Workshop report

Preventing Mass Violation, Promoting Institutional Reform, and Guaranteeing Non-Recurrence

7-10 JUNE 2021

TRANSITIONAL JUSTICE ASIA NETWORK



Workshop Report/Preventing Mass Violation, Promoting Institutional Reform, and Guaranteeing Non-Recurrence © Transitional Justice Asia Network ²⁰²¹

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Cover image:

"A visitor in a museum located in the former Comarca Balide prison building in Timor-Leste. The building is currently becoming the office of Centro Nacional Chega! (CNC), a follow up institution from **Comissão de Acolhimento**, **Verdade e Reconciliação de Timor-Leste (CAVR)** as part of institutional reform in Timor-Leste" by Anne Cecile-Esteve for Asia Justice and Rights.

Background

For the last two decades, most Asian countries experienced a political situation from militarism and authoritarianism into democratic era. The transition process affected the massive reform on institutional reform, including military, police and judiciary reform. However, the current situation in both Global and Asian contexts shows the increasing militarism and authoritarianism. Several countries in Asia, like Myanmar and Thailand, provide examples of military domination, in not only the security actors but in other sectors like business, technology, education, and health.

This is affected to the Increasing numbers of violations including arbitrary detention, torture, custodial deaths and extrajudicial killings, by police, army, and intelligence agencies, without adequate legal process and with maximum sanction. Furthermore, the domination of the security sector in government resulting in shrinking public space, for example, by restricting freedom of expression and assembly (including media and other online platform), and allowing torture and arbitrary arrest.

On the other hand, most countries facing similar problems such as lack of regulations that hold the security sector accountable for international crimes, as well as prevention from mass violations, crimes against humanity and genocide. Thus, it is important to have legal protection for civilians from the security sector and state authorities. As a result, the civil society has a main role in advocating civilians as well as to ensure that four pillars of transitional justice including preventing mass violations, promoting institutional reform, and guaranteeing non recurrence will be achieved.

Asia Justice and Rights (AJAR) together with Transitional Justice Asia Network (TJAN) - KontraS Aceh (Indonesia), ND-Burma (Myanmar), Suriya Women's Development Centre (Sri Lanka), Alternative Law Groups (Philippines), and the Cross-Cultural Foundation (Thailand.) TJAN's membership has expanded to include associates: Assosiasaun Chega Ba Ita/ACbit (Timor-Leste), Liberation War Museum (Bangladesh), Advocacy Forum (Nepal) and May 18 Foundation (South Korea) - convened a four-day online workshop on "Preventing Mass Violation, Promoting Institutional Reform, and Guaranteeing Non-Recurrence" on 7-10 June 2021.

The workshop aims to increase understanding of the innovative responses to entrenched impunity in Asia and build the capacity of those working to advance human rights in the region. The workshop includes presentations by international and regional experts, knowledge-sharing discussions, and practical group activities as well as opportunities for participants to informally discuss their experiences and build community.

Session One: Mapping the Context

A discussion of the following questions:

- How is the context of conflict in your country? Better, worse or stagnant?
- Has there been any progress in relation to TJ mechanisms?

Country	Answers	
Myanmar	 Worsening situation since the February coup: over 800 protestors killed, over 4000 detained and arrest warrants for almost 2000. Also, an emerging humanitarian crisis in regions such as Kachin Some push for TJ mechanisms under the National League for Democracy (NLD) government, but no space for TJ since the coup CSOs now involved in discussions for a new constitution, working with different stakeholders particularly the National Unity Government (NUG). Former NLD politicians have formed the Committee Representing Pyidaungsu Hluttaw (CRPH) Different stakeholders involved in the drafting of the Federal Democratic Charter, considered to be the new foundation for Myanmar. However, some dissent and political disagreements between different stakeholders 	
Thailand	 Conflict in the South typified by continued violence and stagnation. Implementation of martial law and emergency decrees Mistrust in the legal system, particularly due to discrimination Significant issues in relation to the legal system and various threats to democracy 	
Bangladesh	 Various threats to democracy, election process criticized and freedom of expression under threat Religious extremist groups are pushing against the Bangladesh's secular state Significant threats to indigenous people, cases of eviction and land grabs. Threats to traditional ways of life and culture, particularly in the Chittagong Hills Tracts region 50th anniversary of Bangladesh's independence, CSOs using the opportunity to promote human rights 	
Sri Lanka	 Alarming situation, regression of human rights and trends towards authoritarianism, particularly under the current government which came to power in 2019 Covid situation coupled with authoritarian measures, particularly by the centre for outbreak prevention. Use of military, particularly for measures such as lockdowns Threat of violence for ethnic minorities, more division and attempts at integration have gone backwards Cycles of violence given no steps towards peace, acknowledgement or reconciliation 	
Nepal	 No progress in terms of TJ mechanisms, particularly in relation to non-recurrence Frustration among victims given a lack of justice Political turmoil, issues around political parties and significant division. Political turmoil saw parliament dissolved by the president in December 2020 Agreement made with Maoist guerillas but violence has persisted Human rights activists being attacked and facing threats 	

Country	Answers	
Philippines	 Post-Marcos period there was progress in terms of TJ mechanisms, however the human rights situation is moving backwards Significant issues around justice due to the 'war on drugs' Shrinking civil space and anxiety among human rights defenders, government red tagging of civil society activists and workers Anti-Terror Law currently being discussed at the supreme court Indigenous people continually caught between conflict and under threat due to lifting of mining ban 	
Indonesia	 Some progress such as the presidential decree for a truth mechanism, but no involvement of victims General shrinking of democratic space Worsening situation in Papua, internet blackouts and Papuan independence movement being labelled a terrorist group by the military In Aceh, the recommendations of the TRC are not being implemented by local government 	
Timor Leste	 A political impasse during the last 3 to 4 years Increase in cases of police violence, particularly the use of guns to resolve conflict Stalling of legal process, particularly since the exit of international judges Addressing past human rights violationss and providing reparations have stalled as all attention is directed to the Covid situation There has been a decrease in political will which is ironic given the current president was a former head of truth commission of Timor Leste 	
South Korea	- Cases of sexual violence, lack of justice leading to suicide	
Australia	 In May 2021, the Yoo-rrook Justice Commission was established in Victoria. This is a significant development, the newest truth commission in the Asia Pacific region First truth commission in Australia, one of the largest mandates in the world given it will cover the colonial period Truth commission will produce a preliminary report after one year and a full report after three years 	

Session Two: Institutional Reform in Asia

During the second session of the workshop, Josef Benedict from CIVICUS shared his work with a focused on shrinking civil space in Asia, Damar Juniarto from SAFENET who spoke about challenges to strengthening digital security in Asian countries and Patrick Burgess from AJAR who discussed institutional reform as a Key Aspect of transitional justice.

Josef began by explaining the role of CIVICUS as a global alliance of 10,000 CSOs and activists in 175 countries that monitors civic space across the world. Through this work, CIVICUS has found a narrowing of civic space in Asia. According to their data, 4 countries are 'closed', 9 are 'repressed', 9 are 'obstructed' and only Taiwan is considered 'open'. Between 2018-2020, the percentage of people in Asia living in a 'repressed' civic space increased from 13% to 49%. Use of draconian anti-terror, public order and criminal defamation laws was the top civic space violation in 2020. Other factors include the undermining of the rule of law, increased censorship and surveillance, abuses by security forces, a lack of accountability and attacks on journalists, activists and civil society organizations.

With this said, there are also some positive developments across Asia such as the formation or improvement of oversight bodies, establishment of investigatory bodies, repeal or reform of restrictive laws, mechanisms to protect human rights defenders and progressive court interventions.



Presentation from Josef Benedict of CIVICUS on Shrinking Civic Space in Asia and Lack of Institutional Reform

Damar began his presentation by asserting that while digital rights are human rights, the term is quite new for Southeast Asia.

— Over the past decade, Southeast Asia has witnessed a rise of digital authoritarianism which was accentuated by the COVID-19 pandemic, leading to further issues related to surveillance, mobility and inequality of access. Measures of internet control used by governments in Southeast Asia include internet shutdowns, cyber surveillance and online censorship.

(Damar Juniarto, Workshop on Preventing Mass Violation, Promoting Institutional Reform, and Guaranteeing Non-Recurrence, 7-10 June, 2021)

As Damar explained, the internet is being weaponized through social media which includes disinformation, cyber-attacks and propaganda, digital regulations such as defamation, internet and fake news laws as well as through technology which includes internet shutdowns, blocking apps or social media platforms and restrictions on public speech.

Patrick emphasized that while other mechanisms deal with past abuses, institutional reform deals with the future. Root causes often keep repeating because the fundamental causes are still there, such as impunity, and manifest in many ways in different contexts. During the pandemic, the region has seen a rise in militarism coupled with suppression of journalists and human rights defenders. Another impact of the pandemic has been that many observers are focused on their own context and therefore the international community is not pressuring governments in Asia as much as they did in the past. Overall, it seems that many steps backward have been made in recent times. Despite this, there have been some progressive developments that need global cooperation and solidarity.

Session Three: Institutional Reform, Guarantees for Non-Recurrence and Transitional Justice – Global Context

During the third session of the workshop, the speakers are Howard Varney who focused on the guarantee of nonrecurrence as a manifestation of transitional justice; Mo Bleeker Special Envoy and Head of the Task Force for Dealing with the Past and Prevention of Atrocities, and Special Envoy on Peace and Human Security, Swiss Federal Department of Foreign Affairs who focused on preventing a recurrence of mass atrocities through transitional justice; Reuben Lilo who focused on the implementation of disarmament, demobilization and reintegration (DDR) on transitional justice in Solomon Islands and Galuh Wandita who focused on the topic of gender justice as a legacy of post conflict.

Howard began by emphasizing the importance of transitional justice mechanisms such as truth and justice and highlighted their importance for closure, human dignity and deterrence. These mechanisms can sometimes be treating the symptoms of deeper issues. For example, violations of civil and political rights are invariably manifestations of deeper underlying fault lines in society while structural socio-economic practices result in entrenched marginalization and abuse of vulnerable groups. Ensuring the guarantee of non-recurrence requires an understanding of underlying causes to identify long term solutions and strategies that treat the root causes. Examples of this approach include the recommendations made by the Peru TRC to reform the educational system and the Sierra Leone TRC which proposed greater access to natural resources.



INSTITUTIONAL REFORM, GUARANTEES OF NON-RECURRENCE & TRANSITIONAL JUSTICE – GLOBAL CONTEXT

Guarantees for Non-Recurrence as a Manifestation of Transitional Justicee Howard Varney 8 June 2021



Presentation from Howard Varney on Institutional Reform, Guarantees of Non-Recurrence and Transitional Justice from the Global Context

Mo Bleeker shared her perspective on creating strategies that deal with past atrocities and how to ensure legitimacy, credibility and sustainability. This is a long-term endeavor (potentially over many generations) and setbacks do emerge as we are seeing today in Asia. Therefore, it is very important to consider cooperation and alliances with other actors and think about how this cooperation can create political strength. She explained that when strategies that deal with past atrocities are developed, it is important to consider the nature of transition, the parties who want 'dealing with the past' strategies to be developed, who is in charge of the process, when discussions should take place, how the society at large participates and who is excluded.

Rueben Lilo provides a background to the conflict in the Solomon Islands and reminded us that it is rooted in colonialism. Disarmament, demobilization and reintegration (DDR) is key for the guarantee of non-recurrence in the Solomon Islands. As part of the 2000 peace agreement, combatants were offered a DDR program if they put down their guns and assistance was given for reintegration into civilian life. Many police officers were involved in the conflict and efforts were made to lustrate officers with many offered retirement with full pay. An issue was that a large amount of money for the reintegration program was stolen through corruption. Nevertheless, a successful DDR policy has been developed in the Solomon Islands which relates to training, job creation and assistance for former militia members.

Finally, Galuh presented the concept of 'legacy violence' in which there is a continuum of gender-based violence following a period of conflict where there was systematic sexual violence. In Timor Leste, CAVR documented 853 counts of sexual violence which included rape, other forms of sexual violence and sexual slavery. To illustrate the reality of legacy violence in Timor Leste, Galuh referred to a study by Nabilan, an Australian aid program from 2016, which found that 59% of women had experienced intimate partner violence over their lifetime and 47% had experienced violence in the previous 12 months.

The need to acknowledge gendered violence during conflict and how it morphs into new forms post-conflict as well the need for reforms that elevate the voices of survivors and involve girls, boys, youth and men.
 (Galuh Wandita, Workshop on Preventing Mass Violation, Promoting Institutional Reform, and Guaranteeing Non-Recurrence, 7-10 June, 2021)

Session Four: Mapping Institutional Reform in Asia

Session four involved group discussions to map institutional reform in Asia. Participants were asked questions about their countries including whether reforms have been implemented, which sectors need to be changed to deal with mass human rights violations and how CSOs have been involved in the process of institutional reform.

Based on the discussions, it is clear that there has been some progress in Asia in terms of institutional reform. This includes examples of legal, constitutional, education and security sector reform as well as the enactment of laws, establishment of commissions, ratification of conventions and positive court rulings. However, there is an urgently need for reform of the police and military, media, judiciary and constitution. Reform of these sectors is particularly hampered by lack of accountability and political will as well as the fact that many perpetrators of human rights violations are still in power. Across all countries, CSOs have demonstrated a strong commitment and have pushed for institutional reform through protests, publishing statements, filing petitions, public education as well as constant lobbying and advocacy.

Session Five: Security Sector Reform in Asia

Session four involved group discussions to map institutional reform in Asia. Participants were asked questions about their countries including whether reforms have been implemented, which sectors need to be changed to deal with mass human rights violations and how CSOs have been involved in the process of institutional reform.

Rivanlee Anandar from KontraS shared the context of security sector reform in Indonesia. As Rivanlee explained, since Indonesia emerged from dictatorship in 1998 attempts have been made to reform the military, national police and other institutions such as the parliament and intelligence agency. However, there are few examples of successful SSR in Indonesia and the military remains deeply embedded within Indonesian society with little civilian oversight. Key obstacles to successful SSR include the attitudes of the military, business interests, lack of accountability and insufficient political will. Another result of the lack of successful SSR is the prevalence of state violence during periods of protest. Protests against the omnibus law in 2019-2020 were met with excessive force, arbitrary arrest and inhumane treatment. According to Rivanlee, police violence has continue become habitual and is carried out with impunity.

The second speaker was from Myanmar and began their presentation by asserting that there is no possibility of successful SSR in Myanmar given the military seizure of power in February. Faith is currently being put in the National Unity Government (NUG) to provide a secure future for the country and work is currently being done to develop a federal democratic political system and draft a new constitution which may include SSR. According to the speaker, this will require the involvement of various stakeholders and the political will of politicians and army leaders. When a program of SSR is possible in Myanmar, particular focus should be paid on creating a professional and unified army. This will require the involvement of different stakeholders, particularly the various ethnic armies.

Sean Tait from the African Policing Civilian Oversight Forum (APCOF) share his experiences in following the role of civil society in monitoring and advocating for security sector reform in Africa.

----- SSR is a long-term project which is hard to measure in the short term. Given that it is a long-term pursuit, we can think of SSR strategies as a game of pool. That is, while you may not sink the ball you can at least try to set up for the next shot.

(Sean Tait, Workshop on Preventing Mass Violation, Promoting Institutional Reform, and Guaranteeing Non-Recurrence, 7-10 June, 2021)



Presentation from Sean Tait of African Policing Civilian Oversight Forum on Civil Society in Monitoring and Advocating Security Sector Reform in Africa

An example of the pool ball metaphor in action is the creation of extra-national mechanisms such as the 'Common Standards for Policing in East Africa' and the 'Model Police Law for Africa' which act as common HR frameworks that can be applied at the national level and converted in practice when the opportunity arises. An example of these regional standards being applied at a domestic level is the Nigeria Police Act which drew on the shared HR frameworks.

Session Six: Judicial Reform in Asia

Professor Glenda Litong from the University of the Philippines College of Law shared on the judicial reform in the Philippines. Glenda began by providing a history of judicial reform in the Philippines and referred to a number of cases of gross human rights violations, particularly during the Marcos era. To bring justice to the victims, the Supreme Court developed the Rule on the Writ of Amparo and the Rule of the Writ of Habeas Data. These provide victims access to remedy or protection and grants them access to the database of information.

From Nepal, Mandira Sharma, a lawyer and human rights defender from Advocacy Forum explained about conflict in Nepal and the People's War between 1996-2006. After the conflict ended, the Comprehensive Peace Agreement (CPA) was developed. In this context, there has been an increase in the number of women involved in lawmaking. In the 2008 election for the Constituent Assembly (CA), women candidates gained 30 (12.5%) of the 240 seats elected under the first-past-the-post and 161 out of the 335 seats under the proportional electoral system. However, Mandira also recommended a number of improvements such as reforms to the military court and increased judicial independence.

Justice Nazmul Huq, a former Justice of the Appellate Division of Supreme Court of Bangladesh and the first Chair of the International Crimes Tribunal Bangladesh explained that while the war in Bangladesh impacted the country's judicial system, reforms have taken place, albeit slowly. Examples of improvements to the judiciary system include the establishment of Bangladesh Law Commission, Bangladesh Legal Aid Commission, Registration Directorate, and Bangladesh Bar Council. Justice Nazmul recommended that these reforms must work more inclusively and he finished by highlighting the importance of sharing lessons and experiences across countries.

From Thailand, Justice Suntariya Muanpawong, Secretary of the Court of Appeal spoke about her experiences as a Judge in Thailand. Women are still underrepresented in the judicial system and that a significant challenge is ensuring judges are more accountable and independent, particularly in cases related to the Thai royal family.

An important step in Thailand is changing the culture and attitude of law enforcement, as well as ensuring judges are impartial and that gender issues are better integrated in Thailand judicial system.
 (Justice Suntariya Muanpawong, Workshop on Preventing Mass Violation, Promoting Institutional Reform, and Guaranteeing Non-Recurrence, 7-10 June, 2021)

Session Seven: The Guarantee of Non-Recurrence

Hugo Fernandes from Centro Nacional Chega! shared the experiences of CNC in contributing to the guarantee of non-recurrence in Timor Leste. The guarantee of non-recurrence in Timor Leste encompasses training for security reform, education curriculums, research on past memories, monitoring defense and security sectors and providing support for victims.

— The guarantee of non-recurrence requires a victim-centric approach. This includes reparation schemes encompassing health, financial support, scholarship, and housing as well as commemorations as part of the healing process. This is important for violence prevention as survivors may otherwise lose trust in the socio-political system, institutions and processes.

(Hugo Fernandes, Workshop on Preventing Mass Violation, Promoting Institutional Reform, and Guaranteeing Non-Recurrence, 7-10 June, 2021)

Another aspect of a victim-centric approach relates to research and transmission of memories. Memorialization programs include mapping of historical sites and the commemoration of historical events, both of which allow survivors to feel dignified.

From South Korea, Yoojung Hong from the May 18 Memorial Foundation explained about the history of Gwangju Uprising which was a 10-day struggle in 1980 that was violently quashed by the state resulting in a total of 5,517 casualties (155 killed, 81 missing and 5,281 injured). Although it was a democratic movement, the uprising was long labelled a 'riot' carried out by 'hooligans'. In reality, the May 18 Uprising inspired subsequent democratic movements such as the 1987 June Struggle and 2016 Candlelight Revolution. In the wake of May 18, CSOs and activists developed the Gwangju Principles which are truth ascertainment, compensation for victims, commemoration projects, regaining the impaired reputation and perpetrator punishment. The May 18 movement has worked to reckon with tragic legacies of military dictatorship and employ the Korean model of "Nunca Mas" (Never Again). This has resulted in the establishment of a truth commission, an official apology as well as a process of forgiveness and reconciliation.

The final speaker was Naureen Rahim from the Liberation War Museum who focused on the guarantee of non-recurrence in Bangladesh. She emphasizing the role of CSOs in ensuring the state fulfils their obligation to guarantee non-recurrence. The Liberation War Museum, which was established by activists in 1996, has played a crucial role in the guarantee of non-recurrence in Bangladesh through their commitment to commemorating the memory of struggle. In 1996, a public call was put out for support and donations of objects such as clothing that could function as artefacts of the Liberation War. These artefacts were later shared during the International Crimes Tribunal which was established in 2012. The museum has also been heavily involved in commemorating victims and ongoing work is also being carried out to map mass graves.



Workshop participants mapped out the roles of civil society in preventing mass violations

At the end of session seven, participants broke into small groups to discuss the prevention of mass violations. The discussion questions and key points raised during the session are presented in the table below:

What is the responsibility of the civilian government in preventing mass violations?	 Create and implement laws and legislation, particularly for groups such as women and people with disabilities Establish human rights commissions Ensure international standards are upheld and that all people are treated equally Teach young generations about history to prevent future violations Prosecute human rights violators
What is the responsibility of the security sector in preventing mass violations?	 Ensure the military is under civilian control Educate security sector personnel about human rights and past conflict Provide specialized training and create codes of conduct Ensure civilians can exercise their right to protest without suppression
What are the roles of civil society in preventing mass violations?	 Document human rights violations and monitor the government Empower victims to speak and share their experiences Work and organize at the community level Collect and share stories with younger generations Provide community education
What kind of cultural interventions can be used to prevent mass violations?	- Write new history books and reform school curriculums - Memorialization through statues and museums - Integrate local song and dance in campaigns

PUBLIC STATEMENT

"The Threat of Shrinking Civic Space in Asia: Urgent Need to Reform for Greater Accountability in the Region"

10 June 2021 – From 7 to 10 June, the Transitional Justice Asia Network or TJAN conducted an online workshop on Preventing Mass Violations, Promoting Institutional Reform, and Guaranteeing Non-Recurrence. Forty experts, including practitioners, lawyers, academics, and representatives from the security sector participated in the workshop discussing contexts, challenges, best practices, and opportunities in dealing with the institutional reform and guarantees of non-recurrence.

During the four-day workshop, experts mapped hopes and concerns for transitional justice in the region. For the last two decades, many countries have shared a tumultuous history of reform, stalemate, and relapse that continues to shape the future. Each country identified how the transition process influenced trends on institutional change, including reform of the military, police, and judiciary.

However, the current situation, both globally and regionally, shows reassertions of militarism and authoritarianism. Several countries, like Myanmar and Thailand, are examples of dominating military power influencing policy-making, not only in the security sector, but also in other sectors like business, technology, education, and health. Digital authoritarianism commonly enacts laws targeting online activities, through cyber-related surveillance, and regulations on "fake news", not rooted in international human rights law. While there are increasing numbers of violations, including arbitrary detention, torture, custodial deaths, and extrajudicial killings, the majority of cases have yet to go through adequate legal process. Interfering with the independence of judges by government and media is still common. Judicial reforms require political will, and judges with integrity.

Under the guise of COVID-19 protocols, patterns of behavior by government emerge, including issuing emergency decrees, internet shutdowns, and implementing governance mechanisms that endanger civilians. If these patterns are not addressed, progress on transitional justice in the region is in danger of being reversed. The failure to identify the root causes of conflict hinders the accountability process. Reform, especially at the institutional level, has to be integrated into the national policy of each country.

It is important to have legal protection for civilians from both the security sector and state authorities. Civil society has a key role in strengthening survivors, as well as ensuring that the four pillars of transitional justice, including preventing mass violations, promoting institutional reform, and guaranteeing non-recurrence will be achieved. Progressive education is a vital element in encouraging guarantees of non-recurrence, as is memorialization and commemoration, acknowledging the experience of victims.

- 1. Asia Justice and Rights (AJAR)
- 2. KontraS Aceh (Indonesia)
- 3. ND-Burma (Myanmar)
- 4. Suriya Women's Development Centre (Sri Lanka)
- 5. Alternative Law Groups (Philippines)
- 6. Cross-Cultural Foundation (Thailand)
- 7. Assosiasaun Chega Ba Ita/ACbit (Timor-Leste)
- 8. Liberation War Museum (Bangladesh)
- 9. Advocacy Forum (Nepal)
- 10. May 18 Memorial Foundation (South Korea)
- 11. Judicial System Monitoring Program (Timor Leste)
- 12. Katahati Institute (Indonesia)
- 13. Thai Lawyer for Human Rights (Thailand)
- 14. KontraS (Indonesia)

Transitional Justice Asia Network or TJAN is a collaborative effort of ten leading civil society organizations and over 100 experts from ten Asian contexts that are at various stages of transition to sustainable peace after periods of dictatorship, authoritarian rule and mass human rights violations.

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