

[ADRN Issue Briefing]

Transitional Justice and Reconciliation in Asia: Lessons Learned from Korea, Sri Lanka, and Taiwan

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Transitional justice is a government response to past human rights violations (Teitel 2000). Different terms—accountability, truth-seeking, reparations, reconciliation—have been used to refer to transitional justice, and in 2004, it was officially adopted as an international norm with the publication of the UN Secretary General’s report, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies.” However, countries still face a great deal of controversy over how to implement transitional justice and how to resolve the tensions surrounding it.

ADRN’s recent research on transitional justice and reconciliation in Asia explored three country cases: South Korea, Sri Lanka, and Taiwan. In this issue briefing, I first briefly introduce the relevant human rights violations and transitional justice issues in each case. Then, I explore important similarities between the three cases. Finally, I discuss lessons learned from the three cases and provide concluding remarks.

Human Rights Violations and Transitional Justice

The nature and scope of human rights violations in each country varies. In Sri Lanka, human rights violations primarily occurred during the civil war between the government and the Liberation Tigers of Tamil Eelam. In Taiwan, though the February 28 incident was a civil conflict between the indigenous population and the Kuomintang regime, it was not a civil war *per se* since no official armed groups representing the indigenous population were involved. In the case of Korea, there was a civil war element, especially during the Korean War, but it would be more accurate to describe that conflict as an interstate war, and furthermore, the war was not the only instance in Korean history of human rights violations occurring. Due to this complex nature, post-Korean War transitional justice efforts have had to address both atrocities that took place during the war and those under repressive authoritarian regimes.

Korea and Taiwan experienced both large-scale massacres during conflicts and systematic human rights violations under repressive authoritarian regimes. Korea had four large-scale massacres: during the Jeju Uprising (1948), during the Yeosu-Suncheon Rebellion (1948), civilian killings during the Korean War (1950), and during the Gwangju Uprising (1980). Taiwan had one large-scale

massacre: the February 28 incident (1948). In addition, civilians in both countries were killed, disappeared, illegally arrested and detained, and tortured under repressive anti-communist authoritarian regimes. In Taiwan, this period has been conceptualized as the White Terror (1949-1987); there is no similar concept in Korea. Moreover, both countries experienced Japanese colonialism, which was marked by political oppression.

In all three countries, varying measures of transitional justice were used to address past atrocities. In Korea, criminal prosecutions, truth commissions, and reparations were the primary methods used. In Taiwan, truth commissions and reparations were widely used, with no notable accountability measures. In Sri Lanka, under pressure from international society, all measures—criminal prosecutions, truth commissions, and reparations—were proposed and adopted. In all three countries, transitional justice projects were also initiated and led by members of civil society.

Important Similarities in Three Cases

1. Complex and Complicated Human Rights Violations

The cases of Korea and Taiwan both show that past instances of human rights violations are not simple. They are multilayered, involving multiple transgressions. For example, in Korea, in addition to four major large-scale massacres, each of Rhee Syngman's, Park Chung Hee's, and Chun Doo Hwan's authoritarian regimes left its own distinct trail of human rights abuses. Taiwan saw at least three types of human rights violations occur during the February 28 incident, the White Terror, and while being subjected to Japanese colonial rule. Some also argue that Taiwan's indigenous populations have been continuously subjected to human rights violations. In Sri Lanka, civilians were killed by both government agents and insurgents, rendering the transitional justice process even more complex. The existence of diverse human rights violations over a long period of time complicates transitional justice initiatives.

In addition, external forces' involvement or complicity in human rights violations further complicates transitional justice efforts in these countries. In Korea, some abuses were perpetrated by or occurred under the watch of external forces like Japan, the United States, and the Soviet Union. In Taiwan, human rights violations were committed not only by the Kuomintang regime but also by the Japanese colonial regime. Interestingly, although Japan committed similar abuses in Korea and Taiwan, two countries responded differently. Comfort women and forced labor issues have been at the center of the Korean transitional justice debate, whereas this has not been the case in Taiwan.

2. The Effect of International Politics

Large-scale massacres of civilians in each country mostly occurred within the context of the Cold War. Both the Taiwanese February 28 incident and three of Korea's four major massacres—during the Jeju Uprising, the Yeosu-Suncheon Rebellion, and the Korean War—occurred during the early phases of the Cold War. These events were framed as communist challenges to the anti-communist authoritarian regimes. Thus, any attempts to address past abuses or reconcile with victims of these events were framed as “communist instigation”; the label of “communism” was used to obstruct any

discourse on transitional justice and reconciliation. It was only after democratization and the end of the Cold War in the late 1980s that genuine efforts to address the past ideology-driven atrocities began.

In the case of Sri Lanka, the Cold War provided an important backdrop for the civil war itself. After the peace accord, however, a new dynamic emerged between international politics and the local transitional justice process. The UN, Human Rights Council, and international society constantly pressed Sri Lanka to implement various transitional justice measures; this international pressure interacted with ongoing domestic initiatives to pursue transitional justice. In comparison, there were no such dynamics in Korea or Taiwan. The nature of the tension between international and local agents makes transitional justice in Sri Lanka unique.

3. The Impact of Domestic Politics

Human rights violations and transitional justice initiatives occur within the domestic political context, primarily because perpetrators are typically affiliated with the government, the military, intelligence agencies, or the police. In many cases, perpetrators and their supporters still have a close tie with contemporary political elites and play the role of “spoilers.” Therefore, addressing past atrocities necessarily causes disruptions in the existing political structure. The “politicization” of transitional justice is inevitable. Conservative regimes usually oppose transitional justice while progressive regimes tend to actively pursue these measures.

In all three cases, the “politicization” of transitional justice measures or of past events posed a distinct obstacle to resolving the rights violations. In Sri Lanka, controversy around adopting accountability measures to punish “war heroes” is a clear example of this phenomenon. In Taiwan, examples include the resignation of the Vice Chairperson of the Transitional Justice Commission over his remarks on the local election and the emergence of controversy over the National Chiang Kaishek Memorial. In Korea, backlash against transitional justice efforts has resulted in reduced support for or the abolition of committees and projects. In all three countries, such social controversies have strengthened the opponents of transitional justice and weakened the supporters.

Lessons Learned

1. Culture of Accountability

In all three cases, despite being controversial, some meaningful measures of transitional justice have been adopted and implemented. These measures would have been unimaginable in the past, reflecting “a revolution in accountability” (Sriram 2003), which has also been conceptualized as a “justice cascade” (Lutz and Sikkink 2001). This does not mean, however, that truth, justice, and reconciliation have been achieved in every country. As the social controversies in each country have demonstrated, a “culture of impunity” persists. Nevertheless, the world—even Asia, which has lagged behind on the trend of pursuing accountability for past human rights violations—has undergone transformation.

Impunity for past human rights violations is certainly waning in Asia. With an increasing number of states introducing transitional justice measures, achieving accountability is a more common phenomenon. That being said, accountability is not always realized exclusively through

retributive justice. Rather, restorative measures, such as truth commissions and reparations, were used in many cases. Truth commissions and reparations have been enacted in all three countries.

As seen in the Korean case, even after dozens of truth commissions over the past twenty years, truth and reconciliation are still difficult to achieve. This does not mean, however, that no meaningful change has occurred. As a result of transitional justice measures, civil society and the government have changed. In Taiwan and Korea, it is the government which carries out memorialization projects. It is government funds that are allotted as reparations for victims of large-scale massacres like the April 3 incident in Jeju or the February 28 incident in Taiwan. Granting reparations to the victims of past abuses has now become the standard, and many officials, lawmakers, and journalists have internalized accountability as a norm.

2. Transitional Justice as a Process

Transitional justice in Asia is an ongoing process. In all three countries, controversies around transitional justice measures, the revision of laws, or the coexistence of multiple transitional justice initiatives show that transitional justice is not a “one-and-done” process resolving past atrocities. In Korea, even after official investigations concluded, other investigations were later carried out. Similarly, in Taiwan, multiple commissions (e.g., an investigation committee on the February 28 incident, the transitional justice commission, and the commission on ill-gotten assets) were created over a long period of time. Sri Lanka also carried out several transitional justice initiatives to address past atrocities.

As with any other political process, the transitional justice process has its ups and downs, its proponents and its opponents. The overall impact of transitional justice in each country has been somewhat mixed. In Korea, where many transitional justice initiatives have been adopted, scholars generally view the transitional justice process as having had a positive long-term impact. The process as a whole, with all of its moments of forward and backward progress, has helped to consolidate democracy and protect human rights. Even controversies, backfires, and failures have contributed to the overarching narrative in which transitional justice has had an important impact on society. However, in Taiwan and Sri Lanka, a causal relationship between transitional justice and positive outcomes seems less apparent.

3. Transitional Justice as a Whole-of-Nation Response

In Sri Lanka, both civil society and state actors were involved in the transitional justice process. Within the state, both the legislature and administrative bodies were involved. In Taiwan, transitional justice measures were mostly discussed in the Legislation Yuan. The legislative process, however, did not mark the end of transitional justice measures. In Korea, the legislative, judicial, and executive branches cooperated to bring about meaningful changes for victims. For example, in response to the April 3 Jeju Uprising incident, a special law was enacted by the National Assembly in 1999, and the first investigation commission was created in 2000 under the executive branch. After the commission finished its report and the president issued an official apology, victims filed a series of lawsuits against the state. During these lawsuits, the court sided with the victims and ordered the state to make reparations. In some cases, it was not even the central government, but rather legislative and judicial

branches of local and regional governments, that were at the forefront of bringing justice to the victims.

The other important players were civil society actors. There has been a significant contribution from civil society in all three countries. In Korea, civil society actors not only initiated the transitional justice movement but also monitored ongoing government initiatives. It was victims and activists who spent a long time pressing the government to adopt transitional justice measures. In Sri Lanka, a Consultative Task Force (2016), which was a civil society body, worked hard to implement transitional justice measures proposed by the international community. In Taiwan, victims and civil society actors were active as well.

It is challenging to compare the three cases, as each country occupies a very different political context. However, conducting such an analysis shows that there are considerable commonalities, such as the complex nature of human rights violations and the dual impact of domestic and international politics. At the same time, important trends are revealed by comparing the three cases. First, although the culture of impunity is still strong, there is increasing demand for and realization of accountability. Second, transitional justice is an ongoing, imperfect process, and progress is not always direct. Finally, the transitional justice process in each country indicates that responding to past atrocities is a process that involves the entire nation—government, civil society, and civilians. ■

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