

Historical Origin of International Criminal Law

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The Development of ICL: Disciplinary Perspectives

Transitional Justice Delayed or Denied?

A Case Study of Southeast Asia and Indonesia

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Research Questions

- 1. How do Southeast Asian States proceed with their transitional justice programs?**
- 2. What is the relationship, if any, between international criminal law and transitional justice based on Southeast Asian experiences?**
- 3. What do the Southeast Asian experiences tell us about transitional justice measures in general?**

Definition

Transitional Justice:

“A set of legal responses taken and quality of justice rendered when new regimes replace authoritarian predecessors believed to be responsible for human rights violations in the wake of democracy”

*Richard Lewis Siegel's modified definition
of Transitional Justice (1998)*

Transitional Justice Situations in Southeast Asia

1. Philippines

- After the fall of the Marcos regime and end of martial law (1986)
- The end of the Macapagal-Arroyo regime (2010)
- Comprehensive Agreement on the Bangsamoro (2014)

2. Cambodia

- The fall of the Pol Pot regime in 1975 and the end of Viet Nam's incursion (1988)

3. Thailand

- Military rule and democracy 'ping pong' (1932 – 1997)

4. Indonesia

- The fall of Soeharto's New Order regime in 1998

5. Timor Leste

- The end of Soeharto's regime in Indonesia (1998) and popular consultation (independence) in 1999.

Transitional Justice Measures: Philippines

1. Philippines

- After Marcos
 - ✓ Presidential Commissions on Good Governance & on Human Rights
 - ✓ 1987 Constitution, more comprehensive HR protection
 - ✓ Civil cases against the Marcoses & their allies
 - ✓ Criminal cases against military & allies, but not against the Marcoses
 - ✓ 2013 Act on Recognition and Reparation for victims of HR violations under the Marcos regime
- Other Situations
 - ✓ Truth Commission of 2010 ---- corruption allegations against the Macapagal-Arroyo regime (2001 - 2010)
 - ✓ Transitional Justice and Reconciliation Commission under the Comprehensive Agreement on the Bangsamoro

Transitional Justice Measures: Thailand

2. Thailand

- Blanket amnesty law for perpetrators of bloody crackdown of demonstrations in 1976 and 1992
- 1997 Constitution ---- inclusion of democratic values
- 2010 Truth and Reconciliation Commission, specifically to address the political violence that erupted in April and May 2010
- 2013 amnesty law, granting amnesty to all perpetrators of the crackdown of the “red shirt” opposition supporters protests

Transitional Justice Measures: Indonesia

3. Indonesia

Indonesia's transitional justice framework must respond to at least two layers of issue:

- 1) past human rights violations which affect the society as a whole; and
- 2) violations directed specifically to a number of regions, to which the general population may not feel any affinity

Transitional Justice Measures: Indonesia

- a. Amendments of the Constitution (1999, 2000, 2001 and 2002)**
 - Inclusion of human rights provisions
 - Establishment of the Constitutional Court
 - Limitation on the president's term of office
- b. Institutional Reforms**
 - Security sector reform
 - Judicial reform
- c. Truth Recovery efforts:**
 - For prosecution purposes ---- ad hoc and permanent teams
 - National Truth and Reconciliation Commission
 - Commission on Truth and Friendship of Timor Leste and Indonesia
 - Local Truth Commissions (Aceh and Papua)

Transitional Justice Measures: Indonesia

- d. Individual prosecutions** (Law No. 26/2000 on human rights court)
 - Jurisdiction: genocide and crimes against humanity
 - NHRI as sole investigator
 - Retroactive law: conducted by an ad hoc human rights court (established based on recommendation by the House of Representative and approval by the President)
 - Tried 3 situations (2 prior to 2000 and 1 took place in 2003); 18 indictments, all were acquitted; 8 pending situations
 - Special/local human rights courts: Aceh and Papua
- e. Reparations**
 - Government regulation 3/2002: covers restitution, compensation and rehabilitation
 - Compensation is dependent upon conviction

The Return of Old Regimes: Failure to Prosecute?

1. Philippines

- Imelda Marcos, congresswoman representing Ilocos Norte since 1992. Ran for presidency in 1992.
- Imee Marcos, incumbent Governor of Ilocos Norte
- Ferdinand Marcos, Jr., senator

2. Indonesia

- Gen. (ret.) Prabowo Subianto, one of the two candidates in the 2014 Presidential race. He received more than 47% of votes. Suspected as the mastermind in the 1992 Santa Cruz massacre in Timor Leste and Enforced disappearance of students during the 1998 riot in Jakarta.
- Managed to abolish the regional direct election due to his considerable influence in the House of Representatives.

ICL and Transitional Justice: SEA Experiences

- 1. ICL ---- prosecution of core international crimes**
 - It may play an important role in preserving the rule of law, hence the maintenance of democracy. It sends the message that nobody is above the law.
 - The case study shows that societies actually demand for accountability (Indonesia, Cambodia, Timor Leste).
 - As a matter of fact, the failure to prosecute contribute directly to the return of the old regime and even directly threaten democracy (Indonesia and Philippines).
- 2. There is no one size-fits-all approach to transitional justice in Southeast Asia**
 - Mechanisms that are considered as successful usually involved societal engagement (Outreach programs in Cambodia and CAVR in Timor).

Thanks for Your Attention

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