriculum and adding the history of the Bangsamoro people as part of the national building of the Philippines. Even though there is a peace agreement, there is still a separation in the institutional system, which has delayed the materialization of the National Transitional Justice and Reconciliation Commission on the Bangsamoro (NTJRCB).

Otto S. Ishak from Syiah Kuala University in Aceh explained the peace process in Aceh. He stated that no peace process occurred without a democratic process. Although the peace talks started during the time of President Habibie, the talks could only be supported during the periods of President Susilo Bambang Yudhoyono. The peace process gives the opportunity to talk about truth and justice, in which people in Aceh faced problems of a fragmented society and potential horizontal conflict. He stated that the peace process gives the opportunity to discuss about human right abuses.

Revisiting Transitional Justice in Asia Toward Transformative Justice?

Ayu Wahyuningroem from the University of Indonesia presented on trends in Asia Pacific, where there are increasing numbers of countries adopting transitional justice mechanisms. Drawing from several experiences of transitional justice elsewhere, Ayu proposed to examine the limits of transitional justice, which stem from identity challenges, violent extremism, poverty, environmental, etc. She invited the participants to think about transitional justice mechanisms on a theoretical level: In terms of approach, how should one implement a particular mechanism? How would the result vary if it is implemented in a top-down, bottom-up, and margin-centered approach? How does one judge the success and failure of transitional justice in Asia? Ayu offered three possible ways to assess transitional justice mechanisms: procedural or instrumental, setting expectations on the mechanism's objective, and checking the causation. She also explained how a "Dual-Track Strategy" could be utilized. All in all, Ayu stated, because resistance will be understood in its connection to inequalities and injustice, the aim of transformative justice is to emphasize local agency and resources. Thus, one should demand an emancipatory peace, rather than merely a sustainable one.

Howard Varney referred to research conducted by his Serbian colleague on how to assess the practice of transitional justice in several areas. The research questioned the quality of the truth-seeking exercise: How was the official acknowledgment and symbolic representation of it? How the victims were received and what kind of symbol was used? What material reparation and the extent of disappearance have shown in its result? Has the commission made any impact in institutional reform and how does the commission contribute to democracy? How do we ensure that political forces do not capture the transitional justice mechanism supporter? Howard referred to the experiences of Thailand and Sri Lanka, which seemed to have broken from the past but now it seems their commissions are being intimidated.



CLOSING

Patrick from AJAR wrapped up the discussion in the final session, noting that the level of content and analysis in the meeting is among the best that he has ever participated in. Within the span of twenty years, there are indeed changes, but the journey is also incredibly important. The trend in Asia is to find ways to move forward on accountability in the face of an authoritarian and feudal system. The achievement of the transitional justice network in Asia is rather successful in bringing together the people and movement, in comparison to twenty years ago. The work is a “constant struggle.” Each participant then expressed their impression from the two-day discussion that could be tied up in the inspiring words of Mofidul, “We should never feel alone, we have great support and friends, it is because we belong to Asia.”

Learning from the Aceh Context

For the purpose of learning the Aceh context, the governor of Aceh invited participants to have dinner at his residence. Although the governor himself was not able to join the dinner, his representative and two former GAM senior members, Bactiar Abdullah and Munawar Liza, were present. They discussed several key issues regarding the past conflict, the peace negotiations, the resulting treaty, and the current political situation.

Participants also had a meeting with Aceh TRC commissioners and staff at the Aceh TRC office. The officers from Aceh TRC explained their aims, mandate, and activities. The recent activities include statement-taking, which are described by the district coordinators of the Aceh TRC. They described various challenges of their work, including language barriers and security. As for the process on collecting data, the officers are helped by civil society, which already has documented many witnesses and cases since 1999. To reach victims in various areas, they work together with local institutions and villagers.

Participants also visited the Museum of Peace in The National Body of Unity and Politics (Kesbangpol Aceh). In this museum, the participants were shown an installation of collected arms and munition, a timeline of Aceh's conflict, and a collection of photos taken during and after the conflict. A documentary movie about the conflict in Aceh was screened and stimulated a discussion between the participants and representatives of Kesbangpol Aceh.



LIST OF PARTICIPANTS

1. Abdul Noormohamed, Open Society Foundation
2. Afridal Darmi, Aceh Truth and Reconciliation Commission, Indonesia
3. Ah Phong, Asia Justice and Rights, Myanmar
4. Anthea Zervos, Open Society Foundation
5. Asma Edris Rahman, Open Society Foundation
6. Atikah Nuraini, Asia Justice and Rights
7. Aulianda Wafisa, Legal Aid Institute Banda Aceh, Indonesia
8. Beini Ye, Open Society Justice Initiative
9. Diah Tantri Dwiandiani, Tifa Foundation
10. Evi Narti Zain, Aceh Truth and Reconciliation Committee, Indonesia
11. Faisal Hadi, Aceh Commission for The Disappeared and Victims of Violence (KontraS Aceh), Indonesia
12. Fathima Farzana Haniffa, lecturer, University of Colombo, Sri Lanka
13. Hendra Saputra, Aceh Commission for The Disappeared and Victims of Violence (Kontras Aceh), Indonesia
14. Howard Varney, South Africa
15. Indria Fernida, Asia Justice and Rights
16. Joviana Guterres, Asia Justice and Rights Timor-Leste
17. Marzita Ardiantina, Asia Justice and Rights
18. Mofidul Hoque, Centre for the Study of Genocide and Justice, Bangladesh
19. Mustiqal Syah Putra, Legal Aid Institute Banda Aceh, Indonesia
20. Nicole Janisiewicz, Asia Justice and Rights
21. Nova Fransisca Silitonga, Tifa Foundation
22. Otto Syamsuddin Ishak, lecturer, Syiah Kuala University, Banda Aceh, Indonesia
23. Panhavuth Long, Open Society Foundation
24. Patrick Burgess, Asia Justice and Rights
25. Pornpen Khongkachonkiet, Cross Cultural Foundation, Thailand
26. Putri Kanesia, Commission for the Disappeared and Victims of Violence (KontraS), Indonesia
27. Raisa Kamila, Commission for the Disappeared and Victims of Violence (KontraS) Aceh, Indonesia
28. Raissa H. Jajurie, Bangsamoro Transition Commission, Philippines
29. Saiful Mahdi, Lecturer, International Centre for Aceh and Indian Ocean Studies (ICAIOS)
30. Samsidar, Aceh Women's Association for Legal Aid (LBH APIK Aceh), Indonesia
31. Sorang Saragih, Asia Justice and Rights Indonesia
32. Sri Lestari Wahyuningroem, Indonesia
33. Suman Adhikari, Conflict Victims Common Platform (CVCP), Nepal
34. Syafirah Hardani, Tifa Foundation
35. Yuniyanti Chuzaifah, National Commission on Violence against Women (Komnas Perempuan), Indonesia

