



Public Seminar on:

**THE ROLE OF TRUTH IN
STRENGTHENING PEACE**

Banda Aceh, 12 October 2017

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TRANSITIONAL JUSTICE
ASIA NETWORK

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On October 12, 2017, the Aceh Truth and Reconciliation Commission (Aceh TRC), together with Asia Justice and Rights (AJAR), KontraS Aceh, International Centre for Aceh and Indian Ocean Studies (ICAIOS), Katahati Institute, LBH Banda Aceh (Legal Aid Banda Aceh), and the Transitional Justice Asia Network (TJAN) hosted a regional seminar in Banda Aceh, Indonesia, on the role of truth in strengthening peace in Asia. This regional seminar aimed to gather the experiences and lessons learned from truth commissions around the world and to encourage ongoing truth-seeking efforts in order to strengthen peace and promote accountability in Asia. More than a hundred policymakers, academics, civil society members, survivors, and youth attended the regional seminar.

OPENING REMARKS



The Chair of the Aceh TRC, Afridal Darmi, opened the regional seminar by connecting its relevance to Aceh, an Indonesian province with a history of decades-long armed conflict between the Government of Indonesia and the Free Aceh Movement (Gerakan Aceh Merdeka – GAM). The armed conflict in Aceh formally ended through the signing of the 2005 Memorandum of Understanding (MoU) in Helsinki, and in his address, Afridal traced the truth and reconciliation mandate from Article 2 of the MoU. Acknowledging “peace is too expensive to be wasted away, to be destroyed and to be done with carelessly,” Afridal underscored that the Aceh TRC’s truth-seeking efforts will work toward establishing peace and stability in Aceh.

In her opening remarks, the Executive Director of AJAR, Galuh Wandita, applauded the efforts of the Aceh TRC, particularly in its goal to “[gather] truth as a foundation for building peace and democracy in Aceh [and to serve as] a cornerstone and a pioneer in Indonesia’s journey to a better future, based on truth and justice.” Wandita highlighted the renewed optimism of the global community and Indonesia’s civil society in Aceh’s post-conflict reconstruction based on the unique characteristics of the Aceh TRC,

including its mandate's origins in the MoU, its permanent structure within the Aceh government, and its continued collaboration with civil society members to develop a methodology that is “sustainable, community-based, gender-aware, and empowering.”



The Governor of Aceh's welcoming remarks, delivered by the Governor of Aceh's Expert Staff in Human Resources and Stakeholder Relations, Dr Abdul Karim, MSi, also expressed the Aceh government's commitment to the Aceh TRC. The Governor emphasized that “the Aceh TRC is a commitment of the GAM and the Republic of Indonesia as mandated in the MoU in Helsinki. The government will focus on empowering the Aceh TRC, both in terms of institutional capacity and human resources.” The Governor also stressed the following four elements key to the Aceh TRC's success: “First, the commissioners must develop a high quality and professional institution. Second, [the commissioners must] collect existing data from all places or institutions as a start and basis for future statement-taking efforts. Third, truth-seeking and statement-taking efforts must not be conducted before preparing the institution and its personnel for their tasks. Fourth, all institutions committed to the Aceh TRC must mutually protect and support the TRC in the journey to realize justice for victims and to maintain peace.”

SESSION 1

Truth Commission and Peace Process: Opportunity and Challenges



The first roundtable session focused on the immense opportunities and challenges presented by truth commissions in documenting past human rights atrocities and in making recommendations for governments to respond to mass violations. Four transitional experts shared their experiences and the lessons learned from various truth commissions.

Truth-telling as the center of every transitional justice effort: Lessons from Timor-Leste's CAVR

Hugo Fernandez, the Director of Centro Nacional Chega Timor Leste offered a reflection on the successes and challenges of the Commission for Reception, Truth, and Reconciliation in East Timor (CAVR). He began by recounting a quote from George Orwell's novel 1984: “In the time of universal deceit, telling the truth is revolutionary act.” Emphasizing that “truth-telling is the center of every transitional justice effort,” Fernandez encouraged the Aceh TRC to learn from the experience of the CAVR.

According to Fernandez, the challenges faced by the CAVR included the following:

1. Making people understand why the past needs to be discussed: Some Timorese individuals do not understand why the wounds of the past need to be reopened. However, the goal of a truth commission is to document history in a way that heals the wounds of the past and preserves its memory as lessons learned for future generations. It is notable that no country that has conducted a truth commission in the past has repeated the same human rights violations examined in its truth commission.
2. Working with staff who are young and under-educated: The CAVR hired 120 staff members, most of whom were recent graduates from high school or middle school. Their lack of experience and low level of education presented difficulties for the CAVR. Because Acehnese society has a higher level of education than Timorese society did at the time of the CAVR, the Aceh TRC is better poised to hire staff with an adequate level of education and will benefit from doing so.
3. Convincing perpetrators to take part: While truth commissions need to be victim-centered, perpetrators also need to take part in truth commissions to provide missing pieces of information. However, it can be difficult to convince them to take part in truth commissions because it may compromise or be perceived to compromise their eligibility for amnesty. It took the CAVR a year to convince perpetrators to share their experiences in a public hearing.

Going beyond the CAVR, Fernandez summarized the four steps of a truth commission process: 1) establishing the commission itself and its socialization stage, 2) statement-taking, 3) public hearings, and 4) report writing. Fernandez also pointed out that recommendations from truth commissions that were conducted around the world have typically included institutional reform, including security sector reform, and educational reform, such as integrating truth commission findings into school curricula. Fernandez also noted the practice of categorizing recommendations, distinguishing those that address urgent issues that need to be dealt with immediately and those that are aspirational or long-term in nature.



Furthermore, while truth commissions' mandates typically end upon the completion of their truth-seeking efforts and recommendations, their follow-up remains a significant challenge. In 2016, the Prime Minister of Timor Leste established a Working Group to audit the recommendations of the CAVR and the Commission of Truth and Friendship (CTF), which was a bilateral commission between the Indonesian Government and the Timor-Leste Government formed after the CAVR. The audit showed that, twelve years after the CAVR and eight years after the CTF issued their recommendations, only 25% of the recommendations has been implemented partially and impartially. Moreover, some recommendations have created problems for the realization of others. Two recommendations on prosecution have halted the Timor-Leste government from continuing its implementation of the CAVR's recommendations, which totaled 204 recommendations. Fernandez underscored that the, Aceh TRC commissioners need to be aware that certain recommendations, particularly those related to prosecution, may create implementation problems. In addition, he emphasized that it is important to have an institution that monitors the follow-up of the truth commission. In Timor-Leste, it was only recently, twelve years after the CAVR completed its work, that Centro National Chega! was established to help the government create and implement policies in line with the CAVR's recommendations.

A historical overview of transitional justice

Patrick Burgess, Transitional Justice Expert in Asia and President of AJAR, presented next on the history and import of truth commissions throughout the world. He began by noting that “[t]here is no country in the world that has no history of mass human rights violations,” and explained that most violent conflicts are driven by a sense of injustice. Even after violent conflict ends, if the underlying grievances are left untended, they can perpetuate a cycle of violence. Furthermore, usually in conflict situations, there is a lack of information or a prevalence of misinformation. Thus, it is important to have truth commissions to determine what happened and to figure out what needs to take place after the conflict.

Burgess broadly discussed 40 truth commissions from around the world, each with its own truth commission model. He highlighted the following facts:

- In the 1960s, the first truth commission was established in Argentina. Sixty years later, the truth commission report remains a best seller in the nation.
- In El Salvador, United Nations officials and international actors asked to be the commissioners of the nation's truth commission.
- In Guatemala, the church-led Inter-Dioecese Project for the Recovery of the Historic Memory (Proyecto Interdiocesano de Recuperación de la Memoria Histórica - REMHI) pushed the government to conduct its own truth commission.
- The first truth commission in an Islamic context was in Morocco.
- South Africa was the first truth commission to use very large, televised public hearings in which victims from both sides told their stories.
- In Asia, countries that have implemented truth commissions include South Korea, Thailand, and Timor-Leste. A bilateral truth commission, the CTF, was held between Indonesia and Timor-Leste.
- A multi-national truth commission was held for the former Yugoslavia.
- The truth commissions in Guatemala, South Africa, Morocco, Peru,

and Timor-Leste are generally regarded as the five best examples of truth commissions, and they each had different approaches to truth-seeking.

Burgess also highlighted other important elements of truth commissions. First, truth commissions tap into the power of stories. There is an “interpersonal reaction when listening to stories of victims.” Second, it is imperative for commissioners to select a truth and reconciliation model that is appropriate for their cultural context. For instance, the Aceh TRC staff should design a process in a way that enables Acehnese people to say, “This is our commission.” Furthermore, in selecting commissioners, candidates must be independent, with a long history of human rights work, and prepared to work long-term to promote justice in their societies.



Truth as an integral part of peace: Lessons from the Bangsamoro listening processes

Attorney Cecilia Jimenez, UN Special Rapporteur on the Human Rights of Internally Displaced Persons, offered insight from her experience as a former Government of the Philippines Delegate to the Transitional Justice and Reconciliation Commission (TJRC) in Bangsamoro. She began her presentation by encouraging the audience to look at truth not as a static concept, rather as a “part of the process in nation-building.” Thus, “truth and peace are interlinked; [we] cannot have one without the other.” She highlighted the importance of truth particularly for youth. Additionally,

Jimenez noted that truth is being threatened in an era of historical revisionism, in which “history is being manipulated by people with vested interests.” Truth also impacts a nation's identity and future: “If we forget our history, we will not be a nation. And part of the history are the injustices that we as a people have suffered.” Jimenez then quoted a Filipino hero, Jose Risau, “He who does not look to the past will never reach his destination.”

Jimenez next explained that the TJRC was a truth-seeking effort in the Philippines. It was established by the Government of the Philippines and a non-state armed group, the Bangsamoro Islamic Front (MILF), through a peace agreement signed in 2015. The Bangsamoro people, on whose behalf the MILF fought, are a Muslim minority group comprising 7 percent of the Philippines' population. They historically have been marginalised. Christian settlers seized their lands in the past, and the Bangsamoro people still face prejudice and discrimination by the Philippines majority. The TJRC's task was to look into the grievances of the Bangsamoro people and the human rights violations experienced by them.

In her role as a delegate to the TJRC, Jimenez visited over 300 Bangsamoro communities to conduct listening processes. Jimenez explained, “We were not there to prescribe, this is transitional justice, right to truth, right to justice... We were there to listen, what happened to you? And how do we move forward? And really, really learn.” The TJRC worked in consultation with the communities, including the youth. Inclusivity was so important that, even though the focus was on examining the legitimate grievances of the Bangsamoro people, the TJRC also consulted Christian settlers.

Jimenez identified several lessons learned from the listening processes. First, a truth-seeking commission cannot talk to everyone in a society. In part, this can be because not all victims may want to participate in a listening process. Second, it is important to go beyond relying on organizations to represent communities and consult the people themselves. Also, as the TJRC found, depending on the need and context, there are times when the listening process is best done in separate communities and others when engaging mixed communities is more effective. Relatedly, the group of listeners must be diverse. For instance, in the TJRC's case, the commission not only consisted of Bangsamoro Muslims, but also other indigenous people and

Christian settlers. In addition, commissioners must be dedicated to and trained in not only transitional justice concepts, but also facilitation. It is essential for truth commissions to be independent from political agendas. While different parties may designate delegates and commissioners, those individuals must remain independent to foster trust with the communities involved. Ultimately, as the TJRC found, process matters just as much as the outcome of the commission.

Ending impunity is the goal of transitional justice: Lessons from the Aceh TRC

Munawar Liza Zainal, member of the GAM Negotiation Team in Helsinki, spoke about the development of the Aceh TRC and the lessons already learned from its work. Zainal reiterated that the goal of transitional justice is to stop impunity. He connected the Aceh conflict to what happened in Timor-Leste during Indonesia's occupation: “When there [is] impunity and violence... is allowed to happen, then that impunity is used as a tool to fight in other places. The impunity in Timor-Leste allowed for impunity in Aceh.” However, Zainal also mentioned the ways in which the Aceh peace agreement was different from the Timor-Leste and the Bangsamoro contexts, namely 1) Aceh did not become an independent nation, and 2) unlike the Philippines peace agreement, the Aceh peace process was holistic and encompassed all parties—not just the GAM and the government of Indonesia.



In his presentation, Zainal also gave the breakdown of the Aceh TRC's opportunities and challenges. With the Indonesian government's ratification of two UN conventions and its corresponding national legislation on civil and political rights and economic, social, and cultural rights, the Aceh TRC has enjoyed legislative and legal support. However, there are challenges. First, a national TRC has not been formed, despite a law allowing the establishment of a national TRC. Second, the Indonesian government has allowed for prosecution of cases of human rights violations only from 2005 onwards, not for violations preceding 2005. The Aceh peace process and the development of the Aceh TRC have shown that the sequencing and pace of such processes must be taken into consideration. Ultimately, “there must be a mechanism that is good, with the goal not to threaten, but ... to end impunity, promote reconciliation amongst the Acehnese society, and to fulfill reparations for victims.”

Measuring the impact of truth commissions

In the public discussions, a question was raised concerning the possible ways to measure the impact of truth commissions, including indicators of success. According to Fernandez, the success of a TRC depends on the extent to which a TRC fulfills its mandate. “From a technical aspect, if the mandate has been fulfilled, then it was a successful TRC.” In order to fulfill its mandate, a commission must consider how much documentation it is able to process and convert into a report. A truth commission typically has a limited scope, and thus cannot document all types of crimes and human rights violations. Another issue to be considered is the implementation of truth commissions' recommendations. While implementation is not the responsibility of the commission, the commission can monitor the process of the implementation. Similarly, it can monitor the process of transferring the findings of the truth commission to forms of popular media and integrating the findings into school curricula. Thus, understanding what a truth commission can or cannot do must be taken into account in creating success indicators for truth commissions. Burgess offered a helpful guiding question to evaluate truth commissions: “Does the TRC make a meaningful contribution to healing and less likely violations in the future?”



SESSION 2

The Role of Government, CSOs, Women, and Survivors in Truth Commissions



The second session of the seminar focused on the role of multi-stakeholder engagement in truth commissions. In this session, civil society and government member explained the role of governments, civil society organizations (s), women, and survivors in truth commissions in Asia, and the impact they have on the effectiveness and quality of those truth commissions.

South Korea: A tale of two truth commissions

Scott Stevens, Communications Director of the Transitional Justice Working Group in South Korea, stated that the South Korean truth commissions have shown the strengths and complexities of involving stakeholders, such as the government and CSOs, in truth-seeking efforts. The South Korean truth commissions are rooted in the context of colonialism and Cold War dynamics, including systematic crackdowns against communist members, sympathizers, and alleged supporters in South Korea as well as South Korea's hostile relations with communist North Korea. During South Korea's transition to democracy in 1987, the South Korean government began conducting truth-seeking efforts to understand what had happened during

the period of democratization. Thus, the South Korea Truth Commission was established in 2000 and from 2000 to 2004, it focused on the human rights abuses that the South Korean people suffered when fighting for democracy against South Korea's far-right leadership. In 2005, the South Korea Truth Commission mandate expanded to examine abuses in South Korea's 20th century past, dating from South Korea's independence from Japan to its democratization period.

Stevens underscored that the truth commission's findings were successful in uncovering the patterns of abuse throughout South Korea. The commission itself received 1001 cases, and confirmed approximately 900 of them. The killings were discovered to be mostly perpetrated by the South Korean military; in fact, the South Korean military committed 82% of the wartime atrocities. The 2005-2010 Truth Commission recommended a policy of memorialization, reparations for victims, and retrial opportunities for those who were falsely accused of being communists. For most of the years in which the truth commission conducted its efforts, the national government was supportive of its mandate. However, a change of political leadership in 2009 changed the government's attitude toward the truth commission. Toward the end of the commission, many of the recommendations were retracted. The English version of the truth commission report findings was also retracted, limiting the international audience. In addition, the police, military, and press became increasingly reluctant to work with the commission. As a result, little progress has been made to follow-up on the recommendations of the national truth commission.

In contrast to the national truth commission, Stevens explained, stands another truth commission held in South Korea's Jeju Island. Jeju Island saw a brutal crackdown of guerrillas by the far-right government in 1948. The crackdown decimated villages and the livelihoods of Jeju residents and left an estimated 15 thousand victims. In 2000, the government set up the Jeju Truth Commission, which was given a two-year mandate to examine past human rights violations in Jeju. The commission was focused on local, individual cases. In its two years of existence, the commission was successful in fulfilling its mandate and made recommendations, such as educating the public, setting up a memorial park, providing living expenses to victims'

families, excavating for graves, and supporting similar transitional justice initiatives. By 2013, all of the recommendations were dealt with in some way. Actions included the issuance of an apology by the South Korean president, the creation of a memorial day for victims of the Jeju crackdown, historical revisions to school curricula, reparations for victims of the crackdown, and the excavations of mass graves. A major factor behind the success of the Jeju Truth Commission was the support it had from civil society, press, and greater society. Furthermore, its limited scope allowed for recommendations to be implemented swiftly. Yet, the drawback to the Jeju commission was its difficulty coalescing a national narrative due to its focus on individual cases.



How to deal with “dangerous history”: Lessons from Thailand's truth commissions

Ramadan Panjor, Editor of the Deep South Watch in Thailand, presented on Thailand's experience, where fourteen ad hoc truth commissions were established between 2004 and 2014. Many of them were situated in Thailand's Patani Deep South. The situation in Patani is similar to that of Aceh; there was armed conflict between the national government and the peripheral communities that had previously enjoyed a history of autonomy. In Patani, there have been both non-official and official truth-seeking efforts to respond to the mass human rights violations that were often perpetrated by the security apparatus. For instance, the massacre that took place on October 6, 1976 is a very taboo subject in Thailand, but civil society groups

have tried to document it through online archives that are consolidated in www.doct6.com.

Panjor explained that the Thai government has tried to resolve past human rights violations through peace dialogues and ad hoc truth commissions. For instance, following the Takbai Massacre, in which more than 80 demonstrators died at the hands of the military on October 25, 2004, Minister Chaturon issued a fact-finding mission as well as a National Reconciliation Commission to examine what happened. Despite the poor implementation of its recommendations, this commission marked the first official truth commission in Thailand's history.

However, Panjor pointed to many flaws in Thailand's official truth commissions. The Thai government typically appointed controversial people in the commissions, which led people to believe that the commissions were biased. Furthermore, there is a need to represent different voices, ideas, and accounts in truth-seeking efforts. In the words of a Thai academic, Thongchai Winichakul, "To deal with 'dangerous history' the different versions of histories should be unfolded overtly. With this, the judgment of people is able to be made deliberately." Thus, concluded Panjor, truth commissions must be inclusive, unfold every perspective, and include justice into the peace agenda.



Aceh: A pioneer for national truth and reconciliation efforts

The head of the Aceh TRC's Secretariat Office, Devi Riansyah, shared his perspective both as a government official and as a victim and survivor of the Aceh conflict. Going deeper into the concepts of truth and peace, Riansyah posed the question, “When talking about truth, whose truth are we talking about?” ... [I]s there a tension between truth and peace? Can one exist without the other?”

Riansyah pointed out that the national and local governments have supported the Aceh TRC, through Articles 229 and 230 of Law no. 11 of 2006 and Aceh's Qanun no. 17 of 2013. In the Aceh government, both the parliament and the governor of Aceh are supportive of the TRC, and the TRC has been given a budget of 5 billion Indonesian Rupiah. He attributed the local government's support of the Aceh TRC to the local parties that are able to run for parliament seats in the Aceh government. Riansyah encourages the upcoming governor to continue supporting the Aceh TRC, and encourages the Aceh TRC to be a pioneer of the national TRC, just like Aceh is a pioneer of direct local party elections.



Women survivors' role in Sri Lanka's truth-seeking processes

In Sri Lanka, as explained by Sarala Emmanuel, Director of the Suriya Women's Development Centre (Suriya), the transitional justice process has been slow but has made some progress since the end of the civil war in 2009. Some of the progress has included the passing of transitional justice

legislation, the legislation of the Office of Missing Persons (a permanent institution that will look into cases of enforced disappearances in Sri Lanka), and the start of transitional justice consultations with community members. A number of symbolic actions have also been made, such as military withdrawal from former conflict zones, the return of lands, and the handover of governance to civilian control. Independent civil commissions have been set up, such as the Human Rights Commission and the Police Commission, and a few important laws have been passed, such as the Right to Information Act and the Witness and Victim Protection Act. It is also notable that there are efforts to reform Sri Lanka's Constitution.

Emmanuel highlighted the complexities of truth-seeking efforts. There are several questions to consider: that kinds of truth can be acknowledged in a truth-seeking process? When the justice system has betrayed an individual, should there be a retrial? What are the challenges of remembering past violence? How do we convey the truth to the next generation?

Emmanuel identified several lessons that emerged from Suriya's work in transitional justice and trauma healing amongst women victims and survivors of the Sri Lankan conflict, particularly in its efforts to increase the role of women and survivors in a truth commission. First, it is essential to do preparatory work with community women. Second, the concept of peace must be broad, starting with peace in the home and extending to peace in the community, society and nation. Third, violence from past conflict must be linked to current violence within the home and community, as the same structure has allowed violence in both contexts to occur. Fourth, there must be alternative means of accountability in human rights violation cases in which there is no evidence, such as simply acknowledging individuals' testimonies. This is particularly important for individuals who have experienced gender-based and sexual violence. Fifth, while reparations are often provided through customary and religious means, these types of reparations could further stigmatise and oppress women. Sixth, each woman survivor has a different idea of what justice entails, ranging from public apology and acknowledgement of harm to prosecutions, and truth-seeking efforts must reckon with these different ideas.

Drawing from Sri Lanka's experience, Emmanuel concluded her presentation by sharing some process recommendations to enhance the inclusion of women survivors in truth commissions. These included the following:

- maintaining strict confidentiality when victims and survivors share their stories;
- providing psychosocial support, childcare services, and financial support for survivors and victims in the truth-telling processes;
- allowing truth-telling processes to be flexible, particularly as victims and survivors may need several sessions to share the whole story;
- allowing the individual or the family to decide whether they would like to speak out publicly about the human rights violations they experienced;
- traveling to areas where communities and victims reside to gather statements, instead of the other way around;
- formulating and implementing a code of conduct for the truth commission;
- taking swift, strict, and public action when there is backlash toward women who provide statements, especially that of sexual violence; and
- tending to the needs of women survivors and looking out for their protection following their statement sharing.





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