



Transition: THAILAND CASE STUDY

AJAR and Cross Cultural Foundation



TRANSITIONAL JUSTICE
ASIA NETWORK





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About Asia Justice and Rights

Asia Justice and Rights (AJAR) is a regional human rights organisation based in Jakarta, Indonesia. AJAR works to increase the capacity of local and national organisations in the fight against entrenched impunity and to contribute to building cultures based on accountability, justice and willingness to learn from the root causes of mass human rights violations in the Asia Pacific region. For more information, visit <http://www.asia-ajar.org>.

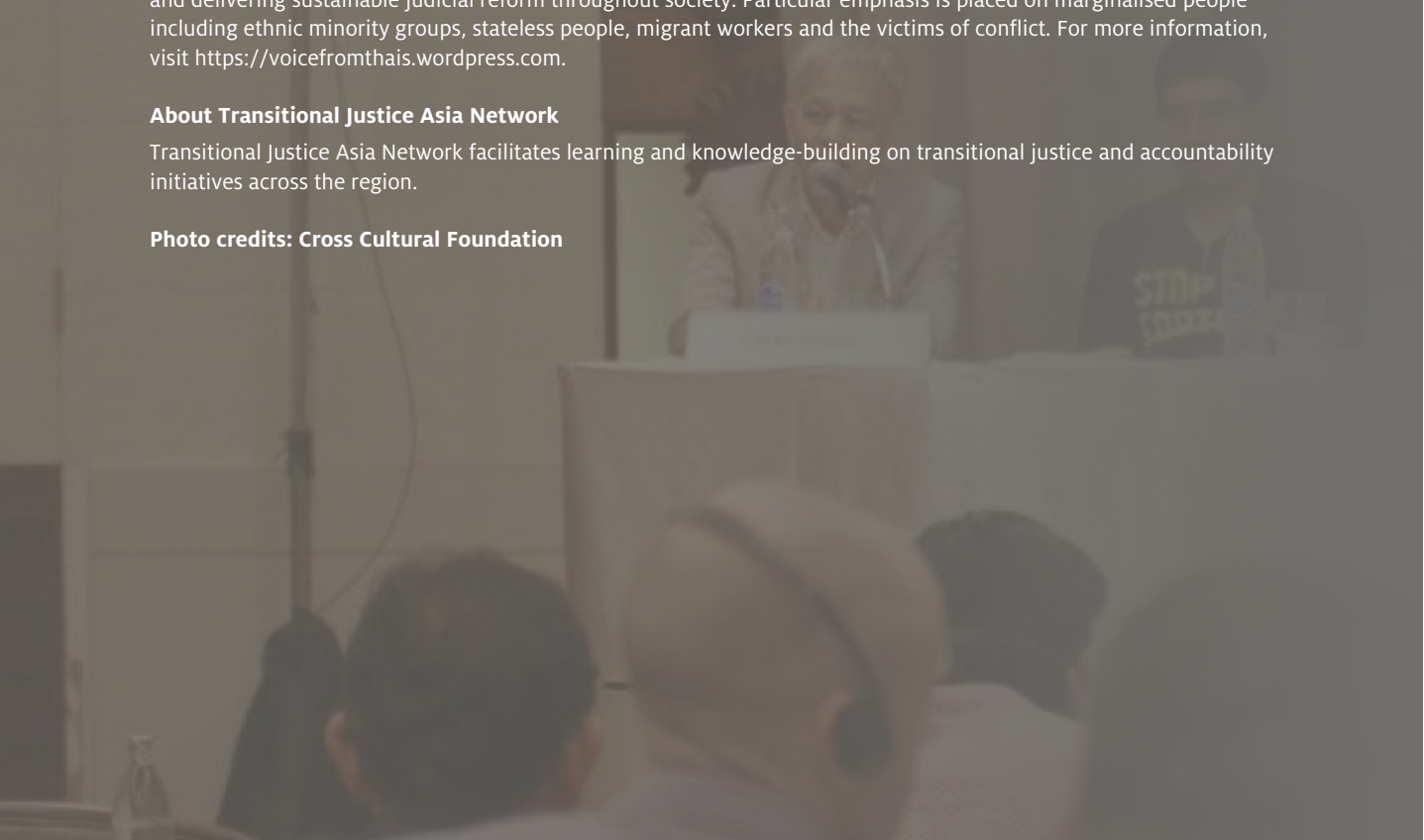
About Cross Cultural Foundation

The Cross Cultural Foundation (CrCF) was founded in 2002. It works on justice and the protection, promotion and monitoring of human rights in Thailand. CrCF's philosophy and activities are focused on strengthening human rights and delivering sustainable judicial reform throughout society. Particular emphasis is placed on marginalised people including ethnic minority groups, stateless people, migrant workers and the victims of conflict. For more information, visit <https://voicefromthais.wordpress.com>.

About Transitional Justice Asia Network

Transitional Justice Asia Network facilitates learning and knowledge-building on transitional justice and accountability initiatives across the region.

Photo credits: Cross Cultural Foundation



Since 2005, Thailand has faced persistent political conflict stemming from ideological divides and on-going power struggles among the elites. Political protests against the government and its policies have left Thai society grappling with social polarization, mutual distrust, and fierce confrontations between the state and the people, and among the people themselves. The country is now marred by a cycle of abuse of power, protests, violent military operations, military coups, corruption, legal trials, and constitutional re-writing.

These violent encounters have caused not only physical and mental suffering among those involved, but have had long-term social economic repercussions that affect human security. If such conflicts continue without resolution, there is a high possibility that Thai society will not be able to restore stability and reach its development potential in the foreseeable future.

The conflicts resulted in 133 deaths, injuries to more than 2,000 people, 3,000 counts of damaged properties, and prosecutions against 1,883 individuals. State and non-state actors were entrusted with the responsibility to address these impacts, but those affected continue to be vulnerable to violence and political conflict.

Thailand is also facing an ongoing military conflict, with roots in a 19th century separatist insurgency among ethnic Malays in the Patani region in the south. The increasingly complex problem has escalated since 2004, with daily shootings and bombings pushing the death toll over 6,500 and more than 10,000 people injured.

The situation of civil society

Social movements and the media have recently helped to create political space to debate Thailand's public policies. Given the diversity of civil society in Thailand, decentralized networks that work on a variety of issues tend to be more or less active over time. Civil society engagement was especially limited following the military coup in 2006. Before ideological polarisation, grassroots civil society

networks were especially strong in advocacy for the protection of community rights over shared resources.

An example of the power and unity of the civil society movement was the significant participation of the public in the drafting process for the 1997 Constitution. This success was an important point that shifted away from elite politics and offered an indication of participatory democracy, as democracy organizations, led by NGOs, pushed for a constitution for the people. Initially a coalition of 15 organizations and networks advocating for democracy, such as the Women and Constitution Network, Student Federation of Thailand, Labor Organization of Thailand, Business for Democracy, the Chamber of Commerce, and other pro-democracy groups, doubled to a combined force of 30 organizations by December 1996. This movement focused on the need for people's participation and empowerment, particularly at the grassroots level, and initiated a drafting committee for the people's constitution. Public campaigns were organized in parallel to the Constitutional Assembly, with some activities held in cooperation with that body. In southern Thailand, movements by civil society organizations and NGOs, particularly women's groups and those who formed a "people's council", also contributed to conflict resolution.

The situation of victims

Some victims or their relatives have formed networks or established foundations to advocate for justice. For example, the events of Black May in 1992 or the 2010 military crackdown provided an impetus that initiated movements and created networks calling for justice and for the government to take responsibility. Some victims were brought into official channels like the National Reform Council's Committee on Reconciliation.

In southern Thailand, besides receiving cash compensation through ad hoc schemes, some victims have set up foundations to support victims. A local university has developed a victims' database that documents incidents. This database is accessible to government and

non-governmental organizations alike and has been very useful. Women's organizations have also collected the voices of victims and disseminated them in the form of books and radio broadcasts to empower survivors. Some foundations work with the government's health sector to monitor developments and advocate for the establishment of rehabilitation centres for victims.

Transitional Justice Initiatives

In the past decade, various sectors of civil society, such as private organizations and academia, have studied the causes of the conflict and proposed recommendations for reconciliation. Unfortunately, the experiences and knowledge accumulated have not been used to create a wider understanding within society or to produce tangible results.

Official initiatives

Over the past ten years, Thai society has become familiar with the idea of setting up commissions following violent events, such as commissions for inquiry or investigation, fact-finding committees, and truth commissions. Since 2004, there have been more than a dozen ad hoc truth commissions established by local governments to examine human rights abuses by the security sector. Numerous reports from the government and civil society provide recommendations for reconciliation.

One of the best-known mechanisms, the Truth for Reconciliation Commission of Thailand (TRCT) was established as an independent organisation under the regulation of the Prime Minister's Office. It was mandated to investigate incidents related to the protests and their dispersal during April-May 2010. The commission created five sub-committees: Management, Fact-Finding, Reparation, Research of the Root Causes, and Strategies/Recommendations for the Prevention of Re-occurrence. Many victims as well as opponents of the government opposition did not trust the

TRCT because it was administered by the Prime Minister's office.

Following an incident at the Krue Se mosque in southern Thailand in 2004, the government set up an independent commission to inquire into the killing of 32 suspected gunmen inside the mosque. Another significant move by the government came in 2006, when the Army Chief and Supreme Commander, General Surayud Chulanont, who had been sworn in as Prime Minister, provided a televised apology to ethnic Malay Muslims in Pattani. He admitted that what happened in the southern border provinces in the past was mostly the fault of the state. During this time there was also a confidential dialogue between representatives of the government and the armed movement.

However, these truth-seeking efforts are largely seen as a cosmetic process to reflect military perpetrators in a good light. Commissions and committees comprised of military, police and local governors. While the government also appointed civilians, academics, and NGO members as commissioners, by and large victims and their committees view the commissions as one-sided and doubt the credibility of their findings and recommendations.

In terms of reparations, there were commissions to provide compensation for victims. The 2005 National Strategy Plan included healing programs for victims in Thailand's Deep South. In 2011, a victim reparation agency was transferred to the Southern Border Province Administration Centre (SBPAC), enabling victims in Thailand's Deep South to have better access to reparation programs. However, these reparation programs were used to deter accountability and justice.

Civil society initiatives

Members of civil society have conducted their own inquiries and fact-finding in parallel to formal mechanisms, either to monitor the work of the mechanism or to cross-check information. For example, the People's Information Center was a group of academics and volunteers who conducted their own fact-finding in

parallel to the work of the TRCT and the National Human Rights Commission in 2010. They produced a report that included findings and recommendations. Another example is research on social healing by the Institute of Human Rights and Peace Studies at Mahidol University.¹

In addition, civil society representatives have been appointed to some formal transitional justice initiatives such as the inquiry commission. Some civil society groups also work closely with the government, such as a foundation in southern Thailand whose collaboration with the government led to a new policy to establish rehabilitation centers for torture victims.

Future Challenges, Lessons Learned and Conclusion

Challenges

For southern Thailand, one pressing and immediate challenge is to create an understanding of transitional justice among members of the general public. Another challenge is to identify the role of stakeholders so they can work toward a more comprehensive and holistic approach to transitional justice. A more long-term challenge is to address a lack of knowledge about prosecutions, vetting, and impunity, and develop ways to prevent the cycle of violence from recurring. Another challenge concerns how to use transitional justice mechanisms so they can benefit the ongoing peace process without harming it.

Key lessons learned

1 Eakpant Pindavanija and Ratawit Oua of the Institute of Human Rights and Peace Studies, Mahidol University, "Social Healing Factors and Process That Lead to Reconciliation and Forgiveness," paper presented to 13th International Conference on Thai Studies: Globalized Thailand? Connectivity, Conflict and Conundrums of Thai Studies, 15-18 July 2017, Chiang Mai, Thailand, see abstract at http://www.icts13.chiangmai.cmu.ac.th/pdf_abstract.php?abs_id=624

1. Popular participation and a sincere, inclusive process is necessary to create a sense of ownership among stakeholders.

2. Forgiveness is difficult when people do not truly understand the full context of what occurred. We cannot overcome the past and move forward if we do not address root causes.

3. One challenge is determining the best time to adopt a transitional justice initiative without initiating additional complexities. We can learn from other countries in the region and how they resolved this issue, since not all countries follow the same pattern of transitional justice.

4. Having a comprehensive set of recommendations is good, but if they are not converted into action the process will fail, and those who contributed to the recommendations will lose trust in the process.

5. Due in part to military coups in 2006 and 2014, official initiatives have been interrupted and this has contributed to more conflict. The role of the military, both nationally and in the south, has contributed to partial reconciliation, but at the same time has complicated democratic developments and failed to resolve past grievances.

6. Due to a lack of participation in government initiatives, civil society has not always contributed as much as it has to offer to transitional justice. This missed opportunity has been due, in part, to a lack of freedom of expression, assembly, and association, and limitations regarding other rights that are essential to the dialogue and listening processes of transitional justice. At the same time, civil society's lack of trust in the government has curtailed its participation, even in an initiative that attempted to conduct credible fact-finding, such the Truth for Reconciliation Commission of Thailand.

Transitional Justice Timeline in Thailand

DATE	EVENT
2005	After a strong five-year run, including a historic landslide re-election, Thaksin Shinawatra encounters mounting opposition. The yellow-shirted royalist People's Alliance for Democracy (PAD) stages mounting street protests, while Thaksin is accused of conflicts of interest and disrespecting the monarchy.
January 2006	Shortly after a change in the tax law, Thaksin sells the family shares in telecom giant Shin Corporation to Temasek Holdings, a transaction that results in a capital gains tax exemption. The controversial deal drove people from ultra-nationalist groups to join protests against the government.
April 2006	Thaksin calls for a vote, knowing that the support of up country rural masses and the working poor would restore his mandate. However, the Democratic Party boycotts the election, robbing it of credibility, and the Constitutional Court annuls the results.
September 2006	While Thaksin is in New York to address the United Nations General Assembly, Thailand's army chief launches a coup that is met by no resistance. The army abolishes the 1997 constitution, considered the most democratic charter Thailand has ever had. Having accomplished its mission, the PAD disbands on 21 September. Surayud Chulanont, a former armed forces chief and a member of the king's powerful Privy Council, becomes interim prime minister.
2007	The Constitutional Court bans Thai Rak Thai party from political activities for five years due to electoral fraud. In the same ruling, the Court also bans 110 executive members of the party for five years. One year after the coup, the draft constitution proposed by the military-backed government is narrowly approved in a referendum. Thaksin's power base votes to reject it, revealing a clear political divide marked by red shirts versus yellow shirts.
December 2007	The People's Power Party (PPP), a new incarnation of Thaksin's banned Thai Rak Thai party, wins the general election.
February 2008	After the general election the representative from Thaksin's influential PPP, Samak Sundaravej, is elected as Prime Minister with a clear policy to grant amnesty to the 111 politicians who were banned from political activities in 2007. At the same time, Thaksin returns from 17 months of self-exile.
August 2008	Thaksin and his wife leave Thailand, ostensibly to attend the Beijing Olympics. Facing corruption charges at home, they do not return. The PAD regroup to push out what was essentially Thaksin's proxy government.
September 2008	Samak is disqualified from office for receiving a small sum from a television station for a cooking show appearance. Thaksin's brother-in-law, Somchai Wongsawat, a lackluster bureaucrat, is installed as Prime Minister.
October 2008	PAD protesters besiege Parliament House, cutting off the power and trapping over 300 MPs and senators. After delivering a policy speech, Somchai escapes by climbing over a fence behind the complex. The government transfers its offices to Don Mueang airport, and Somchai authorizes the police to use force against the protesters. Many protesters and police are injured, and two protesters die. Queen Sirikit attends one of the funerals.
November 2008	The PAD march on Suvarnabhumi International Airport and occupy it, forcing an eight-day closure that strands some 300,000 passengers in Thailand and disrupts regional air travel.

December 2008	The Constitutional Court finds the PPP guilty of electoral fraud, disqualifying it and banning another batch of party office bearers and MPs from politics for five years. The Somchai Wongsawat government collapses, and the PAD releases the airport from its occupation. Opposition leader Abhisit Vejjajiva forms a coalition with the help of a former Thaksin ally, becoming the third Prime Minister in three months.
March-April 2009	Red shirt supporters of former Prime Minister Thaksin mobilize to mount mass rallies against the government. On 8 April, tens of thousands of red shirts flood the area around Government House with a call to topple the amatyathipatai (regime of elites or nobles) whom they accuse of meddling in politics. Elites and the royalist middle class construe this language as anti-monarchy. The red shirts demand an immediate election.
February 2010	In an eight-hour judgment, a court finds Thaksin guilty on five counts of corruption. The court strips Thaksin's family of half its wealth after ruling that he illegally acquired US\$1.4 billion while Prime Minister and deliberately hid his wealth. Thaksin says his money was "stolen".
March-May 2010	Tens of thousands of red shirts paralyse parts of central Bangkok with months of protests calling for Prime Minister Abhisit's resignation and early elections. A dispersal attempt on 10 April disintegrates into chaotic fighting in which a Thai army colonel, a foreign journalist, and several others are killed.
3 May 2010	Abhisit announces a road map to reconciliation and an early election on 14 November. The next day the United Front for Democracy Against Dictatorship (UDD) objects, saying that the Election Commission, not the prime minister, has the authority to set an election date. Hope of a last-minute agreement dies.
19 May 2010	Troops storm the protesters' barricades and the death toll in subsequent weeks of violence reaches 91, most of whom are civilians. The red shirts disperse and the government organizes buses to transport many of them home.
July 2011	The pro-Thaksin Pheu Thai Party wins a landslide victory in elections. Yingluck Shinawatra, Thaksin's sister, becomes Thailand's first female prime minister.
October 2011	The government introduces a subsidy scheme that gives rice farmers a guaranteed price. The scheme pays more than the market price, leaving the government with millions of tonnes of unsold rice in warehouses.
June 2012	Anti-government protesters, incensed at the ruling party's bid to pass amnesty legislation that paves the way for Thaksin's return, block Parliament House to prevent debate. The issue galvanizes the middle class.
November 2012	Police disperse a 10,000-strong protest in Bangkok calling for the overthrow of Prime Minister Yingluck.
April 2013	The Constitutional Court blocks the ruling Pheu Thai Party from amending the post-coup 2007 constitution.
November 2013	Former Minister and Deputy Leader of the Democrat Party, Suthep Thaugsuban, a key figure in both the 2009 Pattaya crisis and the 2010 crackdown while in government, starts the People's Democratic Reform Committee (PDRC). The party distributes whistles as a new way to register protest, replacing plastic hand and foot clappers. Hundreds of people blow whistles in the streets, creating a massive din, in protest of the political amnesty bill.
December 2013	Prime Minister Yingluck rejects calls to step down, but announces early elections for February 2014.

February 2014	General elections are sabotaged by the PDRC that deploys protesters to block polling stations. Many Thais are upset that they cannot vote, and this leads to angry shouting matches and skirmishes at some polling stations. The Constitutional Court declares the election invalid, while the PDRC continues protests and even seizes government buildings within the government complex.
May 2014	The Constitutional Court disqualifies Prime Minister Yingluck from office for transferring her national security head, allegedly to pave the way for a relative to become national police chief. Nine cabinet members are similarly disqualified, but the government, citing the constitution, remains obdurate. Army Chief General, Prayuth Chan-ocha, acts, first by declaring martial law, then by seizing power in a coup and abolishing the constitution.
July 2014	King Bhumibol gives his assent to the National Council for Peace and Order (NCPO), an interim constitution enacted by the junta that gives the military sweeping powers.
August 2014	General Prayuth, a veteran of the elite Queen's Guard, is installed as prime minister.
March 2015	Prime Minister Prayuth ends martial law, but continues to rule by executive order.
May 2015	Former Prime Minister Yingluck is brought to court on charges of negligence over her government's rice scheme and faces up to 10 years in prison.
August 2015	A rush-hour bomb kills 20 people at the Erawan Shrine in the heart of Bangkok.
February-March 2016	Restrictions on discussions and public debate on the draft Constitution continue. On 27 February, a seminar on the draft Constitution organized by iLaw, a human rights NGO, is cancelled after the Lumpini Police Station warns that the event is considered a political gathering in violation of NCPO order 3/2015 that bans political gatherings of five or more.
June-July 2016	Preparation for the Constitutional referendum of 7 August begins. The Election Commission approves two international election observation groups (Asia Network for Free Election and the Asia Foundation) to monitor the vote, but rejects requests from national election observation groups to participate in monitoring. The new Democracy Movement campaigns on "Seven reasons to reject the draft Constitution", even as the suppression of "vote no" efforts continues.
August 2016	The military's proposed constitution is approved in a referendum, emboldening the military. The vote is also a step forward on the road to an election, which the regime says will take place by the end of 2017.
September 2016	Head of the ruling NCPO issues a military order that declares all new cases will no longer go to a military court, but instead fall under the jurisdiction of the Court of Justice. The order ends prosecution of civilians in military court for cases of security, sedition, and lèse-majesté, a practice that was imposed right after the military coup in 2014. The UN Office of the High Commissioner for Human Rights (OHCHR) calls on the government to drop all cases against individuals arrested and charged for exercising their fundamental rights of freedom of expression, opinion, and assembly.
September-October 2016	The Election Commission submits a draft organic law, on the management of the political parties to the Constitution Drafting Commission (CDC). The proposed law would give power to the Constitutional Court to remove party board members or leaders if found guilty of gaining power through unconstitutional means. The bill would also allow the registrar of political parties, with the approval from the EC, to impose five-year bans if party candidates and members violated election laws, allowed non-party members to exert influence, or failed to present policy platforms to the EC before making them public.

October 2016	<p>The 40th anniversary of the massacre of 100 student activists and bystanders at Thammasat University on 6 October 1976 by military and paramilitary forces is commemorated. At panel discussions on impunity and the significance of the student democratic movement at Chulalongkorn and Thammasat University, participants highlight the need for transitional justice mechanisms to deal with past human rights violations and to end impunity in Thailand. The participants also highlight the continuous lack of access to justice and reparations for victims and their families.</p> <p>King Bhumibol Adulyadej dies on 13 October.</p>
November 2016	<p>The National Legislative Assembly (NLA) and political parties oppose the draft organic law on the management of the political parties that would impose the death penalty on politicians involved in selling and buying political positions. The NLA and the political parties state that this proposal is not in line with basic legal principles and international practice.</p>
January 2017	<p>Members of the NLA indicate the possibility of postponing general elections until April 2018 to allow time to draft and adopt ten draft organic laws under the new constitution. However, senior officials, including the Prime Minister and the Deputy Prime Minister, are assured that the roadmap to general elections remains the same despite delays due to the death of King Bhumibol Adulyadej. According to the roadmap, general elections are to be held by the end of 2017.</p>
February 2017	<p>On 7 February the government completes the revision of the draft constitution and also sets up a Committee for Reform, Reconciliation, and National Strategy under the Prime Minister. The government also establishes the Reconciliation Preparation Committee headed by Deputy Prime Minister Prawit Wongsuwon. Comprised of military and government officials, the Committee plans to meet with political parties, civil society, and academics to discuss options and build commitment for political reconciliation. The government informs the OHCHR that the Committee will not look into amnesty options on political cases, as the next government would be better placed to make such a decision. The OHCHR encourages the government to release people in detention for exercising their freedom of speech, and to drop charges against human rights defenders, ahead of the March review by the UN Human Rights Committee.</p>
April 2017	<p>His Majesty the King officially endorses the 2017 Constitution of the Kingdom of Thailand. The royal presentation of the constitution (the country's 20th) dates back to the reign of King Rama VII and the creation of a constitutional monarchy in 1932. The Constitutional Drafting Commission must complete 10 draft organic laws by November 2017. The National Legislative Assembly will then deliberate the draft acts by January 2018. After they become law, the 150 days needed for campaigning and elections will likely require elections to take place in mid-2018, or no later than November 2018.</p>

