

Thematic Cluster 3.

Transitional Justice: Impunity

This year's GDF will specifically address the issue of impunity, one of the most challenging aspects of transitional justice. Impunity is when atrocities caused by authoritarian states or state organizations are never investigated, and when the truth is revealed, no accountability is asked from the perpetrators. The lack of accountability and, at the minimum, acknowledgment and apology by the perpetrators leaves victims with no way to resolve their resentment and trauma. We hope that the GDF 2024 will highlight the prevalence of impunity in Asia as a case study. The results will lead to international solidarity for those working to implement a transitional justice where bad actors are held accountable.

Moderator Chung Jujin (Center for Peace & Conflict Resolution)

Speakers

1. Review of the Indonesia Police Reform
Poengky Indariti (Indonesia National Police Commission)
2. “Peace-building After State Violence”: Focusing on Mindanao, the Philippines & Timor-Leste
Gus Miclat (The Initiatives for International Dialogue)
3. Memory and Silence of State Violence in Thailand
Thongchai Winichakul (University of Wisconsin-Madison)

Review of the Indonesia Police Reform

Poengky Indarti

Member of the Indonesia National Police Commission

Reform of the Indonesian National Police (INP) in 2024 has entered its 24th (twenty-fourth) year. Over the last twenty-four years, the public has witnessed the change of the INP from the bad practices carried out during the New Order era to the good practices carried out during the Reformation period.

INP reform is divided into three aspects, namely the first is the structural aspect, including changes to the position of the police in the state administration, organizational form, structure and position. After INP Reform, the structure of the INP is under the President, while in the past it was under the Minister of Defense/The Chief of the Armed Forces. Second, the instrumental aspect, includes changes in philosophy, doctrine, function, authority and competence. Third, the cultural aspect, namely changes in the guidelines for ways of thinking (mindset) and behaving (cultureset) which are believed to be corrected by the leadership and members of the INP, including changes in the way of thinking and behavior of leaders and members of the INP to become professional civilian police, which means mastering their duties to serve and to protect the community and enforce the law for the best possible maintenance of security and public order; no longer use excessive force or militaristic actions; respecting human rights; not living a luxurious lifestyle; not arrogant, where these changes must be reflected in the recruitment, education, budget, staffing, management and police operational systems.

The public can see that Structural Reform has been implemented, including changing the structure of the INP to be directly under the President. Likewise, instrumental reform has been implemented, including with the passed of Law Number 2 of 2002 concerning the INP. Meanwhile, for Cultural Reform, it has indeed been implemented, but it still takes longer to change, because Cultural Reform changes perspectives, ways of thinking and ways of behaving cannot be done quickly.

Even though during the last 8 (eight) years (2016 – 2024) while I served as Commissioner of the National Police Commission (Kopolnas) I saw that the INP had shown an increase in professionalism and achievements that received praise from the public, but in practice there were still cases of use of violence that exaggeration that is in the spotlight of society. Apart from that, the public also sees that there are still police who live luxurious lifestyles, act arrogantly, and even make illegal levies, which is not in line with the public's expectations for the police to be more serving, nurturing and protective. In fact, in 2022 there were two criminal cases involving the two INP's two-star generals, namely Ferdy Sambo who was charged with premeditated murder of his driver and Teddy Minahasa who was charged with buying and selling drugs (crystal methamphetamine), which

seriously tarnished the good reputation of the INP institution, so that public trust in the INP fall to the lowest point. This can be interpreted as saying that INP Cultural Reform still needs to be encouraged so that it can be implemented seriously by all INP leaders and members.

My institution Kompolnas – the National Police Commission as external oversight of the INP sees that INP reform must continue to be supervised by civil society until changes are realized as expected by society, especially the realization of a new INP culture as a professional civil police force that respects human rights in carrying out its duties to serve and to protect the community and uphold the law for the sake of maintaining security and public order.

In this article, I will describe the history of INP reform and the changes that have occurred based on existing regulations, as well as the existence of bad actions of the individual personnels so that they can be changed into good ones in the future.

THE HISTORY OF POLICE REFORM IN INDONESIA

The source of public dissatisfaction with the INP during the New Order era (1966 – 1998) was because the character and behavior of INP members was greatly influenced by ABRI (Indonesia's Armed Forces) and the policies of the political leadership during the New Order era. So that the thinking paradigm of INP leaders and members becomes like a militaristic military force, their behavior often uses excessive violence, arrogant, tolerates corruption, collusion and nepotism, and is used as a tool for President Soeharto to maintain his power. This makes the INP unprofessional in carrying out its duties.

In the early days of the Indonesia Independence Revolution in 1945, the INP was independent and separate from the TNI (the Indonesia's Military which consisted of the Army, Navy and Air Force), but in line with political developments at the national and international levels, in August 1959 President Soekarno stated that he would form the Indonesian Armed Forces (ABRI) consisting of the Military Force and the Police Force. INP leader at that time, Police Commissioner General Raden Said Soekanto Tjokrodiatmodjo expressed objections to the plan to merge INP and the Indonesian Military into ABRI on the grounds of maintaining police professionalism, but these objections were ignored. On 15 December 1959 Commissioner General of Police R.S. Soekanto Tjokrodiatmodjo resigned after serving as Minister of Police. Based on Presidential Decree Number 21 of 1960, the term Minister of Police was abolished and was subsequently referred to as Minister of State Police along with other Armed Forces and was included in the field of national security.

In 1960, the People's Consultative Assembly passed the Decree Number II/MPRS/1960, where in article 4 it united the Defense and Security Sectors, and then on June 9 1961 the House of Representative passed the Law no. 13 of 1961 on the INP which united the INP and the TNI into the Armed Forces of the

Republic of Indonesia (ABRI).

The integration of INP into the Armed Forces of the Republic of Indonesia (ABRI) has had serious impacts, including shrinking INP structurally, because INP was previously under the President/Prime Minister, after being merged with the Armed Forces, the structure of the INP is under the Minister of Defense/Chief of the Armed Forces. This unification also changed the character of the INP members to become militaristic, because their recruitment and education were integrated with the Indonesia's Military Forces, especially when the New Order was in power from 1966 to 1998.

On June 19, 1961, the People's Consultative Assembly passed the Law Number 13/1961 on the INP as an adjustment to Decree Number II/MPRS/1960. In this Law it is stated that the position of the National Police is an element of the Indonesia Armed Forces which is the same and equal to the Army, Navy and Air Force. In fact, INP and the TNI have different main tasks and functions.

The objection of the first Chief of Police, Raden Said Sukanto, that the integration of INP into the Armed Forces would eliminate INP professionalism was proven. During the period 1961 to 1998, INP experienced degradation, including as follows:

1. INP is under the leadership of the Minister of Defense and Security and the Chief of the Armed Forces, so it only focuses on defense issues. It is true that there is a Chief of Police who is the Chief of INP, but INP policies must be in line with the policies of the Minister of Defense/Chief of Armed Forces;
2. The Armed Forces' priority is the Army, so that the INP – which is considered the fourth force, is also the fourth priority. The INP budget is far below the Army budget;
3. INP human resources are recruited, selected, educated and raised according to the standard of Armed Forces. INP's doctrine follows Armed Forces' doctrine, namely Catur Dharma Eka Karma. Thinking paradigm INP members also follow the Armed Forces paradigm;
4. INP has become militaristic in character, using excessive force following military culture and violating human rights;
5. The political policy of the New Order Government which gave the Armed Forces dual function authority, namely the Social Function and Political Function, made the Armed Forces go beyond its main tasks and functions, so that in practice the Indonesia's military could carry out actions that should have been the duty and authority of the INP, for example the military could carrying out enforcement actions, law in the form of arrest, detention and interrogation, as well as appointed as Governor and Mayor, etc.
6. The minimal INP budget makes law enforcement a way for INP members to finance inquiries and investigations, as well as providing a source of

side income. Therefore, it is common to joke that the Criminal Code (Criminal Code) is used to give money after cases.

Since the implementation of government reform in 1998, there have been many significant changes, marked by the fall of the New Order government with the resignation of President Soeharto, who was then replaced by the Reform government under the leadership of President B.J Habibie. In the midst of various public demands for the completion of reform, demands have also emerged for the INP to be separated from the Military, with the hope that the INP will become a professional and independent institution, far from interference from other parties in law enforcement, and returning to its main duties and functions as a responsible State apparatus responsible for maintaining security and public order.

Following up on public pressure, since October 5 1998 there has been a debate around the President who wants the separation of the INP and the Armed Forces. Within the INP itself, many similar aspirations have emerged. To fulfill the people's expectations, President B.J. Habibie on April 1 1999 issued Presidential Instruction (Inpres) Number 2 of 1999 concerning Policy Steps for the Separation of the Indonesian National Police from the Indonesian Armed Forces.

The Executive's steps to separate the POLRI from the TNI were further strengthened by the Legislature by passing Decree of the People's Consultation Assembly Number VI of 2000 concerning the Separation of the Military and the INP. The consideration of the Decree for the separation of the Military and the INP as follows:

- a. that one of the demands for reform and future challenges is democratization, so it is necessary to reposition and restructure the Armed Forces of the Republic of Indonesia (back to barrack – do not involve in social and politics issues);
- b. that as a result of this merger, there is confusion and overlap between the role and function of the Military as a national defense force and the role and duties of the INP as a security and public order force;
- c. that the socio-political role in the dual function of the Armed Forces of the Republic of Indonesia causes deviations in the role and function of the Military and the INP of the Republic of Indonesia which results in the development of the foundations of democracy in the life of the nation, state and society;

The 1945 Constitution also emphasizes the INP as stipulated in article 30 paragraph (4), the INP has the duty to protect, to serve the community, and enforce the law.

The separation of the INP and the Military is a new chapter for both institutions. Especially for the INP, because it is no longer part of the Armed Forces. INP

during the Reformation period was a civil institution that was subject to the Civilian Court. Apart from that, to supervise the INP so that it carries out its functions well, the establishment of a National Police Commission as external oversight was mandated.

In its development, based on Chapter VI articles 37 to 40 of Law Number 2 of 2002 on the National Police of the Republic of Indonesia, the INP is regulated in this Law as a follow-up to People's Consultative Assembly Decree Number VI of 2000, and is referred to as the National Police Commission. With the existence of a police supervisory institution that supervises the National Police functionally, it is hoped that the National Police can implement National Police Reform as well as possible.

CULTURAL REFORM OF THE INDONESIA NATIONAL POLICE (INP)

Kompolnas sees the three mandates for Polri Reform, namely Structural Reform, Instrumental Reform, and Cultural Reform, that Polri Cultural Reform still requires special attention so that it can run according to community expectations.

Kompolnas noted prominent matters of public concern related to Cultural Reform of the National Police, including the following:

1. The use of excessive force by members of the National Police is still widespread, especially during inquiries and investigations, as well as in handling demonstrations that criticize Government policies.
2. There are still widespread complaints of extortion and corruption committed by members of the National Police.
3. There are still many members of the National Police and their families who live luxurious lifestyles.
4. There are still many members of the National Police who carry out their duties in an arrogant manner.

Cultural Reform of the INP became the concern of the INP Chiefs who led it during the Reformation period (2000 – to date). Various efforts were made by the INP Chiefs in the past, including creating a INP Grand Strategy 2005–2025 during the leadership of the INP Chief General Dai Bachtiar (on duty in 2001 – 2005) through the Decision of the Chief of the INP No. Pol: Skep/360/IV/2005 dated 10 June 2005. The Polri Grand Strategy is divided into three stages, namely stage I Trust Building in 2005 – 2010, stage II Partnership in 2011 – 2015, and stage III Strive for Excellent in 2016 – 2025. With the Grand Strategy of the INP, the leadership and all members of the INP are expected to be able to carry out their duties professionally and independently.

During the leadership of the INP Chief General Bambang Hendarso Danuri (on duty 2008 – 2010), the Cultural Reform of the INP was realized by issuing two

National Police Regulations, namely first, the INP Chief Regulation Number 1 of 2009 on the Use of Force, and second, the INP Chief Regulation Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Implementing Duties of the National Police of the Republic of Indonesia. With the existence of two regulations, it is hoped that it can significantly change the behavior of all members of the National Police so that they become more humane and respect human rights. However, along the way, it turned out that this hope had not been realized properly.

During the leadership of INP Chief General Tito Karnavian (on duty 2016 – 2019), Cultural Reform of the National Police became a focus again, because there was still corrupt, hedonistic and excessively violent behavior by members of the INP when dealing with the public. With the vision and mission of PROMOTER or professional, modern and trustworthy work program, the INP Chief seeks to increase the professionalism and modernity of the INP's services to the community to gain public trust.

To further strengthen the spirit of Cultural Reform of the National Police, National Police Chief General Tito Karnavian passed the INP Chief Regulation Number 8 of 2017 concerning State Officials' Asset Reports (LHKPN), the INP Chief Regulation Number 9 of 2017 concerning Individual Business for the INP Members, and the INP Chief Regulation No. 10 of 2017 concerning Luxury Goods, all of the regulations were passed to avoid corruption in the INP.

During the leadership of National Police Chief General Idham Azis (on duty 2019 – 2021), the PROMOTER program was continued. With Telegram Letter number ST/30/XI/Hum.3.4/2019/DivPropam, the INP Chief prohibited all National Police members from showing off their luxurious lifestyle. Idham Azis' policy was continued by his successor the INP Chief General Listyo Sigit Prabowo (2021 – to date).

Although based on surveys from several survey institutions, it shows that the level of public satisfaction with the INP has increased, many public critics state that members of the INP still use excessive violence, especially related to the politics issues, including the massive protests from the civil society related to the result of the General Election.

In 2020, the National Police Commission (KOMPOLNAS) conducted a review of the implementation of two INP Chief Regulations related to Human Rights, namely the INP Chief Regulation Number 1 of 2009 concerning the Use of Force and the INP Chief Regulation Number 8 of 2009 concerning Implementation of Human Rights Principles and Standards in Carrying out Police Duties, to be able to measure the success of Cultural Reform of the INP, and the result is as follows:

1. **The INP Chief Regulation Number 1 of 2009 concerning the Use of Force.**

The INP Chief Regulation Number 1 of 2009 concerning the Use of Force is one of the important regulations for INP Leaders and Members. The INP Chief

Regulation Number 1 of 2009 also marks the implementation of Cultural Reform within the INP. This regulation is used as a guideline for members of the INP in carrying out their duties in the field so that the use of force in police actions is carried out in accordance with standards and methods that can be accounted for, so as to avoid excessive or irresponsible use of force.

Based on complaints of the civil society that received by Kompolnas, prominent cases that have received public attention, as well as public complaints that have appeared in mainstream media or social media, are still related to the use of force by police officers which is considered excessive. Cases related to the use of firearms that are often complained about by the public mostly occur during inquiries and investigations, especially during the pursuit and arrest of perpetrators or suspects, resulting in injuries and even death.

Kompolnas sees that INP members in education are only trained to shoot, but not when to shoot. The discretionary authority possessed by INP members makes it easy for members to open fire without first thinking about the impact. The reason often given is that the perpetrator or suspect resisted or ran away, so it was legal for the police to shoot. Discretion is the reason members use force, so that only they themselves can judge whether the use of force is right or wrong.

The INP internal supervisors, namely Irwasum or the General Supervision Inspector and the Internal Security Division, rarely carries out inspections on the use of firearms to see whether members are right or wrong in using firearms. Members who use firearms in their duties will only report to their immediate superior. Information obtained from in-depth interviews with members, the INP internal supervisors will carry out speedy examinations of prominent cases that are of public concern. On the other hand, the INP Internal supervisors admitted that it did not always receive reports from the perpetrator's superiors, so that their monitoring was passive.

Kompolnas noted that weak leadership supervision over the use and storage of firearms resulted in misuse of firearms, for example using firearms to threaten other people, using firearms outside of duty to kill, and using firearms to show off.

The public also highlighted that a transparent and fair law enforcement process was not carried out, because there was no accountability when the leadership processed the law against members who committed violations. If they are prosecuted, most of them are cases that are published in the mass media and receive public attention, so they become prominent cases.

Apart from that, the legal process carried out is limited to examining violations of the code of ethics, not a criminal process. Only cases of serious individual violations are subject to criminal proceedings, for example cases where members of the INP shot dead fellow members of the INP, the cases of the INP that become the drug dealers, or conducting other serious crimes.

2. The INP Chief Regulation Number 8 of 2009 concerning Implementation of Human Rights Principles and Standards in Carrying out Police Duties.

The second benchmark to see whether the Cultural Reform of the INP is successful or not, is to see how the leadership and members of the National Police implement the INP Chief's Regulation Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Carrying out the Duties of the INP.

From the many cases of violence, Kompolnas sees that the regulation little attention from the commanders and members of the INP. The lack of understanding by commanders and members about Human Rights is because education about Human Rights is only taught briefly during education and is not practiced further.

Kompolnas recommends protecting human rights and preventing excessive violence through efforts to increase the capacity of members, by means of human rights education or courses, socializing the INP Chief Regulation Number 8 of 2009, as well as installing equipment to prevent excessive violence, including installing CCTV, video cameras and recorders in interrogation rooms, installation of body cameras and dashboard cameras in operational cars for assignments in the field during investigations and other operational tasks.

Based on a review of the two regulations mentioned above, Kompolnas concluded that the Cultural Reform of the National Police has not yet been implemented well, so it requires seriousness in implementing it for better cultural changes can be realized in the near future.

“Peace-building After State Violence”: Focusing on Mindanao, the Philippines & Timor-Leste

Gus Miclat

The Initiatives for International Dialogue

Peacebuilding does not stop even after a violent conflict. In fact, it is in a post-conflict era that peacebuilding can become more challenging.

There is a tendency for peacebuilding actors – especially those from multilateral entities like the United Nations (UN), to scurry off to the next conflict zone. And for the state to relapse into doing the same things that led to the violence beforehand.

Thus, even state violence may not also entirely end in a post-conflict situation even after a peace agreement is inked between them and non-state armed actors. Violence can linger or persist in other forms.

Peacebuilding is also not the exclusive domain of governments or multilaterals. Other important, if not, crucial actors include civil society, women, youth and other sectors such as faith or church groups, business, academe and trade unions, among others.

In 2013, a coalition of civil society, business, trade unions and lawyers called the “Quartet”, were responsible for mediating peace in Tunisia. Their efforts led them to be awarded the Nobel Peace Prize in 2015.

But let us talk about the examples of Mindanao, the Philippines and Timor-Leste – or East Timor, as it was called then. My organization, the Initiatives for International Dialogue (IID) has been in the forefront of engaging in solidarity, democracy and peace building work in these areas.

What have been achieved so far?

Mindanao

In Mindanao and in the Bangsamoro territory in particular, after 30 years of violent conflict and 17 years of incessant war and negotiations between the Moro Islamic Liberation Front (MILF), a Comprehensive Agreement on the Bangsamoro (CAB) was finally achieved between the Philippine government (GPH) and the MILF. Bangsamoro is what the people in the territory are also called.

An earlier Framework Agreement on the Bangsamoro (FAB) was inked on 15 October 2012 that set out the terms laid out later in the CAB. A Bangsamoro Organic Law (BOL) was then passed on 18 July 2019 creating the governance entity that will implement the CAB provisions.

A Bangsamoro Transition Authority (BTA) was inaugurated on 02 March 2019 to oversee its realization. The BTA is composed of 80 members, 41 of whom were

nominated by the MILF and 39 by the Philippine government. This is to give the MILF control during a transition period of 3 years in governing the territory that they have been waging a self-determination struggle for.

Among the 39 from the government, are Moro leaders identified with other Moro fronts that earlier waged their own battles against the government and also had their own peace agreements with them, but have yet to be fully implemented. This was one of the reasons why the MILF was born in the first place, as those so-called earlier agreements had much left to be desired.

The CAB's main feature enunciated that both sides agree on the legitimacy of the Bangsamoro cause. It also affirmed the commitment of both parties to create a new Bangsamoro political entity eventually called the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM).

One of the provisions of the CAB was the creation of a Transitional Justice and Reconciliation Commission (TJRC). Transitional justice was identified as a major component of the Normalization Annex of the CAB that also required the demobilization of MILF combatants.

Among the major recommendations of the Commission were:

- Establishment of a National Transitional Justice and Reconciliation Commission on the Bangsamoro (NTJRCB);
- Creation of a Civil Society Forum For Transitional Justice and Reconciliation in the Bangsamoro; and
- The emphasis on the use of the "Dealing with the Past" framework.

As of today, more than 10 years after the peace agreement, both components of the Normalization Annex have yet to be satisfactorily accomplished.

The provision on TJ has particularly been left behind. Even MILF leaders who are now running the BTA, have not prioritized this requirement. While understandable that they are more concerned with managing expectations of their constituency in immediately delivering basic services and dealing with the culture of corruption that have bedeviled their region for ages, it is ironic that the core and strategic concern of addressing historical injustices-- land conflicts among others, that mainly led to their struggle, remain at the sidelines.

On 06 March 2023, IID launched a research on the land conflict in Mindanao wherein we argued that land dispossession being a major root cause of discord, should be jointly addressed by multiple actors such as the government (including local governments), the MILF, clans, traditional leaders and grassroots organizations.

The study recommended the following to be implemented at the national and local levels:

- Ensuring Internally Displaced Peoples (IDP)-centered policy and decision-making;
- Developing a comprehensive land governance framework for BARMM;
- Empowering local mechanisms for land conflict settlement;
- Integrating socioeconomic interventions, while
- Guaranteeing simplified processes and legal support for displaced residents.

Meanwhile, the BTA has passed an Electoral Code, Administrative Code, Education Code, Civil Service Code, Local Governance Code and is in the process of enacting a Revenue Code and an Indigenous Peoples Code.

While the vertical conflict has tapered off because of the peace agreement, violent conflict continues to hound the region. One of the deadliest strife happened in Marawi City eight years ago.

A siege that lasted four months to neutralize so-called elements of the Maute Group that had alleged ties with the Islamic State, literally pulverized the city and emptied it of its more than 300,000 residents. Up to now, only a reported 3% or so have returned to their homes — if those abodes are standing at all. The national government has built concrete roads, state of the art traffic lights, modern mosques and stadiums. But there is almost literally no one in the city who can use them. It behooves that this is the kind of situation that can lead to persistent conflict and even create the desperate conditions for the growth of violent extremism.

Marginalized communities in the BARMM, especially the displaced, indigenous peoples, women, and youth, continue to live in fragile peace and insecure environments. Their lives, families, livelihood, land, home and properties are under constant threat from state and non-state armed groups amidst weak or lack of public policies to protect and support them.

It is in this context that on 01 November 2019, IID launched a “Peacebuilding and Transitional Justice in Transforming Conflicts and Preventing Extremist Violence” project that envisions to contribute to increased agency and inclusion of marginalized (tri-people) communities and civil society actors and partners in instituting mechanisms and policies that will transform the social, political, economic and resource-based sources of conflicts, extremist and intolerant violence.

We believe that the so-called hubs like the madrasahs and groups such as the youth, who are touted by governments to be prone to extremist ideals are actually the ones who have more effective answers and solutions to prevent violent extremism.

Horizontal conflict has also been bewildering the region. An uptick of clan

conflicts called “rido” have been noted, mostly centered around land issues. Even among fellow former mujahedeen and MILF commanders.

Conflict in some ancestral domains of indigenous peoples inside the Bangsamoro territory have also spiked, reflecting the irony of a people’s self-determination struggle being waged within a “victorious” self-determination conflict of another, albeit lopsided and in a mostly non-violent manner. Some Moro commanders and leaders are leveraging the peace agreement to take over non-Moro indigenous lands claiming them as theirs in their skewed understanding of the peace pact.

Even then, civil society has been in the forefront of engaging the peace process even beyond the peace agreement. Clearly, civil society’s work accompanying the peace process has evolved into a different level.

From providing platforms and spaces for communities and peoples; organizing a ceasefire watch network, to offering their inputs and proposals on the substantial agenda of the peace talks, to lobbying for meaningful participation in the process – civil society continues to develop its capacities and explore avenues for engagement.

The Bangsamoro is a continuing peace process and civil society’s paramount agenda is for the Bangsamoro’s right to self-determination to be fully realized. We want the agreement to hold and succeed. And our commitment translates in supporting processes and initiatives that are contributing to this, including calling out the MILF and/or the national government if they are deemed to be detouring from the principles and promises they have committed to in the CAB. And we do not criticize for its sake, but also endeavor to offer alternatives and solutions to a perceived problem.

Fortunately, the current Bangsamoro leaders welcome this type of engagement from civil society. Perhaps because it keeps them on their toes. And as one key leader said to us, our engagement does not come with any expectations in return.

In 2012, we launched the “Mindanao Peoples Peace Agenda (MPPA)” after a 2-year consultation process among our constituencies in Mindanao.

The MPPA is a consolidated document that mapped issues that peoples in Mindanao identified and proposed to be considered by the conflict actors in their negotiations and be included in the final agreement. Some of these recommendations are categorized into:

- Right to Self-Determination
- Human Rights and Justice
- Humanitarian Accountability
- Good Governance
- Sustainable Development and Environment
- National Peace Policy
- Solidarity and People’s Participation

The MPPA was ratified by the assembly of the Mindanao Peace Weavers (MPW)-- the largest coalition of peacebuilding networks working on Mindanao issues, in an assembly in Davao City on 20–22 April 2010 and presented to both the Government of the Philippines (GPH) and MILF panels. Some of its key features resonated with certain provisions in the CAB.

Principles for Peace

One of the recent efforts of civil society in its engagement of the peace process is tapping into the so-called Principles for Peace (P4P) framework .

The P4P is a global participatory initiative to develop new principles, standards, and norms to fundamentally reshape peace processes and chart a path to lasting peace. It is anchored by the P4P Foundation based in Geneva and has adopted the Bangsamoro as its initial strategic model in applying the principles.

Guided by IID's own core principle of "bridging peoples and building peace", IID has been actively supporting the Bangsamoro through engagement and advocacy initiatives. Both IID and P4P share a central goal of fostering lasting peace in the BARMM, particularly during this critical period marked by upcoming elections in 2025 and the potential signing of an exit agreement between the two key parties: the GPH and the MILF.

By aligning with P4P's focus on building a strong constituency at the heart of peacemaking processes and leveraging IID's extensive experience in peace monitoring, negotiated political dialogues, and constituency building, the partnership between our institutions and other partners in a consortium we are part of, aims to enhance support for the Bangsamoro peace process and contribute to its success for a lasting peace. To this end, we are consulting, accompanying and harnessing the inputs of other key sectors in the Bangsamoro: religious, faith and church leaders, academe, indigenous peoples, business, media and of course, civil society.

At present, most of the Bangsamoro leaders are frenziedly preparing for the elections in 2025. This will install an elected government to replace the current interim government who are appointed mostly from the MILF as stipulated in the peace agreement. Those from the MILF will have to contest in the elections like all the other stakeholders that includes traditional politicians and clans who have held sway over the reins of successive Bangsamoro governments before the peace agreement ordained the MILF to run the provisional administration during a transition period that was extended to 2025.

Either the MILF will have to deliver amply while they are running the BTA now and get themselves back in power in 2025, or the traditional clans and politicians will return to the saddle. If the latter happens, the MILF may need to become a viable opposition, or the region could regress to pre-peace agreement times.

Like any other revolutionary group that has become victorious, the MILF has perhaps realized that it is easier to wage a revolution than run a government.

Amid the commemoration of the 10th anniversary of the CAB last March, and perhaps sensing their vulnerability in the upcoming 2025 polls, allies of the MILF have recently petitioned the national government for another 3-year extension of their mandate to govern the territory before conducting elections. They claim that they have yet “to fully implement the peace agreement”, thus the need “to shield this fragile peace from the self-serving agendas of politics and power struggles”.

This call has elicited mixed reactions even from civil society.

Those who have been aligned with the MILF are naturally supporting this call, while the more independent elements believe that the MILF should seek its mandate directly from the people and not via a mere fiat from the national government.

While it is true that the totality of the peace agreement has not yet been implemented (and will still probably take even much longer), many elements including various Bangsamoro sectors view this move as ironically also self-serving and does not hew to the essence of democracy that they have valiantly fought for.

The MILF signed and committed to a peace agreement that provided them with the mandate to govern for 3 years, with another 3-year extension provided due to the pandemic. This initial extension was deemed “acceptable” and there was universal support for this. This time however, the lines have been blurred. There is an uncomfortable condition where the hitherto entrenched traditional political clans are on the same page with some independent and progressive elements in the Bangsamoro and civil society in questioning this effort.

We have yet to see how this situation will evolve.

Communist insurgency

While there is relative peace in the Bangsamoro despite the challenges mentioned earlier, a far wider peace process in the country is mired in uncertainty. This pertains to the armed conflict between the government and the communist-led National Democratic Front (NDF).

From our perspective, there cannot be a “peace bubble” in the Bangsamoro, while another peace process in the country is in the doldrums with the conflict still festering.

There were initial high hopes that this would also go the way of the Bangsamoro peace process during the early years of the previous government of President Rodrigo Duterte who even appointed 3 nominees from the NDF to his Cabinet. A national ceasefire was in the works to provide conditions for more substantive talks on the agenda of social and economic reforms, but this collapsed due to a combination of the ascendant hawkish military voices in the Duterte government, miscues from the NDF and the mercurial character of Duterte himself.

Since then, an all-out war policy to annihilate the NDF and its allied organs, including the Communist Party of the Philippines (CPP), its armed wing -- the

New People's Army (NPA), and its legal front organizations, became the dominant strategy of the government.

A National Task Force to End Local Communist Armed Conflict (NTF ELCAC) was established and was resourced robustly to oversee the defeat of the communist insurgency. This agency oversaw the extension of securitization policies towards other aspects of society such as the academe wherein some educational institutions are either closed or under surveillance as they are suspected of being "breeding grounds" for the communist ideology.

This campaign however engendered various human rights abuses with numerous ordinary activists, opposition personalities and anyone who randomly expressed dissent to be "red-tagged" by the government. Red-tagging -- someone or an organization labeled as a communist, thus subject to harassment, persecution, if not, termination-- became rampant and ludicrous.

It did not matter that there is already an existing "Comprehensive Agreement on Human Rights and International Humanitarian Law (CAHRIHL) between the government and the NDF inked during the Ramos presidency on 16 March 1998 that the Philippine government is bound to respect.

The current Marcos, Jr. administration had originally continued the policy of the Duterte regime in not pursuing any peace talks with the NDF. But last 23 November 2023, many were happily surprised when both the government and the NDF issued a joint statement to resume the peace process. This was facilitated by the Norwegian government which had been the Third Party Facilitator of the talks between the conflict actors since 2001.

There has however been no follow through from this statement, while some disturbing contradictory pronouncements have been issued in the meantime by the Armed Forces leadership that gave a deadline to annihilate the CPP, NPA and NDF by the end of 2024. The military even launched a deadly attack on a rebel camp somewhere in Mindanao just a few days after the joint statement was released resulting in a number of alleged rebels and civilians killed.

Civil society's engagement of this process has not been as vigorous as that with the Bangsamoro. This is a more intractable and ideological-based struggle with the conflict actors drawing clear lines of "either-or" borders of constituencies. Civil society is seen as either supportive of the government or leaning towards the rebels' perspectives. It was only recently that the effort to build a broader and independent peace constituency was welcomed by both parties.

Together with some partners, IID convened a "national dialogue" process involving communities, NGOs and platforms not identified or aligned with either of the conflict actors, several of whom have also been engaged in the Bangsamoro endeavor. The aim is to build a broad and independent constituency to engage the peace process and help capacitate sectors, groups and communities who are either interested, engaged in, or victims of the conflict. Some 40,000 people have been killed due to this conflict, which is ballyhooed to be one of the longest running

insurgencies in the world.

A lot of communities involved are those of indigenous peoples (IP) who are caught in the crossfire of the conflict with their ancestral domains being the battleground of the clashes between the military and the NPA. The IPs have also been subject to recruitment by both parties, thus contributing to divisions among themselves and disruption of their cultural practices.

There are meanwhile efforts from other actors in society and personalities to engage the process.

Some prominent individuals have banded together under the banner of a “Council of Leaders for Peace Initiatives (CLPI)” to help influence public opinion toward a peaceful resolution of the conflict.

A “Working Group on Enabling Collaboration (WGEC)” was also established by the Global Partnership for the Prevention of Armed Conflict (GPPAC) to accompany the national dialogue process and help develop its capacities through learning and exchanges from other peace processes experiences in the world.

The Norwegian government continues to facilitate the process, even while some actors want them to be more proactive.

Timor–Leste

In Timor–Leste, Asia’s youngest nation, peacebuilding is in full swing.

As a brief background to the context, East Timor as it was called then, was originally colonized by the Portuguese, and remained such until the fall of the Salazar military dictatorship in Portugal in 1974. East Timor declared independence soon afterwards, but Indonesia decided to intervene due to fears that the government of the new state would most likely be leftist in leaning.

The Indonesian government launched Operation Komodo, which intended to bring about the integration of East Timor into Indonesia. “Integration” was just a more palatable word for the actual deed of outright occupation and forcible annexation.

Indonesia began with a propaganda campaign, but after the outbreak of conflict among the political actors within East Timor, the Indonesian military began a campaign on 7 October 1975 starting with an assault on a border post that climaxed with a full-scale invasion utilizing paratroopers and naval support. The UN quickly condemned the invasion, but due to resistance in the Security Council, no further action was taken. The United States tacitly gave their approval, as the dismantling of a perceived pro-communist government in East Timor helped advance the policy of containment being pursued by the US.

Indonesia occupied the territory for the following two decades. During the Habibie administration in Indonesia after the fall of Suharto – the military dictator who presided over the invasion and annexation of Timor, a referendum was held asking if the Timorese people wished to remain a part of Indonesia or become

independent. Even before the referendum, there was massive harassment by pro-Indonesian militia groups in the territory, with even UN workers being attacked.

It soon became clear in the wake of the referendum that the result would be overwhelmingly in favor of independence. This raised tensions to a boiling point, and within two hours of the announcement of the sweeping result favoring independence, armed pro-Indonesian militia groups began attacking civilians randomly. The militias continued to attack citizens as they withdrew from the country, and several massacres occurred as they trickled out of the area.

A UN peacekeeping force known as International Force for East Timor (INTERFET) was deployed to stabilize the situation, made up of mostly Australian troops, and was withdrawn with the arrival of regular UN peacekeepers. It is ironic that INTERFET was led by Australians as it was the only country that provided de jure recognition of Indonesia's illegal annexation of East Timor. Talk about how the wheels turn, or how crass political opportunism is played to the hilt.

East Timor eventually transitioned from a UN mandated territory to an independent country.

There is no longer an active armed or violent conflict between the Timorese people and the Indonesian state after the UN-initiated referendum resulted in the irrefutable vote for independence by the Timorese.

But the wounds of the occupation that left almost 300,000 killed— or a quarter of the entire Timorese population then, remain seared into the consciousness of this small, gentle and brave nation.

A transitional justice and reconciliation process initiated during the transition period when the UN administered the territory between 25 October 1999 to 20 May 2002 resulted in the creation of the so-called CAVR.

The Commission for Reception, Truth and Reconciliation in East Timor (more commonly known by its Portuguese acronym CAVR: Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste) was an independent truth commission established in 2001 under the UN Transitional Administration in East Timor (UNTAET) and charged to “inquire into human rights violations committed on all sides, between April 1974 and October 1999, and facilitate community reconciliation with justice for those who committed less serious offenses.”

The Commission had a triple mandate as reflected in its name, to address:

- Reception, the return of Timorese displaced into Indonesian West Timor and their reintegration into their communities, which the Commission described as “people embracing each other as East Timorese, of coming back to ourselves, living under one roof, after many years of division and violence”;
- Truth seeking, rendering a full accounting of human rights violations between 1974 and 1999 (the end of the period of Indonesian rule),

- primarily through the collection of more than 7,000 statements; and
- Reconciliation, conducted through a "novel and previously untested program" called the Community Reconciliation Process, designed to reintegrate low-level offenders into their community.

During its work, over 10,000 statements were taken from victims and perpetrators, and public hearings were held which were broadcast on TV and radio. The Commission delivered its 2,500-page report entitled *Chega!* meaning "stop" or "enough" in Portuguese, covering human rights violations from 1974 to 1999, to the President of East Timor on 31 October 2005. The President, Xanana Gusmao, then handed the report to the UN Secretary General as required by law, on 20 January 2006.

Chega! found that East Timor had suffered massive human rights violations, including violations of the right to self-determination, killings and disappearances, forced displacement and famine, detention and torture, violations of the laws of war, political trials, sexual violence, violations of the rights of the child, and violations of economic and social rights. It determined that the death toll during Indonesian rule had been between a low limit of 102,800 and may have been as high as 183,000. (This does not cover the unaccounted that could total 300,000.) It also concluded that the majority of deaths had been the result of actions by the Indonesian army, and that violence in 1999 was the result of a "systematic campaign orchestrated at the highest levels of the Indonesian government." The findings of *Chega!* were affirmed in 2008 by the Indonesia-Timor Leste Commission of Truth and Friendship.

The *Chega!* report was never debated in parliament, although the government of Timor-Leste says it implemented the majority of the report's recommendations.

One of the bleakest stories investigated by CAVR was that of the so-called "stolen children".

During the Indonesian occupation, thousands of Timorese children were forcibly taken without their parent's consent. This stolen generation, who are now adults, experienced a dark childhood. After they arrived in Indonesia, they had to change their faith and identity. Many were promised a proper education and life, but their reality was far from what they expected. They were often neglected, many experienced violence and endured trauma, and were forced to move around in order to survive.

A regional organization based in Indonesia, Asian Justice and Rights (AJAR), has a program of returning those willing children back to their families in Timor-Leste.

More than 100 survivors have so far been reunited with their families since 2013 – "a culmination of relentless work by survivor communities and civil society organizations in searching for these stolen children's whereabouts". Even then, "they are still finding a way to make up for lost time, thousands others are waiting to be found, documented, and reunited". These reunions are just a "first step to rebuilding lives torn by trauma and loss.

The survivors' personal struggle is intertwined with the challenge for the two nations, who must forge a way to reconcile a difficult past".

Several non-governmental organizations are also active in pushing for full implementation of the Chega! recommendations, including the Chega for Us Association (ACBIT) and AJAR.

Follow-up work on education, archives, memorialization, advocacy, victim support and other aspects are meantime carried out by the Centro Nacional Chega! (CNC), which was established in 2016.

Since its establishment in December of 2016, CNC has centered its mission on promoting the recommendations of the CAVR to institutionalize memory and promote human rights through education, training, and solidarity with the most vulnerable survivors of human rights violations. CNC as described by one Timorese Minister, is a "living monument" which serves to always keep present the "idealism that motivated people to fight for their freedom" and to "orient Timor-Leste to not contribute to decisions that take away peoples' rights, in the region and the world."

CNC which for short is also called Chega! , engages with the community, both the public and survivors, through commemorating historical events, mapping historical sites, organizing educational tours that allow students to visit historical sites and to hear the testimonials of survivors, and creating the spaces for intergenerational transmission of memories.

When the Timorese resistance leaders took over the reins of governance and transition from the UN in their path to a new democracy, reconciliation was paramount in their agenda. Thus, despite the recommendations of the UN-led CAVR process, that endorsed the conviction of a number of Indonesian military generals (among those charged with command responsibility is the newly elected President of Indonesia, Prabowo Subianto, who commanded the special forces liable for the Krakas massacre in 1983), the governments of Timor-Leste and Indonesia instead established the Indonesia-Timor Leste Commission on Truth and Friendship (more commonly known also by its Portuguese acronym CVA, Comissão Verdade e Amizade) in August 2005.

The commission was officially created to investigate acts of violence that occurred around the independence referendum held in East Timor in 1999 and sought to find the "conclusive truth" behind the events. The commission wanted to establish "the conclusive truth regarding human rights violations to have occurred prior to, immediately after the Popular Consultation on 30 August 1999" as well as "prepare recommendations that can contribute to healing wounds of the past and strengthen friendship".

After holding private hearings and document reviews, the commission handed in the final report on July 15, 2008 to the presidents of both nations, and was fully endorsed by Indonesian President Susilo Bambang Yudhoyono providing the first acknowledgement by the government of Indonesia of human rights violations

committed by state institutions in Timor. The commission is notable for being the first modern truth commission to be bilateral.

The timing of the commission's creation was however criticized by some, as it was believed that it was designed to intentionally subvert calls for an international tribunal to deal with the events surrounding the 1999 plebiscite. The commission's mandate allowed it to review documents pertaining to four other inquiries surrounding the events that predated it: "The Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999", "The Indonesian Ad Hoc Human Rights Court on East Timor", "The Special Panels for Serious Crimes", and the CAVR.

The events that predated the commission had mixed results with regard to their respective mandates.

Indonesia's National Human Rights Commission (KOMNASHAM) established the Commission for Human Rights Violations in East Timor (KPP-HAM) to investigate human rights violations in East Timor committed in 1999. KPP-HAM found that there was a pattern of human rights violations committed in East Timor, such as:

- Systemic and mass murders
- Torture and ill-treatment
- Enforced disappearances
- Gender-based violence
- Forced Displacement of Civilians
- Scorched Earth campaigns

However, the outcome of the Ad Hoc Human Rights Court in East Timor did not live up to the expectations of rendering justice to the victims of the 1999 East Timor Crisis.

In a press release entitled, "Indonesian Verdicts A Far Cry From Justice; Real Masterminds Remain Free," the Asia-Pacific Coalition for East Timor (APCET) criticized the initial ruling of the Ad Hoc court in acquitting six military officers and only sentencing a civilian official for 3 years. APCET then proposed that only an International Tribunal can end impunity in Indonesia and punish war criminals in East Timor.

In addition, UNTAET's Special Panel for Serious Crimes conducted around 55 trials concerning 87 individuals from 2000-2005. Most of those convicted were "low-level perpetrators" who were affiliated with the Pro-Indonesian militias.

The CVR conducted a document review and analyzed previous trials and investigations into the subject. The commission also stated its intent to research the "historical background, political dynamics, and institutional structures that shaped events before and during 1999" to "inform its conclusions with a broader understanding of the way in which the causes of the violence in 1999 were

connected to previously established institutional structures and practices."

Operating over three years, the commission gave its final report on July 15, 2008, concluding that "gross human rights violations in the form of crimes against humanity did occur in East Timor in 1999" and that "pro-autonomy militia groups, the Indonesian military (TNI), the Indonesian civil government, and Indonesian police must all bear institutional responsibility", as well as stating that "from a moral and political perspective the respective states must accept state responsibility for the violations identified in the report."

The commission also made recommendations that both nations begin institutional reform enhancing the strength of investigative and prosecuting bodies involved with investigations into the events, as well as forming joint security policy to ensure the safety of individuals in case of the recurrence of violence. It also noted the need to resolve other standing border and security issues between the two nations to allow for more cooperation. Notably, the report gave no recommendations of amnesty or rehabilitation. The report however, being endorsed by Indonesian President Yudoyono, marked the first recognition of the Indonesian government's complicity in human rights violations in East Timor.

It is understandable that the Timorese leaders are more concerned with reconciliation because of realpolitik and the fact that Indonesia is their adjoining geographical neighbor forever. They must have calculated that they cannot afford perpetual animosity between their peoples if they pursue the UN recommendations of calling many Indonesian generals and officers to account and thus ruffle the Indonesian state especially its military establishment. Perhaps the political leadership in Dili believe that having cordial diplomatic relations with Indonesia would also benefit East Timor's application for ASEAN membership.

But a lot of civil society groups within Timor and also Indonesia have a different take on this. Even the Timorese NGO, Timor-Leste National Alliance for International Tribunal wrote an open letter in response to the commission's findings with several criticisms, including the lack of public consultation with victims and parliamentary approval of the commission, as well as noting that the commission assigned institutional responsibility rather than individual responsibility, "which is contrary to the principles of international laws which were ratified by the state of Timor-Leste and to Article 160 of its constitution which says that there must be a justice process for crimes against humanity". It also stated their belief that the CAVR was a more trustworthy and support worthy commission for the government to support.

Internationally, the report had a mixed reception. Some, such as the War Crimes Studies Center at the University of California in Berkeley, said that the commission could be seen as "widely acknowledged as credible and far-reaching," noting that the Indonesian government's affirmation of the results was important and that the commission made arguments that "there was credible evidence to indicate that Timorese institutions were also responsible for illegal detentions and possibly other crimes."

Perhaps the rub is that while there is acknowledgment of the crimes perpetrated in Timor, there has been no accountability or punishment meted to the ones responsible for them. Especially the policy makers and high ranking Indonesian military officers who oversaw the carnage in the territory. One of whom is about to become the President of Indonesia. The Commission was seen as a primarily political mechanism designed to support state priorities rather than substantive justice.

If governments are found wanting, civil society is not deterred.

Initiatives from civil society ranged from petitioning the UN for the establishment of a tribunal as recommended by their own Special Panel, writing open letters and position papers on the issue to organizing a public indictment that was hoping to help lead to the establishment of a people's tribunal.

Forum-Asia, the foremost human rights coalition in the region, issued an open letter on 22 May 2007 to the Presidents of Indonesia and Timor-Leste calling the CVR a "farce". It instead urged the "creation of a credible mechanism to hold accountable high-level perpetrators of crimes against humanity in Timor-Leste". It warned that if that did not happen, they would "continue to call for the establishment of an international criminal tribunal in line with the Commission of Experts report."

On 16-24 May 2004, APCET, which IID convened and steered, organized a public indictment prior to the penultimate 5th Asia Pacific Conference on East Timor (APCET V).

Among the results of the event were:

- That the draft indictment sheet be adopted by the conference;
- That APCET submit to UN a resolution calling for the creation of an international tribunal to provide justice to the victims of serious crimes;
- That a People's Tribunal be established that will prosecute the perpetrators of genocide and other crimes against humanity in East Timor (among them, then President Suharto and Indonesian generals Murdani, Subianto, and Wiranto);
- That concerned lawyers from the region study the requirements of a People's Tribunal; and
- That other avenues for justice be explored such as the filing of individual cases in Timor-Leste or Indonesian courts.

Sadly, subsequent political events seem to have overtaken this call of civil society to pursue these commitments.

Meanwhile, current Timor-Leste President Jose Ramos Horta has initiated a process of reconciliation with pro-Indonesia Timorese who fled to West Timor in the midst of the hostilities after the referendum.

Horta is utilizing the "Document for Human Fraternity for World Peace and

Living Together” signed by Pope Francis and Sheikh Ahmed el-Tayyeb, the grand imam of Al-Azhar on 04 February 2019. The Document is concerned with “how different faiths can live peaceably in the same world and areas”. Pope Francis and Sheikh Tayeb "declare the adoption of a culture of dialogue as the path; mutual cooperation as the code of conduct; reciprocal understanding as the method and standard."

Horta has been a stalwart in propagating the document.

Some have however voiced concern over this scheme, wherein leaders of the perpetrators of the bloodbath during the referendum period will be invited to return to Timor-Leste without any accountability or a process of justice. Participation in crafting this reconciliation policy by the victims and the communities brutalized by the perpetrators should at least be ensured.

Conclusion

As mentioned earlier in this presentation, peacebuilding can indeed be a perpetual process. It does not end with a handshake or a signed peace agreement between conflict actors. Violence can only be abated, but never extinguished. It can manifest elsewhere, not necessarily between the original antagonists, but also among and within themselves. Or with other more marginalized communities, like women and the indigenous peoples, or even within the household, for example. This is starkly shown in the experiences depicted of Mindanao, the Philippines and Timor-Leste.

Only the degree and manifestations of peacebuilding and bloodshed changes.

Paramount in ending violence is the conscious and active involvement of victims, survivors, sectors, communities and civil society in peacebuilding.

It is in their unremitting vigilance and engagement that justice – and peace, is not only relentlessly pursued, but ultimately realized.

Memory and Silence of State Violence in Thailand: How History and Laws Contribute to Impunity

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Abstract

There were two uprisings and two massacre and innumerable incidents of violence by the Thai state in the past 50 years. But no serious investigations into any of them, let alone accountability or justice. Instead, most of them followed by the “unforgetting” -- the inability to remember or forget, or to articulate memories in public. The unforgetting is not only the result of political suppressions and censorship, but also of the permeated historical ideology, laws and legal system, all of which contribute to impunity.

I. Political Struggles and Atrocities

Across Southeast Asia, among the chronic political problems many countries have faced over many decades are authoritarianism in various forms and the domination of the center, administratively, politically, and ethnically. Struggles for democracy, decentralization, regional or local autonomy, and equality are on-going.

These problems have led to many quiet suppressions, violent clashes, uprisings and massacres. Thousands have lost their lives. Their families have suffered. Fresh wounds and scars are across the landscape. Indonesia’s anticommunist purge in 1965, and Myanmar under several military regimes and with wars against ethnic peoples over the past sixty years, are a few examples of notorious crimes by the state in the region.

In Thailand, struggles against the authoritarian state under the dominance of the monarchy and military have taken place from time to time, in parallel to the serious conflict in the Malay Muslim region along the border with Malaysia, where people seek local autonomy from the discriminatory state with security paranoid.

In the past 50 years, the struggles for democracy led to two uprisings (1973 & 1992) and two massacres (1976 & 2010), altogether resulting in more than 300 deaths, and unknown number of disable and disappearances. Apart from those major atrocities, there were innumerable incidents of state’s crimes against its own citizens in the name of national security during the Cold War and in recent decades of authoritarian rules. Thousands of ordinary people have been victims of these political crimes.

Meanwhile in 2004, two atrocities took place in the Malay Muslim region. One was the raiding of a seventeenth century mosque allegedly to arrest the separatists. The other one was a thoughtless tragedy starting from the arrest of a few local

men, leading to the gathering of hundreds more to protest. They too were arrested. With hands tied behind their backs, they were ordered to lie face down on a few trucks, but with one layer of bodies piling up over another. By the time the trucks reached the destination, nearly a hundred had suffocated and died.

Moreover, since the Cold War, there have been discrete incidents of violence to people who allegedly were threats to the nation, thanks partly to the laws that grant extraordinary powers to the security agencies. In the past twenty years, a bundle of security laws makes the entire Malay Muslim region under the state of legal exception in which the normal laws are suspended and grant extra power to the security agents. An entire generation was born and grew up under the normalcy of legal exception.

The country's justice system also serves national security obediently. Since the royalist coup in 2006, hundreds have been arrested, presumed guilty, put in jail, denied bail, and ruled guilty, especially for lese majesty because a critical expression about the monarchy is considered a high crime of national security. Among them are children as young as 14 and 15 years old.

For these cases, the denials of bail are common, instead of being a basic right. The punishment for lese majesty is quite disproportional, similar to rape and manslaughter, even though the violations are never more than making public comments, mostly in social media.

Among those currently in jail for lese majesty is Mr. Anon Nampha, the recipient of the Gwangju Human Rights Award in 2021, a lawyer for many victims until he himself becoming one of them. He has been sentenced to eight years in prison, while more charges and trials are still on-going.

II. Silence Without Justice

In Thailand and Southeast Asia, it is quite common that the past political tragedies were left without closure and without justice. (The exception was the case that international community involved heavily, namely, the crime of the Khmer Rouge.)

To this day, there was no or only sham investigations into those uprisings and massacres. No investigation into the 1973 uprising in which 72 people died, or into the horrible carnage in 1976. For the 1992 uprising, the report was redacted so heavily that it was unreadable, thus nobody was held accountable for 70 deaths. The serious investigation into the latest bloodshed in 2010 with 99 deaths was done by academics, while the government did only a dishonest one that put the blame on the "phantom" instigators that did not exist.

The way a society deals with its past atrocity tells a lot more about that society. There are different approaches in dealing with it. The atrocity that caused about one million deaths in 1965 Indonesia and the Khmer Rouge genocide may involve ordinary people so pervasively that it is difficult to bring all perpetrators to justice. Only a small number of Khmer Rouge leaders were brought to trial thanks mainly

to the international community. The perpetrators of the 1965 widespread killings in Indonesia remain unaccountable.

Instead of seeking truth and justice in order to moving on, the Thai state and Thai society chose silence. Moreover, except a few cases, victims of those incidents and their relatives usually chose silence too, due to fear of repercussion.

Unlike Chile, Argentina and some others in Latin America that dealt with the past atrocities by finding ways to punish the perpetrators, countries in Southeast Asia opted for burying history and memories of the traumatic past for various reasons that are all wrong.

III. Memories/Unforgetting

Justice requires facts; seeking for truth about those atrocities is a pre-requisite for justice. In addition to the denial of investigation and the suppression of information by various means, the authoritarian regimes in Thailand usually encourage people to forget the past atrocities for the sake of reconciliation and national security, as if truth and memories would shatter the society. The memory of the massacre in 1976, perhaps the ugliest political crime in Thai history, has been suppressed for decades during which it was risky even to mention it in public.

Consequently, people do not forget the atrocities, but they cannot remember them either. I call this phenomenon the “unforgetting.”

What are the factors surrounding the unforgetting of the past atrocities? The answers for Thailand are probably similar to the ones for the question why it is so hard to get to the bottom of the 1965 incidents in Indonesia.

First, the ruling regime has not fundamentally changed yet.

Indonesia: the same military elite that ruled and prospered under Suharto’s New Order remains influential till today. The elected governments after Suharto have to be cautious often with care for the interests of these powerful elite.

Thailand: as institutions, the palace and military that were responsible for the past atrocities including the 1976 massacre continue their political dominance, only individuals have changed. In fact, the two institutions are more consolidated today than in the 1970s.

Second, civil society has been relatively weak to advocate for accountability and truth-seeking against the state’s attempts to silence the past.

Third, therefore, it is difficult for victims and survivors to take risk to tell their stories. Their memories are fraught with possible undesirable repercussions not only from the state but from social sanctions too, since one does not know if people regard them danger to the country.

Fourth, in many countries, the discursive phantoms of the evil to the nation persist. The communist is such a phantom for Indonesia despite the end of the

Cold War decades ago. The anti-monarchist is such a phantom for Thailand. These illusory demons have penetrated popular culture and helped justify the state crimes.

The fifth factor is the illiberal and intolerant historical culture. In Thailand, the dominant historical ideology is anathema to democracy and justice. This factor is much less understood, even though, in my view, it is more consequential than we realize.

IV. Historical Ideology & Control of History

Every state knows that history matters. Authoritarianism is built partly on the control of history, which is dangerous more than the outright lies. It usually wants to control history in textbooks, museums and other public institutions to reproduce only the story that buttresses its rule. Their crimes such as the past atrocities would be told evasively or distortedly, if not erased altogether.

In Indonesia, there has been the proliferation of historical writings after the fall of Suharto in 1996. Among them are lot of memoirs of the 1965 bloodshed, both the reaffirmation of the New Order historiography and some voices of victims. Yet, most are the genre of “eye-witness to what happened”, not the rethinking, critical or alternative history that challenges the dominant national narrative.

In Thailand, history is not an interpretive knowledge that explains the past and the change over time. Rather, it is the venerated story that epitomizes the glory of Thainess. Authoritarian regimes in Thailand always claims the successor and savior of such history.

In this historical ideology, the monarchy and the state are benevolent. They rule by virtue for the good of people. The state’s violence is sometimes necessary as a righteous battle against the evil enemy. Its violence to people is framed as such, thus fitting in with the narrative of the virtuous royal state, instead of being a brutal crime against its citizens.

A memory that contradicts the royal-national narrative is often received by the public with suspicion, disbelieve, even distrust. Such had been the fate of the October 6 memories for many decades. Today, despite that the public recognized the atrocity 50 years ago, there is a ceiling to what can and cannot be said. The question who was responsible for the massacre remains off-limit since the answer could implicate the palace, thus very dissonant with the narrative of the virtuous monarchy. Such a narrative is often regarded dangerous to the nation.

The control of the past is anathema to democracy and justice.

V. Legal System

The legal systems in many post-colonial countries are not the Rule of Law that protects people’s rights by limiting the state’s power. Instead, national security

lends legal privileges to the “prerogative state”. Such is the case in Thailand.

The foundation of modern legal system in the semi-colonized Siam was to serve the absolute monarchy without respect to people’s rights. After the end of the absolute monarchy, Thai legal system has been developed upon this foundation most of the time under authoritarian regimes.

“National security” or the security of the state has, therefore, been the highest purpose of the legal system, above people’s rights and liberty. Development, as seen by the state, also renders privileges for the state often at the expense of people’s rights, freedom, even private property.

Thai legal system has normalized the state’s emergency powers in the ordinary statutes, far beyond the emergency and the martial laws, such as in the laws of forestry, media, freedom of information, privacy law, and many more. These provisions allow the state to suspend the normal substantive and procedural laws and to exercise extraordinary powers that encroach people’s rights, liberty and property.

All legal institutions and the entire justice system, have been built and developed accordingly. It is not surprising that the judiciary has repeatedly endorsed a coup as legitimate and its orders as valid laws. Institutionally, Thai judges claim to “act in the name of His Majesty”. They are regarded exceptionally high despite their obedient services to the state.

VI. Impunity

The ultimate privilege that the Thai state has often enjoyed while no other states have, is impunity. Every coup-makers have granted impunity to themselves, then endorsed by the judiciary. Impunity was also granted by the state and the judiciary in the wake of every uprising and massacre. Besides, impunity is granted in the extant 2008 Internal Security Act, allowing the security agencies to (ab)use authority. Impunity has been part of Thai legal culture and practices, and of the development of the Thai state.

Moreover, the Thai state and the public alike usually urge people to move on beyond the past tragedies for the sake of the harmonious future. In a Buddhist culture, it is easier to talk about reconciliation and forgiveness without knowing who to be forgiven and what to forgive since forgiveness is a unilateral act to cleanse one’s own mind. In this culture, the desirable future is possible because of, not despite of, the absence of retributive justice that requires memory. People do not forget, but they are encouraged to not remember in order to moving on. I believe we can find similar psyche and mentality in other countries.

What the society actually gets is impunity.

Impunity is a legal privilege for a few above everybody else. It contradicts to democracy and the rule of law in which everybody is equal before the law.

With the absence of the rule of law but with the affirmation of unequal power

and privileges, democracy is merely a day dream that will never come.

As one Indonesian intellectual once remarked, “If we have never fully acknowledged the truth of the 1965 incident, we will not be able to either end impunity or fully recover our common humanity”.