



Criminal Law and Human Rights: Challenges and Enforcement

Deassy J.A. Hehanussa¹, Carolina Tuhumury², Ardiyanti Aris³, Viorizza Suciani Putri⁴, Wahab Aznul Hidayah⁵, Ontran Sumantri⁶

^{1,2}Faculty of Law, Pattimura University, Ambon, Indonesia

³Faculty of Law, Institute of Social Sciences and Business Andi Sapada, Parepare, Indonesia

⁴Supreme Court of Republic Indonesia, Indonesia

⁵Faculty of Law, Muhammadiyah Sorong University, Sorong, Indonesia

⁶Bethesda Yakkum Yogyakarta College of Health Sciences, Yogyakarta, Indonesia

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ABSTRACT

Recognising the variety of legal and non-legal tools accessible to react to these challenges within the framework of transitional justice, this research delves into a multi-faceted approach to addressing significant human rights breaches. In both permanent and ad hoc Human Rights tribunals, the primary emphasis is on the function of Truth and Reconciliation Commissions as an alternate or supplementary mechanism to conventional judicial proceedings. This research explores the concept of transitional justice and how it can help victims of human rights violations in the past achieve justice by focusing on truth-telling, reconciliation, and healing. It does this by analysing the dynamics of power transitions from authoritarian to democratic systems. The study's overarching goal is to provide light on the pros and cons of using transitional justice to put an end to egregious human rights abuses and lay the groundwork for long-term social and peace.

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Corresponding Author:

Deassy J.A. Hehanussa
Faculty of Law, Pattimura University
Jl. Ir. M. Putuhena, Kampus Unpatti Poka-Ambon, Indonesia 97233
Email: deassyhehanussa@gmail.com

1. Introduction

Law number. 26 of 2000 concerning Human Rights Courts governs the case settlement procedure since the phrase severe human rights violation is an offence governed outside of the Criminal Code (Criminal Code) (MUHTAR, 2018). Human Rights Court crimes are unique in nature and do not appear in either Book II (crimes) or Book III (offences) of the Criminal Code. The word "violation" used by the Human Rights Court is fundamentally different from the criminal code's use of the same term.

Since the Human Rights Court regulates genocide and crimes against humanity as categories of crimes (Articles 8 and 9 of the Human Rights Court), the term "gross human rights violations" is really somewhat inadequate (Cingranelli et al., 2019). Since "crime" means

"infraction" or "violation," the Human Rights Court's framers felt the need to append the adjective "serious" to the word "human rights violation" to compensate for the term's perceived lack of strength (M. Ali et al., 2023). More specifically, it distinguishes between the words "crime" as used in the Second Book of the Criminal Code and "offences" as used in the Third Book.

Any illegal act, whether codified in statute or not, violates fundamental human rights, according to philosophical principles. Human rights violations, on the other hand, are defined as a distinct crime with their own set of rules enforced by the Human Rights Court and the Human Rights Law. Therefore, the fundamental purpose of creating any legislation is to safeguard human rights, and this is particularly true of laws dealing with criminal activity. It follows from what Achmad Ali said that (A. Ali, 2008)

Because of the inextricable link between criminal law and punishment and the safeguarding of human rights, the Universal Declaration of Human Rights served as an inspiration for the drafting of Indonesia's Criminal Procedure Code (Law Number 8 of 1981 Concerning Criminal Procedure Law, n.d.) (10 December 1948).

Beyond that, Achmad Ali defined "Serious Human Rights Violations" and "Ordinary Human Rights Violations" using various terminology. "Human rights violations" include all illegal and criminal activities, in his view, even if not all of them qualify as "serious human rights violations." (Natsif, 2016). Genocide and crimes against humanity are the two most severe breaches of human rights, according to the Law on Human Rights Courts. These two categories of crimes are not applicable in Indonesia; all "Human Rights Violations" are just "Ordinary Human Rights Violations," which would be handled by the General Courts if they were classified as criminal offences. The Human Rights Court has jurisdiction, as opposed to the Serious Human Rights Violations Court. The President's Ad Hoc Human Rights Court will hear complaints involving significant human rights breaches that happened before the Human Rights Court Law was passed.

After then, according to the Human Rights Court Law, Achmad Ali went into additional detail in his study about the many factors that constitute Serious Human Rights Violations. When an act is committed with the purpose to eliminate or exterminate all or part of a national, racial, ethnic, or religious group, we say that it is genocide. Same goes for "crimes against humanity"; they need to be either "systematic" or "widespread" (not both) to qualify. As a result, crimes like rape, forced population transfer or expulsion, slavery, murder, and extermination do not constitute "genocide" or "crimes against humanity"; rather, they are merely "Ordinary Human Rights Violations" or Criminal Offences, and not "Serious Violations" of human rights.

The word "serious human rights violations" has not been defined clearly and decisively in international treaties, according to H. Victor Conde (Condă, 2004), as follows (Tesfai et al., 2023):

Human rights treaties, declarations, and resolutions use the term "gross violations of human rights," which is not clearly defined but usually refers to more serious forms of systematic human rights abuses like apartheid, racial discrimination, mass murder, slavery, genocide, and religious persecution. Violators do victims irreversible damage when they commit gross violations.

H. Victor Conde basically said that the term "serious human rights violations" has not been adequately defined in a number of human rights resolutions, declarations, and accords (De Jong, 2006). As a general rule, however, state officials' systematic, severe, and massive-scale violations or violence against human rights norms, such as apartheid, racial discrimination, murder, slavery, mass murder, or religiously motivated violence or torture, can be considered serious human rights violations. Consequently, victims of severe human rights crimes sometimes find it difficult to heal or move on.

Despite the lack of a definitive definition from an expert, Dinah Shelton cites Resolution No. 1530 of the United Nations Economic and Social Council as outlining the types of human rights violations that fall into this category (Shelton, 2015):

A class of cases of flagrant and systemic human rights violations has been recognised by international human rights law, particularly as it has evolved within the United Nations. The specific definition is lacking, but it serves as the criterion for determining whether human rights concerns brought under Ecosoc Resolution 1503 may be considered.

Theo van Boven argues that there is a distinction between minor and major human rights breaches. Words like "severe" and "violation" convey the gravity of the situation, but the kind of human rights that are being infringed upon must be considered while using this adjective (Fitriani et al., 2023). According to the Draft Criminal Procedure for Crimes against Peace and Safety of Mankind, Serious Human Rights violations can be categorised according to the following: apartheid; genocide; systematic or mass violations of human rights (such as murder, torture, forced labour, slavery, exile or forced population transfer); persecution based on social, political, racial, religious, or cultural factors; and so on. (Rojas, 2022). Antonius Sujata also proposed the word "serious violations" that should be associated with human rights, specifically (Sujata, 2000):

Since serious violations cannot be understood as crimes committed in isolation, as cruel acts, as those resulting in death, etc., it is clear that human rights must be considered in any attempt to clarify and precisely formulate these violations. These atrocities do not constitute major crimes or criminal offences; rather, they constitute grave breaches of human rights.

Severe human rights abuses are the offences included in the Human Rights Court Law's category of significant violations. Article 1 point 2 of the Human Rights Court Law states that breaches of human rights constitute significant human rights violations, however this phrase is not established precisely. Crimes against humanity and genocide are included in the categories of severe human rights violations stated in Article 7.

Article 1 point 6 finally defines a human rights violation as follows, in contrast to the preceding Human Rights Law, which does not include the word "serious" when referring to human rights violations. Intentional or negligent actions by any individual or group, including state officials, that unlawfully restrict, limit, or revoke the human rights guaranteed by this law and fail to receive, or are reasonably believed to be denied, a fair and correct resolution through the appropriate legal channels constitute a violation of human rights.

According to C. de Rover, who proposed a rephrasing of the term "human rights violation" that omits the word "serious," there are two ways to identify the nature of such violations in light of the Declaration for Victims of Crime and Abuse of Power (Rover, 2000): "Violations of criminal law in force in member states, including violations of laws that establish abuse of power as a crime." is how the first one describes these infractions. The breaches in question centre on the injury and suffering inflicted upon individuals or groups by the state, whether it be bodily or mental harm, emotional distress, economic loss, or a significant impairment of their fundamental rights. The second definition encompasses "acts or omissions (which can be blamed on the state) which do not yet constitute violations of national criminal law but constitute internationally recognised rules in relation to human rights".

According to Article 8 of the Human Rights Court Law, the crime of genocide encompasses a wide range of significant human rights breaches, including any action carried out with the purpose to eliminate or exterminate an entire national, racial, ethnic, or religious group. To carry out this conduct, one must: murder group members, inflict severe bodily or mental pain on group members, destroy group property, institute policies to restrict births inside the group, or forcefully transfer children from one group to another. several categories. Article 9 of the Human Rights Court Law specifies the kinds of crimes against humanity. Crimes against humanity are defined as gross human rights violations that target civilians on a large scale or in a systematic manner. These violations can take many forms, including but not limited to: murder, genocide, slavery, forced displacement or relocation of residents, and arbitrary restrictions on physical liberty that go against the principles of international law.

In the framework of Indonesian national law, the protection of human rights is embodied by the Human Rights Court Law, which controls major human rights abuses. Nevertheless, it is imperative that international principles (international legal instruments) not

be disregarded, notwithstanding Indonesia's domestic legislation pertaining to human rights protection.

Violence is a common tactic in gross human rights breaches, which Antonius Sujata argues has a direct impact on people's sense of justice, dignity, and morality (Rover, 2000). So, the subsequent backlash was as robust, going so far as to target the very fabric of the state on a global and national scale. Investigating and demanding punishment for egregious human rights breaches is a crucial function of non-governmental organisations and international organisations.

Human rights abuses, often called human rights crimes, are fundamentally different from criminal infractions. The first is "extraordinary crime," which is shorthand for major breaches of human rights. Criminal offence, the second phrase, is often known as common crime (Lira et al., 2022).

An explanation of the variations between the words described above is also given in the Human Rights Monitoring and Investigation Guidebook (Kontras, 2009). This book explains why crimes against human rights are distinct from other types of infractions and criminal offences. When state authorities (state actors) misuse their authority, whether by doing something or doing nothing, they commit crimes against human rights. After that, there is a distinction: When a state does to uphold its duties as outlined in international human rights legislation, this is known as a human rights violation. Intentional breaches, disregards, or failures to fulfil normative human rights norms are hallmarks of human rights infractions in relation to legal products, policies, or official practices. Whenever a state actor is involved in the commission of a crime or violation. This violation of human rights is known as human rights abuse according to the jargon of international human rights law.

Defining the issue statement for this study (1) What are the challenges to and methods for resolving instances of major human rights abuses using non-judicial procedures, particularly the Truth and Reconciliation Commission? (2) How does the term "transitional justice" relate to the resolution of human rights breaches cases, and how does it vary from restorative justice and the judicial system in this regard?

Theoretically and pragmatically, this kind of research has the potential to teach lawmakers about the need for changes to the legal framework by illuminating the relationship between human rights and criminal law. By delving into the reasons behind the criminal justice system's inadequate regard for human rights, we might perhaps motivate the implementation of reforms to address this problem.

2. Method

The questions and concepts that informed the selection of this study place it within the realm of normative legal studies. This study takes a philosophical and analytical tack, drawing from a variety of theoretical frameworks to arrive at its conclusions, which in turn seek to generate new results to address the identified primary issue.(Ishaq, 2017). Additionally, descriptive analytical tools will be used to examine the matter at hand. This will include outlining the relevant laws and regulations as they pertain to legal theory as well as positive law enforcement tactics (Mahmud, 2016). Several steps are needed to make data sources useful to criminal law and human rights research: Find relevant data, Assess Data Quality, Evaluate Data Relevance, Timeliness

3. Analysis and Results

3.1. Settlement of Cases of Serious Human Rights Violations

There are other avenues beyond permanent or ad hoc human rights court legislation that may address grave human rights breaches. The Truth and Reconciliation Commission is one of the non-court processes outlined in the Human Rights Court Law as a means to resolve major human rights breaches (Muhtar et al., 2023). During times of transitional governance, the Truth and Reconciliation Commission often handles instances of infractions. A change in leadership from one that is oppressive or autocratic to one that fosters democracy. Commonly

referred to as "transitional justice," it is the goal of a new administration to address the demands of victims of human rights breaches in the past.

This is problematic since the Constitutional Court has ruled that Truth and Reconciliation Commission Law no. 27 of 2004 is invalid (Abqa et al., 2023). The Truth and Justice Advocacy Team's judicial review of various articles in the Truth and Reconciliation Commission Law (Articles 1 number 9, Article 27, and Article 44) was the basis for the Constitutional Court's decision, as they were determined to be in violation of the State Constitution. In 1945, Indonesia became a unitary republic. The Truth and Reconciliation Commission Law included contradicting information, according to the Constitutional Court's findings. It is hard to uncover the truth and make reconciliation happen since the Truth and Reconciliation Commission Law does not have clear standards. Consequently, the Truth and Reconciliation Commission Law must be proclaimed null and void since, according to the Constitutional Court, it runs counter to the 1945 Constitution of the Unitary State of the Republic of Indonesia.

An impartial body established to investigate and bring to light grave human rights abuses and to facilitate reconciliation is defined in the Truth and Reconciliation Commission Law. According to Ildal Kasim, the Truth and Reconciliation Commission is a phenomena that is arising in nations that are going through the process of transitioning from authoritarian to democratic regimes. During this time of change, the public is expecting the new administration to address human rights offences, often known as severe abuses of human rights. These commissions operate under various titles and with varying powers in various nations. The Truth and Reconciliation Commission in Chile and Argentina, for instance, is only allowed to look into instances of enforced disappearances and extrajudicial killings; this is one example of a restricted mandate. Nevertheless, the majority of the Truth and Reconciliation Commissions that have been established so far have very wide-ranging powers that include almost every kind of grave human rights infringement, for instance in El Salvador, South Africa, and Guatemala.

The procedure for addressing instances of previous egregious human rights abuses via the Truth and Reconciliation Commission is considerably different from settling matters through the Ad Hoc Court (RS et al., 2023). The Truth and Reconciliation Commission apparatus does not acknowledge a juridical process beginning with investigation, continuing through prosecution, and ending with a legal conclusion, in contrast to the court's recognition of such a procedure. Revealing the truth via a synopsis of trends in severe human rights abuses and suggestions is the primary product of the Truth and Reconciliation Commission.

Disagreement has arisen due to the fact that there is a fundamental distinction between judicial and non-judicial processes (the Truth and Reconciliation Commission). In the eyes of many, this panel is content to provide policy suggestions to the government rather than call for criminals to face legal consequences for their actions. On the other hand, the purpose of the legal system is to impose a person's criminal or civil responsibility via the imposition of a punishment.

The reasons for accepting or rejecting the Truth and Reconciliation Commission's existence are clear to everybody. others who support it argue that it offers a practical answer at a time of political change, while others who reject it call it transitional justice. A peaceful and stable political system may be established by this committee. Opponents argue that the Truth and Reconciliation Commission serves only to protect criminals (a method of impunity) and accomplishes nothing to bring victims of human rights violations any measure of justice.

Essentially, victims may get justice via the Truth Commission provided it is administered independently (Widodo et al., 2023). What this implies for victims and perpetrators of crimes is that the state must be clean about what it did in the past, whether it was under the previous regime or when it was in power. After that, there is reconciliation, which means that all communities that have been oppressed must heal from their wounds and come to a consensus on how to end the violence and anarchy once and for all.

3.2 Understanding Transitional Justice

During times of transitional governance, cases involving human rights breaches are often settled without trials. A change in leadership from one that is oppressive or autocratic to one that fosters democracy. Typically, victims of human rights crimes in the past who are seeking redress during a change in administration use the phrase "transitional justice" to describe their goals.

To put it simply, Ruti G. Teitel proposed the idea of transitional justice. When there is a shift in power or a period of transition, he argues, transitional justice issues emerge (Setiyawan & Muhtar, 2023). Thus, transitional justice becomes an issue during the time between two governmental regimes. In common parlance, a regime change from one that is less democratic to one that is more democratic is what we mean when we talk about transition. (Muhtar et al., 2024). According to Teitel, there is a direct correlation between the transition phenomena and a change in normative thinking about justice and the function of law in this process.

Ruti G. Teitel defines transitional justice and provides more information in her article. (Muhtar et al., 2024): This setting and the political climate are interconnected with justice. Thus, legislation serves a contradictory purpose; the change signifies a paradigm shift in how justice is conceptualised. The normal societal role of law is to provide order and stability; nevertheless, during exceptional periods of political unrest, the law serves to both establish order and facilitate change. So, normal legal predicates and conventional institutions won't work throughout the changeover. *Sui generis*, unique, and transformational legal paradigms emerge as a result of legal reactions to rapid political change.

Since it is also the goal of law, the justice that is being discussed here is not an isolated concept. But the time it takes for a nation to change from an autocratic to a democratic administration is correlated with the achievement of justice (Harahap et al., 2023). According to Terre, transitional phenomena are out-of-the-ordinary occurrences that provide light on questions of democracy, justice, the function and character of the law, the state, and society from a different angle than traditional ideas (Natsif, 2016). The question of justice and the function of law in maintaining justice during this time of change take on greater significance. According to Teitel, there is a relationship between the idea of transitional justice and the notion of transitional law, which he dubbed transitional jurisprudence. This is necessary because, in the current context, remembering the horrors of the past and looking forward to a more equitable and peaceful society are both eclipsed by the present.

It is believed that if transitional justice can be achieved, the new administration would be able to carry out its duties effectively and efficiently throughout the transition phase, free from the weight of past human rights violations and cases. Consequently, a transitional justice framework is required for the finalisation of previous cases. Todung Mulya Lubis further elaborated on the idea of transitional justice by saying (Natsif, 2016) :

As a nation makes the shift from an oppressive authoritarian regime to a more democratic one, it encounters a number of difficulties; these difficulties are associated with the idea of transitional justice. Respect for historically suppressed civil, political, economic, social, and cultural rights is central to the transitional justice framework.

According to Todung Mulya Lubis, following the lead of other nations like Argentina, South Africa, and El Salvador, transitional justice is implemented by investigating and bringing to light all types of human rights abuses that have occurred in the past, including those that qualify as crimes against humanity. Human rights violators were not only investigated, prosecuted, and punished, but many of them were also granted amnesty. As part of the legal system, victims undergo rehabilitation as part of a healing process, which may include the truth and justice commission's work. By integrating the judicial system, amnesty, rehabilitation, and democratic rehabilitation, transitional justice seeks to end the cycle of impunity via truth-finding, healing, and reconciliation.

Ifdal Kasim also proposed the idea of resolving human rights violation cases by integrating truth disclosure with the judicial process, rather of relying only on it. In the opinion of Ifdal Kasim (Kasim & Terre, 2003), These two methods of settling do not exist in a vacuum. The very act of revealing the truth serves to validate previously broken standards. In such a

case, the guilty party (the state or military institution) must first admit culpability and then formally apologise. Despite the fact that just fifteen cops out of hundreds were found guilty, this guilty plea had far-reaching consequences. Just because they will be let free after they pay the price doesn't mean the norm that was broken will be validated, especially because they refuse to accept responsibility. This is in contrast to admitting wrongdoing and apologising; the latter two steps should be followed by reparation for victims by restitution, rehabilitation, or assurances that the former will not happen again. The state's acknowledgment of wrongdoing and apologies will be meaningless if the path to rehabilitation for these victims is not pursued.

3.3 Restorative Justice in Transitional Justice

One alternative to the criminal justice system, which is defined by revenge, is the Truth and Reconciliation Commission mechanism, which seeks to resolve human rights violation cases by rehabilitating victims, telling the truth, and apologising to the offender. In response to this, Muladi said: the Truth and Reconciliation Commission's decision ushers in a new paradigm in criminal case resolution, one that moves away from the retributive (prosecutorial) justice that has long defined our criminal justice system and towards restorative (community) justice. legal system), which places an emphasis on rehabilitative measures for victims of crime (Sofyan & Syatar, 2020).

Also mentioned by Achmad Ali was the kind of justice that applies restorative practices when dealing with criminal cases, particularly those involving grave human rights breaches (Sudewo, 2021). He claims that at this happy period of Indonesian human rights activism, the need of "restorative justice"—a judicial mechanism to find and punish those responsible for grave human rights violations—is not always necessary. "Restorative justice" use a reconciliation process rather than a litigation procedure in court to resolve situations of major human rights breaches in various nations. The emphasis in "restorative justice" is on the "interests of the victim" rather than the offender. In order to achieve understanding, peace, friendship, and the prospect of reconciliation between countries, communities, and people, the restorative justice paradigm attempts to elicit reactions from both individuals and society. Human rights ultimately aim to restore people's dignity, and one approach to doing so is the restorative justice ideology, which seeks to uncover the truth rather than penalise the offender. That is why the fundamental purpose of restorative justice is to bring to light the facts surrounding human rights abuses.

Restorative justice, according to Achmad Ali, also seeks to provide chances for victims, offenders, and the community at large to do the following: 1) Come together and accept responsibility for what has happened; 2) Work to restore what has been lost or damaged; 4) Allow all parties involved a chance to have a say in what happens, and 3) Help victims and criminals become productive members of society again (Arief et al., 2023).

According to Achmad Ali's other work, the restorative justice model, which is mainly concerned with the interests of victims through the provision of reparation or compensation, is based on reconciliation and the restorative resolution model, which prioritises victim healing as its end goal. victim.

Reading the 1985 United Nations General Declaration on Justice for Victims of Human Rights abuses and Abuse of Power, the Pocket Book Understanding Human Rights and Victims' Rights provides a clearer explanation of who is considered a victim of human rights abuses. The book states that victims are individuals or groups that experience losses due to the acts or inactions of state authorities or their misuse of authority. In addition to material loss or the inability to exercise fundamental rights, people may also suffer on an emotional, mental, and bodily level. People who were assaulted while assisting or preventing human rights crimes are likewise considered victims, as are close relatives.

Accordingly, the goal of addressing human rights abuses without trials is to satisfy victims' needs. The core principle of restorative justice is this pursuit of victim interests. Here is how restorative justice is defined: As a social movement, restorative justice is working to make it the norm for dealing with wrongs, resolving conflicts, and addressing human rights and legal transgressions in a nonviolent manner. Some examples include the Truth and Reconciliation

Commission in South Africa and other international peacemaking tribunals; others include reforms in the juvenile and criminal justice systems, as well as in educational institutions, social assistance programmes, and local communities. In restorative justice, victims, perpetrators, and communities all work together to find solutions that foster healing, restitution, and relationship restoration, as opposed to putting the spotlight on the state, experts, and the law. In order to address community misbehaviour in a positive manner, restorative justice aims to form relationships in order to restore shared accountability. Through procedures that uphold the dignity and safety of all parties involved, restorative methods aim to address the needs of the community, the offender, and the victim in a way that is fair and equitable.

When it comes to human rights breaches and other transitional justice situations, restorative justice provides an alternative paradigm to retributive justice's emphasis on punishment. The Truth and Reconciliation Commission is one example of a restorative justice system that promotes accountability by requiring offenders to admit wrongdoing and apologise to victims as part of a larger effort to help them heal and return to society as productive members. In order to stop injustice from happening again, this strategy seeks to mend broken relationships, open doors to discussion and reconciliation, and fortify social networks. Recognising that the restoration of human dignity and rights is the essence of true justice, restorative justice seeks to establish a stronger foundation for sustainable peace and social justice by concentrating on the interests of society and victims while also attending to the non-criminal aspects of violations.

4. Conclusion

By focusing on mending relationships, owning up to errors, and attending to victims' and the community's needs, restorative justice within the context of transitional justice provides a compassionate and creative way to resolve situations involving grave human rights breaches. The significance of building bridges of understanding and reconciliation as stepping stones to long-term peace and social justice is acknowledged by this perspective. My recommendation is that for restorative justice to work better within the framework of transitional justice, both the state and society must fully back it. This includes making sure the process is open and accessible to all, and that its ultimate goal is to fortify democratic principles and human rights. Furthermore, public policy and educational institutions may play a significant role in laying the groundwork for future justice and peace by raising public awareness and including restorative justice teaching.

Current criminal law-human rights research is limited. Few studies compare legal systems and nations, making it hard to discover criminal law enforcement and human rights issues and best practices. To overcome these constraints, future research should compare criminal justice systems and human rights enforcement strategies across nations and regions to discover common issues, variances, and lessons gained.

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