



Disrupting Cycles of Discontent

**TRANSITIONAL JUSTICE AND
PREVENTION IN THE PHILIPPINES**

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Justice
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Dignity

Cover Image: Relatives and friends hold balloons during the funeral of three-year-old Kateleen Myca Ulpina on July 9, 2019, in Rodriguez, Rizal province, Philippines. Ulpina was shot dead by police officers conducting a drug raid targeting her father. (Ezra Acayan/Getty Images)

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Robert Francis B. Garcia

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About the Research Project

This publication is part of an ICTJ comparative research project examining the contributions of transitional justice to prevention. The project includes country case studies on Colombia, Morocco, Peru, the Philippines, and Sierra Leone, as well as a summary report. All six publications are available on ICTJ's website.

About the Author

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About ICTJ

The International Center for Transitional Justice works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit www.ictj.org

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“No punishment has ever possessed enough power of deterrence to prevent the commission of crimes. On the contrary, whatever the punishment, once a specific crime has appeared for the first time, its reappearance is more likely than its initial emergence could ever have been.”

—Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*

Introduction

Armed conflicts and authoritarian regimes have their own life cycles. Armed conflicts eventually reach their conclusions; dictators fall or are replaced by less authoritarian dispensations. These are the junctures where transitional justice comes in: to deal with the mass injustices that have been committed, and to help avoid their recurrence. This study looks at the relationship between transitional justice and prevention. Literature suggests that transitional justice can potentially contribute to the prevention of large-scale injustice by providing redress and dignity to victims, addressing grievances, fostering inclusion, identifying state deficiencies, and reforming institutions and laws.¹ The reverse can likewise be argued—that is, that the lack of transitional justice may be a factor in the recurrence of injustice.

The Philippine experience strengthens this argument. This report—based on 46 interviews with top government officials, legislators, civil society leaders, victims of human rights violations, leaders of armed groups, and academics, as well as a review of relevant documents and literature—examines the contribution of transitional justice to the prevention of human rights violations, authoritarianism, and violent conflict in the Philippines. It analyzes the limits of this contribution due to the failure to comprehensively address and learn from the past and undertake structural changes.

The study looks at the country's recent history, tracing back to the martial law under former president Ferdinand Marcos that combined repression and large-scale corruption and that encountered strong resistance—including armed challenges. Armed conflicts in the Philippines have their own history, largely emerging from unjust social structures going back to the colonial period. Armed resistance was both a reaction to martial law and, in Mindanao, a response to the long-standing practices of dispossession of land and marginalization. The downfall of the Marcos regime provided opportunities to deal with the human rights violations that had been suffered by Filipinos on a large scale, to undo the damages to society wrought by martial law, and to undertake reforms. Early reforms included a massive purge of the bureaucracy, down to the local governance levels, and changing the constitution. Other institutional changes followed, including in the security sector and the judiciary.

The actions that were taken to address the human rights violations under Marcos included a class action lawsuit filed in the United States, which led to a guilty verdict against Marcos and, much later, in 2013, a law on reparations and memory-building for the victims of martial law (Republic Act No. 10368). Meanwhile, the recovery of Marcos's ill-gotten wealth was spearheaded by the Presidential Commission on Good Government (PCGG). The class action suit lawyers and the PCGG have been able to locate Marcos assets abroad, some of which have been used to provide reparation for martial law victims. Reparations have contributed

¹ UN Human Rights Council, *Joint Study of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence and the Special Advisor to the Secretary-General on the Prevention of Genocide* (A/HRC/37/65, March 2018), 5.

to the recognition and inclusion of victims of rights violations by addressing grievances, providing redress, and increasing awareness of rights. At the same time, however, legal requirements and technical hurdles limited the reach of the process—and therefore its inclusiveness—and even created some divisions.

Key measures have achieved much in reestablishing the democratic order, but they have not led to an acceptable level of justice. The parallel efforts to locate and retrieve Marcos assets have not been complementary but discordant. No one has been punished for the torture, extrajudicial killings, massacres, or other atrocities that were committed during martial law. The reforms have not been transformative enough, leaving an inadequate system of checks. Legislation tried to fill human rights gaps, including through the enactment of the Anti-Torture Law; the Anti-Enforced or Involuntary Disappearance Law; and the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity. However, a law that addresses terrorism, the Human Security Act of 2007, was recently replaced by the Anti-Terrorism Law that is currently being challenged for its potential threats to civil liberties.

A major obstacle to the country's development is the persistence of armed conflict, which has not been resolved despite the downfall of the dictatorship in 1986. Insurgency rages on two battlefronts: the Muslim/Bangsamoro struggle for self-determination in the south and the revolution fought for by the Communist Party of the Philippines–New People's Army–National Democratic Front (CPP-NPA-NDF). Compounding this continuing violent unrest is the rise in extremist violence in recent years.²

With the government's peace agreement with the Moro Islamic Liberation Front (MILF) in 2012, the Transitional Justice and Reconciliation Commission (TJRC) was established to study core issues like land dispossession, marginalization of the Moro people, human rights violations, and discrimination—leading back to historical grievances and root causes—and to make concrete recommendations, including on guarantees of nonrecurrence.³ Considerably less progress has been made in the peace negotiations with the CPP-NPA-NDF, in which there was less articulation of transitional justice in the agenda. Notably, however, the NDF negotiators tried to obtain state commitment to provide reparations to the martial law victims who obtained a judgment for damages against Marcos in the U.S. Alien Tort Claims Act case. This judgment is referenced much later in the 2013 law on reparations.⁴ The 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) is argued by some to be the appropriate accountability instrument for handling violations that were committed in the course of the armed conflict, but its implementation has been minimal. Transitional justice–related initiatives of civil society, however, such as exhumations and truth-telling processes, are noteworthy.

Given that societal reforms have been limited and armed unrest has continued, human rights violations have remained rampant. Already alarmingly high during the time of Marcos, they have remained pervasive under the subsequent regimes. Most of these violations have been committed in the name and in the course of counterinsurgency, but they have taken on a different flavor under the current Philippine presi-

2 “Revolutionary” violence, which arises from battles in the course of warfare, is differentiated from “extremist” violence perpetrated by terrorist groups, which deliberately targets civilians to create maximum political impact. It is acknowledged that such a distinction is sometimes blurred in practice.

3 The Framework Agreement on the Bangsamoro was signed by the Philippines government and the MILF on October 15, 2012.

4 Republic Act No. 10368, “An Act Providing for Reparation and Recognition of Victims of Human Rights Violations During the Marcos Regime, Documentation of Said Violations, Appropriating Funds Therefor and for Other Purposes.”

dent, Rodrigo Duterte. Many of the present-day violations, in the form of extrajudicial killings that run to the tens of thousands, are committed in the context of the “war on drugs”—victimizing mostly the poor and powerless.

Limited structural change and economic policy have failed to address social inequality, as the country’s economic system continues to be inimical to equitable growth, leaving the Philippines a deeply divided society with high levels of discontent. This inequality is also a factor in the continuing insurgencies. The post-dictatorship reforms adopted institutional processes and checks and balances that are the hallmarks of democracy, including regular elections, the separation of government branches, and a robust media. These reforms, however, have not removed the rent-seeking practices that harmonized the interests of the economic elite and government leaders—a quid pro quo system that can be traced back to colonial times. Although they reached their peak under Marcos, corruption and rent-seeking existed long before martial law, and deeply rooted corruption practices, especially in the electoral-political system and the media, persist today. Government continues to be a vehicle of enrichment for politicians, treating laws, policies, contracts, and appointments as transactable elements. Elections favor the rich and continue to be a source of political patronage.

The lack of accountability for crimes that were committed during the Marcos period and the very limited accountability in the decades since have perpetuated a culture of impunity and an environment that proved to be conducive to the return of the Marcoses. From exile, they were able to return to the country and, in a matter of time, ran and won in elections. Their return to power implies that the lessons of martial law have never really been learned. Among other things, these lessons have not been adequately incorporated into the formal education curriculum, as textbooks extol Marcos’s rule and avoid discussions of its abuses and injustices. Recent inclusion of the subject in certain schools has come too late to prevent the rehabilitation of Marcos’s image in public opinion.

Seemingly congruent with the return of the Marcoses is the swing back to authoritarianism under Duterte, who has publicly declared his admiration for the ousted dictator. In moves that bear an uncanny resemblance to those in the former president’s playbook, Duterte has attacked democratic institutions, eliminated checks and balances, targeted critics and opposition leaders, jailed and pressured journalists, and wrested control over the judiciary and the legislature. This is arguably at least partially the result of society’s failure to address and learn the lessons of the past.

After the Philippines emerged from 14 years of authoritarian rule, its challenges were legion: rebuilding (or perhaps building for the first time) democracy, developing and strengthening institutions, pursuing justice and redress for the numerous human rights violations that were committed during the past regime, resolving armed conflicts, and undertaking economic reforms that will address the country’s underdevelopment, rampant poverty, and severe inequality—which many regard as the root of its malaise and perpetual strife. This report illustrates that efforts to address the past—through reparations for Marcos’s victims, legal and institutional reforms, peace talks with armed groups, and truth-telling about historical injustice and the marginalization of the Moro people—have likely helped to prevent the recurrence of injustice at the level it was reached under Marcos. However, the limited and delayed transitional justice efforts fit within a broader failure of Philippine society to address how the legacies of the past—the roots of poverty, inequality, and corruption; the flaws in governance; and the economic maldevelopment—can allow the risk of recurrence to persist.

Marcos Martial Law: Context and Transitional Justice

Ferdinand Edralin Marcos was the Philippine president from 1965 to 1986. The impact of his authoritarian rule has been so exceptionally deep and severe that the efforts to undo his legacy continue to this day.

The Post-Authoritarian Transition

The Philippines can be considered a postcolonial democratic project after World War II, when it was granted independence from U.S. colonial rule. It started practicing formal representative democracy, with the head of state elected through presidential elections every four years.⁵ Marcos's first term was not fundamentally different from those of his predecessors. The Philippine economy, over which oligarchic families held a virtual monopoly, remained tied to U.S. trade and was increasingly dependent on foreign borrowings, ballooning the country's foreign debt. Innovations were introduced, including an aggressive infrastructure program that was also debt-dependent, and the Green Revolution, which brought the country closer, but not quite, to rice self-sufficiency. Marcos's reelection in 1969 came at a huge cost. As much as \$50 million went to his campaign funds, much of it from public funds. The ensuing government deficit of one billion pesos plunged the country into crisis, forcing Marcos to float the currency and leading to inflation, which precipitated massive unrest.⁶

The unrest was partly fueled by the refounding of the Communist Party of the Philippines (CPP) under Jose Maria Sison, with massive protest actions led by groups calling for revolution, such as the radical Kabataang Makabayan (Nationalist Youth) and the Samahang Demokratiko ng Kabataan (Democratic Youth Group). Other formations, such as the National Union of Students of the Philippines and other organizations associated with the more moderate social democrats, likewise mobilized and staged mass actions.

⁵ The first postwar elected president was Manual Roxas, followed in succession by Elpidio Quirino, Ramon Magsaysay, Carlos Garcia, and Diosdado Macapagal. Ferdinand Marcos was elected president in 1965 and became the first and only president who won a second term, in 1969. Nine months before his second term expired, he placed the country under martial law through Proclamation 1081, dated September 21, 1972.

⁶ P. N. Abinales, *State and Society in the Philippines* (Lanham, MD: Rowman & Littlefield, 2005), 198.

Marcos saw this as both a threat and an opportunity. His declaration of martial law was designed to undercut challenges to his rule and at the same time perpetuate and expand his hold on power.⁷ Marcos would himself appropriate the notion of “revolution,” describing martial law as a “democratic revolution” or a “revolution from the center.” He declared: “We are confronted with the problem of revolution in our country. Drastic, fundamental changes in our society are necessary. Revolution, then, is inevitable.... What kind of revolution? Is it the revolution that the communists are shouting in the streets...that...leads, ineluctably, to a totalitarian state? Or is it a revolution that...rejects violence as a policy and looks forward to the expansion of human freedom?”⁸

Marcos’s actual rule, however, was not a rejection of violence in practice, for alongside the implementation of martial law came military overreach and the resultant state-sponsored violence. Throughout, Marcos exercised absolute control, declaring martial law as a resolution “to establish reforms so drastic because they were necessary as to be nearly a revolution” and explicitly characterizing it as “constitutional authoritarianism.”⁹ He abolished the Philippine Congress and, by virtue of his own constitution, formed his own parliament, the *Batasang Pambansa*, which crafted every single law he wished. Marcos also took over vital industries and clamped down on media.

Estimates of the number of human rights violations committed during Marcos’s rule vary, but they are consistent in describing excessiveness. The Task Force Detainees of the Philippines has documented and monitored at least 9,000 victims of human rights violations from 1969 to 1986. This number increased gradually during the 17-year period; for example, “only 16 victims were recorded in 1972, the year when Martial Law was declared.”¹⁰ According to one count, 70,000 people were jailed, 35,000 tortured, 878 disappeared, and 3,257 summarily executed during the Marcos’s presidency.¹¹ Torture and execution became standard operating procedure for those who were arrested on suspicion of rebellion.

Marcos’s rule depended on the support of many loyal followers, including the “Marcos cronies” who benefitted through access to public funds, government-awarded projects, government appointments, or special favors for their businesses. This was variously called transactional politics, patronage politics, crony capitalism, and bureaucrat capitalism. As one observer described it in an anthology of first-person accounts about the martial law, “Many others, riding on the coattails of the powerful, tasted the intoxicating brew of power without accountability.”¹²

7 Conrado de Quiros, *Dead Aim* (Pasig City, Philippines: Foundation for Worldwide People’s Power, 1997), 419.

8 Ferdinand E. Marcos, *The Democratic Revolution* (Manila: Office of Media Affairs, 1985), 11.

9 Ferdinand E. Marcos, “The Integrated Approach to Human Rights,” in *Ferdinand E. Marcos on Law, Development and Human Rights* (University of the Philippines Law Center, University of the Philippines Press, 1978), 32.

10 “By the Numbers: Human Rights Violations During Marcos’ Rule,” compiled by the ABS-CBN Investigative & Research Group, September 21, 2018.

11 Alfred McCoy, “Dark Legacy: Human Rights Under the Marcos Regime,” in *Memory, Truth-Telling, and the Pursuit of Justice: A Conference on the Legacies of the Marcos Dictatorship* (Office of Research and Publications, Ateneo de Manila University, 2001), 129–44. Many observers say that these estimates are far lower than the actual extent of martial law atrocities.

12 Victor H. Manarang, “Marcos’s Dark Legacy to the Nation,” in *Not on Our Watch: Martial Law Really Happened: We Were There*, ed. Jo-Ann Q. Maglipon (Taguig City, Philippines: Publications Group, 2012), 81.

Historical Background of Marcos's Authoritarian Rule

This kind of political patronage system was by no means invented by Marcos. It was already in place, with varying degrees of sophistication, during previous administrations, and its structural roots can in fact be traced to the country's colonial past—all the way to the Spanish annexation of the Philippine islands. The Spanish colonization of nearly 400 years created systematic inequalities and unjust social structures in Philippine society. Before the Spanish colonizers arrived, the country was not yet the "Philippines," as it were, but a group of islands in Southeast Asia doing trade with neighboring islands, in which Islam already had a foothold, particularly in the south. Spanish rule, in the name of spreading the Catholic religion and modernity, introduced the private property of land through the *encomienda* and *hacienda* system, in the process creating a hierarchical structure that favored a few but created hardships and deep resentments among the natives.

Strong resistance led to the revolution that culminated in 1896, at which point Spain sold the Philippines to the United States for \$20 million, beginning the period of American colonial rule. If Spain introduced religion, the United States introduced the public education system. The local resistance that had built up for three centuries against Spanish colonial rule was sustained against the new colonizers—leading to the Philippine-American War. Eventually the Americans initiated the process of turning over governance of the Philippine archipelago to Filipinos. First, the Commonwealth of the Philippines (1935–1946) was established, to serve as the transitional administrative body before the granting of full independence. Manuel L. Quezon was elected Commonwealth president. World War II, however, interrupted the transition process with Japan's invasion of the Philippines. Following Japan's defeat in 1944, the Philippines was granted independence in 1946, but with conditions related to trade and military cooperation: The Bell Trade Act gave American entrepreneurs parity rights to land ownership, natural resource exploitation, and other business activities; the Military Bases Agreement allowed the United States to maintain and operate its military bases on Philippine soil.

All throughout this colonial and postcolonial history, there was tension between hegemony and resistance. The struggles against Spain and the United States were aimed at both colonization and the unjust social order it created—with a dominant, repressive minority class ruling over the toiling masses. It was basic class contradiction brought to the brink by colonialism and its modern iteration, imperialism. The transition to governance by Filipinos was therefore a tricky process. On the one hand, the emergent national leaders had a genuine desire for the modernization of governance, including the establishment of formal institutions like the courts and the legislature. On the other hand, these leaders had also been molded in the tradition of transactional politics.

Rent-seeking, in particular, evolved during the period when the transfer of governance was being worked out between the American colonial rulers and the Filipino bureaucrats. Rent-seeking is the gaining of profit not through the normal movement of market forces but through the use of political advantage. Political interests merge with economic interests, leading to concessions, political favors, licenses, and monopolies.¹³

¹³ Rent-seeking is also corruption, plain and simple, but a peculiar kind. The term was introduced by economist David Ricardo in reference to payments given for certain tradeable goods or services that are far higher than the goods' or services' actual value, in

The interests of Filipino elite rulers and American businesses coincided, resulting in the creation of treaties and laws for their mutual benefit: “Whether by accident or design...the US birthed and nurtured the country’s rent-seeking system.”¹⁴ Crony capitalism henceforth flourished. Those who entered the Philippine bureaucracy slowly learned how to use their government position as a privilege to hand out political favors in exchange for economic gain. This self-serving setup coexisted with efforts to make the system work, adjusting policies when crises occurred. It was thus a combination of competence and corruption, with the balance tilted to the latter.¹⁵

The Marcos Dictatorship: Rent-Seeking on Steroids

Marcos inherited this system and elevated it. He and his wife became masters of the backroom deal. He attacked entrenched oligarchs but created his own set of oligarchs, in the process accumulating enormous amounts of wealth.¹⁶ “Martial law was the logical extension of a politico-economic system based on rent-seeking,” economist Calixto Chikiamko explained. “It represented the seizure of the State by a faction of the rent-seeking elite in order to monopolize the economic favors emanating from the State.”¹⁷ Marcos beefed up rent-seeking through a centrally concentrated mode of governance that allowed him to stay in power for 14 more years.¹⁸

Not everyone regards the Marcos era as a “dark period” for the country. Some maintain that it was actually the “golden years,” acknowledging that it was strongman rule but arguing that that was what the country needed. This is revisionist thinking, however. It flies in the face of the human rights record of the regime, as well as the systematic, well-documented plunder of the nation’s coffers. While there was some degree of stability in the early years of martial law—high growth in the mid- to late 1970s, reduced crime rates, infrastructure development on the upswing, and the Green Revolution that was highly regarded even outside the country—the nature of the growth under Marcos buried the country deeply in foreign debt.¹⁹

The challenges to Marcos’s authority were real and serious. They included the armed struggles waged by the Moro National Liberation Front (MNLF) in the Muslim south and by the CPP-NPA nationwide. The strength of the aboveground opposition also increased dramatically, especially in the later years. Marcos’s vicious and intolerant response to these challenges, ironically, strengthened them further. One of the major events that sharpened the contradiction between Marcos and anti-Marcos forces was the assassination of

exchange for some privilege that is not above-board. See David R. Henderson, “Rent-Seeking,” The Library of Economics and Liberty, www.econlib.org/library/Enc/RentSeeking.html.

14 Calixto V. Chikiamko, “The Political Economy of Martial Law,” in *Not on Our Watch: Martial Law Really Happened: We Were There*, ed. Jo-Ann Q. Maglipon (Taguig City, Philippines: Publications Group, 2012), 88.

15 P. N. Abinales, *State and Society in the Philippines*, 142.

16 Raissa Robles, *Marcos Martial Law: Never Again* (Filipinos for a Better Philippines, 2016), 172.

17 Chikiamko, “The Political Economy of Martial Law,” 87–88.

18 Rigoberto Tiglao, formerly with the underground armed communist leadership but now aligned with the administration camp, posited that Marcos could have done more for the good had he stayed in power longer. “All of the Asian Economic Dragons, as well as the Tiger Cubs,” he wrote, “depended a lot on authoritarian rule in order to become industrialized nations.” Rigoberto Tiglao, *Debunked* (Akropolis Publishing, 2018), 133.

19 Marcos was attracted to the low interest rates of the early years, but he was not able to anticipate the subsequent global shock of an increase in fuel prices. When the interest rates suddenly increased, the country was severely affected. “Problems of governance shadowed Marcos’s efforts at economic development. The world economy entered a period of recession, and he could not repay the foreign loans he had borrowed and misused. His modernization project collapsed because it had become politically untenable.” Randolph David, *Understanding Philippine Society, Culture, and Politics* (Anvil Publishing, 2017), 68.

opposition leader and former senator Benigno “Ninoy” Aquino on August 21, 1983—on the very moment of his arrival in the Philippines from his exile in the United States.

The public cry of protest provoked by the assassination was massive and sustained. Protest actions were staged almost daily and all over the country—many of which were responded to with brutal force. Many individuals who were heretofore apathetic became politically engaged and involved in actions of resistance. One of these was Leni Robredo, the current Philippine vice president. “My political awakening happened when Ninoy was killed,” she recalled. “I was second-year college in UP [University of the Philippines].” The killing made the atrocities real for her. “You read about it, some of your classmates would go out on the streets to fight these atrocities [but] until the assassination, it was still very distant.”²⁰

The anti-Marcos and anti-dictatorship struggle coincided with, and was reinforced by, a worsening economic crisis with runaway inflation. By the end of 1985, the political tensions were coming to a head, and Marcos was forced to call for snap elections on February 7, 1986. The election returns from the Commission on Elections, which showed Marcos winning, were massively protested due to allegations of widespread fraud. On February 9, 1986, “30 computer workers at the Comelec [Commission on Elections] tabulation center walked out, protesting the tampering of election results.”²¹ At this time, unrest among the military ranks was also growing. Marcos discovered a military coup plot against him and ordered the arrest of its leaders, particularly his defense minister, Juan Ponce Enrile. The head of the Philippine Constabulary, General Fidel Ramos, joined forces with Enrile in a resistance at the Camp Aguinaldo in EDSA (Metro Manila’s main thoroughfare). Catholic Church leader Jaime Cardinal Sin made a call to support the military uprising. Filipinos responded with a huge mass gathering of close to two million people along EDSA. Marcos, torn between crushing the rebellion or giving up power, was effectively forced out of the country. The Philippines was then faced with the difficult task of transition and rebuilding.

Transitional Justice for Marcos Martial Law: Institutional Reforms

Government Restructuring

With Corazon Aquino’s ascension to the presidency after the EDSA uprising in February 1986, numerous actions were undertaken to undo the deeply embedded instrumentalities of authoritarian rule. Declaring her government to be a revolutionary government, Aquino formed her own cabinet, reconstituted the Supreme Court, and abolished the Batasang Pambansa (the Philippine parliament). This proved to be a tough balancing act because the coalition of forces that had ultimately brought Marcos down and elevated Aquino to the presidency was a cast of diverse actors across a broad political spectrum from left to right.²²

²⁰ Interview with Leni Robredo at the office of the vice president, Quezon City, October 28, 2019.

²¹ Aurora Javate de Dios, Petronilo Bn. Daroy, and Lorna Kalaw-Tirol, eds., “Chronology of Events: 1968 to Present,” in *Dictatorship and Revolution: Roots of People’s Power* (Quezon City: Conspectus Foundation Inc., 1988), 868.

²² On the right were the coup leaders Enrile and Ramos along with the military rebels, while those considered to be associated with the left were Joker Arroyo (who was appointed executive secretary by Aquino) and Augusto “Bobbit” Sanchez (appointed labor secretary).

Aquino's Proclamation No. 1 (series of 1986) sought to overhaul the entire bureaucracy by replacing all Marcos-affiliated government officials who had previously been appointed and elected—including 74 governors, 60 city mayors, and 1,520 town mayors—with officers-in-charge. As expected, the incumbents, not willing to give up their power, resisted the takeover. But the momentum was on the anti-Marcos side and, except for a governor in Marcos's stronghold, Ilocos Sur, the local government purge was consummated all over. These new appointees served until the first post-Marcos local elections on January 18, 1988.²³

There was no initial resistance within the new ruling coalition when the purge was first announced. However, the overhaul later proved to be one of the most divisive actions the new government took, with tensions running along partisan lines. Aquilino Pimentel—the one assigned the overhauling task—apart from receiving insinuations of left affiliation, was also accused of favoring members of his own party, Partido Demokratiko Pilipino Laban, in his choice of appointments, which he denied.²⁴ But “it was the implementation [of the local government purge] that set off a ferocious scramble among them,”²⁵ wrote political analyst Nemenzo, referring to the opposition parties whose members felt that they should be rewarded through the vacated positions. It became a messy battle for spoils within the opposition. Ultimately, although the purge succeeded in breaking the backbone that propped Marcos solidly in place, it also fractured the fragile unity of the Aquino coalition.

This massive revamp across the country must be reassessed at all levels. While the need to clean up the bureaucracy from the remnants of the dictatorship was crucial, did it have to entail the replacement of each and every sitting chief executive across the archipelago? The resulting fragmentation of the new coalition suggests that there could have been a less disruptive and arbitrary process. It is true that many of the sitting officials benefitted from the Marcos political patronage and had gained their seats aided by it. But these officials, after all, still had a mandate. Taking away this mandate, even if propped up by just cause, needs a process. Assuming, in the name of a “revolutionary government,” the power and privilege to remove all of the sitting officials and to then handpick their replacements without elections—all the way down to the country's farthest and smallest municipalities that are little affected by changes in the national leadership—is not a process that can easily be defended.²⁶

23 This massive, drastic purge across the country must be understood in the context of the country's political evolution. Political power emanates from economic power, at the national as well as provincial levels. At “the apex of the traditional class structure in the Philippines stand the province-based political clans”—the biggest landowners and owners of the largest industries. They, or their subservient politicians, have traditionally occupied the local elective posts. Marcos's quest for absolute power disrupted this traditional power equation without leveling it, emasculating many of the old political clans outside his control and replacing them with his own loyal cohorts. This assault included demobilizing private armies, applying a tight grip on businesses, and manipulating election results. The old clans either capitulated or took a leave from active politics. The political terrain became populated with Marcos loyalists. It therefore made political sense for Aquino to start with a “thoroughgoing overhaul,” for without it, “her government could easily be undermined and her programs sabotaged.” Francisco Nemenzo, “From Autocracy to Elite Democracy,” in *Dictatorship and Revolution: Roots of People's Power*, eds. Aurora Javate de Dios, Petronilo Bn. Daroy, and Lorna Kalaw-Tirol (Quezon City: Conspectus Foundation Inc., 1988), 226.

24 Pimentel, Aquino's political ally, was once a political detainee under Marcos. See William Branigan, “The Troubled Presidency of Corazon Aquino,” *Washington Post*, September 14, 1986.

25 Ibid.

26 It is interesting to note the political trajectory of a certain beneficiary of this revamp who was appointed vice mayor of Davao City in 1986, then won as mayor of the city in the succeeding elections. That person is Rodrigo Duterte, now the president of the Philippines.

Constitutional Change

Corazon Aquino's immediate declaration of a revolutionary government upon her assumption of the presidency was not without opposition, even from some of her allies. As a result, she changed track, declaring the government to be constitutional and in the same breath producing the so-called Freedom Constitution. This interim charter abrogated many of the provisions of Marcos's 1973 constitution, including the unicameral legislature (the Batasang Pambansa), the prime minister's office, and presidential legislative powers. Aquino then created the Constitutional Commission, composed of 48 experts from various disciplines, to draft a new constitution. The commission grappled with contentious issues, including the form of government, the death penalty, the U.S. military bases on Philippine soil, and the inclusion of economic policies in the constitution. The final draft was finished on October 12, 1986, and ratified through a nationwide plebiscite on February 8, 1987.

The new Philippine constitution categorically asserted civilian authority over the military and police (Article II, Section 3). It also paved the way for the creation of the Commission on Human Rights (CHR), replacing the Presidential Committee on Human Rights. The CHR, however, does not enjoy fiscal autonomy, unlike other independent constitutional bodies like the Commission on Audit, the Commission on Elections, and the Ombudsman's Office, whose funds cannot be touched. According to former CHR chair Loretta Ann Rosales, the CHR should also have been given financial independence.²⁷ The 1987 constitution brought back the pre-martial law constitutional system guided by the 1935 constitution, providing for a presidential form of government, a bicameral legislature, and an independent Supreme Court. The new regime was thus characterized as "restorationist" instead of being truly revolutionary or transformative, "bringing back the institutions of pre-martial law politics without seriously addressing the most pressing structural problems of Philippine democracy."²⁸

In order to prevent a repeat of the Marcos overstay, the new charter limits presidential terms to six years with no reelection.²⁹ Term limits are set on other elective posts as well—senators are allowed two six-year terms, and representatives and local executives are restricted to a maximum of three terms of three years. The constitution further reduced the presidential powers Marcos had accumulated. While the president retains control of executive offices, appointments to these offices are now subject to approval by the congressional Commission on Appointments. The powers to suspend the writ or declare martial law still remain within presidential discretion, but with limits.³⁰ In short, the framers of the constitution acknowledged that there may be certain conditions that would necessitate the derogation of certain rights, and that govern-

27 Interview with Etta Rosales, Quezon City, September 12, 2019.

28 G. Luis Igaya, "The Political Economy of the Philippine Democratic Transition," in *Transitions to Democracy in East and Southeast Asia*, ed. K. N. Gaerlan (Quezon City: Institute for Popular Democracy, Transnational Institute, Focus for the Global South, and Asean Regional Exchange for New Alternatives, 1999), 34.

29 Marcos was in office for a total of 20 years.

30 As provided under Article VII (Executive Department): "SECTION 18. The President shall be the Commander-in-Chief...and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion... [He] may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation...the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.... The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing."

ment should still be able to exercise such authority in extreme situations, but they put safeguards in place through the checks and balances provided by the executive branch's coequal branches of government, namely Congress and the judiciary.

Judicial Reform

Government restructuring after the fall of the dictatorship necessarily included the judiciary, which was one of the instruments Marcos used, manipulated, and undermined to extend his rule. As such, upon the ascendance of President Corazon Aquino and her government's call for a thoroughgoing revamp of the Supreme Court, five of its 12 associate justices submitted their resignations. Another justice had resigned earlier in protest of electoral fraud.³¹ These resignations and the subsequent revamp represented initial steps toward rebuilding the judiciary and emphasized the need for more appropriate vetting processes that uphold judicial independence. Such processes would later be formalized in the promulgation of a new constitution.

The new Philippine constitution contained specific provisions addressing judicial reforms. The framers of the constitution believed it was essential to reassert and uphold the integrity and independence of the judiciary as a coequal branch of government. One aspect of judicial reform enshrined in the new constitution was the granting of judicial power to check grave abuse of discretion, a direct response to the way the executive branch, under the leadership of Marcos, had monopolized power and effectively undermined the other two branches.³² The credibility of the Supreme Court in particular had been called into question after it allowed Marcos to unilaterally change the constitution in 1973. Marcos was then nearing the end of his second term, and the constitution explicitly prohibited a third term. Arbitrarily changing the fundamental law of the land enabled Marcos to extend his term of office well beyond the legal limit. "Ferdinand Marcos railroaded the adoption of a new constitution by creating citizens' assemblies which, by a show of hands, allegedly approved his constitution," one legal scholar explained. "This was accomplished in an atmosphere of restricted civil liberties brought on by Marcos's imposition of martial law."³³

As the scholar explained further, "the Supreme Court avoided confrontation with Marcos by invoking the 'political question' doctrine—claiming that the issues raised before it were better decided by other branches of government."³⁴ The Supreme Court in fact knew that Marcos's new constitution was not legitimately ratified, but nevertheless ruled that it was "already in force through the acquiescence of the people"—in other words, it was a political question that could no longer be decided by the Court. The Court then continued to use this "political question doctrine" to allow Marcos's subsequent legally questionable acts.³⁵ Hence, the post-Marcos 1987 constitution was deliberately formulated to weaken the political question doctrine and ensure that an abdication of duty such as that exercised by the Supreme Court under Marcos would not happen again. The Court under the new charter is expected to check executive or legislative overreach, that is, to determine whenever abuse of discretion has been committed.

31 "Five of 12 Justices Quit Philippines Supreme Court," *Washington Post*, March 5, 1986.

32 As stipulated under Section 1, Article VII of the Constitution, this power "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

33 Dante Gatmaytan, "Developments in Philippine Constitutional Law: The Year 2016 in Review," I-CONnect, October 15, 2017, www.iconnectblog.com/2017/10/developments-in-philippine-constitutional-law-the-year-2016-in-review/.

34 *Ibid.*

35 *Ibid.*

Another area of reform was ensuring the judiciary's fiscal autonomy. Article VIII, Section 3 of the constitution says that "appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released"; this provision is meant to prevent the budget from being used as a weapon, threat, or reward in furtherance of political favors, whims, vindictiveness, and other political objectives.³⁶

Finally, judicial reform requires the insulation of the judiciary from partisan politics. The 1987 Constitutional Commission members pointed to the past role of appointments based on loyalty in compromising the integrity and quality of the judiciary. In order to address this situation, the new charter provided for the creation of the Judicial and Bar Council to take charge of matters related to judicial appointments.³⁷ Previously, judges' appointments were confirmed by the Commission of Appointments, which was composed of legislators, meaning that "judges had to kowtow to members of the legislative body to get an appointment or at least to see the Chairman of the Committee on the Judiciary in Congress and request support for the confirmation of their appointment."³⁸ While the judges appointed by the president are now chosen from a list supplied by the Judicial and Bar Council and need no further confirmation, the members of the Judicial and Bar Council themselves need confirmation by the Commission of Appointments. Such an arrangement "allows a political check on the President's appointing authority which otherwise would be the sole political influence on judicial appointments."³⁹

All these reforms are, at least on paper, designed to curtail the abuse of power, maintain the autonomy of coequal branches of government, and ensure checks and balances in the exercise of authority. They are by no means foolproof arrangements, as judicial independence has continued to be subjected to the vagaries of politics and power throughout the years after Marcos was deposed, albeit in subtler ways.

Security Sector Reform

The security sector primarily involves the military and the police force of a given state. However, a broader look at the sector's role, significance, and impact on governance, justice, and democratization needs to consider other institutions and instrumentalities as well, and how they relate to and affect each other. The current composition of the Philippines' core security forces includes the Armed Forces of the Philippines (AFP; composed of the army, air force, and navy), Philippine National Police (PNP), intelligence agencies

³⁶ As the Supreme Court put it, "Fiscal autonomy means freedom from outside control. The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based." *Bengzon v. Dilon* (208 SCRA 133 [1992]).

³⁷ To wit: "SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. (2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year."

³⁸ Carmelo Sison, "Democratization of the Legislative, Executive, and Judicial Departments of Government," in *Law and Newly Restored Democracies: The Philippines Experience in Restoring Political Participation and Accountability*, ed. Raul C. Pangalangan (Japan: Institute of Developing Economies, 2002), 22.

³⁹ *Ibid.*, 23.

such as the National Security Council and the National Intelligence Coordinating Agency, and paramilitary organizations, primarily the Citizens' Armed Forces Geographical Unit.⁴⁰

The Philippine security sector has a long history, dating back to the precolonial period. The “semblance of a citizen’s armed force” can be traced from the anti-colonial struggle against Spain and later against the United States and Japan—albeit in the form of organized resistance groups. Through the Philippine Commonwealth inauguration in 1935, a defense program for the country was formulated, paving the way for an institutionalized security force. The National Defense Act (Commonwealth Act No. 1) established the Philippine Army. The president serves as the commander in chief and a civilian defense secretary serves as a contact between the president and the army.⁴¹

The colonial relations between the two countries provided that the United States assumed the external defense of the Philippines, leaving the AFP to focus on internal security and peace and order. Such a setup continued even after the Philippines was granted its independence in 1945, on account of the 1947 Military Bases Agreement as well as the 1951 Mutual Defense Treaty. Hence, the country’s formal security forces have been oriented more toward responding to internal threats, as posed by communist or separatist rebels, than to external defense. This orientation was put into operation during the Huk rebellion, against which the AFP employed a “two-pronged approach” of military operation and civic action, which included medical missions, relief distribution, and even small infrastructure projects like temporary roads and bridges.⁴²

“This incremental acquisition of developmental roles associated with counter-insurgency since the 1950s saw its institutionalization during the Marcos period,” when the serious communist and Muslim threats made the “civilian government dependent on the military for national security.”⁴³ Marcos used the military as his primary implementation apparatus for martial law—privileging it while undermining or neutralizing other civilian political institutions like the legislature, the judiciary, and political parties. As the role of the military in national affairs expanded, suppression of civil liberties increased. This was how the military was “politicized,” in the sense of developing “a heightened sense of political awareness” of its immense powers under an authoritarian regime.⁴⁴

Marcos was able to wield absolute control over the military through the help of his loyal right-hand man, AFP chief of staff General Fabian Ver. Ver increased the military’s budget by 700 percent from pre-martial law levels, aggressively recruited more soldiers and expanded its ranks from 70,000 to 275,000, and dispensed political favors by appointing military officers to government-owned and -controlled corporations

40 The AFP also included the constabulary until 1990, when it was abolished and replaced by the PNP. Paramilitary organizations are civilian auxiliary forces in the rural communities that are organized and even armed by the military to assist them in their military operations. They are formed especially in areas with a strong presence of a communist or Muslim insurgency.

41 Aries Arugay, “Spheres of Military Autonomy Under Democratic Rule: Implications and Prospects for Security Sector Transformation (SST) in the Philippines,” New Voices Series no. 5, Global Consortium on Security Transformation, Santiago, Chile (2010).

42 The Hukbong Mapagpalaya ng Bayan, or “Huks,” evolved from the Hukbong Bayan Laban sa Hapon (Hukbalahap), the communist-led guerrilla force against the Japanese. See Marilen J. Danguilan, Harvard School of Public Health, “Bullets and Bandages: Public Health as a Tool of Engagement in the Philippines,” Research Paper No. 161 (1999).

43 Arugay, “Spheres of Military Autonomy.”

44 C. G. Hernandez and M. C. Ubarra, *Restoring and Strengthening Civilian Control: Best Practices in Civil-Military Relations in the Philippines* (Quezon City: Institute for Strategic and Development Studies, 1999).

and other key civilian posts.⁴⁵ Marcos's control over the military through presidential favors and prerogative, while effective at the outset to solidify his rule, eventually had repercussions for the professionalism of the military. Resentments arose and ultimately boiled over, leading to a plot, instigated by a faction of the military called Reform the Armed Forces Movement, to oust Marcos. The coup plot, led by then defense minister Juan Ponce Enrile and Philippine Constabulary chief Fidel Ramos, was discovered, forcing the two leaders to barricade themselves at EDSA. This was followed by the series of events involving the mass uprising that eventually forced Marcos out of Malacañang, as described previously.

“Depoliticizing” the Military (or: Putting the Security Sector in Its Place)

The new administration, which ran on an antiauthoritarian, civil libertarian platform, had implications for the security sector. At the outset, Aquino felt the need to assert civilian supremacy, as later articulated in the new constitution, and redefine the role of the military in society. Oversight mechanisms for the AFP were established, including legislative power over the budget and confirmation of appointments and promotions.

The outsized role of the military in Philippine society was seen as problematic. However, the strategic positioning of the military faction that had turned its back on Marcos alarmingly bestowed upon it a certain level of entitlement and privilege under the new government: “Given the volatile and ‘accommodationist’ nature of democratic transitions, during the Aquino administration the military became a strong veto player, one whose spheres of autonomy were either consolidated or multiplied.”⁴⁶ The experience of these military actors in altering the course of history made them prone to “military adventurism.” Seven military coup attempts were survived by the Aquino administration, some of which involved the very same people who had rebelled against Marcos. After the last coup attempt, the government was forced to form an investigative body, the Davide Commission, in order to identify the root of the perennial unrest.⁴⁷

The commission, after an intensive probe of the military as a political institution, came up with recommendations for military reform and for imposing “democratic civilian control.”⁴⁸ Some of these suggestions were implemented, such as the adoption of a Code of Ethics for the AFP and the establishment, in 1990, of the Office of Ethical Standards and Public Accountability to deal with military corruption issues. However, the majority of the Davide Commission's recommendations, especially those involving strategic governance matters, were not carried out.

Through the years, the military would not readily shed its outsized role in national political affairs. The mass uprising against President Estrada in 2001, for example, saw the security forces again performing a pivotal part. Estrada was forced to vacate the position when the military and the police leadership withdrew their support, leading observers to predict that the security sector would again attempt to sway the country's political direction in the future if it saw the need or the opportunity. Sure enough, it happened again under the presidency of Gloria Macapagal-Arroyo, when a faction of soldiers called the Magdalo staged the so-called Oakwood mutiny to protest corruption in the military leadership and the government.

45 Arugay, “Spheres of Military Autonomy.”

46 Ibid.

47 The commission was headed by Hilario Davide, Jr., who would later become Supreme Court Chief Justice.

48 Arugay, “Spheres of Military Autonomy.”

This latest attempted coup prompted the government to create yet another investigative body, the Feliciano Commission, whose findings contained no surprises, as the issues that led to the mutiny were the same ones that bedeviled the institution and the government itself: corruption, the welfare of soldiers, favoritism, and politicization of the military.⁴⁹ In fact, the commission called attention to the failure to implement the Davide Commission recommendations, especially the “enforcement of law against previous offenders.”⁵⁰ Among other things, it recommended addressing these issues and taking steps against military adventurism.

Military adventurism, politicization, unrest—these had been the problems that security sector reform was supposed to address. Such problems cannot be completely solved, however, if the bigger structural flaws in governance are not fixed. As it is, the civilian government’s institutionalized checks against military excess remain highly politicized and vulnerable to rent-seeking practices. The Commission on Appointments, as a legislative oversight mechanism that regulates military appointments and promotions, for example, remains hostage to quid pro quo arrangements within the “politico-military network.” AFP officials get legislators as “adopted” Philippine Military Academy classmates, or legislators become reserve officers.⁵¹

Furthermore, military adventurism can also be seen as a symptom, a response to the civilian bureaucracy’s inadequacies and flaws. Not all coups are the same. The earlier coups during Aquino’s time in the 1980s were fomented by either vestiges of the old regime (protesting Aquino’s ascendance to power and demanding the return of Marcos) or rightist elements moving against perceived leftists in government. The Magdalo coup, in contrast, was launched on the basis of legitimate grievances. While the methods can be questioned, and military-led power grabs should be recognized as undemocratic and unacceptable shortcuts to change, restiveness among the ranks may be expected to remain until a just, robust, and credible civilian bureaucracy is put in place.

Structural and Operational Reforms

One of the early structural changes that was undertaken was the abolition of the Philippine Constabulary, which was originally the fourth major military service (the others were the army, navy, and air force). In its place, the Philippine National Police was created, assuming from the AFP the task of internal security, which supposedly involves counterinsurgency. But the PNP has not really acquired the operational capacity of the AFP in dealing with the various threats against the state and has not evolved into a full-fledged internal security force. Hence, the task of dealing with the serious threats posed by the communist and Moro insurgencies remained with the AFP.

Meanwhile, the military acknowledged the need for its own upgrading. While the Feliciano Commission’s recommendations, which outlined steps for substantial reform, were largely unheeded, the military—with the Department of National Defense—produced its own Philippine Defense Reform Program in 2003, containing what the military itself believed needed to be reformed within the sector. Created through the Joint Defense Assessment, which was assisted by the U.S. government, the document was the product of a systematic and detailed assessment of the country’s defense and military establishment, aiming toward the

49 The commission was headed by retired Supreme Court Justice Florentino Feliciano.

50 Arugay, “Spheres of Military Autonomy.”

51 Online interview with Aries Arugay, May 16, 2020.

“transformation,” reengineering, and retooling of personnel. However, the reform program was interested solely in developing operational capacity and efficiency, focusing on 10 key competency-based areas of improvement, including defense planning, training, logistics, staff development, financial control, and strategic communications. It revealed that the security sector still construed defense “in the traditional sense, with a heavily statist and military tone.”⁵² The program was deficient in the more relevant issues of “weak and ineffective civilian oversight agencies, undemocratic and limited participation in security policymaking, and the implications of the war on terror and the counterinsurgency campaign.”⁵³

Counterinsurgency and Human Rights

The country’s defense establishment has not really changed its fundamental orientation and *raison d’être* since its creation in the 1930s: fighting insurgency. This function defines the institution’s existence, but it also constitutes its primary dilemma. States have the right to protect themselves from any threat, whether external or internal. But for this to be justifiable, the act of defending needs to be done within acceptable parameters as provided by law and reasonable standards—such as those prescribed by the principles of human rights and international humanitarian law. Marcos’s outright weaponization of the military to perpetuate his authoritarian rule indefinitely led to widespread human rights violations. The end of his rule created expectations that the era when rights could be violated with impunity had ended, but recent history has shown that it is not so easy to eliminate unacceptable practices of the past. Strict adherence to human rights in counterinsurgency operations remains a work in progress to this day.

Nevertheless, the security sector, at least to a certain degree, has incrementally and progressively through the years developed levels of appreciation for and recognition of human rights and international humanitarian law. An important reason for this is the enactment of human rights–related laws, such as those against torture and enforced disappearance (see below). However, security sector reform also included self-imposed initiatives such as the publication by the PNP of a human rights–based policing manual in 2009 titled *PNP Guidebook on Human Rights-Based Policing*. In the introductory message, the former PNP chief wrote that “no matter the situation or nature of the police mission, one imperative remains unchanged: the need to respect and protect human rights.”⁵⁴ The PNP then put out a *PNP Human Rights Desk Operations Manual* the following year for police personnel assigned to the PNP Human Rights Desks.

The Armed Forces of the Philippines, meanwhile, produced its *Human Rights/International Humanitarian Law (IHL) Handbook* in 2010 “to institutionalize human rights concepts as part of its overall security operations.” It also established a Human Rights Office, which serves as “the main platform for addressing all human rights and international humanitarian law issues involving the Armed Forces.”⁵⁵ Colonel Augusto Gaité, who oversees the values education of the AFP as the head of the Command and General Staff College, believes that military abuses have been significantly reduced since martial law because checks and balances have been effectively established. “To eradicate human rights violations completely,” Gaité argued, “the main component should be our national leadership.... Since the transition from Marcos to Cory...we were able to reenforce and uphold the value of human rights.” He said that human rights education has been put in

52 Arugay, “Spheres of Military Autonomy.”

53 Ibid.

54 Philippine National Police Human Rights Affairs Office, *PNP Guidebook on Human Rights-Based Policing* (2009).

55 “The Aquino Administration’s Human Rights Initiatives,” *Official Gazette*, December 10, 2012, www.officialgazette.gov.ph/2012/12/10/the-aquino-administrations-human-rights-initiatives/.

place at every level, starting from pre-entry, to cadet, to advanced education, and up to general. “That is the only way. We really have to start young and be consistent—continuous, nonstop education on human rights because [if] you remove human rights education in the AFP, do you think we would be very much aware and cautious of our action?”⁵⁶

It was also around this time that the government launched the International Peace and Security Plan *Bayanihan*, a strategic plan to end armed conflict that deemphasized the military component. It focused more on delivering socioeconomic projects in depressed areas of rebel activity. Security Reform Initiative, a nongovernment organization that monitored and assessed the implementation of the strategic plan, took note of positive developments within the military ranks, citing an improvement in “human rights performance” and a “decrease in human rights violations.”⁵⁷

The military has cooperated to a certain extent in pushing for transitional justice, such as through its declassification and turnover of martial law documents to the Commission on Human Rights in 2011. These confidential files have been secured by the Intelligence Service of the Armed Forces of the Philippines for more than 30 years, since 1981. The turnover was part of the commission’s Martial Law Files Project in collaboration with the Department of National Defense, where, former CHR chair Loretta Ann Rosales said, “historically opposing forces have come together to start a process of healing based on truth, transparency, fairness and justice.” She noted that “in a society where the scars of martial rule have only superficially been healed, the Martial Law Files Project is a transformative tool for achieving transitional justice.”⁵⁸

All of these initiatives notwithstanding, changes do not happen overnight. Any impact of the AFP “embracing the human rights framework” through these initiatives would take a long time to manifest, Arugay opined, because “the military does not change easily.”⁵⁹ Under the current administration, progress in the security sector in human rights–related reform may have even been set back. “The Duterte administration stopped the momentum of reform,” Arugay stated. This time around, the PNP has taken center stage as far as human rights violations are concerned, with Duterte turning primarily to the police in his brutal campaign against drugs. In fact, the extrajudicial killings count in the war on drugs far outweighs the same figures in all past administrations. While the Duterte administration has just passed the midpoint in its term, all signs point to Duterte’s weaponization of the security sector, especially the police, in the same way that Marcos did in his time.

Justice, Reparation, Prevention

U.S. Class Action Suit

The first initiative seeking justice for the human rights violations that were committed during Marcos’s martial law was the filing of a consolidated case against the Marcos estate in the U.S. Federal District Court of Honolulu, Hawaii, in April 1986.⁶⁰ The lead counsel was American attorney Robert Swift, assisted by Filipino lawyers Rene Saguisag, Jose Mari Velez, Rod Domingo, and Ruben Fruto, and representing 9,539 martial

56 Interview with Colonel Augusto Gaité, Quezon City, November 7, 2019.

57 IPSP Assessment, Security Reform Initiative, in partnership with Bantay Bayanihan, PowerPoint presentation, October 26, 2016.

58 “Martial Law Papers Out,” *Philippine Daily Inquirer*, December 11, 2011.

59 Interview with Aries Arugay, May 16, 2020.

60 With Judge Manuel Real presiding, docketed as MDL No. 840, CA No. 86-0390.

law victims. Swift and the counsels based the lawsuit on a 200-year-old U.S. law, the Alien Tort Claims Act (1789), which states that federal courts have jurisdiction over violations of international law.⁶¹ They also invoked command responsibility—a legal principle that dates back to the Middle Ages in central Europe and was effectively used in the Nuremberg and Tokyo tribunals, among others. It was the first-ever class action suit filed for human rights violations.

According to attorney Byron Bocar, “Among the evidence submitted to the court and accepted as such was documentation of human rights violations (HRVs) from 1974 to 1986 gathered by the Task Force Detainees of the Philippines, then headed by the late Franciscan Sister Mariani Dimaranan (SFIC), the now iconic Filipino human rights defender.”⁶² Dimaranan was one of the eight experts who testified in court. The court also used “inferential statistics,” where court masters examined a random sample of 137 claims and, extrapolating these to the whole class, found Marcos liable for 135 human rights violations in 1992. He was ordered to pay damages amounting to almost \$2 billion (\$1.2 billion for compensatory damages and \$776 million for exemplary damages). The court further issued an injunction that prohibited the transfer or dissipation of Marcos’s property. Imelda and Bong Bong Marcos (his wife and son, respectively) received a contempt award of \$353.6 million for attempting to conceal their property and assets to evade the execution of the judgment.

Marcos was finally declared guilty by a jury verdict under Judge Manuel Real in 1995, hence the need to enforce the payment of damages. Efforts were then focused on identifying, locating, and recovering assets of the Marcos estate to be used for reparation. The court ruling was already deemed enforceable in the United States, though its enforcement in the Philippines has been unsuccessful so far, with the claimants finding themselves in dispute with the Philippine government, which also laid claim to the Marcoses’ stolen assets. “The victims’ attempt to enforce the Hawaii judgment locally also has been obstructed by unfavorable court rulings,” said Bocar, citing the legal hurdles such as exorbitant docket fees (which were later successfully petitioned), the local court’s initial dismissal, and many others.⁶³

Nevertheless, the efforts to locate the ill-gotten wealth of Marcos bore fruit, resulting in the actual distribution of monetary compensation to the plaintiffs: \$10 million in 2011 and \$10 million again in 2014, in partial satisfaction of the judgment. These assets included monetary settlements with cronies Marcos used as dummies to hide or launder his wealth and expensive artworks owned by Marcos, including Monet and Manet paintings. A third distribution was made from May to July 2019, with \$13.5 million going to the victims and \$4 million to the government. According to Swift, a fourth distribution might be forthcoming.⁶⁴

The process was not without difficulties. The current government, for example, through the solicitor general, tried to block the third distribution, with Malacañang “coming out with statements undermining it.”⁶⁵ On the whole, the Philippine government’s position was that recovered assets from Marcos’s ill-gotten

61 “Conversations with Robert Swift,” University of the Philippines Law Center, Institute of Human Rights and Commission on Human Rights, Quezon City, July 9, 2019.

62 Byron D. Bocar, “The Right to Reparation and the Philippine Experience,” presentation at the Transitional Justice Pilot Training for the CHR, Quezon City, August 15–16, 2019.

63 Bocar, “The Right to Reparation.”

64 “Conversations with Robert Swift.”

65 Ibid.

wealth should go directly to the national coffers, not to specific victims. In an official statement on April 3, 2019, the Office of the Solicitor General canceled an agreement that was being negotiated with martial law victims because the deal was “grossly disadvantageous to the government.”⁶⁶

Furthermore, according to Aurora Parong of the Task Force Detainees of the Philippines, an attempt to forge a compromise settlement with the Marcoses created division among the victims. Some were willing to come to a negotiated settlement amounting to \$100 million, half of which would go to the government and half to the victims. The other claimants refused this deal, however, arguing that such an arrangement would in effect absolve the Marcoses of their crimes. Parong did not agree with the terms of the proposed settlement because it would technically erase the reality that was martial law, “not unlike the denials that are being used regarding the Holocaust.”⁶⁷ In the end, the Supreme Court decided against the settlement, finding it unacceptable to absolve the Marcoses of criminal liability.

According to Roy Mendoza, an academic who has extensively researched the issue, “the Marcos litigation demonstrated that a massive number of human rights abuses could be litigated in a U.S. court. The 20 or so opinions rendered in the litigation by U.S. appellate courts created a human rights jurisprudence of lasting importance. These opinions have been cited in hundreds of other cases and discussed in more than 100 law reviews and textbooks.”⁶⁸

Presidential Commission on Good Government

The Presidential Commission on Good Government (PCGG), established through Executive Order No. 1, was tasked with (1) the recovery of Marcos’s (and his relatives’ and cronies’) ill-gotten wealth, (2) the investigation of graft and corruption, and (3) the institutionalization of measures to prevent the reoccurrence of corrupt practices. Specifically, the PCGG’s mandate includes the “adoption of safeguards to ensure that the corrupt practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption.”⁶⁹ One estimate puts the total amount stolen by Marcos at US\$10 billion.⁷⁰

More than 30 years after its creation, the PCGG has been able to recover PHP 170 billion, working with a relatively small annual budget of PHP 2.9 billion. In its pioneering year in 1986, the commission sequestered 236 corporations that were owned and controlled by Marcos, whether directly or through his cronies, including the United Coconut Planters Bank, Philippine Communications Satellite Corporations, Bataan Shipyard and Engineering Company, and San Miguel Corporation, among others. Shares of stocks from 146 other companies and the Malacañang jewelry collection were taken over for custody as well. The PCGG also started negotiating the first settlement agreement with Jose Y. Campos, a businessman with close dealings with Marcos, which led to the turnover of around PHP 2.5 billion worth of property assets and PHP 250 million in cash.

66 Lian Buan, “OSG: Martial Law Compensation from Paintings ‘Disadvantageous’ to Govt,” *Rappler*, April 3, 2019.

67 Interview with Aurora Parong, Quezon City, September 13, 2019.

68 Interview with Roy Mendoza, Quezon City, September 13, 2019.

69 “PCGG at 30: Recovering Integrity: A Milestone Report” (PCGG, 2016), 8.

70 This estimate comes from veteran journalist Alan Robles, who extensively researched and reported on this topic. Eimor P. Santos, “Government to Intensify Hunt for Marcos’ Ill-Gotten Wealth,” *CNN Philippines*, November 26, 2016.

The PCGG has achieved a great deal in asset recovery, and it needs to be recognized for groundbreaking work that had no precedent before 1986. Its mandate complements the work of human rights advocates because it addresses another facet of totalitarian rule: corruption and abuse of privilege. As Mendoza put it, “Marcos was no ordinary dictator; he was also a kleptocrat.”⁷¹ The problem, however, was that the work of the PCGG and the efforts of those involved in the U.S. class action suit were not in harmony: “Efforts to enforce the decision of the Hawaii district court to award tens of thousands of martial law human rights victims with compensation to be sourced from the ill-gotten wealth deposits of the Marcos family collided with the PCGG’s efforts to reclaim them for the Philippine government.”⁷² In short, the bone of contention was whether to award Marcos’s money directly to victims or to return it to the Philippine Treasury for use in government programs.

The different initiatives have intersected on numerous occasions. Swift petitioned the Swiss government, for example, to make a judicial assignment of the Marcos funds directly to the victims.

In 1997, the Swiss Federal Supreme Court declared the secret account of Marcos amounting to US \$540 million as criminally-acquired. It ordered the transfer of the funds to the Philippine National Bank (PNB) in an escrow account. The Philippine government can only use it on two conditions: (1) if Marcos is proven guilty under Philippine laws (specifically in the forfeiture case filed in the Sandiganbayan: Case #0141); and (2) Martial law victims will be compensated. In 2003, the Philippine Supreme Court ‘found said amounts constituted ill-gotten wealth and declared its forfeiture in favor of the Philippine government.’⁷³

The Philippine government’s position is that any resource recovered from Marcos’s ill-gotten wealth should be returned to the Treasury and used in government programs, with priority given to landless farmers and farmworkers, the poorest and most neglected sector in the country. The 1988 Comprehensive Agrarian Reform Law directly addresses where the recovered Marcos assets should go: It provides for the proper redistribution of agricultural land to landless farmers and farmworkers, to be financed through the creation of an Agrarian Reform Fund. This fund would be augmented through assets recovered from the Marcoses. As the law puts it: “All receipts from assets recovered and from sales of ill-gotten wealth recovered through the Presidential Commission on Good Government shall be allocated to the Agrarian Reform Fund.”⁷⁴

However, this law needed to be reconciled with the Swiss injunction to directly compensate the victims of human rights violations under Marcos—thus, the process of crafting a new law on reparation for the victims of martial law started during the time of President Gloria Macapagal-Arroyo. Such a law will need to make an amendment to the Comprehensive Agrarian Reform Law in order to use part of the money transferred by Switzerland for reparation. According to Etta Rosales, Arroyo was initially supportive of the reparations law. But, she became hostile to it when the impeachment process against her was initiated, especially given

⁷¹ Interview with Roy Mendoza, September 13, 2019.

⁷² Roy Mendoza, *Transitional Justice 1.0* (unpublished draft, March 3, 2019).

⁷³ Cecilia Jimenez-Damary and Renato G. Mabunga, *A Research Scoping Major and Outstanding Issues on Transitional Justice in the Philippines* (Quezon City, Philippines: Alternative Law Groups, 2018).

⁷⁴ Republic Act No. 6657, “An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for Its Implementation, and for Other Purposes,” Ch. 14 (Financing), Sec. 63 (Funding Source), b.

that many of those involved in the impeachment were also pushing for the reparations law. They were not able to pass the law during Arroyo's time.⁷⁵

Rosales was appointed chair of the Commission on Human Rights under the presidency of Benigno "Noynoy" Aquino, in which capacity she lobbied hard for the reparations law. She considers the failure to pass it under the previous administration as a "blessing in disguise, because the bill was improved. More elements were added, such as the martial law museum, roster of names, and the nonmonetary reparations where other agencies government are given roles in the reparation."⁷⁶ The bill was eventually signed into law in 2013 after a hard-fought battle. (See more on this law, Republic Act No. 10368, in the subsequent section.)

On the whole, the PCGG argues that with its limited budget, it had an exemplary cost-to-recovery ratio. But it could have done more, and recently it has been criticized for failures resulting from the most basic shortcomings. It lost four civil cases in five months—the latest in December 2019, "which allowed the Marcoses to keep PHP 200 billion of their alleged loot." The loss was caused by the PCGG submitting photocopies of evidence instead of the required originals, violating the "best evidence rule." That decision came at the end of a 30-year process.⁷⁷ As a result, there have been calls, including at the Senate, to investigate the PCGG. Nevertheless, it cannot be denied that the signal work of the PCGG highlights the value of asset recovery in bringing forth a public process of accountability, "relying on and empowering the post-dictatorship society, instead of using US courts and the private efforts of lawyer-led victims."⁷⁸

Republic Act No. 10368

Twenty-seven years after the end of the dictatorship, the enactment of Republic Act (RA) No. 10368 created the Human Rights Victims Claims Board and the Human Rights Violations Victims Memorial Commission. RA 10368, "An Act Providing for Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime, Documentation of Said Violations, Appropriating Funds Therefor and for Other Purposes," institutionalizes the memory of the repressive regime and mandates the documentation, reparation, and recognition of victims of human rights violations during the Marcos period.⁷⁹

The intended beneficiaries of this program are entitled to monetary and nonmonetary reparation. The amount of monetary reparation is "in proportion to the gravity of the human rights violation committed on the HRVV [human rights violation victim]," following a "point system in the determination of the award." For example, victims who died or who disappeared are given 10 points, victims who were tortured and/or raped or sexually abused six to nine points, and so forth. The act provides for the creation of the Human Rights Victims Claims Board (HRVCB) to process applications, determine qualifying claimants, and compute the final monetary amount due to qualified beneficiaries. It automatically covers, via "conclusive presump-

75 Interview with Etta Rosales, September 12, 2019.

76 Ibid.

77 "Probe PCGG," *Philippine Daily Inquirer* editorial, December 26, 2019.

78 Comments received from Ruben Carranza on a draft of this study.

79 The law obliges the state to "recognize the heroism and sacrifices of all Filipinos who were victims of summary execution, torture, enforced or involuntary disappearance and other gross human rights violations committed during the regime of former President Ferdinand E. Marcos covering the period from September 21, 1972 to February 25, 1986," acknowledging its "moral and legal obligation to recognize and/or provide reparation to said victims and/or their families for the deaths, injuries, sufferings, deprivations and damages they suffered under the Marcos regime."

tion,” the claimants in the U.S. class action suit, thus enabling the state to implement the favorable U.S. court judgment and fulfill its responsibility for reparations. The source of funds is Marcos’s ill-gotten wealth recovered in cooperation with the Swiss government.⁸⁰ The law further provides for “nonmonetary reparation,” which is assigned to the Department of Health, the Department of Social Welfare and Development, the Department of Education, the Commission on Higher Education, the Technical Education and Skills Development Authority, and other government agencies “as may be determined by the Board pursuant to the provisions of this Act.” This nonmonetary reparation forms part of the agency’s budget, as determined in the annual General Appropriations Act.⁸¹

The HRVCB was created on May 12, 2014, and allotted two years to perform its function, per the sunset clause in the law. But given the volume of applicants and the amount of work required to process them all, the board’s life was extended to May 2018 through Republic Act No. 10766. By May 11, 2018, the HRVCB had finished adjudicating all 75,749 claims that were filed. Of these, 11,103, or 14 percent, were rendered eligible for compensation. In addition, 126 victims were recognized by the board *motu proprio* as human rights violations victims, bringing the total number of successful beneficiaries to 11,229. Soon after, the HRVCB started the distribution process in Metro Manila as well as in the provinces.

The low percentage of qualifying claimants underscores the problematic aspects of the law and its implementation. One is the question of resources. The board is composed of nine members supported by a secretariat, partly by the CHR, and supplemented by additional hired personnel, with an initial budget of PHP 10 million pesos, though the amount “shall not exceed PHP 50 million pesos a year,” taken from the PHP 10 billion total allotment. The volume of claimants overwhelmed such meager resources and personnel. Another problem lay with the implementation of the legal requirements that were deemed necessary for qualification. A huge majority of the claimants come from very poor backgrounds and do not possess or do not have the ability to produce even basic documentary evidence of their identity—such as birth certificates and government-issued ID cards—let alone legal proofs of the human rights violations they have suffered. Many were unable to write up credible affidavits or afford the luxury of legal assistance. Thus, the high number of disqualifications could also be the result of the board’s strict implementation of the legal requirements. The HRVCB finished its work on May 12, 2018, when it became *functus officio* and ceased to exist.

Meanwhile, the conflict with the U.S. class action suit persists—it has not yet been definitively resolved by this law. Swift continues to fight over the right to collect damages from Marcos assets that are being identified in favor of his clients on the strength of the U.S. court ruling. It can be argued, however, that the quest for justice and reparation on Marcos’s martial law has evolved. There is now a larger universe of victims, beyond Swift’s clients. Furthermore, Swift’s arguments tacitly imply that Marcos legitimately owns the huge amounts of money he had been secretly stashing abroad, and therefore it can be used to pay for the dam-

80 The act states the following under Ch. 3, Sec. 7: “*Source of Reparation.* —The amount of Ten billion pesos (P10,000,000,000.00) plus accrued interest which form part of the funds transferred to the government of the Republic of the Philippines by virtue of the December 10, 1997 Order of the Swiss Federal Supreme Court, adjudged by the Supreme Court of the Philippines as final and executory in Republic vs. Sandiganbayan on July 15, 2003 (G.R. No. 152154) as Marcos ill-gotten wealth and forfeited in favor of the Republic of the Philippines, shall be the principal source funds for the implementation of this Act.”

81 RA 10368, Sec. 5.

ages. This goes against the Supreme Court decision in 2003 stating that the Marcos assets in question were ill-gotten.⁸²

Beyond reparation, the law also creates the Human Rights Violations Victims Memorial Commission, currently referred to as the “MemCom,” which seeks to prevent attempts to airbrush the history of martial law through programs of education, coordinating with academia and orienting teachers about martial law. Preparations are also underway to build a martial law museum. The MemCom has so far collected more than a million pieces of memorabilia, including 500,000 documents from the PCGG and 75,000 photographs and affidavits submitted by martial law compensation claimants. Some of these are currently kept at the University of the Philippines Main Library, while others are in the MemCom’s office. Public access remains limited until the MemCom’s work of indexing and cataloguing the records is finished. The museum will be located inside the University of the Philippines, Diliman campus, in Quezon City.

There were already existing martial law memorials in the country even before this legislation was passed. The Bantayog ng mga Bayani (Monument of Heroes), for example, is “a landscaped memorial center honoring those individuals who lived and died in defiance of the repressive regime that ruled over the Philippines from 1972 to 1986.” The Bantayog features documentation of torture and prison conditions during martial law and has a Hall of Remembrance beside the museum “dedicated to the heroes and martyrs, through the capsule biographies and individual photos of each one.”⁸³

The Task Force Detainees, the most formidable human rights organization during the time of Marcos, also has a museum within its office. Various provinces have their own memorials, such as the marker in Cebu City in the Visayas, which, according to Alvin Dizon, was a city government project initiated in 2012.⁸⁴ Erected inside Plaza Independencia, it bears the following etched words: “This marker is a testament to the courage of Cebuano martyrs whose lives were sacrificed in the fight against martial law. That those who live will always remember to guard the freedom they fought so hard to reclaim. 21 September 2012. City of Cebu.”

Additional Legislation

Producing a new constitution that promotes human rights and expresses an unequivocal antiauthoritarian position was an important step. However, constitutions usually contain no more than general statements and principles. The task of filling in the details is left to legislators, who are expected to produce enabling laws. In addition to RA 10368, two explicit laws have been signed that seek to prevent the perpetration of specific human rights violations. The first, enacted in 2009, near the end of Arroyo’s term, is the Anti-Torture Law.⁸⁵ The law defines torture as

82 Republic of the Philippines v. Sandiganbayan, G.R. No. 152154, July 15, 2003, lawphil.net/judjuris/jur2003/jul2003/gr_152154_2003.html.

83 Bantayog ng mga Bayani, “About,” www.bantayog.org/about/.

84 Interview with Cebu councilor Alvin Dizon, Cebu City, October 8, 2019.

85 The law declares it the policy of the state “to ensure that the human rights of all persons, including suspects, detainees and prisoners are respected at all times; and that no person placed under investigation or held in custody of any person in authority or agent of a person in authority shall be subjected to physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity.” Republic Act No. 9745, “An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor,” Sec. 2(b).

an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is *inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority*.⁸⁶

The second, signed by Noynoy Aquino midway into his term, in December 2012, is the Anti-Enforced or Involuntary Disappearance Law. It likewise criminalizes the act of “enforced or involuntary disappearance,” which it defines as

the arrest, detention, abduction or any other form of deprivation of liberty *committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State*, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.⁸⁷

The phrase “agents of the State” is of particular importance because in the run-up to the enactment of these laws, the question of who can commit those specific violations had been contentious. In their final version, the “traditional” notion of human rights prevailed—that is, the definition of human rights violators was limited to state agents. Only persons in authority can commit torture or enforced disappearance, according to these laws. But this notion continues to be challenged. Some groups, such as the Peace Advocates for Truth, Healing and Justice and the South-South Network, believe that it is a narrow definition and no longer in accordance with the reality that violations against people are also committed by nonstate armed groups. As such, there is a need to increase understanding and to develop mechanisms, tools, strategies, approaches, and technology for addressing the human rights accountability of such actors.

This idea is not particularly novel and is increasingly accepted in international law and jurisprudence. For one thing, international human rights law recognizes that in addition to the proscription of human rights violations within their territory, states also have a “positive obligation” to exercise “due diligence” in securing the enjoyment of human rights against violations by nonstate actors. States are required to “prevent, punish, investigate or redress the harm caused by such acts [violations] by private persons or entities.”⁸⁸ Such “wider-application definitions,” according to Naga City judge Soliman Santos, represent “new legal thinking...on human rights,” which, although established originally for the protection of individuals against the potential abuses of a powerful state, can also, it is now clear, be committed by “illegitimate” but equally powerful armed forces, especially those staking a political claim.⁸⁹

⁸⁶ Ibid., Sec. 3(a); emphasis added.

⁸⁷ Republic Act No. 10353, “An Act Defining and Penalizing Enforced or Involuntary Disappearance,” Sec. 3(b); emphasis added. By “agents of the State,” the law refers to “persons who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the government, or shall perform in the government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class.” Ibid., Sec. 3(a).

⁸⁸ Human Rights Committee, *General Comment 31*, para. 8.

⁸⁹ Interview with Soliman Santos, Naga City, October 2, 2019.

Currently, two Philippine laws cover acts that are committed by nonstate armed groups. The Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, signed by Arroyo in 2009, commits the country to adopt “the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation.”⁹⁰ It is considered to be the applicable law in the context of war, in which “all organized armed forces, groups and units that belong to a party to an armed conflict which are under a command responsible to that party for the conduct of its subordinates” are “subject to an internal disciplinary system which enforces compliance with International Humanitarian Law.”⁹¹ The law enumerates particular acts that violate the relevant international humanitarian law provisions with respect to noninternational armed conflict (the four Geneva Conventions of 1949), covering “acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention,” and so on.⁹² These violations, which can be committed by both state and nonstate armed groups, have commensurate penal sanctions as well.

The other law is the very recent Anti-Terrorism Law (ATL), which was passed in July 2020 amid concerns from human rights groups and other politically engaged citizens that it will be used to stifle dissent and crack down on critics. The ATL serves as an amendatory law to the Human Security Act that was signed into law under Arroyo in 2007. The title “Human Security” Act can actually be considered a misnomer, or at best not particularly precise or descriptive of its content, which is all about terrorism. As Arugay put it, “As early as 2003, the Macapagal-Arroyo administration has promised to enact legislation that will help curb terrorism. What became a surprise is how RA 9372...was able to be named as the ‘Human Security Act of 2007.’”⁹³ The concern is that this law might not be used solely to combat and sanction terrorism, but to suppress previously respected rights and freedoms.

However, Representative Edcel Lagman, who was involved in crafting the bill, argues that legislators were able to insert sufficient safeguards to ensure the protection of human rights in the law.⁹⁴ In fact, against the fears of human rights activists, many in the security sector think that the law is such a weak legal instrument that it can hardly be wielded against the enemies of the state, an opinion that was echoed by many of the speakers at a high-level military conference in 2018. Rafael Alunan, the chair of the National Security Committee of the Philippine Council for Foreign Relations, said there that as the centerpiece of counterterrorism, the act is “not tough enough” and needs to be amended. Alex Paul Monteagudo, director general of the National Intelligence Coordinating Agency, also thinks it needs to be amended because it “heavily penalizes law enforcement agencies.”⁹⁵

The effort to repeal the law in favor of a stronger one seems to have been set in motion, reaching its desired conclusion with the enactment of the ATL. The law continues to receive criticisms. Human rights

90 Republic Act No. 9851, “An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes,” Sec. 2(d).

91 *Ibid.*, Sec. 3(d).

92 *Ibid.*, Sec. 4(b).

93 Arugay, “Spheres of Military Autonomy.”

94 Jose Manuel Diokno et al., “Unmasking the Terror Bill,” June 4, 2020, live broadcast at Lapis Facebook page, www.facebook.com/rapplerdotcom/videos/260317135190298/.

95 Senior Leaders Conference of the 11th Philippine Army, Fort Andres Bonifacio, Metro Manila, March 20–21, 2018.

lawyer Chel Diokno cites the alarming provision that allows the detention of a suspected terrorist for 14 days, extendable for 10 more days, without warrant. (The Human Security Act provides for not more than three days.) This and many other amendments to the original law, critics argue, effectively removes the human rights safeguards and gives undue powers to the executive branch, undermining the powers of the judiciary.⁹⁶

Presently the ATL is facing legal challenges. Former associate justice Antonio Carpio, former ombudsman Conchita Carpio-Morales, and other legal academics have requested the Supreme Court to issue a temporary restraining order on the law's implementation. This has been the 11th petition against the ATL so far. As co-petitioner Carpio-Morales put it, "In its fight against terrorism, the government must not be the source of terror and impunity itself. We must never let reason continue to escape us."⁹⁷

96 Diokno et al., "Unmasking the Terror Bill."

97 Lian Buan, "Carpio, Morales, UP Law Profs File 11th Petition vs Anti-terror Law," *Rappler*, July 22, 2020.

Armed Conflict: Context and Transitional Justice

The Communist Armed Challenge

The current communist rebellion traces its origins to the anti-colonial struggle—from the Katipunan uprising against Spanish colonial rule, to the Hukbalahap revolt against the Japanese invaders, which later evolved into the Hukbong Mapagpalaya ng Bayan (“Huks”) under the old Partido Komunista ng Pilipinas (PKP).⁹⁸ Jose Maria Sison, a PKP member, broke away and formed the new Communist Party of the Philippines. Sison was able to recruit a number of student intellectuals and, in 1969, forged a strategic alliance with a band of armed rebels called the New People’s Army (NPA). The CPP-NPA waged an armed revolution, seeking to ultimately seize state power and install a new dispensation.⁹⁹ At the time, student protests and massive demonstrations against Marcos were intensifying, mobilizing hundreds of thousands of people and peaking during the so-called First Quarter Storm of 1970. Martial law drove many student activists underground to join the communist movement.¹⁰⁰

The CPP-NPA-NDF became arguably the strongest resistance against Marcos, but the EDSA uprising in February 1986 relegated the revolutionary force to the margins. Nevertheless, the new government under Aquino presented a possibility for the peaceful resolution of the communist armed conflict. Political detainees were released and peace negotiations were initiated, but tensions resurfaced in the process. Finally, one particular incident led to the abandonment of peace negotiations: the 1987 “Mendiola massacre,” in which 13 farmers were killed after government forces shot at militant demonstrators who were ready to storm the Malacañang Palace.¹⁰¹

98 *Hukbalahap* is an abbreviation of Hukbo ng Bayan Laban sa Hapon, or People’s Army Against the Japanese. See Alfredo B. Saulo, *Communism in the Philippines: An Introduction* (Ateneo de Manila Press, 1990), 35.

99 Patricio Abinales, *Fellow Traveler: Essays on Filipino Communism* (University of the Philippines Press, 2001).

100 Jose F. Lacaba, *Days of Disquiet, Nights of Rage: The First Quarter Storm and Related Events* (Salinlahi Publishing, 1982).

101 The bloodbath happened on January 22, 1987, when security forces fired upon rallyists, numbering around 10,000 farmers and representatives of other sectors, who were marching toward Malacañang Palace to demand agrarian reform. The march was led by the Kilusang Magbubukid ng Pilipinas (Farmers Movement of the Philippines) with support from militant students and other sectors. The following day, President Corazon Aquino created the Citizens’ Mendiola Commission, headed by a retired Supreme Court Justice, to investigate the incident. Charmie Joy Pagulong, “Timeline of Mendiola Massacre: 33 Years and Counting,” *The Philippine Star*, January 21, 2020.

By 1992, internal rifts within the party led to the “split” between the so-called Reaffirmists, who remained loyal to the party, and the Rejectionists,¹⁰² who formed their own organizations and alliances, such as the Rebolusyonyong Partidong Manggagawa ng Pilipinas–Revolutionary Proletariat Army–Alex Boncayao Brigade (RPMP-RPA-ABB) and the Rebolusyonyong Hukbo ng Bayan.¹⁰³ Others, such as Sanlakas and Akbayan, decided to abandon armed struggle and pursue reforms through parliamentary means.¹⁰⁴

There was also a much earlier split from the CPP-NPA-NDF in the north, involving former-priest-turned-NPA-guerrilla Conrado Balweg, who formed the Cordillera People’s Liberation Army (CPLA) in 1986, which separately negotiated peace with the newly installed government of President Corazon Aquino. Throughout the years, hostilities have continued between the CPLA and the NPA; the conflict reached its peak when Balweg was assassinated by NPA guerrillas in 1999.

The CPP-NPA has maintained its armed challenge against the government from Marcos through the succeeding presidents up to the present. By the very nature of their struggle, CPP-NPA cadres, especially the combatants, have sustained huge casualties in the course of battle. Government soldiers and rebel fighters are injured or killed as an inevitable consequence of war. But there are also numerous cases of victimization that fall under the rubric of human rights violations or violations of international humanitarian law. The victims of these violations include rebels who are captured in battle, suspected communists, and members of legal left organizations who are accused of being members of or supporting the CPP-NPA. Violations they suffer include illegal detention, torture, summary execution, and enforced disappearance.

CPP-NPA leaders and members are not exclusively victims of human rights violations, however. On some occasions, they have been the perpetrators. One of the earliest, and most serious, allegations against the CPP-NPA, for example, was responsibility for the infamous “Plaza Miranda Bombing” in 1971, a year before the declaration of martial law. Plaza Miranda, at the heart of Manila, had historically been the site of major political events in the country. On August 21, 1971, the Liberal Party—the leading opposition party against Marcos’s Nacionalista Party (NP)—was in the middle of its *miting de avance* at the square when two grenades were lobbed at the stage where the Liberal Party senatorial candidates were seated. The crowd was thick around the stage. One of the grenades exploded, killing nine people and injuring 95 others. Among those seriously injured were the Liberal Party leadership, including prominent politicians like Senators Gerry Roxas, John Osmeña, Ramon Mitra Jr., and Jovito Salonga. President Ferdinand Marcos was immediately blamed for the incident.

In later years, however, key personalities of the armed left surfaced and revealed that the bombing was orchestrated by CPP leader Jose Maria Sison, with the purpose of escalating the tension among the ruling classes. According to private interviews as well as testimonies at Senate hearings, Sison anticipated that the attack against the opposition party would be blamed on Marcos and would drive the moderate opposition,

102 “Rejectionists” has become the collective label of all members of the CPP-NPA who decided to split from the party. Those who stayed are called “Reaffirmists.”

103 Kathleen Weekley, *The Communist Party of the Philippines 1968–1993: A Story of Its Theory and Practice* (Quezon City: The University of the Philippines Press, 2001).

104 Akbayan is a democratic socialist party formed through the merger of various political groups, including the socialist group Bukluran sa Ikauunlad ng Sosyalistang Isip at Gawa, the social democratic group Pandayan, and some Rejectionists.

especially those from the middle class, into the revolutionary fold.¹⁰⁵ Sison has continuously denied this allegation through the years, and the Plaza Miranda bombing—a major historical nodal point and one of Marcos’s justifications for imposing martial law—remains unresolved to this day.

The CPP-NPA-NDF also carried out a series of internal purges or operations, supposed to ferret out suspected “infiltrators” within its ranks, that involved the detention, torture, and execution of thousands of its own cadres. The purges were not isolated incidents. They were launched systematically as regional operations or campaigns in the various CPP-NPA-NDF regions and were sustained throughout the 1980s. By the CPP’s own assessment, as described in a paper after its 10th Plenum in 1992, more than 1,500 people were arrested and tortured, and more than 800 were killed in Kampanyang Ahos (July 1985–March 1986), the anti-deep-penetration agent operation in Mindanao. Similar operations in succeeding years were undertaken in Southern Tagalog (“Oplan Missing Link”), Metro Manila (“Olympia”), Cebu, North Central Mindanao, Cagayan Valley, Leyte, and practically all regions where the CPP-NPA-NDF operated, resulting in the torture and execution of thousands—most of whom have never been located, let alone returned to their families.¹⁰⁶

Peace Processes: CPP-NPA

Numerous peace negotiations since the time of President Corazon Aquino have made little progress. Part of the reason for this stagnation is that the CPP-NPA still believes that its “protracted people’s war” will ultimately end in victory; thus, it continues to recruit, consolidate its ranks, and pursue its revolutionary war.¹⁰⁷ The first peace negotiations came in fits and starts, with the parties having difficulties in finding common ground. Despite a cease-fire in April 1986, major disagreements about the framework and a general air of distrust pervaded the talks. The military was not keen to engage in negotiation, believing it could rout the insurgency. The rebels, meanwhile, became increasingly critical of the Aquino government, arguing that fundamental changes in society had not occurred. They held on to their belief in the need for a radical restructuring of society that addresses the root causes of its problems, and they pushed for a comprehensive political settlement with a certain level of power sharing. These differences became increasingly irreconcilable.

From August 31 to September 1, 1992, a government delegation met with NDF leaders in The Hague, Netherlands, and produced the Hague Declaration, which spells out an agreement to include “mutually acceptable principles” in formal peace negotiations, “including national sovereignty, democracy, and social justice, to resolve armed conflict.” The substantive agenda should “include human rights, international humanitarian law, socio-economic reforms, political and constitutional reforms, an end to armed hostilities, and the disposition of forces.”¹⁰⁸ The Hague Declaration formed the backbone of the joint declarations and agreements that were drafted thereafter—including the 1995 Joint Agreement of the Government of the Philippines and the National Democratic Front of the Philippines on Safety and Immunity Guarantees, and more

105 Jovito Salonga, *Responsibility for the Plaza Miranda Bombing: A Journey of Struggle and Hope* (Mandaluyong, Philippines: Regina Publishing Co., 2001), 177.

106 More on the communist purges is in the next section on transitional justice, under the CPP-NPA.

107 “Conditions are ever favorable for waging and advancing people’s war,” declared the CPP in their recent publication: “Frustrate the US-Duterte Regime’s War of Suppression! Further Strengthen the NPA and All-Sidedly Carry Forward the People’s War!,” *Ang Bayan*, August 28, 2020.

108 *Ibid.*, 19.

significantly the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL).

Peace talks under the current Rodrigo Duterte government have been, in many ways, unprecedented. The communist leadership, at the start, was uncharacteristically accommodating toward the new government and seemingly genuinely fond of the newly elected president. It had not spared him from its obligatory anti-government statements, but it was far less hostile and virulent than usual. CPP founding chair Jose Maria Sison cautioned against an all-out attack, practically advising his comrades to give the government a chance.

Part of the explanation for this was Duterte's known affinity with the movement. He proclaimed himself to be a leftist and a socialist. He appointed personalities identified with the extreme left to his cabinet. He released top-ranking party leaders from detention. And at the outset, he declared a unilateral cease-fire. Duterte was even criticized, especially by certain quarters of the military, for being too accommodating with the extreme left. But this accommodation was only during the first two years. The cease-fire was soon abandoned, left-appointed cabinet members were removed, and fighting resumed. The situation has deteriorated since then, the peace talks apparently having reached a dead end at this point.

Since then, Duterte has been going out of his way to ensure the sympathy and loyalty of the military, practically "giving them *carte blanche* authority and massive funding to return to crude, Cold War-era anti-communist propaganda."¹⁰⁹ Recent policies and legislation, such as the Anti-Terror Law and the creation of the National Task Force to End Local Communist Armed Conflict, are designed to definitively crush the rebellion, with the military playing a crucial role. The peace process has been completely relegated to the background as of this writing.

The Communist Armed Challenge: Transitional Justice

As mentioned earlier, leaders and members of the CPP-NPA-NDF have been both victims and perpetrators of violations of human rights and international humanitarian law. The violations associated with the revolutionary group involve political assassinations, extortion in the form of "revolutionary taxation," the burning of properties (such as tractors, trucks, and buses) of companies that refuse to pay taxes, and the recruitment of underage combatants. What could be considered among the most horrendous of the CPP-NPA-NDF's acts have been the systematic, widespread, and bloody purges of members who are suspected of being "deep penetration agents," or spies within the group. One organization that was created to deal with the aftermath of these purges is the Peace Advocates for Truth, Healing, and Justice (PATH), which is composed of survivors and families of purge victims.¹¹⁰ PATH considers its work to be complementary to that of human rights groups in the country; it argues that justice and accountability would not be complete if state security forces are the only ones called out for violations of fundamental human rights, while leaving out the nonstate armed groups that have committed equally atrocious acts. While the CPP-NPA admits

¹⁰⁹ Comments received from Ruben Carranza on a draft of this study.

¹¹⁰ This author, a purge victim, has documented his experience of torture and near-death in a book: Robert Francis Garcia, *To Suffer Thy Comrades: How the Revolution Decimates Its Own* (Anvil, 2001). After the book came out, he helped form PATH.

that the purges happened, it considers them a “closed book,” claiming that the perpetrators have already been punished internally or have otherwise left the party and are now associated with the Rejectionists. The work of PATH, however, shows that the purges cannot be left in the past.

PATH’s research has unearthed many distinct cases of CPP-NPA atrocities. The group has yet to come up with a realistic estimate of the total number of purge victims in the 1980s, given that there was very little documentation of these operations, but that number could easily be in the thousands. There are area-specific estimates, though. Patricio Abinales, for example, cites Mindanao figures from Gregg Jones’s inside account of the movement in his book *Red Revolution*: “Within a six-month period, 950 cadres, guerrillas and activists were executed for being *demonyo* suspects.”¹¹¹ PATH, meanwhile, has exact figures for Southern Tagalog in 1989: 66 dead and 55 survivors. But the purge happened in numerous other provinces: Negros, Cagayan Valley, Cotabato, Central Luzon, Cebu, and so on. This kind of work is difficult to sustain, given the continuation of armed conflict and the absence of an established accounting mechanism. The party would be in a better position to provide the figures, if it would be so inclined.

What PATH has done, for now, is to document particular accounts, such as torture methods employed in NPA detention camps: beatings, lacerating the skin with a blade, hanging by the wrists or ankles, rape, sexual molestation and humiliation (for example, women being stripped naked and forced to fight), clamping and mutilating male and female genitalia with forceps, searing the private parts with molten plastic, the water cure, suffocation with plastic bags, denial of food and water, using tranquilizers and drugs (such as Ativan, Novain, and Demerol) as a truth serum, and other methods. Modes of execution included bashing the back of the skull with a wooden club, stabbing with a fixed bayonet or sharpened bamboo stick, breaking the neck (“marine hold”), beheading, and disemboweling.

The CPP-NPA-NDF’s response, however, has been defensive; they argue that they have dealt with the bloody purge case definitively. In a public statement, National Democratic Front of the Philippines leader Fidel Agcaoili claimed that through the “Second Great Rectification Movement,” they have “criticized, condemned and repudiated the ideological, political and organizational errors that allowed certain violators of Marxism-Leninism and renegades to commit grave crimes by carrying out so-called anti-infiltration campaigns of hysteria which were in fact bloody witchhunts bereft of respect for human rights.” Agcaoili said that they have investigated these campaigns through administrative proceedings and “people’s courts,” and “meted out disciplinary measures...according to the gravity of their responsibility.” The punishments included expulsion, suspension, demotion, reprimand, imprisonment, and even the “death sentence to those accused principals who were proven as the worst offenders and as remorseless.” They also issued pardons to the less guilty. Agcaoili noted that “majority of those most culpable...ran away from the criminal justice system of the people’s democratic government.” The NDF further labeled PATH as an “imperialist-funded NGO, with the sole obsession and objective to discredit and destroy” the CPP, accusing the group of pretending “to call for a Truth Commission in order to obscure the fact that the revolutionary forces have their own system of discipline and the people’s democratic government has its own legal and judicial system.”¹¹²

¹¹¹ Abinales, *Fellow Traveler*, 155.

¹¹² “Reply to the Lies of PATH Against the Revolutionary Forces,” Fidel V. Agcaoili, NDFP Human Rights Committee, April 21, 2005.

PATH nevertheless continued its work, and with the help of forensic teams and partner human rights organizations it was able to exhume the remains of nine purge victims in Cebu and Mindanao and return them to their families for proper burial. Finally, PATH has been writing and meeting with the Office of the Presidential Adviser on the Peace Process, calling for both the inclusion of a comprehensive truth-seeking and accountability mechanism (state and nonstate) in the peace agenda and the involvement of civil society in the peace process.

Compared to the peace negotiations with the MILF, the peace talks with the CPP-NPA-NDF did not have the same deliberate and conscious articulation of transitional justice—in form and in substance—in the agenda. Former representative Satur Ocampo, who was one of the chief negotiators from the NDF and one of the most recognizable leaders of the communist movement, however, argued that there was in fact transitional justice “in the CARHRIHL.”¹¹³ The 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law was the first item on the four-point substantive agenda in the peace talks between the government and the NDF.¹¹⁴ The final draft of the CARHRIHL was negotiated during the administration of President Ramos and approved under President Estrada. The rest of the substantive agenda has yet to be approved.

Ocampo argues that CARHRIHL could qualify as a transitional justice instrument because it contains provisions that have the potential to hold both parties accountable for crimes.¹¹⁵ As a mechanism for ensuring compliance with and accountability for human rights and international humanitarian law in the middle of peace negotiations, there was an attempt to make CARHRIHL work during the time of President Arroyo in the 2000s. The implementing arm of CARHRIHL, the Joint Monitoring Committee, was constituted in mid-2004 and was composed of the two negotiating parties: the Government of the Philippines Monitoring Committee and the NDF Monitoring Committee. The idea was for the committee to monitor and record violations of human rights and international humanitarian law while peace talks got underway—with

113 Interview with Satur Ocampo, October 14, 2019.

114 The other three are socioeconomic reforms, political and constitutional reforms, and an end of hostilities and disposition of forces. The NDF represents the entire CPP-NPA-NDF in the peace negotiations with the Philippine government.

115 Ocampo, in an interview in Quezon City on October 4, 2019, cited the following provisions:

Article 3. The Parties decry all violations and abuses of human rights. They commend the complainants or plaintiffs in all successful human rights proceedings. They encourage all victims of violations and abuses of human rights or their surviving families to come forward with their complaints and evidence.

Article 4. The persons liable for violations and abuses of human rights shall be subject to investigation and, if evidence warrants, to prosecution and trial. The victims or their survivors shall be indemnified. All necessary measures shall be undertaken to remove the conditions for violations and abuses of human rights and to render justice to and indemnify the victims.

Article 5. The Parties hereby respect and support the rights of the victims of human rights violations during the Marcos regime, taking into consideration the final judgment of the United States Federal Court System in the Human Rights Litigation Against Marcos Senate Resolution 1640; Swiss Supreme Court Decision of 10 December 1997; and pertinent provisions of the U.N. Covenant on Civil and Political Rights and the 1984 U.N. Convention Against Torture.

Should there be any settlement, the GRP shall also execute with the duly authorized representatives of the victims a written instrument to implement this Article and guide the satisfaction of the claims of said victims, with regard to the amount and mode of compensation, which shall be the most direct and quickest possible to every victim or heir in accordance with the relevant Swiss Supreme Court decisions.

Ocampo argued that Article 5 was fulfilled through the successful litigation of the lawsuit filed in Hawaii. Article 6, which calls for the government to “review the cases of all prisoners or detainees who have been charged, detained, or convicted contrary to this doctrine, and shall immediately release them,” he contended, is the part that continues to be neglected. The NDF has been trying to push for the release of all its political prisoners up to the most recent negotiations under the Duterte government. Other important provisions of CARHRIHL—such as Article 7, Part 3, which is about the “repeal of any subsisting repressive laws, decrees, or other executive issuances,” and Article 8, about the government’s commitment to review its jurisprudence on warrantless arrests, checkpoints, and saturation drives—remain “unsettled issues.”

complaints against state security forces to be submitted to the former, and complaints against the rebels to be submitted to the latter. When the agreement became operational, both offices became collection centers for complaints, with each party seeming to be in a race to rack up the recorded violations of the other. Unfortunately, the process did not go beyond collection and filing, as the CARHRIHL contains no concrete provisions to enforce compliance or to pursue punitive measures. Thus, no concrete action has resulted from the accusations against either party. The complaints have just been filed with the respective monitoring committees.

The Joint Monitoring Committee's work was further hampered by numerous peace process debacles along the way. The peace talks that were scheduled to be hosted in September 2004 by Norway, for example, were postponed; the NDFP backed off due to the CPP's inclusion in the United States and EU's list of foreign terrorist organizations. The Joint Monitoring Committee tried to continue its work despite the impasse, believing that monitoring could still be done even if the parties were no longer talking, but it eventually lost steam and ceased to operate when its funding (which was contingent on the peace talks) dried up. There was an attempt to revive the committee in January 2017 during the peace talks under Duterte, but this has not progressed either, given the failure of the talks.

Muslim Mindanao: Context

The conflict in Muslim Mindanao traces its roots to the fight against colonial power in the 16th century. The Muslims are the native inhabitants of the islands of Mindanao, Basilan, Sulu, and Palawan, and their communities were already organized, independent, and fully functioning, with their own governance systems, hundreds of years before the Spanish colonial powers arrived. In short, the main reason behind the struggle of the Bangsamoro Muslims is the illegal usurpation of land. Spanish colonization involved not only the spreading of religion but the introduction of an alien system of land ownership through the enactment of the Regalian Doctrine, which claimed all land as owned by the Spanish Crown. This radically altered the system of land ownership in the country. While much of the rest of the Philippines succumbed to this forcible appropriation, however, Mindanao's pushback prevented it from gaining a foothold on the island except in some areas.

When Spanish colonization ended in 1898 through a revolt of the Filipinos, Spain sold the Philippine Islands to the United States through the Treaty of Paris, granting colonial rights to the Americans and initiating the systematic dispossession of Mindanaoan inhabitants from their land. Mindanao land dispossession and the marginalization of Moros have since come in four waves:

- 1898 to the Commonwealth period (American colonial rule),
- 1946 to the late 1960s (postindependence Philippines),
- the early 1970s to the mid-1980s (Marcos martial law), and
- the mid-1980s to present day (post-Marcos).

The first wave included the United States's introduction of the Torrens title system, allowing Americans full control of land registration and the system of ownership. This went against the communal land system that was in place, reducing indigenous land ownership in Mindanao to 52 percent by 1903. Agricultural produc-

tion, along with the development of large plantations and migrations from the north, was aggressively promoted. The second wave came under the leadership of local elites after the country gained independence from the United States. Spurred by agrarian unrest in Luzon and the Visayas, government-sponsored resettlement programs enhanced Christian immigration from the north, further displacing the Moros from their land.

The third wave came under Marcos's martial law, which furthered dispossession through the introduction of logging, mining, and the corporate ownership of rice and corn plantations. This state-instigated, market-oriented migration program escalated the influx of Christian settlers and continued the marginalization and minoritization of Muslims. Tension between Mindanaoans and newer Christian communities escalated. Muslim armed groups such as the Black Shirts and Barracudas engaged in violent acts against Christian settlers. The tension was aggravated by the deputizing of armed groups, such as the Ilaga, under the Armed Forces of the Philippines. The formation of the Moro National Liberation Front (MNLF) in 1972, which fought for the creation of a Bangsa Moro Republik (Moro National Republic), brought the armed conflict in the south to full scale: "The MNLF war (1973–1977) caused the death of more than thirteen thousand people and forced more than a million to flee their homes."¹¹⁶ By 1980, 75 percent of Muslims in Mindanao were concentrated in only five provinces: Maguindanao, Lanao del Sur, Basilan, Sulu, and Tawi Tawi.

Under the fourth wave, the continuation of commercial logging has depleted the natural resources. Peace negotiations have been resumed and new laws and institutions have been introduced, but these have not completely resolved the land and autonomy issues—with some causing further confusion and divisiveness. Some gains have been achieved over the last several years, but sustainable peace and development in Mindanao remains a work in progress.¹¹⁷

Throughout the Bangsamoro armed conflict, violations of human rights and international humanitarian law have been frequent and continuous. The Philippine state has been accused of a disproportionate use of force in quelling the Moro resistance. One of the first and most well-known cases was the "Jabidah Massacre" on March 18, 1968, when 23 young Muslims were reportedly executed by government forces.¹¹⁸ The incident is widely recognized as the spark that ignited the MNLF rebellion.¹¹⁹ More massacres happened after the declaration of martial law. During the "burning of Jolo" in February 1974, massive naval and air bombardments drove thousands of inhabitants out and left the city "burning for six days."¹²⁰ In the "Palimbang massacre" in September 1974, men and boys in the Palimbang municipality of Sultan Kudarat were lined up and shot, while women were raped in naval boats stationed in the area, as part of government's campaign against the MNLF.¹²¹

116 Abinales, *State and Society in the Philippines*, 217.

117 Open Bangsamoro: Open Data for the Transition from the ARMM to the BARMM: openbangsamoro.com.

118 These Muslim army recruits were supposed to infiltrate Sabah and foment rebellion there for the purpose of reclaiming the island from Malaysia.

119 Transitional Justice and Reconciliation Commission, "Report of the Transitional Justice and Reconciliation Commission" (2016), 41.

120 Carmen Abubakar, "Beyond Forgetting: The Moros During and After Martial Law," in *Memory, Truth-Telling, and the Pursuit of Justice: A Conference on the Legacies of the Marcos Dictatorship* (Office of Research and Publications, Ateneo de Manila University, 2001), 172.

121 Ibid.

This “vertical conflict” was aggravated by “horizontal conflicts” between Christians and Muslims, and among Muslim groups.¹²² Nonstate armed groups have also been responsible for violations of human rights and international humanitarian law, such as in the “Patikul massacre” in October 1977, when the MNLF fired upon unarmed AFP officers, and in the MILF’s looting and use of human shields in response to the AFP’s “Buliok Offensive” in 2003.¹²³

There have been numerous attempts to settle this conflict. The first formal act was Resolution 18 of 1974, which responded to the recommendation of the Organization of Islamic Conference to find a just, durable, and comprehensive political solution to the problem of the southern Philippines through negotiation. Peace talks started in 1975, leading to the Tripoli Agreement in 1976. A faction of the MNLF that disagreed with the agreement, led by Hashim Salamat, was expelled and started organizing outside the country and building diplomatic relationships. It would later become the MILF.

War with the MNLF continued until peace talks were revived after the 1986 uprising that gave birth to the Aquino administration, leading to the creation of the Autonomous Region of Muslim Mindanao (ARMM). A final peace agreement was reached under the administration of President Fidel Ramos, and Nur Misuari was elected as the first governor of ARMM in 1996. However, administration by former rebels who were untrained in governance proved disastrous for the region. The ARMM became a bloated, inefficient bureaucracy that was further weakened by corruption.¹²⁴

This situation fueled further unrest among the Muslim communities within the ARMM, impelling the MILF to fill the vacuum and resume the struggle. Compared to the more secular MNLF, the MILF was explicitly Islamist in its politics. It continued to fight for an autonomous Bangsamoro Republic. Ultimately, “full-scale war broke out between the MILF and the [government] less than five years after the peace agreement with the MNLF, after the MILF started to flex its muscle in the areas surrounding its camps in the late 1990s implementing agricultural and livelihood projects and imposing Islamic justice on criminals and other ‘bad’ elements.”¹²⁵

The emergence of the MILF as the dominant armed opposition force in Muslim Mindanao created new challenges in peace negotiations, although the group has demonstrated a real desire for reaching a reasonable settlement. In 2008, the Memorandum of Agreement on Ancestral Domain was crafted by the government of President Gloria Macapagal Arroyo and the MILF. At that time, the Bangsamoro struggle was seen as an “ancestral domain question,” meaning that it has been mainly a response to the systematic dispossession of land.¹²⁶ The agreement encountered stiff resistance, not only from politicians but also from certain Islamic

122 There is also conflict with the non-Islamized indigenous peoples in Mindanao, collectively called Lumads, which is another important dimension but is not covered in this study.

123 MILF is the breakaway group from the MNLF. Transitional Justice and Reconciliation Commission, “Report,” 46.

124 Abinales, *State and Society in the Philippines*, 293.

125 Francisco J. Lara, *Insurgents, Clans, and States* (Quezon City: Ateneo de Manila University Press, 2014), 65.

126 Interview with Camilo “Bong” Montesa, former assistant secretary at the Office of the Presidential Adviser on the Peace Process and former advisor of current chief minister of the newly formed Bangsamoro Autonomous Region in Muslim Mindanao Al Hajj Murad Ebrahim, Quezon City, November 28, 2019.

groups that did not find the terms acceptable, which led to the creation of the militant Islamist organization Bangsamoro Islamic Freedom Fighters.¹²⁷

Another round of negotiations with the MILF under President Noynoy Aquino led to both parties signing the Comprehensive Agreement on the Bangsamoro, the step before the enactment of a law that would seal the agreement: the Bangsamoro Basic Law. The law was nearing finalization when the so-called Mamasapano massacre happened, effectively derailing the peace process.¹²⁸

Peace negotiations were resumed under President Duterte, leading finally to the enactment of Republic Act No. 11054, or the Bangsamoro Organic Law, on July 26, 2018. Ratified through a plebiscite on January 21, 2019, it marked the transition from the ARMM to the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM).¹²⁹ The Bangsamoro Organic Law adopted most of the features of the Comprehensive Agreement on the Bangsamoro, which had two tracks: the political track, which deals with self-governance, and the normalization track, which deals with the decommissioning of forces, human security, and transitional justice.¹³⁰

Transitional Justice in the Bangsamoro

Transitional Justice and Reconciliation Commission

The Transitional Justice and Reconciliation Commission (TJRC) was established as part of the Normalization Annex of the Framework Agreement on the Bangsamoro, which was signed by both parties on October 15, 2012. The commission was mandated to study and recommend actions that address past injustices resulting from the Moro conflict, including legitimate grievances of the Bangsamoro people, human rights violations, and marginalization through land dispossession. The main goal was to promote the reconcilia-

127 Guimel Alim, “Transitional Justice in the Bangsamoro Now and Then: Analysis and Challenges,” presentation at the Seminar on Advancing Transitional Justice and Dealing with the Past in the Bangsamoro, Independent Working Group on Transitional Justice and Dealing with the Past, Quezon City, March 9–10, 2020.

128 The Mamasapano massacre was a clandestine operation in Mamasapano, involving the Special Action Force of the Philippine National Police, aimed at capturing or killing extremist leader Zulkifli Adhir, aka Marwan, which led to the deaths of 44 Special Action Force members, 18 members of MILF and the Bangsamoro Islamic Freedom Fighters, and five civilians. Marwan was also killed in the operation.

129 This was actually the first of two plebiscites aimed at ratifying the Bangsamoro Organic Law in existing ARMM provinces—Maguindanao, Lanao del Sur, Basilan, Sulu, and Tawi-Tawi—as well as inclusion into the BARMM of Cotabato City and Isabela City. The second plebiscite was on February 6, 2019, in Lanao del Norte (except Iligan City) for the inclusion of its six municipalities, Nunungan, Tangkal, Munai, Pantar, Balo-i, and Tagoloan; and in seven municipalities of North Cotabato (Pigcawayan, Pikit, Kabacan, Carmen, Aleosan, Midsayap, and Tulunan) for the inclusion of 67 barangays.

130 Political track: The transition from the ARMM to the BARMM provides for the creation of the Bangsamoro Transitional Authority to serve as an interim government. The Bangsamoro Transitional Authority has legislative authority as well as executive authority and is composed of 80 members appointed by the president, 41 of whom are MILF nominees. The MNLF, non-Moro indigenous people, young people, members of settler communities, traditional leaders, and other groups are represented as well. On March 29, 2019, the Bangsamoro Transitional Authority held its first session and President Duterte officially inaugurated the BARMM in Cotabato City. Normalization track: Partnership between the government and MILF aims to “ensure human security in the Bangsamoro.” To pursue this track, the president signed Executive Order 79, which, inter alia, provides for the creation of the Inter-Cabinet Cluster Mechanism on Normalization (ICCMN). One aspect of normalization is transitional justice and reconciliation, for which the ICCMN is responsible: “The ICCMN shall lead the implementation of the recommendations provided for in the report of the Transitional Justice and Reconciliation Commission, to address legitimate grievances of the people in the BARMM, correct historical injustices, and address human rights violations and marginalization through land dispossession, towards healing and reconciliation.” The ICCMN is presently finalizing its road map on transitional justice.

tion of the different communities that have been affected by the conflict by addressing its root causes and supporting healing.

The TJRC adopted a “dealing with the past framework,” asserting that it must be fully integrated into the peace process to ensure its sustainability. It explained, “‘dealing with the past’ is a conceptual and analytical framework for TJ [transitional justice] inspired by the UN principles against impunity, which have the force of customary international law.”¹³¹ The TJRC believed that this framework was appropriate because it “addresses both the root causes of the conflict and their consequences” and represents a “future-oriented approach...[that is] sensitive to the Bangsamoro and Filipino context...[and] that also strives to prevent the recurrence of human rights violations.”¹³²

To make the process inclusive, the commission “designed and implemented an elaborate consultation process...and involved community-based ‘listening process’ sessions, study group reviews of existing research, as well as key policy interviews.” The TJRC conducted “listening sessions” in more than 210 Moro, indigenous, and settler communities in Mindanao and the Sulu archipelago, involving some 3,000 community members and local officials. The commission also engaged with a diverse set of experts from the Bangsamoro region and at the national level, including peace and human rights advocates, community and religious leaders, Bangsamoro scholars, public servants, and representatives of the security and private sectors. The TJRC does not claim that its findings are fundamentally new or “particularly wide-reaching or profound, given the limited time frame and resources with which it operated,” but it does assert that through the listening process, community members were “asked their opinion on these matters for the first time.”¹³³

The government’s past initiatives through peace negotiations had failed on several fronts: They did not address the root causes of violence, neglected to undertake broad and transparent consultations before implementation, lacked a holistic strategy in dealing with the past, failed to end conflict-related violence, and did not prevent revisionist discourse and denial about the past abuses.¹³⁴ In the TJRC’s view, legitimate grievances associated with historical injustice, human rights violations, and marginalization through land dispossession are “the result of three interlocking phenomena—violence, impunity, and neglect—which, in turn, are rooted in the *imposition of a monolithic Filipino identity and Philippine State by force* on multiple ethnic groups in Mindanao and the Sulu archipelago that saw themselves as already preexisting nations and nation-states.”¹³⁵

The theft of land was effected through violence and deception, and, as discussed in the previous section, it came in waves—as part of direct colonization, then as part of an appropriation into the Philippine state without consent. It led to poverty and neglect, aggravating the condition of people who were already gross-

131 Transitional Justice and Reconciliation Commission, “Report,” xix.

132 Ibid., xxi.

133 Ibid., 20.

134 According to the TJRC, “the Bangsamoro narrative of historical injustice is based on an experience of grievances that extends over generations, particularly with respect to land dispossession and its adverse effects upon their welfare as a community as well as their experience of widespread and serious human rights violations....” It is clearly rooted in the systematic land-grabbing of Moro land that is part of what it describes as “historical injustice,” or the “‘wrongdoings’...committed or sanctioned by governments (Spanish, American, and Japanese colonial governments and the Philippine government) that hurt or harmed people, affected relationships repeatedly over time and were not [properly] addressed.” Ibid., 24.

135 Ibid., xvii.

ly mistreated and heightening unrest. Furthermore, the perpetrators of this injustice have not only gone unpunished, but in fact have been able to maintain their privilege and continue to enjoy the bounties across generations. Hence, for many, the Moro rebellion can be seen as a people's resistance, or even as reprisal for a history of unjust acts that have been systematically and continuously committed against them—a violent response to violence inflicted. The TJRC revealed as much in the listening process, in which “the lack of recognition by the State of the Bangsamoro as a people with their own distinct social and cultural heritage and, politically and historically, as an independent nation-state was cited as a legitimate grievance.”¹³⁶

The consultation also raised substantial gender-specific issues, with testimonies suggesting that “violence against women was used systematically against the Moro and indigenous population” before and during martial law, and that “incidences of gender-based and sexual violence associated with armed conflict have also been recorded in the post-Martial Law period.” The TJRC contended that a formal investigation of this issue in particular, and of the “mutually reinforcing consequences of ongoing human rights violations and armed conflict” as a whole, “is warranted to ensure accountability for past abuse and to prevent the recurrence of such violations in the future.”¹³⁷

The TJRC recommendations come in two parts. The first part concerns the creation of a National Transitional Justice and Reconciliation Commission on the Bangsamoro (NTJRCB) to address the issues of violence, impunity, and neglect.¹³⁸ The commission would be headed by a chairperson, with four subcommissions covering the following categories: Historical Memory; Against Impunity, for the Promotion of Accountability, and Rule of Law; Land Dispossession; and Healing and Reconciliation. These subcommissions are expected to cooperate with the “relevant existing institutions and organizations in their respective fields,” and the entire NTJRCB is expected to cooperate with other institutions and stakeholders, including civil society. The TJRC recommends a Civil Society Forum for Transitional Justice and Reconciliation in the Bangsamoro that is “culturally and socially representative of the Bangsamoro and gender-balanced in its composition” to “monitor the work of the NTJRCB and support it in the implementation of its mandate,” among other tasks.¹³⁹

The second part is a set of 99 specific recommendations addressed to the Office of the President, the Commission on Human Rights, various executive line agencies, future Bangsamoro authorities, Congress, and civil society. These recommendations are divided into four groups: the right to truth, the right to justice, the right to reparation, and guarantees of nonrecurrence. Actions under the right to truth involve the “inventory of past and present human rights violations in the Bangsamoro” and the institutionalization of a human rights education system that is in concordance with the Bangsamoro culture. These efforts are premised on the right of victims, as well as society as a whole, “to know the truth about past events and the circumstances that led to the perpetration of massive or systematic human rights violations, in order to prevent their recurrence in the future.”¹⁴⁰

136 Ibid., 17.

137 Ibid., 38, 56.

138 To distinguish, the TJRC was a body created to study and produce recommendations related to transitional justice in the context of the Bangsamoro peace. The creation of the NTJRCB was one of their recommendations, to be a part of the new bureaucracy to be formed in the BARMM region.

139 Transitional Justice and Reconciliation Commission, “Report,” 98.

140 Ibid., 144.

Under the right to justice, the TJRC recommends that the Armed Forces of the Philippines, the Department of Justice, the Office of the Ombudsman, the Public Attorney’s Office, the Philippine National Police, the Commission on Human Rights, the Civil Service Commission, and the Commission on Audit all cooperate with the Sub-Commission against Impunity and on the Promotion of Accountability and Rule of Law “to identify potential areas for corruption and ways to prevent and redress corruption.”¹⁴¹ Under the right to reparation, the commission recommends that the AFP and the PNP “contribute to symbolic reparations by offering formal apologies for their respective role in the commission of or failure to prevent human rights and humanitarian law violations, as well as for specific incidents known to Bangsamoro communities and to the AFP or PNP alike.”¹⁴²

Finally, the recommendations aimed at guaranteeing nonrecurrence enjoin all relevant government agencies (national and regional), civil society, and other stakeholders to work together in examining and finding solutions to the root causes—for example, by addressing “issues related to land dispossession, use, and tenure in the conflict-affected areas in Mindanao by developing and/or implementing a dispute-resolution mechanism for land conflicts.”¹⁴³ These recommendations also point to the importance of education as a strategic and sustainable approach to prevent recurrence. They propose the need to promote “intercultural exchange and cultural diversity integration” by integrating “Bangsamoro history, indigenous peoples’ history, and corresponding lessons in art, literature, and language” as well as “peace education, gender studies, and nonviolent conflict management” into the curriculum. The TJRC also highlights the importance of memory; it proposes memorializing “specific tragic events and honoring victims” as well as identifying “sites of conscience.”¹⁴⁴

Transitional Justice in the Bangsamoro Organic Law

The TJRC also recommended passing the Bangsamoro Basic Law—the draft law that was being deliberated at the time of the commission’s operation under the presidency of Aquino—arguing that it was “necessary to prevent a resurgence of armed conflict and to provide conditions for a durable peace.”¹⁴⁵ As it happened, the law was not passed during Aquino’s term, but the Bangsamoro Organic Law was enacted under President Duterte. As mentioned previously, the new peace agreement, through the Bangsamoro Organic Law and the creation of the BARMM, recognizes the mechanisms that were developed in previous talks, including the twin tracks of the Comprehensive Agreement on the Bangsamoro, the political track and the normalization track—the latter through the power of an executive order, prescribing the implementation of the TJRC’s recommendations.¹⁴⁶

141 Ibid., 103.

142 Ibid., 108.

143 Ibid., 105.

144 Ibid., 106.

145 Ibid., xix.

146 The Comprehensive Agreement on the Bangsamoro was developed during Aquino’s term. The Bangsamoro Organic Law explicitly provides for transitional justice in Article 9, Basic Rights (emphasis added).

Section 1 Transitional Justice—The Bangsamoro Parliament, taking into account the report of the TJRC, shall enact a *transitional justice mechanism* to address the legitimate grievances of the Bangsamoro people and the indigenous peoples, such as historical injustices, human rights violations, and marginalization through unjust dispossession of territorial and proprietary rights and customary land tenure.

Section 2 Reparations for Unjust Dispossession—The Parliament shall enact laws providing for adequate reparation to the Bangsamoro peoples affected by unjust dispossession of territorial and proprietary rights or customary land tenure, which may include payment of just compensation to and relocation of such people. No land title issued by the National Government under the Torrens System shall be invalidated.

Inter-Cabinet Cluster Mechanism for Normalization

Executive Order No. 79 provides, under Section 2, for the creation of the Inter-Cabinet Cluster Mechanism for Normalization (ICCMN).¹⁴⁷ This inter-agency mechanism is expected to lead the implementation of the TJRC recommendations through its Transitional Justice and Reconciliation (TJR) Cluster (the others being security, socioeconomic development, and confidence-building).¹⁴⁸

The third meeting of the ICCMN on August 9, 2019, occasioned a discussion of the “dealing with the past” framework. It was noted that there has been some resistance against this framework within the security sector. This is not unexpected, because bringing up questions of accountability for controversial acts in the past naturally elicits defensiveness. It was clarified, however, that “dealing with the past” looks beyond individual soldiers committing violative acts and considers the policies that enabled such episodes to happen. The activity is less about blaming and more about understanding, suggesting that transitional justice should be focused on the big picture and enabling systemic changes.¹⁴⁹

It was also emphasized that the “dealing with the past” framework “promotes reconciliation and conflict transformation” and is about “preventing past atrocities and recurrence of violence. It demands accountability and rule of law. Thus, the government has a crucial role to play in dealing with the past in becoming good institutions promoting good governance.”¹⁵⁰ As of this writing, the body is in the process of drafting the TJR Roadmap (2020–2022), which is designed to produce the plan and timeline for implementing the TJRC’s recommendations. Envisaged to contain action points under the respective TJR pillars, four working groups have been created: Truth/History, Justice and Reparations, Land Issues, and Guarantee of Non-recurrence.¹⁵¹ Member agencies of the TJR Cluster were divided into these four working groups. See Appendix 1 for a summary of the action plans and member agencies of each working group.

Legislative Initiatives

A legislative initiative in support of transitional justice in Bangsamoro was the filing of House Bill 4003, on August 15, 2019, which was designed to set up institutional mechanisms for dealing with historical injustice and accountability. The bill seeks to implement the TJRC recommendations, foremost of which is the creation of a National Transitional Justice and Reconciliation Commission for the Bangsamoro. The bill was

147 Executive Order 79 was issued in 2018 for the purpose of “Implementing the Annex on Normalization Under the Comprehensive Agreement on the Bangsamoro.” The ICCMN members include the Departments of Defense, Interior, Justice, Social Welfare and Development, Agriculture, Education, Finance, Health, Labor, Budget, Trade, and Information and Communications, as well as the Technical Education and Skills Development Authority, National Economic Development Authority, National Security Council, National Commission on Indigenous People, and the Commission on Higher Education.

148 The TJR Cluster is chaired by the Office of the Presidential Adviser on the Peace Process and the Office of the Cabinet Secretary, and had eight original member agencies: the Commission on Higher Education, Department of Education, Department of Interior and Local Government, Department of National Defense, Department of Justice, Department of Social Welfare and Development, National Security Council, and National Commission for Indigenous People. In the cluster’s first meeting on July 15, 2019, the original members decided to expand in order “to involve critical agencies for the implementation of a comprehensive TJR program in the Bangsamoro.” The following agencies were added: the Commission on Human Rights, Department of Environment and Natural Resources, Armed Forces of the Philippines, Philippine Commission on Women, National Commission for Culture and Arts, Human Rights Violations Victims Claims Board, Land Registration Authority, National Archives of the Philippines, National Commission on Muslim Filipinos, National Historical Commission of the Philippines, Philippine National Police, Mindanao Development Authority, and National Youth Commission. Office of the Presidential Adviser on the Peace Process email to relevant agencies, August 5, 2019.

149 Minutes, ICCMN meeting, August 9, 2019.

150 Ibid.

151 Enhanced draft as of November 22, 2019.

authored by Representatives Jose Christopher Y. Belmonte (6th District, Quezon City) and Amihilda J. Sangcopan (AMIN Partylist).¹⁵² Senator Risa Hontiveros also signified interest in filing a Senate version.¹⁵³

Transitional Justice–Related Civil Society Initiatives in Mindanao

Civil society has historically played an important role in Philippine development. Broadly encompassing all civilian formations outside formal government structures, they may be in the form of nongovernmental organizations (NGOs), community-based people’s organizations, foundations, social movements, cause-oriented groups, coalitions, or issue-specific alliances. They have variously played key roles in society—as opposition, advocates, counterparts, and government partners. They often fill in gaps where government service is deficient or perceived to be flawed. Civil society is practically present in all issues of significance—in governance, human rights, environmental advocacy, education reform, peace-building, and so forth. Not unexpectedly, they are also in the field of transitional justice.

Civil society initiatives in transitional justice in Mindanao include the following:¹⁵⁴

- Kakap Dulunan (“Revisiting Boundaries”) in North Cotabato: an Aromanon-Magindanawon grassroots peacemaking initiative to revisit traditional peace pacts and boundaries in the context of the creation of the Bangsamoro autonomous region, supported by the Initiatives for International Dialogue.
- Lumad Husay Mindanaw: an independent and inclusive indigenous people’s platform formed to ensure that indigenous people’s concerns would be addressed in the Bangsamoro peace process.
- Healing the Past: a Mindanao Survivors Solidarity Assembly hosted by Mindanao Peace Weavers.
- Reflection Sessions on Martial Law in Mindanao: an effort by Katilingbanong Pagtambayayong to connect the Marcos martial law and the current one in Mindanao under Duterte, including identifying the human rights violations that have been committed under both circumstances, with the latter including violations in the campaign against illegal drugs, criminality, and terrorism.¹⁵⁵

These are just some of the numerous civil society initiatives in Mindanao to advocate for peace and accountability. They seek to ensure, first, that all concerns are addressed. Further, they work to prevent the violations that were committed in the past from being repeated or, should they be repeated, to guarantee that they will be monitored and swiftly acted upon.

152 House Bill (HB) 4003, “An Act Establishing a Transitional Justice and Reconciliation Program for the Bangsamoro, Creating for the Purpose the National Transitional Justice and Reconciliation Commission for the Bangsamoro, and Appropriating Funds Therefor,” is a refiled bill under the present (18th) Congress. The previous version, HB 5669, with the same title, was filed on September 2018 under the 17th Congress and was approved up to the committee level. Belmonte stated that “the prospects are good—all stakeholders are talking about it, from the executive to the present BARMM government down to the local politicians, [especially] the local committees.” Interview with Congressman Christopher “Kit” Belmonte, Quezon City, October 21, 2019.

153 Interview with Senator Risa Hontiveros, Quezon City, October 28, 2019.

154 Mags Maglana, “Transitional Justice in the Bangsamoro,” Transitional Justice Pilot Training, CHR, Quezon City, August 16, 2019.

155 The work of Katilingbanong Pagtambayayong, a “non-partisan group of concerned individuals pursuing transformative, restorative, and healing justice,” is particularly noteworthy because it addresses the current war on drugs and violence but situates it in the historical context and thus is able to trace origins and root causes. Every year, the group runs reflection sessions, such as one called “Conversation on a Culture of Life and Dignity,” in line with the December 10 Human Rights Day celebration. They have tackled issues such as the alarming rates of extrajudicial killings, the martial law in Mindanao, and continuing impunity.

Transitional Justice and Prevention: Contributions and Challenges

Reparation and Inclusion

Compensating victims is a fundamental right and a basic way to repair damage and acknowledge offense. In the case of the collective, widespread harm done by Marcos through 14 years of autocratic rule, two sets of reparations have been undertaken—one judicial, the other legislative—that have resulted in direct payments to actual victims. These are no small gains; the benefits are tangible. This government action compelled Switzerland—the country used by Marcos to store his ill-gotten wealth—“to return the money because it would have been morally condemnable to withhold reparation” that was meant to be funded by that money.¹⁵⁶ It also effectively addresses arguments of a lack of funding.

Furthermore, the fact that the source of the payments was the money recovered from the Marcoses can be considered in itself a punishment for wrongdoing, and it is of important social value in that it returns stolen resources to the state and reinforces the rule of law. At least theoretically, this may have an indirect deterrent effect for would-be human rights violators who also intend to steal. RA 10368, for its part, is considered a landmark in transitional justice in the Philippines, being the “first legislation of its kind in the history of the country.” It is both “unprecedented and at the same time precedent-setting,” even as it provides only “partial” justice to the victims. It legally mandates state accountability and, as Bocar explained in a lecture, from a prevention perspective, “RA 10368 serves as a commitment by the state that these violations should never be repeated.”¹⁵⁷

The actual implementation of reparations was not without issues. The end result was as imperfect as the process itself. The legislative and judicial mechanisms had also often been at cross-purposes. Attorney Rob-

¹⁵⁶ Comments received from Ruben Carranza on a draft of this study.

¹⁵⁷ Bocar, “The Right to Reparation.”

ert Swift sought out Marcos's assets for the execution of the class action suit judgment in favor of victims, while the PCGG looked for Marcos's ill-gotten wealth to recover for the state—and “both found themselves in litigation in various venues abroad claiming opposing rights to the same assets, along with the Marcos family.”¹⁵⁸ The two efforts did not operate as part of a holistic and comprehensive transitional justice framework, and deficiencies in the process may have lessened their effectiveness and impact.

The process suffered from problems of inclusion and awareness. At the beginning of Cory Aquino's term, for example, the number of complaints received by the Presidential Committee on Human Rights was just 1,000. Three decades later, more than 75,000 complaints have been received by the Human Rights Victims Claims Board. While many factors may have contributed to this huge difference—monetary compensation as a key incentive being one—increased awareness of rights was an important aspect as well, Etta Rosales believes. “75,000 applied—I used to compare that to the 1,000 claimants during the time of Diokno,” she said. Rosales added that at that earlier time there was still “a climate of fear, people were scared, they did not know. But once they saw that there was the CHR...there was the HRVCB, then *ang dami na nila* [their number increased],” showing that “once the people are made aware of how to act, they gain courage. They become empowered.”¹⁵⁹

Notwithstanding this positive aspect, the troubles in the implementation need to be acknowledged. One issue is the low qualification rates. The small number of applicants who were approved for benefits—only 11,103—was not because the rest were making false claims. Rather, it was a result of the legal and technical hurdles they faced—from the impossibility of producing legal proofs of identity, to siblings fighting over the money, to communications and notices not reaching people, to missed deadlines, to the chaotic conditions of some distribution centers. Karl Gaspar, for example, wrote about the long queue and disorganized arrangement that he, along with more than a thousand people from widespread villages in the Davao-Cotabato region, had to endure in order to collect his payment: “As the morning got hotter and my back... was starting to make life uncomfortable...I thought of pulling out. But as with the claims that we human rights victims fought for...I wanted to do this for its symbolic value. Even if I had to go through this inconvenience (which is no match to the 22 years of detention as a political prisoner), I would gladly do it as a symbolic act to once more attest to the evils of the Marcos dictatorship.”¹⁶⁰

For some, hopes that were raised were just as quickly vanquished. A particular challenge lay in finding the right flexibility in legal requirements. “In a situation where structure of law is deficient, we cannot be too legalistic. There are victims from far-flung areas who do not even have birth certificates,” Rosales explained. “There should have been more creative means to ascertain what's ‘evidentiary,’ if any. The post office, for one, could not be depended on because of some nefarious practices, such as the manufacture of fake IDs.”¹⁶¹ Many human rights lawyers, such as those affiliated with the Free Legal Assistance Group in Cebu, have volunteered their assistance to overcome such hurdles. They formed a group to assess claimants, especially poor and semiliterate ones, who had missing relatives but could not produce death certificates, and they notarized affidavits free of charge. “That was our contribution,” one attorney said.¹⁶²

¹⁵⁸ Ibid.

¹⁵⁹ Interview with Etta Rosales, September 12, 2019.

¹⁶⁰ Karl Gaspar, *A Hundred Years of Gratitude* (Davao City: Aletheia Printing and Publishing House, 2017), 82.

¹⁶¹ Ibid.

¹⁶² Interview with attorney Democrito Barcenás, Cebu City, October 7, 2019.

Reparation has also “divided the communities.”¹⁶³ In the case of the massacre in Palimbang, for instance, only a handful of claimants were accredited from among hundreds. Those who were denied were outraged. The entire village in Malisbong and other areas in the Palimbang municipality were collectively victimized by the military onslaught in 1974. The men were herded and shot; the women and children were brought to the naval boats; the women were sexually violated. They all shared practically the same experience, but were in effect recognized differently because some were able to produce legitimizing documents while others were not. A related limitation is coverage. RA 10368 only applies to victims between September 21, 1972, and February 25, 1986, and only the victims of state authorities, excluding victims of atrocities that were committed before and after the Marcos period and victims of nonstate armed groups. This distinction unwittingly privileged certain victims over others, creating a hierarchy of victims and opening the program to criticisms of selective application of justice.

Lack of Accountability and Reform

Transitional justice in the Philippines included little in the way of criminal accountability. What was especially glaring was the lack of attempts to prosecute, with no one convicted for any of the heinous acts that were committed during martial law. And while seizing assets and using them to fund reparations is a form of justice, the absence of criminal justice processes can undermine the reparative value of those benefits. More than 11,000 people may have received financial compensation for suffering torture or death of kin during martial law, but none of the people who are responsible for these very crimes have been prosecuted.

The clear impunity for those who were responsible for martial law helps to explain why people in authority, or those with coercive means, have easily been able to continue to violate people’s rights since. There is no guarantee, or even likelihood, that such violations will be punished. Compared to the number of reported cases of human rights violations in the decades since Marcos, for example, there have been very few convictions.¹⁶⁴

Thus, the old practices have not really died out. The military detains activists on suspicion of being communists. They torture captured rebels in the anti-insurgency war. The police commit extrajudicial killings against poor, defenseless suspects in the name of the war on drugs. They trample on the rights of individuals in the name of peace and order. These practices continue and they are hardly punished. The impunity of security forces cuts across issues—political or otherwise—and such impunity goes all the way to the top. The Marcoses are the archetype.

Ferdinand Marcos was found guilty by a U.S. court and ordered to pay damages. His daughter, Maria Imelda Josefa “Imee” Marcos, was also found guilty by the same U.S. court for the death of Archimedes Trajano, a student activist who openly questioned her in a public forum in 1977. Marcos’s wife Imelda, meanwhile, was

¹⁶³ Interview with political science professor Vene Rallonza, General Santos City, September 24, 2019.

¹⁶⁴ Police Officer Jerick Dee Jimenez was convicted in April 2016 for the crime of torture, the only torture conviction after Republic Act 9745 or the Anti-Torture Act (2009) was passed (the victim complainant was Jerryyme Corre); General Jovito Palparan was convicted for kidnapping and serious illegal detention in the 2006 disappearance of University of the Philippines student-activists Karen Empeño and Sherlyn Cadapan; and three Caloocan City policemen were convicted in November 2018 for the murder of 17-year-old Kian delos Santos in the government’s war on drugs.

found guilty on seven counts of graft and sentenced to imprisonment for at least six years and one month by the Sandiganbayan—a special court in the Philippines that has jurisdiction over graft and corruption cases involving government officials—on November 9, 2018, although she posted bail and filed an appeal and remains free to this day.

These pending cases and actual convictions have not, however, prevented the Marcoses from running for public office after they were allowed to return to the Philippines in 1991, after five years in exile in Hawaii.¹⁶⁵ Nothing has kept them from serving their terms when they won, either. Imelda ran for president in 1992 and lost, but won in succeeding elections as a congresswoman in Leyte in 1995 and Ilocos Norte in 2010, where she served three full terms, until 2016. Imee served three terms as a congresswoman in Ilocos Norte from 1998 to 2007, became governor of Ilocos Norte in 2007, then won as a senator in 2019 and is currently serving her term. Finally, Ferdinand “Bongbong” Marcos Jr., the only son of the president, was elected governor of Ilocos Norte in 1998, served as a congressman in Ilocos Norte from 1992 to 1995 and then from 2007 to 2010, became a senator in 2010, and ran as vice president in the 2015 elections but lost to Leni Robredo.

The fact that Marcos’s heirs were able to make a successful comeback shows that society has not really substantially or fully addressed the dictator’s deeds. The Marcoses were not only tolerated but were in fact chosen to lead in various capacities. The government’s inability to recover the entirety of Marcos’s stolen wealth was a disappointment, but this impunity for the family is an even bigger shortcoming. As Robredo put it, “We were not able to penalize Marcos and make him accountable.” Robredo considers the Marcoses’ return to power as a “failure of transitional justice in the Philippines. What is the message for the generations after us? Furthermore, they are now even being given an opportunity to change history.”¹⁶⁶

The paths of other essential players during martial law are a further indication that the post-EDSA dispensation was not a complete severance from the Marcos shadow. Juan Ponce Enrile, Marcos’s defense secretary and the architect and implementer of martial law, and Fidel V. Ramos, the head of the now defunct Philippine Constabulary, mounted a rebellion against Marcos not because they were against martial law or the other repressive policies, but because they fell out of grace with Marcos near the end of his rule. Hence, when they were appointed top officials under Aquino, they made no effort in matters of human rights accountability.¹⁶⁷

The enactment of a new constitution with a robust bill of rights and the creation of the PCGG, the Commission on Human Rights, and the Ombudsman’s Office were meant to address human rights violations and corruption in the past and prevent their recurrence. One important lesson from the Philippines is that pursuing justice in transition can be supremely difficult when it involves entrenched powerful entities and constant challenges to the autonomy of justice bodies. The PCGG, for example, “was and continues to be subjected to demands for political accommodation...specially from the ruling elites,” Ruben Carranza said.

¹⁶⁵ Imelda, however, was prevented from holding any public office after her Sandiganbayan conviction in 2018.

¹⁶⁶ Interview with Vice President Leni Robredo, October 28, 2019.

¹⁶⁷ Enrile was appointed defense secretary again, and Ramos was appointed the Armed Forces of the Philippines chief of staff. Enrile eventually had differences with Aquino and, after being implicated in a right-wing coup attempt, was forced to resign. Ramos had a better stint in Aquino’s government and later successfully won the presidency of the Philippines. Though he made no effort to hold Marcos accountable, he can at least be credited for his serious attempts to hold peace talks with the rebels.

The PCGG was able to recover Marcos assets, but “it has not fundamentally taken away the economic foundations of the Marcos cronies who profited from the dictatorship and have subsequently sponsored their own political protégés.”¹⁶⁸ It is beyond the mandate or capacity of one institution to neutralize the economic power of all the Marcos cronies—many of whom constitute the top tier of the country’s elite and remain in power today. This requires an entire government that ideally is able to tap other stakeholders as well.

Persistence of Corruption

Apart from his pretext of promoting peace and order, Marcos imposed martial law on an anti-corruption platform, singling out the supposed oligarchs who were controlling the country’s economy and politics. By the time he was ejected, however, he had gained a worldwide reputation for his theft of the nation’s coffers. The electoral-political system in particular had been historically conducive to corruption. It was a system Marcos did not invent but inherited. “Since the early postcolonial years, Philippine elections have often been marred...by corruption, fraud, and terrorism,” or what Filipinos dubbed “guns, goons, and gold.”¹⁶⁹ Oftentimes, the oligarchs were also the bureaucrats, or the two were in a quid pro quo relationship.

Media was another arena of corruption that traced back to the pre-martial law years. For example, “the practice of giving regular payoffs to beat reporters had become routine in some government institutions such as Congress by the 1960s.”¹⁷⁰ Martial law brought this to a new level, starting with the closing of critical media outlets, then combining coercion with media bribery. The fall of Marcos and the ushering in of more formally democratic governance, however, was not enough to fully stem media corruption; instead, it became more sophisticated. The “ugly practices of the past persisted and transmogrified into more insidious forms,” according to one report.¹⁷¹ Reporters moonlighted as public relations practitioners; political columnists were on politicians’ payrolls; the practice of “attack and collect, defend and collect (AC-DC)” was widespread; and, most profitably, the media served as the main battlefield for elections.¹⁷²

Marcos emasculated certain oligarchs and bureaucrats but cultivated his own. His concentration of power coupled with corruption to the highest levels ran the country to the ground. The post-Marcos era was a golden opportunity to change things. Some Marcos cronies tried to make amends. Jose Yao Campos, for example, the owner of the major drug firm United Laboratories, Inc., “probably the most cooperative among the known Marcos cronies,” surrendered 197 real estate property titles and PhP 250 million (US \$5.3 million) in cash to the PCGG. The PCGG was able to sell many of the assets under Campos’s name. Antonio Floirendo and Roberto Benedicto, other magnates, followed suit.¹⁷³

168 Ruben Carranza, “The Prospects for Transitional Justice in the Philippines,” remarks made at the conference Human Rights in the Philippines: Contemporaneous Strategies and Future Pathways, organized by the Commission on Human Rights, the University of the Philippines Institute of Human Rights (UP IHR) and the Center for International Law (Centerlaw), September 6, 2018.

169 Nathan Quimpo, *Contested Democracy and the Left in the Philippines After Marcos* (Ateneo de Manila University Press, 2008), 2.

170 Chay Florentino-Hofleña, Philippine Center for Investigative Journalism, “News for Sale: The Corruption and Commercialization of the Philippine Media” (2004), 8.

171 *Ibid.*, 20.

172 Melinda Quintos de Jesus defined AC-DC as the “kind of journalism where the reporter attacks a person in order to collect money from that person’s rival or enemy. The same journalist then defends the person originally attacked, also for a fee.” “Philippines: How Media Corruption Nourishes Old Systems of Bias and Control,” in *Untold Stories: How Corruption and Conflicts of Interest Stalk the Newsroom* (Ethical Journalism Network, 2015), 59.

173 Philip M. Lustre Jr., “Search for Marcos’ Wealth: Compromising with Cronies,” *Rappler*, February 25, 2016, In-Depth section.

Nevertheless, many of the oligarchs and political families who were disfavored by Marcos enjoyed a later resurgence, just as the political class associated with Marcos had. Rent-seeking, with new player combinations, remained alive and well. Getting elected into important positions required huge amounts of money, so campaign contributors invested in candidates with expectations of political favors when they won. With politics regarded as an investment, winning candidates lost no time in getting their “returns on investment” through subtle and vulgar means. This has been true at the local and national levels.

With corruption a recurring issue, political leaders have risen and fallen with it. President Corazon Aquino did not get embroiled in any corruption controversy herself, but the issue of Hacienda Luisita hounded her presidency. Critics charged that the huge estate, which Aquino’s family owned, was spared from land reform through legal loopholes. It was during Joseph “Erap” Estrada’s presidency, though, that the issue of corruption moved center stage again. Estrada won in a landslide victory in 1988, owing largely to his huge popularity as an actor, especially with the Filipino masses. His fitness in office, however, was questioned due to a series of controversies involving competence and corruption. Protests against his rule, largely emanating from upper- and middle-class discontent, escalated in 2001 into what became “EDSA II,” in which a mass gathering at EDSA deposed a sitting president once again.

But the problems would not end there. As Randy David reflected, after the overthrow of Erap, “corruption aggravates poverty and keeps our country in a state of stagnation. The goal of People Power II will remain unachieved until we are able to stamp out this scourge in our national life.”¹⁷⁴ As it turned out, corruption allegations would be even more pronounced under Arroyo’s rule. In July 2003, a group of disgruntled soldiers mounted an uprising demanding Arroyo’s resignation. Their concerns involved corruption in the procurement processes for military supplies and equipment. This rebellion was quickly quelled, but displeasure with the escalating scale of corruption increased. The discontent peaked on July 8, 2005, when 10 top government officials (including Cabinet secretaries and heads of agencies) resigned en masse to protest the alleged rigging of the national election that would ensure an Arroyo victory. The manipulation was exposed through the airing of a recorded phone conversation in which Arroyo was heard instructing an election commissioner to guarantee her win by at least a million votes.¹⁷⁵ Arroyo refused to heed the call for her to resign. She was able to continue serving her term, but subsequent corruption issues came in succession.¹⁷⁶ Although she did finish her remaining term, it was with severely damaged credibility. Her trust rating hit an all-time low, at –53, in April 2010, three months before she stepped down from office.¹⁷⁷

174 Randolph David, *Nation, Self and Citizenship: An Invitation to Philippine Sociology* (Mandaluyong, Philippines: Anvil Publishing, 2004), 156.

175 Marites Danguilan Vitug, *Hour Before Dawn: The Fall and Uncertain Rise of the Philippine Supreme Court* (Quezon City, Philippines: Cleverheads Publishing, 2012), 224.

176 A particularly prominent one was the deal with China’s national broadband network company ZTE in 2007, which was marred by egregious irregularities involving huge payoffs for the approval of its US \$329 million contract, as well as kidnapping charges involving the whistleblower, Rodolfo “Jun” Lozada. The controversy dragged in the president’s husband, Miguel Arroyo, Commission on Elections chair Benjamin Abalos, and other top officials, spurring Senate investigations that captured national interest. The deal was eventually scrapped and Abalos was forced to resign. Marites Vitug, *Shadow of Doubt: Probing the Supreme Court* (Quezon City, Philippines: Public Trust Media Group, 2010), 152.

177 When the distrust rating exceeds the trust rating, the net trust rating becomes negative. Social Weather Stations, “SWS March 2010 Pre-Election Survey: PGMA’s Net Satisfaction Rating Falls to New Record-Low –53; 60% Say She Does Not Intend to Extend Her Term,” April 12, 2010, www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20151211102440.

Benigno “Noynoy” Aquino won the presidency on an anti-corruption platform in 2010. His very first act as president was Executive Order No. 1, setting up a truth commission to investigate the corruption during Arroyo’s rule. This, however, was struck down by the Supreme Court, which argued that it violated the “equal protection clause” of the constitution because it singled out only the previous administration—a peculiar judgment because the country had created many other case-specific commissions before.¹⁷⁸

In 2013 another corruption issue erupted, with the revelation that top officials had received millions of pesos in “commissions” from the Priority Development Assistance Fund, more popularly called the “pork barrel,” channeled through fake NGOs. This elaborate, multi-billion-peso scheme, in operation from 2004 to 2010, was exposed by an insider turned whistleblower who identified the leader, Janet Lim Napoles, and implicated legislators. Three senators were jailed: Juan Ponce Enrile, Ramon “Bong” Revilla, and Jinggoy Estrada. It was a huge indictment of the Arroyo government. As de Quiros wrote, the corruption was “at the heart of the culture of impunity. It is a facet of that culture of impunity. That culture had to do not just with the ease with which people could murder other people, it had to do with the ease with which people, notably public officials, could steal.”¹⁷⁹ Success was not fully satisfactory, though, as the stolen money was never actually recovered and the three senators were later released. Revilla, who had been an actor before entering politics, would win again as a senator in the 2019 elections. His main campaign strategy was dancing in front of the camera.

While President Aquino’s approval rating remained relatively high until the end, his administration was battered by high-profile complaints against governance lapses on issues such as mass transportation and traffic mismanagement and unaddressed problems of poverty and inequality. It was against this backdrop that Duterte came into the picture, striking a rugged image and promising a tough stance against criminality. He was wildly popular, despite or perhaps because of his foul, politically incorrect language—he joked about rape, cursed in all his speeches, and spared no one, not the U.S. president or even the Pope.

Like all his predecessors, Duterte promised to stamp out corruption. He issued Executive Order No. 43, creating the Presidential Anti-Corruption Commission, and appointed as its chairman Dante Jimenez.¹⁸⁰ Before this, Jimenez headed the private group Volunteers Against Crime and Corruption, which focused on heinous crimes and pushed for the reinstatement of the death penalty. Duterte has replaced—sometimes subtly and silently, but more often accompanied by dramatic public humiliation—top public officials he has accused of corruption, incompetence, or both.¹⁸¹

But these moves have all been better as optics than as actual efforts to overhaul the corrupt system, as the more deeply rooted corrupt practices persist. For one thing, not all officials “caught red-handed” were removed; many were just eased out of their existing posts into other, less controversial but equally lucrative posts. Other officials Duterte simply dismissed without even bothering to initiate investigations. Duterte also has a penchant for attacking institutions that are meant to ensure checks and balances and account-

¹⁷⁸ Vitug, *Hour Before Dawn*, 172.

¹⁷⁹ Conrado de Quiros, “Still, Getting Back,” *Philippine Daily Inquirer*, September 25, 2013.

¹⁸⁰ Its powers were even extended through Executive Order 73, allowing it to recommend to the ombudsman the filing of corruption charges against accused officials, whereas before it could only refer cases.

¹⁸¹ These include interior and local government secretary Ismael Sueno, information and communication technology secretary Rodolfo Salalima, justice secretary Vitaliano Aguirre II, and presidential adviser on the peace process Jesus Dureza.

ability, such as the Commission on Audit and the media, and for creating new ones that will reinforce his control. As a result, the Philippines dropped in the Corruption Perceptions Index of Transparency International from 99 in 2018 to 113th place out of 180 countries in 2019.¹⁸²

Education and the Lessons of the Past

An important question is how much the lessons from martial law were really learned, not only by the generation that experienced it but by the generations that came after, such that they can help prevent its recurrence. The answer is: not enough. There was no systematic, deliberate attempt to introduce martial law as a subject into the formal education curriculum after EDSA. If it happened at all, it was contingent on the teacher or the school. “There was no program for reeducating the Filipinos about what actually transpired during the 1972-86 period,” which is the reason why, 40 years later, they still make new discoveries about Marcos, said Chuck Crisanto, executive director of the MemCom.¹⁸³

This is true especially for basic education in public schools, where old textbooks that extol the Marcoses are the main references. As former senator Bam Aquino said at a Senate hearing, “We have laws to talk about the atrocities of Martial Law. Are we scared? Are we ashamed of talking about the not-so-good things in history? I think we need to face that so we won’t make the same mistakes in the past.” He lamented the way martial law was being taught—by referring only to the good accounts of the Marcos regime and omitting the atrocities.¹⁸⁴ Indeed, the descriptions of martial law that have been ingrained into students’ minds are either favorable to the Marcoses or watered down. “Abuses by the military and paramilitary units, and the plunder committed by the Marcos family and their cronies, were routinely downplayed, while emphasizing the positive accomplishments of the regime, as if it were a balance sheet.”¹⁸⁵

Even older activists have failed to ensure that the lessons of martial law would be included in the country’s educational system. Doods Santos, a former activist and current academic, said that martial law as a subject “was not incorporated in the books—most of the history reached only up to the 1960s.” The older activists did not push for these important historical lessons to be incorporated into the curriculum because “they focused on dealing with their lives after the trauma.” With Marcos gone, many of them put activism aside. Consequently, inculcating the lessons of the era remained an unfinished business.¹⁸⁶

National discussions on the topic actually came to the fore in 2012, when top government officials and legislators debated the proper way to discuss martial law in the classroom. There was general agreement about the need to finally incorporate the subject in the curriculum, but disagreement as to the proper approach. The Department of Education secretary at the time, Brother Armin Luistro, contended that educators should not tell students whether martial law was good or bad. Students should derive their own conclusions and

182 Transparency International, “Corruption Perceptions Index 2019,” www.transparency.org/en/cpi/2019.

183 Interview with Chuck Crisanto at the office of the Human Rights Violations Victims Memorial Commission (HRVVMC) office in Quezon City, October 14, 2019.

184 “Senate Lauds New DepEd Curriculum with Inclusion of Martial Law History Accounts,” *UNTV*, September 21, 2016, www.untvweb.com/news/senate-lauds-new-deped-curriculum-inclusion-martial-law-history-accounts/.

185 Jose Tirol, “The Frailty of Our Martial Law ‘Education,’” *CNN Life*, November 15, 2016.

186 Interview with Doods Santos, an educator and activist, October 2, 2019, Naga City, Bicol.

avoid “imbibing the bias” of historians.¹⁸⁷ Etta Rosales and a number of legislators, however, argued that teaching should have a stronger political stance. Former congressman Walden Bello said, “Truth can’t be separate from ethics.”¹⁸⁸

By 2016, changes were introduced into the curriculum, incorporating “in-depth discussions” on martial law at the grades 5 and 6 levels. Department of Education secretary Leonor Briones, herself a martial law victim, has also admitted that there are inaccuracies in the history lessons that are taught to students. “It is not only textbooks that should be the source of learning of the youth. There should be supplementary readings and activities in school like events, plays, other activities that will emphasize the teaching of martial law,” she said.¹⁸⁹ The University of the Philippines has also recently introduced separate subjects on martial law in their college curriculum.

All of these actions are positive developments, but had they been done much earlier, the lessons of martial law could have been more impervious to attempts at historical revisionism, such as the current attempts to rehabilitate the Marcos image. In fact, Bongbong Marcos himself aired an appeal that calls for a revision of the education curriculum, but in the opposite direction. He said his family should be portrayed more favorably in history books: “We have been calling on that for years. *Syempre ang nakaupo* [those in power], under the influence of our opposition, pero *‘di rin naman tama ‘yun* [that is also not right]. What has been proven wrong is that they continue to contend—essentially, you are teaching the children lies.”¹⁹⁰ In effect, Marcos Jr. was saying that his family has been portrayed in a negative light because those who came to power were their enemies; he denies the negative allegations and wishes to redraft such a reading.

According to the Social Weather Stations, public opinion about the former president “softened after the passage of several years.” In a May 1985 survey on whether Marcos was a “thief of the nation’s wealth,” 51 percent agreed and 34 percent disagreed—a +17 net agreement to the statement. In October 1995, 48 percent agreed and 49 percent disagreed, or net –1, indicating a shift that would continue to 1998, when it became net –4. On whether Marcos was a “brutal or oppressive president,” agreement went from a net zero in May 1986 to net –22 in 1995, to net –17 in 1998.¹⁹¹ What accounts for this swing? The failure to teach the evils of authoritarianism and the value of human rights is a key factor. Another is a systematic, well-funded public relations campaign—enabled by the failure to recover all of Marcos’s stolen wealth. With those resources at their disposal, it was easy enough for the family to influence perception and prettify a tarnished image.¹⁹²

187 Leila B. Salaverria, “DepEd Sets New Directions on Teaching Martial Law Era,” *Philippine Daily Inquirer*, September 23, 2012.

188 Ibid.

189 “Senate Lauds New DepEd Curriculum with Inclusion of Martial Law History Accounts,” *UNTV News and Rescue*, September 21, 2016.

190 Doreen Dionela, “Martial Law Victims Ask DepEd to Review History Books on Martial Law,” *SAGISAG*, January 16, 2020.

191 Social Weather Stations, “Softening of Public Opinion About the Marcoses,” October 9, 1998, www.sws.org.ph/swsmain/artclidisplay/?artcsyscode=ART-20160104172420.

192 “When the Marcoses were certain that their ultimate aim was to change the Filipino mindset in accordance with their own perception, they mastered the worst type of the science of manipulative influence. Their mastery of manipulation consisted of setting up an expensive PR department, backed up by a well-oiled army of trolls and humongous fake-news agencies. Henceforth, with one focus aim, their eternal quest to revise history began.” Jose Mario Bautista Maximiano, “‘Perception Is Real; Truth Is Not’—Perpetuating a Fallacy,” *Philippine Daily Inquirer*, February 6, 2020.

Rappler has investigated this “systematic campaign to burnish the image of the Marcoses and pave the way for their further rise in Philippine politics” using “massive amounts of propaganda and targeted disinformation produced and amplified by an extensive network of websites, Facebook pages and groups, YouTube channels, and social media influencers.” The content includes “either downplaying or outrightly denying kleptocracy and human rights violations during the Martial Law years, exaggerating Marcos achievements, and vilifying critics, rivals, and mainstream media”—much of which content was debunked or proven false. Facebook has in fact taken down many of these pages and accounts.¹⁹³ Using its database Sharktank, *Rappler* learned that the (dis)information campaign escalated two years before the 2016 elections, merging Marcos and Duterte fan pages and groups, around the time when Imelda Marcos announced her desire for her son to run for president. New fan pages continued to be created after the 2016 elections, ramping up again in the run-up to 2019 elections—when Imee Marcos ran for senator.

Resilience of the Insurgencies

CPP-NPA

The armed conflict between the Communist movement and the Philippine government had some opportunity to be resolved during the transition from Marcos to Aquino, but a negotiated peace settlement remains elusive. Forty rounds of talks with the armed movement in more than three decades have produced 37 major agreements and joint statements, with occasional cease-fires along the way, but these have not ended the fighting. Some credit can be granted to the 1998 signing of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, the first substantive agreement between both parties. Cease-fire had been part of the agenda in the course of the talks, but none of them had actually been fully committed to except for the unilateral ones that were declared every Christmas season and during major calamities, such as the current Covid-19 crisis. CARHRIHL has therefore not really affected the levels of violence in the ongoing insurgency war.

While the overall rebel strength has been considerably reduced from its peak of 26,000 combatants in the late 1980s, armed confrontations, in the form of raids, ambushes, and chance encounters, continue in different parts of the country.¹⁹⁴ Negros Island in the Visayas, for example, has been the site of violent encounters and retaliatory killings over the recent years.¹⁹⁵ This crisis exemplifies the larger problem of the insurgency and counterinsurgency cycle, in which noncombatants—who may or may not be active sympathizers of either side—become either unintended victims in the crossfire or proxy targets of attacks. The police and the military have often been associated with such killings of accused CPP-NPA sympathizers.

193 Gemma Bagayaua-Mendoza, “Networked Propaganda: How the Marcoses Are Using Social Media to Reclaim Malacañang,” *Rappler*, November 20, 2019.

194 The International Crisis Group reported that in February 2020, “several clashes between military and communist insurgents took place in Luzon and Mindanao throughout [the] month: seven New People’s Army (NPA) suspected rebels 14 Feb [2020] killed in clashes with military in Isabela and Ilocos Sur provinces; exchange of fire between local police officers and communist rebels same day in San Narciso, in Quezon province, left two police wounded.” International Crisis Group, Crisis Watch Philippines, February 2020.

195 On July 20, 2017, six policemen and one civilian were killed in an NPA ambush in Guihulngan, Negros Oriental. In addition, 116 killings have been reported on the island from July 2016 to August 2019. Most of the victims were farmers involved in political advocacies such as land reform; victims also included a number of human rights lawyers and even two children, aged one and four. “Human rights and church groups blame state forces that have launched an intense campaign against communist rebels and criminals.” Jodesz Gavilan, “Negros Killings Since July 2016 (Map),” *Rappler*, August 28, 2019.

But the CPP-NPA also attacks nonmilitary targets. According to the head of the Office of the Presidential Adviser on the Peace Process, secretary Carlito Galvez, “Since 2010, the attacks carried out by the rebels on private companies have resulted to more than P5-billion in damages. A company reported losses amounting to P2.8-billion following an attack by the insurgents in 2017.”¹⁹⁶ About 30,000 people have been killed since the communists started their insurgency in the Philippines in the 1960s, according to an estimate by Global Security.¹⁹⁷

Consequently, the government continues to seek and combine ways of effectively dealing with the insurgency, whether in the context of peace talks or in armed military encounters—and all those initiatives in between. Much of the communist armed conflict has in fact been a “battle for hearts and minds.” Thus in 2011, the Payapa at Masaganang Pamayanan (Pamana) project was “developed as a priority program of the Government that supports the Peace Negotiation Track and contributes to the goal of attaining Just and Lasting Peace.”¹⁹⁸ The project, which includes farm-to-market roads, water supply systems, livelihood programs, and environmental protection initiatives, has three strategic pillars: policy reform, justice, and human rights; capacity building; and socioeconomic interventions.¹⁹⁹

The Armed Forces of the Philippines, for its part, launched the Internal Peace and Security Plan Bayanihan, a military blueprint to end rebellion that places a “greater emphasis on [the] non-combat dimension,” said former AFP chief of staff Emmanuel Bautista. It is more concerned with “winning the peace and not just defeating the enemy.” As the NPA rebels immerse themselves in communities and organize rural inhabitants into “revolutionary collectives,” the military tries to match these efforts with programs involving “civic actions.” However, the plan had hardly made a dent in the NPA’s strength two years after its implementation: The number of NPA guerrillas had been reduced from 4,384 to “a little over 4,000,” a mere 9 percent decline.²⁰⁰

The Duterte administration continues this strategy, however, recognizing that it promotes the convergent delivery of goods and services and addresses regional development challenges in conflict-affected and vulnerable areas, according to Secretary Galvez, the presidential adviser on the peace process.²⁰¹ On December 4, 2018, President Duterte issued Executive Order No. 70, “Institutionalizing the Whole-of-Nation Approach (WNA) in Attaining Inclusive and Sustainable Peace, Creating a National Task Force to End Local Communist Armed Conflict, and Directing the Adoption of a National Peace Framework.” With the objective explicitly stated in the title, the National Plan to End Local Communist Armed Conflict set a timeline from 2019 to 2022. Defense Secretary Lorenzana, acknowledging that the insurgency could not be defeated in one year,

196 Office of the Presidential Adviser on the Peace Process, “CPP-NPA-NDF Is Now Becoming Irrelevant—OPAPP,” February 1, 2020, peace.gov.ph/2020/02/cpp-npa-ndf-is-now-becoming-irrelevant-opapp/.

197 See “New People’s Army (NPA),” *GlobalSecurity.org*, www.globalsecurity.org/military/world/para/npa.htm.

198 Pamana aims “to contribute to (a) addressing issues of injustices and improve community access to socio-economic interventions; (b) improving governance by building the capacity of national government agencies and local government units for a conflict-sensitive, peace-promoting, culture-sensitive and gender-sensitive approach to human rights promotion and development; and, (c) empowering communities and strengthening their capacities to address issues of conflict and peace.” Office of the Presidential Adviser on the Peace Process, “Payapa at Masaganang Pamayanan (PAMANA),” November 14, 2016, peace.gov.ph/2016/11/payapa-masaganang-pamayanan-pamana.

199 Ibid.

200 Frances Mangosing, “AFP Data Shows NPA Strength Hasn’t Waned,” *Philippine Daily Inquirer*, July 11, 2013.

201 Ruth Abbey Gita-Carlos, “OPAPP Hopeful of Passage of P3.8-B PAMANA Budget for 2020,” *Philippine News Agency*, November 24, 2019.

estimates the NPA at 4,000 regular members (the same as five years ago), and its militia and underground movement at 50,000 members.²⁰² DILG chief Eduardo Año is confident that the NPA will be wiped out in two years with the national plan; he gives a lower estimate of 3,700 NPA combatants, saying that 1,600 rebels surrendered in 2018.²⁰³

There have been more favorable developments, in terms of violence reduction, with groups that split from the CPP-NPA. The 1999 peace agreement signed with the RPMP-RPA-ABB includes a commitment to lasting cooperation in addressing the root causes of armed conflict; the Joint Enforcement and Monitoring Committee was set up to monitor the commitments. Treated then as a development partner, the group ended the skirmishes with government security forces, although, expectedly, conflict with the CPP-NPA remains. The situation is roughly the same with the CPLA, with which the peace pact so far is holding. One complication is that it has splintered into factions that are equally armed and all demand the opportunity to negotiate a peace-development package with the government.

Bangsamoro

The correlation between the level of violence and the success of the peace process can be more clearly established in the Bangsamoro question: The forward movement of the negotiations coincides with the lessening of violent incidents. This suggests a favorable and—some might argue, self-evident—causal relationship between progress in peace talks and the lessening of violence. The reverse of this equation also holds true: The lack or failure of peace negotiations leads to an increase in violence—at times dramatically. For example, the total war waged by President Estrada against the MILF in 2000, which culminated in the raid and capture of Camp Abubakar, the rebel group's stronghold, was immediately followed by numerous bombings. "In response to Estrada's offensive, the MILF declared *jihad* against the Philippine government."²⁰⁴ Another example is the rampage in 2008, led by MILF Commander Bravo, after the failure of the signing of the Memorandum of Agreement on Ancestral Domain during Arroyo's administration, which would have sealed the peace pact. The resulting tumult caused the displacement of at least 500,000 civilians in Lanao del Norte.

Meanwhile, a significant lull in violence around 2013 and 2014 accompanied the progress in crafting the Bangsamoro Basic Law. Then, in January 2015, it was broken by the Mamasapano encounter, a clandestine operation targeting the terrorist Zulkifli Abdir, aka Marwan, involving the police Special Action Force. The operation led to an unexpected bloody clash with the armed Muslim group at the poor Maguindanao town, leaving 44 Special Action Force members dead and effectively spoiling the peace process. Conflict incidences increased rapidly in 2015, peaking at 2016 and remaining high in 2017.

In May 2017, the Marawi conflict erupted when the extremist Maute group, which is associated with the international terrorist organization ISIS, staged a siege at the heart of the city, provoking a major military

202 Jeannette Andrade, "We Can't End Insurgency This Year," *Philippine Daily Inquirer*, January 9, 2019.

203 Cathrine Gonzales, "CPP-NPA Wiped Out in 2 Years, Says DILG Chief," *Philippine Daily Inquirer*, March 25, 2019.

204 "Mapping Militants Project: Moro Islamic Liberation Front (MILF)," Center for International Security and Cooperation, Freeman Spogli Institute for International Studies, Stanford University.

response from the Duterte government.²⁰⁵ The conflict killed thousands, displaced tens of thousands, and flattened the entire Marawi city. In response, martial law was declared in Mindanao on May 23, 2017; it lasted five months, until the extremists were subdued. Martial law remained in effect for the whole of Mindanao for more than two years after the Marawi conflict, finally being lifted on December 31, 2019. Violations of civil liberties have been reported, including illegal detention, unlawful arrests, torture, and killings within the context of the declaration of martial law in Mindanao, and involving terrorist suspects.

In 2018, International Alert recorded 2,910 incidents of violent conflict—a drop of 30 percent from 4,140 incidents in 2017, and a drop of 33 percent from 4,363 incidents in 2016. Nevertheless, these are all still higher than the 2013 to 2015 levels. Data further show that violence related to the MILF and MNLF rebellion has been on the downtrend since 2016. What is alarmingly on the rise, however, is extremist violence, with registered increases starting in 2016; it was the leading cause of death from 2016 to 2018. “The 2011–2018 data demonstrates the shift from rebellion being the deadliest until 2015, to extremist violence beginning 2016 and claiming a staggering 2,300 lives by 2018.”²⁰⁶ With the start of the Bangsamoro Organic Law ratification campaign, 2018 stabilized somewhat. The start of the following year, however, was punctuated by the bombing of the Jolo Cathedral, in which at least 23 people were killed and 109 others injured, just days after the Bangsamoro Organic Law was ratified.

On the whole, the most concrete outcome of the Bangsamoro peace process was the creation of a mechanism that sets the stage for the Moro people’s self-governance. To understand the scope of the challenges that are inherent in this process, it is important to look at the lessons of previous attempts at peace—such as the experience of MILF’s predecessor (and rival), the MNLF. After a successful negotiation, the MNLF relinquished its arms and gained formal authority through the creation and leadership of the Autonomous Region of Muslim Mindanao (ARMM). But its leaders were unable to govern effectively due to a total lack of administrative capacity. More importantly, the failure was an indication of the “exclusionary nature of the post-conflict political settlement,” as the new leadership failed to compete with powerful clans and local elites who provided basic security, captured bigger chunks of internal revenue allotments under a devolved economy, and spread a shadow economy that strengthened them and created a large number of untaxed livelihoods.²⁰⁷

Thus, apart from addressing the economic and social needs of their constituency, emergent leaders need to consider the interests and roles to be played by local elites as *de facto* political players. Failure to do so will lead to discontent and the eruption of fresh uprisings. At this point, the Bangsamoro peace process may have somehow reduced incidences of conflict in Muslim Mindanao. However, it remains a fragile peace—contin-

205 Some suggest that the Marawi conflict is also a transitional justice issue. In this regard, Congressman Mujiv Hataman filed a bill in the current Congress, House Bill No. 3543, the Marawi Siege Victims Compensation Act of 2019, seeking to quantify and eventually legislate payment for lost, damaged, or destroyed properties of victims of the 2017 Marawi crisis. Former presidential peace adviser Deles said that “compensation” in the case of Marawi should not just be a matter of how much was lost in terms of lives and property: “What was lost was a whole lifestyle, a culture. Marawi was an intellectual, cultural, and economic center.” For Marawi, then, the first matter is to ensure that the right to truth is fulfilled, in order to understand what really happened—the role of “violent extremism,” the seemingly excessive government response, the carpet-bombing, the massive looting by the military—before even thinking about compensation. Documentation of the missing is needed, but it will be very difficult to gather, as some remains have been seen but went missing after the war. No DNA testing was conducted at a burial ground for around 200 bodies. Interview with former presidential adviser on the peace process, Secretary Teresita Quintos Deles, Quezon City, October 11, 2019.

206 International Alert Philippines, “War Makes States” (Conflict Alert 2019), 37.

207 Lara, *Insurgents, Clans, and States*, 65.

gent on the post-conflict performance of the governance structure that was put in place: the Bangsamoro Transitional Authority. This entails multiple concerns and enormous challenges: finding the right approach to normalization, crafting local laws, building the local bureaucracy, coordinating with the national government, ensuring inclusion, addressing social justice, setting up a credible transitional justice mechanism, and effectively handling the emerging major concerns of the region, including violent extremism.

Persistence of Human Rights Violations

One of the most important prevention-related indicators is the human rights record under successive regimes. But documentation work is extremely difficult, even in normal circumstances, and doubly so in an authoritarian setting. It was particularly dangerous work under Marcos; nevertheless, a number of organizations performed the task, such as Amnesty International and the Task Force Detainees of the Philippines. The creation of a “democratic space,” as well as the transitional justice initiatives that were implemented in Philippine society after Marcos, have made conditions for documentation more favorable—and the results of this documentation have made it patently clear that human rights violations did not end with the fall of the dictator.

Task Force Detainees, which collects and quantifies cases in its areas of operation, has documented incidences of massacre across all the administrations: 968 incidences under Marcos, 488 under Corazon Aquino, 164 under Ramos, 107 under Estrada, 245 under Arroyo, 13 under Benigno Aquino, and 26 (so far) under Duterte.²⁰⁸ A particularly horrific incident happened under Arroyo’s watch: the so-called Maguindanao massacre, where 58 individuals—mostly media personnel and relatives and associates of a rival gubernatorial candidate—were murdered in cold blood on November 23, 2009, in the town of Ampatuan, Maguindanao.²⁰⁹ Task Force Detainees has also continued to record cases of torture up to this very day.²¹⁰

Amnesty International has also documented specific cases of illegal detention, torture, enforced disappearances, extrajudicial killings, and massacres under all the administrations from Marcos to the present. In its 1992 report for the year that passed under Corazon Aquino’s term, 25 people were reported disappeared or held incommunicado by security forces and six were believed to be killed.²¹¹ The organization recorded 10 extrajudicial killings in its 1998 report under Ramos, nine in 1999 under Estrada, and 33 in its 2008 report under Arroyo.²¹² For 2016, under Benigno Aquino, it reported that 53 *lumads* (indigenous people) had been killed since 2010.²¹³ Amnesty International also reported violations that were committed by nonstate armed groups, such as the NPA’s arbitrary killing of dozens of police officers, government officials, trade unionists, and others in 1991, and the killing of former mayor Cerilio Cariaga and others when the NPA fired upon their group as they were seeking peace talks with insurgents in Camarines Sur. Another prominent case is

208 *Massacre* is used in the general sense rather than as a legal definition.

209 The prime suspect was taken to jail—Datu Unsay mayor Andal Ampatuan Jr., son of the incumbent Maguindanao governor Andal Ampatuan Sr. (the clan patriarch and alleged mastermind, who died in 2015). Ampatuan Jr. and around 200 defendants were found guilty by a Quezon City court on December 19, 2019.

210 Task Force Detainees of the Philippines, “Statistics of Human Rights Violations Under the Duterte Administration (as of March 28, 2020).”

211 Amnesty International Report 1992, “Philippines” (1992), 216–19.

212 Amnesty International Report 1998, “Philippines” (1998), 280–81; Amnesty International Report 1999, “Philippines” (1999), 277–79; Amnesty International Report 2008, “Philippines” (2008), 239–40.

213 Amnesty International Report 2016, “Philippines” (2016), 293–95.

the NPA's execution of Eduardo "Pedic" Federico, a trade union leader.²¹⁴ Similar nonstate-perpetrated violations, such as killings and hostage-taking by the MILF, Abu Sayyaf, and MNLF renegade units, continue to be reported.²¹⁵ One item that stands out in the Amnesty International documentation of 2017 is the 6,000 people who were killed in the war on drugs, constituting a major spike in the extrajudicial killings record of the country.²¹⁶

Human rights violations have remained pervasive in the Philippines under all administrations since Marcos.²¹⁷ Torture is still practiced, albeit it is underreported, aggravated by the continued existence of secret detention facilities. A primary factor for the ongoing human rights violations in the Philippines, however, is the persistence of internal armed conflicts. These conflicts have led not only to massive casualties in the battlefield but also to conditions that are favorable to excessive acts and abuse of power, such as torture, the use of human shields, enforced disappearances, and extrajudicial killings, as the documentation of the Task Force Detainees of the Philippines and other human rights groups has shown. The issue of extrajudicial killings was particularly prominent during Arroyo's time, prompting the visit of Philip Alston, UN special rapporteur on summary, arbitrary, and extrajudicial executions, in February 2007. Alston took the government and the military to task for the spate of extrajudicial killings in the country (though he acknowledged that other groups, such as private armies and armed rebels, were responsible for some of the killings). Other violent episodes have happened in the context of political contestations, such as the massacre in Ampatuan, Maguindanao.

The Duterte administration is different from others because the bulk of its human rights violations, particularly extrajudicial killings, are related to the war on drugs. To be sure, leftists and suspected communists are also victimized under Duterte, but these figures pale in comparison to the thousands of nameless, faceless, drug-related extrajudicial killings victims who mostly come from the extremely poor.²¹⁸ Duterte has repeatedly and unequivocally expressed his disdain for human rights throughout his more than three years of rule. And he has gone beyond rhetoric. On his campaign trail, he declared a tough stance against criminals, especially those involved in drugs, promising "it will be bloody." He used the "war on drugs," his centerpiece program, to deliver on his promise. The exact numbers are difficult to ascertain, as the police have stopped giving out reports, but one thing is sure: The number of victims of killings under Duterte is staggering. The government itself has admitted to a figure of more than 5,000 between July 1, 2016, and March 31, 2019, claiming that these people were killed in "legitimate police operations" in which the suspects ostensibly fought back ("*nanlaban*").²¹⁹ This is an alarmingly high figure, but independent groups estimate the actual death toll to be much higher; the Ateneo School of Government, for example, put it at 20,000 deaths for the same period.²²⁰ These shocking numbers were reaffirmed in a recent report of the UN

214 Amnesty International Report 1992, "Philippines" (1992), 217.

215 Amnesty International Report 1998, "Philippines" (1998), 282.

216 Amnesty International Report 2017, "Philippines" (2017), 295–96.

217 It is difficult to ascertain trends of human rights violations across the regimes due to the scant and uneven documentation. It would be risky to provide an analysis of whether they are increasing or decreasing if available data are partial, as this may lead to showing false patterns.

218 For example, Amnesty International reported Gloria Capitan, a human rights defender and anti-coal mining activist in Mariveles, Bataan, as an extrajudicial killings victim. Amnesty International Report 2017, "Philippines" (2017), 296. Task Force Detainees also reported 58 non-drug-related extrajudicial killings victims between July 2016 and March 2020. Task Force Detainees of the Philippines, "Statistics of Human Rights Violations Under the Duterte Administration (as of March 28, 2020)."

219 Philippine Drug Enforcement Agency, "#RealNumbersPH," from July 1, 2016, to September 30, 2002, pdea.gov.ph/2-uncategorised/279-realnumbersph.

220 Clarissa C. David, Ronald U. Mendoza, Jenna Mae Atun, Radxeanel Cossid, and Cheryll Ruth Soriano, "The Philippines' Anti-Drug Campaign: Building a Dataset of Publicly-Available Information on Killings Associated with the Anti-Drug Campaign," Ateneo De Manila University School of Governance Working Paper 18-001 (June 2018).

Office of the High Commissioner for Human Rights (OHCHR), which calls out the “heavy-handed focus on countering national security threats and illegal drugs [that] has resulted in serious human rights violations in the Philippines.”²²¹ The report cites the Philippine CHR’s documentation (which is not even exhaustive) of the “killing of 73 children in the context of the campaign against illegal drugs—62 male and 11 females” between June 1, 2016, and April 21, 2020.²²²

An Inexorable Return to Authoritarianism

The elevation of Duterte as the latest Philippine president can reasonably be argued to be at least partly a consequence of the limited justice, accountability, and reform in the country. Duterte has systematically attacked democratic institutions, making a mockery of those that maintain democratic governance, leading many to believe that the Philippines is already under authoritarian rule once again. As Randy David put it: “Only a few saw that authoritarianism could be put in place without the need for a formal declaration. It is what the Duterte presidency has succeeded in doing, and it is where we are today.”²²³ Perhaps it is not a categorically authoritarian state in the fashion of the Marcos regime after he declared martial law, but many indications show that Duterte has been eating away at liberal democratic limits and in the process slowly debilitating the country’s democratic space. Language has been one of the choice weapons, repeatedly deployed to intimidate and offend.²²⁴

Legal and constitutional mechanisms are being craftily employed to undermine and even eliminate the country’s institutional checks and balances, especially targeting Duterte’s foremost critics. Among the first and best-known victims was Senator Leila de Lima, former chairperson of the CHR and secretary of the Department of Justice. As an incumbent senator, she held Senate hearings questioning Duterte’s war on drugs and calling out the spate of extrajudicial killings. By late 2016, she had become the target of a vilification campaign and drug charges led by Duterte’s then justice secretary, Vitaliano Aguirre. De Lima was arrested on the strength of detained drug criminals’ testimonies and has been in jail to this day.

Another victim was former Chief Justice Sereno, who was also critical of Duterte’s policies and actions. Sereno wrote to the president in August 2016, for example, raising concern over a list of judges that the president had announced on media as having drug links, which she said may put their lives at risk.²²⁵ Sereno

221 Human Rights Council, Forty-Fourth Session, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Situation of Human Rights in the Philippines*, June 29, 2020 (Geneva: A/HRC/44/22, 2020).

222 The youngest victim, the UN rights body reported, was five months old. It stated further that “[on] the basis of information reviewed, the drug campaign-related killings appear to have a widespread and systematic character. The most conservative figure, based on Government data, suggests that since July 2016, 8,663 people have been killed—with other estimates of up to triple that number. This clearly illustrates the need for a transparent and comprehensive reporting system for data on killings by State and non-State actors.” Human Rights Council, Forty-Fourth Session, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Situation of Human Rights in the Philippines*, June 4, 2020 (Geneva: A/HRC/44/22, 2020), 5.

223 Randolph David, “Populism 101,” *Philippine Daily Inquirer*, December 15, 2019.

224 As the OHCHR observed, “The rhetoric has ranged from degrading and sexually-charged comments against women human rights defenders, politicians and combatants—including rape ‘jokes’—to statements making light of torture, calling for bombing of indigenous peoples, encouraging extreme violence against drug users and peddlers—even offering bounties, calling for beheadings of civil society actors, and warning that journalists were not immune from assassination.” Human Rights Council, *Report*, June 4, 2020.

225 Duterte named seven judges, along with other government officials, as being involved with illegal drugs during a speech at Camp Panacan in Davao City on August 7, 2016. “Duterte Names Officials Linked to Drugs,” *Rappler*, August 7, 2016. See also Maria Lourdes

voted against the express wishes of Duterte in critical cases as well, such as the proposed martial law in Mindanao and the burial of Marcos at the Libingan ng mga Bayani (Cemetery for Heroes). The first attempt to remove Sereno was through impeachment, initiated through a corruption complaint filed by a Duterte-allied lawyer at the House of Representatives. But before the impeachment proceedings could even begin, a *quo warranto* case was filed by the solicitor general at the Supreme Court, questioning Sereno's fitness for the post on account of a minor technicality.²²⁶ The allegation was put to a vote at the Supreme Court, which Sereno lost, and hence she was effectively ousted. "Sereno is not the first Philippine chief justice to face impeachment, but she is the first to go through the process with normal legal standards having been so blatantly lowered."²²⁷ Her removal sets a fearsome precedent for actions against other high officials who have been criticizing Duterte's actions and statements.

The media has not been spared the onslaught. *Rappler*, an online news service that is known to issue critical coverage of and opinions against the president, has been on the receiving end of intense pressure. Its founder, Maria Ressa, was arrested and briefly held by the National Bureau of Investigation on cyber-libel charges even though her article in question predated the country's cyber-libel law. In a recent development in this case, Ressa and *Rappler* staffer Reynaldo Santos were judged guilty by the Manila Regional Trial Court 46 on June 15, 2020. They were sentenced to jail for a minimum of six months and one day and a maximum of six years, with bail set at PHP 200,000 in moral damages and another PHP 200,000 in exemplary damages. Ressa faces seven other charges, including a lawsuit alleging foreign ownership of *Rappler*.²²⁸ Similar legal pressures have been faced by the *Philippine Daily Inquirer*, the country's largest circulation broadsheet, and ABS-CBN, the country's largest television network. ABS-CBN was in fact forced to shut down on May 5, 2019, after its 25-year franchise expired. The company has applied for a renewal at the House of Representatives, which approves franchise applications, but the Duterte-controlled legislative body has not acted on the application for the last three years.

Meanwhile, Duterte has described making alterations to the 1987 constitution since before he became president: His main campaign platform, apart from fighting drugs, was federalism. Adopting a federal type of government would require a charter change, since the 1987 constitution provides for a unitary form of government led by a president. What alarms people is not federalism per se, but the prospect that changing the entire constitution would open the process up to including other amendments as well—such as revising the six-year single term limit for the president. The whole process is reminiscent of Marcos's hijacking of the country's constitution, along with implementing martial law, that enabled him to prolong his presidency for 14 additional years.

Finally, the results of the May 13, 2019 Philippine elections practically sealed Duterte's hegemony over the entire bureaucracy. Control of the executive branch is a given, since all Cabinet members are his appointees. The judiciary has been effectively neutralized with the removal of Sereno, and the majority of the sitting associate justices are Duterte's appointees as well. For the legislature, the House of Representatives

Sereno, "Letter to President Rodrigo Roa Duterte," August 8, 2016. In the letter, Sereno described the individual circumstances of each judge—one of whom retired back in 2007 and another of whom was killed in 2008.

226 The main charge was her alleged failure to file her statements of assets, liabilities, and net worth when she was teaching at the University of the Philippines between 1986 and 2006, and other acts that supposedly put her integrity in question.

227 Björn Dressel and Cristina Regina Bonoan, "Southeast Asia's Troubling Elections: Duterte Versus the Rule of Law," *Journal of Democracy* 30, no. 4 (2019): 134–48.

228 Lian Buan, "Maria Ressa, Rey Santos Jr Convicted of Cyber Libel," *Rappler*, June 15, 2020.

had historically been beholden to any sitting chief executive. The 2019 election results were no different—even obscure candidates who were supported by Duterte won. But most alarming was the result of the elections for the Senate, which “traditionally acts as the veto player in the country’s hyperpresidential system.”²²⁹ Not a single senatorial candidate from the opposition won—or was allowed to win—leaving the 24-member upper house with only three opposition senators, all of whom were entering the second half of a six-year term.²³⁰ The Senate was supposed to be the last bastion for intragovernmental checks and balances, but even that institution has been effectively commandeered.

On the whole, Duterte’s presidency has resurrected the specter of Marcos. In fact, the Marcoses themselves supported his candidacy, and in one of his campaign speeches, Duterte declared that Imee Marcos had donated to his campaign.²³¹ In an opinion piece, column writer and Mindanao activist Mags Maglana wrote, “It seems the ones who dramatically benefited from changes in 2016 and 2017 were the Marcoses and Arroyos, prime examples of abusive oligarchs who were supposed to have been held to account by the anti-oligarchy promise of the Duterte election campaign but are now fully back in power.”²³² Institutional reforms that have been painstakingly crafted over more than three decades seem to be getting reversed.²³³

The march toward outright authoritarianism is incessant and relentless.

Limited Structural Change

The most recent Human Development Index puts the Philippines in the “high human development category,” ranking it 106 out of 189 countries and territories in 2018.²³⁴ That characterization, however, belies the glaring persistence of poverty all over the country.²³⁵ Decades after the dictatorship, poverty and inequality remain significant problems. By 2018, the percentage of people living below the poverty line was at 16.6

229 Ibid.

230 These three were elected in 2016, as the Senate elects only half of its 24 members each election period.

231 Marcos, however, was not officially listed in his Statement of Campaign Expenditures. Paterno Esmaguél, “Duterte Donor Imee Marcos Not in His SOCE,” *Rappler*, October 12, 2016.

232 Mags Maglana, “December 10 Conversations,” *SunStar Philippines*, December 16, 2017.

233 As the OHCHR report concludes: “The legal, constitutional and institutional framework in the Philippines contains human rights safeguards, as well as checks and balances. The challenge has always been one of implementation—and circumvention. The long-standing overemphasis on public order and national security at the expense of human rights has become more acute in recent years, and there are concerns that the vilification of dissent is being increasingly institutionalized and normalized in ways that will be very difficult to reverse.” UN Office of the High Commissioner on Human Rights, “Philippines: UN Report Details Widespread Human Rights Violations and Persistent Impunity” (June 4, 2020).

234 United Nations Development Programme, *Human Development Report 2019* (New York: UNDP, 2019).

235 Poverty had reached its most extreme point at the end of Marcos’s term. “Between 1971 and 1983, the number of poor families increased from 3.3 million to 3.6 million,” while the income gap was also widening: Between 1971 and 1979, the poorest 60 percent earned 25 percent of total income. By 1979, “their share dropped to 22.5 per cent.” The richest 10 percent received 37.1 percent of total income in 1971, but by 1979 this had increased to 41.7 percent. Similarly, the World Bank reported that the bottom 40 percent of all families received 12 percent of national income in 1971, while the top 10 percent received a 53 percent share. By 1983, the bottom 40 percent’s share decreased to less than 10 percent, while the top 10 percent’s share rose to 59 percent. After 1983, the country was already posting negative growth rates, at –6.8 percent gross national product in 1984 and –3.8 percent in 1985. Felipe Miranda, “The Political Economy of National Plunder: The Philippines Under Marcos,” in *Memory, Truth-Telling, and the Pursuit of Justice: A Conference on the Legacies of the Marcos Dictatorship* (Office of Research and Publications, Ateneo de Manila University, 2001), 96. In 1985, poverty incidence had reached 44.2 percent, according to the Asian Development Bank. Asian Development Bank, *Poverty in the Philippines: Causes, Constraints, and Opportunities* (Mandaluyong City, Philippines: Asian Development Bank, 2009), 13. Also in that year, “two-thirds of families consumed less than the recommended minimum daily calorie intake, and 22 percent of preschool children experienced moderate to severe malnutrition.” Abinales, *State and Society in the Philippines*, 231.

percent.²³⁶ While the poverty incidence has been getting incrementally lower over the years, that 16.6 percent still represents more than 17 million Filipinos living in extremely poor and precarious conditions.²³⁷ The extent of the challenge is especially indicated in the country's ability to ensure the right to shelter for all its citizens: More than 4.5 million people are homeless or living in informal settlements, 3 million of whom live in Metro Manila, making it among the densest urban sprawls in the world.²³⁸ Such poverty and deprivation exist amidst enclaves of wealth. Wealth disparity has been slow to change in the Philippines across government regimes. In 2003, the share of the poorest 20 percent of the population was a mere 4.48 percent of the national income. By 2009, the share of the same cohort (the bottom 20 percent) was even lower, at 4.45 percent.²³⁹ The Gini coefficient measuring inequality in 2018 was at 47.90 percent, showing that society became even more unequal than the previous year, when it was at 41.70 percent, and similar to 2000, when it was at 47.70 percent.²⁴⁰

The Philippines remains a deeply divided society harboring high levels of discontent that has erupted in various stages in its history: "The Philippines' apparent proneness to political and societal ruptures has to be viewed within the context of the country's grave social disparities."²⁴¹ Throughout its history, the country has gone through a spiral of poverty, inequality, unrest, resistance, reaction, and atrocity that has prevented it from fully developing into a viable and equitable economy with strong, independent, and democratic institutions. The miserable conditions during the Marcos years included poverty and hunger, bloated foreign debt, massive atrocities, armed conflict with the communists and the Moros, intolerance of opposition, lack of civil liberties, and mind-boggling corruption: totalitarian rule at its worst. The situation was not solely the handiwork of Marcos, for he was but a by-product of history—albeit an extreme variant of society's fundamental ills. The problems were also structural and systemic. With the removal of Marcos, attempts were made to recover the loot, set up a human rights institution, bring back civil liberties, and revamp the bureaucracy, among other things. These efforts, however, did not get at the roots of the problems and overturn the system.²⁴² For the Philippines is a victim of its own history. It remains stuck in the system that was cultivated and then left behind by its colonizers, from Spain to the United States—a rent-seeking, quid pro quo system that favors a privileged elite and leaves a broad mass of people tied in perpetual patronage to their elite benefactors. The country has yet to evolve into a development state. "A key problem in Philippine

236 Asian Development Bank, "Poverty Data: Philippines," 2020, www.adb.org/countries/philippines/poverty.

237 Poverty incidence has considerably gone down through the years—from a high of 44.2 percent in 1985 under Marcos, to 39.9 percent in 1991 under Corazon Aquino, to 31.8 percent in 1997 under Ramos, 26.9 percent in 2006 under Arroyo, and 21.6 percent in 2015 under Benigno Aquino. Asian Development Bank, *Poverty in the Philippines*; Asian Development Bank, "Summary Poverty Reduction and Social Strategy," www.adb.org/sites/default/files/linked-documents/41076-048-sprss.pdf.

238 Rina Chandran, "Slum Dwellers in the Philippines Build Homes Through Community Programs," *The Christian Science Monitor*, June 7, 2018.

239 Jose Ramon Albert and Arturo Martinez, "Are Poverty and Inequality Changing?," *Rappler*, February 25, 2015.

240 Knoema, "Philippines—GINI Index," *World Data Atlas*, knoema.com/atlas/Philippines/topics/Poverty/Income-Inequality/GINI-index; Knoema, "Philippines—GINI Index"; World Bank, Development Research Group, "Philippines—GINI Index (World Bank Estimate)," *IndexMundi*, www.indexmundi.com/facts/philippines/indicator/SI.POV.GINI.

241 Quimpo, *Contested Democracy and the Left*, 2.

242 One view is that the creation of reform institutions, such as the PCGG and the CHR, was "just directed at the Marcoses and the horrors of the regime," and was therefore insufficient. The institutions "did not address fundamental and structural problems of the country, such as social inequality; as well as our lack of a national character that puts the nation first above all things. Marcos was just a symptom of these problems, nurtured by the entrenched oligarchic control of Philippine society. This is the root of the social volcano that continues to smolder up to this day. While the 1987 constitution and the local government code espoused decentralization, the provincial political clans continued to lord it over as they serve as just the alter ego of whoever is in power in Manila and Malacanan." Interview with Frank Peñones of the Philippine Rural Reconstruction Movement in Naga City, October 27, 2019.

development has been the state, which has traditionally not functioned as a development agent but as a mechanism used by the economic elite to almost exclusively extract wealth from society.”²⁴³

This elite, in full control of the bureaucracy, has been on top of an economic system and development trajectory that has proven to be inimical to equitable growth. The default economic policies they pursue, which have limited the country’s progress, have included the prioritization of debt servicing through automatic budget appropriation, which has bled the government dry; a continuous outflow of resources that could have been used for social services with development returns; an export orientation and import dependence, which effectively stunted the development of industry; labor export, which, while the remittances help buffer the country from economic shocks, deprives the country of needed quality human resources; and deregulation, privatization, and trade liberalization, which have led to market monopolies.²⁴⁴ Economic policies and directions have always been contentious, but these policy choices have unquestionably led to anemic growth at best and to massive inequality.

Poverty, inequality, and discontent, among other factors, contribute to a never-ending cycle of unrest and armed conflict, provoking extreme, violative reactions and escalating conflict, leading to tougher responses, ad infinitum. It is clear, for example, that for the conflict in Bangsamoro, transitional justice has to be about social justice. “Historical injustice was always part of the discourse with the Muslims,” said former presidential adviser on the peace process Ging Deles.²⁴⁵ A MILF commander repeated the idea, adding that “transitional justice is not just for Bangsamoro people but for all people in the Philippines.”²⁴⁶ The creation of the TJRC was a concrete expression of this belief, providing not only a historical perspective but an expansive, national framework as well.

There is no guarantee that peace is sustainable, especially if the roots of the conflict are not effectively addressed. “If there is poverty and hunger, lack of grievance outlet, or if the BARMM becomes corrupt, then the problems will continue,” said Belmonte. These problems can include extremist activities, which continue to this day. As Belmonte cautioned, “Those who are not happy with the settlement...can be pushed towards extremism.” The MILF itself has, on occasion, gotten involved in excessive acts, such as the 2008 offensive in Lanao del Norte led by MILF Commander Bravo. Furthermore, extremist armed groups continue to mount attacks, such as the Abu Sayyaf Group’s violent siege in Marawi City in 2017. “These jihadist groups will not be assuaged by the provisions of BARMM. They have no intention to partake in this iteration of state-sanctioned self-governance in Bangsamoro, and the idea of establishing a lasting peace in Mindanao through BARMM alone cannot be reconciled with this reality.”²⁴⁷

243 Walden Bello et al., *State of Fragmentation: The Philippines in Transition* (Quezon City, Philippines: Focus on the Global South, 2014), 31.

244 The export-oriented development strategy entailed having transnational corporations operate labor-intensive operations, such as electronic products, in the Philippines, limiting much of the labor force in assembly work and stunting its own industrial development—and making the country dependent on imports of finished products. This situation is aggravated by unbridled trade liberalization that led to a massive inflow of foreign imports that eroded the country’s agricultural and industrial base. In turn, this reduced the country from a net food exporter to a net food importer, among other things. *Ibid.*, 13.

245 Interview with Secretary Teresita Quintos-Deles, October 11, 2019.

246 Kingboy Bayang, currently MILF commander in Sultan Kudarat in southeastern Mindanao, said further: “Imagine soldiers from Luzon—when we get into firefight with them, they also die—they are also victims. We thus hope that this normalization continues, that the armed struggle is finally ended, and we can already pursue social justice. We are satisfied with the process, a win-win solution, and we are in 100 percent.” Bayang was 22 years old when the so-called Palimbang massacre happened, in which soldiers indiscriminately killed hundreds of civilian Muslims in their pursuit of MNLF rebels. Muslim men and boys were herded inside a mosque and killed in batches. The soldiers fired at the village of Malisbong in Palimbang in crosswise fashion from 50- and even 75-caliber machine guns mounted on naval ships on the sea. Interview with Kingboy Bayang, Sultan Kudarat, September 23, 2019.

247 Matthew Bukit, “In Mindanao, BARMM Is Only the Beginning,” *The Diplomat*, March 12, 2019.

Ways Forward and Summative Conclusion

Transitional justice remains relevant for many current issues in the Philippines. For example, the Bangsamoro Organic Law has led to transitional justice initiatives being conducted by the national government through the ICCMN. The BARMM government, specifically the Bangsamoro Transitional Authority, needs to strengthen its work in this area because the lack of justice may compromise the gains of the fragile peace in Mindanao, which might lead to dissatisfaction that could lure combatants back to the battlefield or, even worse, abet violent extremism. For the CPP-NPA, the first step is to resolve the armed conflict, preferably through a peace settlement. If the parties begin talking again, it is important to strongly push transitional justice in the agenda such that it comprehensively covers accountability for both sides.

The transitional justice processes for the Marcos legacy remain unfinished business. Aside from the need to confront the malicious, methodical distortion of history, there is the matter of pending reparations—including the full satisfaction of the Hawaii judgment of almost \$2 billion. What are the prospects of obtaining the passage of new legislation on this? “Under the present administration, dim,” said Bocar. “CHR, other institutions of government accountability, and even the concept of human rights itself, are under attack and being undermined.” Prospects for transitional justice legislation may be more realistic with a future administration that is “more open and friendly to transitional justice and human rights.”²⁴⁸ Finally, Duterte’s war on drugs and its tens of thousands of victims of extrajudicial killings cry out for justice and accountability, which may possibly be delivered in a future transitional justice process. It may be difficult to push for this under the current administration, with its explicit hostility to justice and accountability, but it is possible to begin creating the demand for transitional justice and laying the foundations for different efforts, in order to be in a position to move forward under more favorable circumstances.

Referring back to the TJRC’s assessment, past transitional justice initiatives in the Philippines have been “problematic and ineffective” because they did not adequately address the root causes of violations, were not based on a broad and transparent consultation, comprised isolated measures instead of a holistic strategy, did not draw clear lines before and after periods of wrongdoing and injustices, and did not contribute to the prevention of revisionist discourse and denial about the injustices that were committed.²⁴⁹ Clearly, these past initiatives, though they resulted in some concrete gains and institutional reforms, have not been comprehensive. On the contrary, they were disparate and lacked harmony. Attempts to deal with corruption

²⁴⁸ Bocar, “The Right to Reparation.”

²⁴⁹ Transitional Justice and Reconciliation Commission, “Report,” 73.

and seek justice for human rights violations became separate strands that had minimal coordination. They remain unfinished business, in the same way that the armed conflicts and emergent issues like the war on drugs and creeping authoritarianism warrant renewed transitional justice as well. Given the diversity, complexity, and interconnectedness of these issues, what exactly would be the holistic approach? Ideally, a grand strategy would dig deep into historical origins, analyze relationships, and devise transformative solutions. On the other hand, it may be that there is no such thing as a one-size-fits-all solution, and each issue has a specific context that requires a specific approach.

Ultimately, the work of transitional justice in the Philippines requires a creative combination of approaches: It needs to be both holistic and comprehensive and at the same time focused and precise. Each issue needs to be addressed separately, but they cannot be treated completely independently because they impact one another. Transitional justice efforts for BARMM, as well as the other issues just enumerated, offer historic opportunities to correct the deficiencies and imbalances of past transitional justice initiatives. The role of government in all of this work is a given, as it is in a position to provide leadership, resources, and support. The role of civil society, however, is also crucial; transitional justice cannot successfully proceed without its active involvement. Civil society articulates a viable vision and can oftentimes better represent the people, especially victims, because they are channels of mass political action and bearers of relevant experience. Civil society needs to harness its historic, collective power and start building a transitional justice movement that works with, challenges, and transcends governments.

The Philippines is a country that has experienced large-scale injustice in the past and continues to suffer it up to the present. It is a wellspring of lessons on how transitional justice can be optimized in preventing the recurrence of injustice—and of how deficient transitional justice measures can increase the likelihood of recurrence. Excessive violence, mass atrocities, and various other forms of human rights violations in the country's recent history have occurred within two broad milieus: authoritarianism and armed conflict. These two phenomena are tightly intertwined and feed on each other, perpetuating and even escalating levels of violence and injustice.

The end of authoritarianism under Marcos, when he was deposed through a mass uprising in February 1986, was a nodal point in history and served as an important opportunity to undertake transitional justice and effect societal transformation. The subsequent attempts to administer reform and transitional justice in the Philippines deserve to be recognized, and it is reasonable to argue that they have played some role in preventing the recurrence of the most serious and widespread human rights violations associated with Marcos. But many of these measures were not implemented at the opportune time—at the beginning of the transition, when the events and memories were fresh—and they were not sufficient to either fully address the legacies of the past or to maximize their contributions to preventing recurrence.

The rights to truth, justice, and reparation and the guarantee of nonrecurrence can be useful parameters for examining those measures and identifying their shortcomings.

1. Right to truth: There remain yawning gaps in establishing the truth behind key moments of the country's history. Who was behind the bombing of Plaza Miranda in 1972? Who ordered the assassination of Senator Benigno Aquino in 1983? The efforts to uncover these mysteries, and many others, have been wanting and need to be revived if there is to be genuine justice for the victims and reconciliation with

the past. More importantly, there has been a huge deficiency in disseminating the truth as well as the lessons that can be derived from it. The true state of the country under martial law and the magnitude of human rights violations that were committed under its name have not been incorporated in the country's education system. As a result, the so-called Marcos legacy has now become a contested truth—a story that is easily recast and remolded, especially when huge resources are deployed to do so, and at a time when social media has become exceptionally vulnerable to manipulation.

2. **Right to justice:** The struggle against the Marcos dictatorship was long and hard; the quest to bring him to justice was even longer. There have been incremental victories. Marcos was found guilty for human rights violations through a class action suit filed in the United States and was ordered to pay damages. His daughter, Imee, was also found guilty by the same U.S. court for the torture and murder of Archimedes Trajano, a student who questioned her in the middle of a university forum in 1977; she was ordered to pay damages to the Trajano family. Marcos's wife Imelda, found guilty by the Sandiganbayan on seven counts of graft, was sentenced to imprisonment in 2018. None of the Marcoses, however, have actually spent a day in jail for these crimes. None of the officers who directly committed the acts of torture, summary executions, or enforced disappearances were punished, either. This is why many people consider that justice for the victims of martial law continues to run short. Was this kind of impunity remedied after Marcos? That, unfortunately, remains a work in progress at best. There have hardly been prosecutions, let alone convictions, for human rights violations despite the subsequent laws and policy reforms that have been implemented.
3. **Right to reparation:** While attempts to hold Marcos to account have not brought justice commensurate to the crimes that were committed under his repressive rule, they have approximated some level of repair by way of compensation to thousands of martial law victims. The original plaintiffs in the class action suit have received monetary payments. The justice-cum-reparation process has also evolved toward the creation of a law governing the reparation and memorialization of Marcos martial law victims, RA 10368. More than 11,000 victims have been awarded reparations. Efforts are also underway for the building of a martial law museum as part of the memorialization. Beyond the actual payment of compensatory damages, however, is the symbolic value of this act, with the state officially recognizing the excesses that were committed under Marcos and undertaking corrective measures. It also demonstrates the viability of providing reparations from dictators' illegally acquired wealth. Tyrants are often plunderers as well, which adds crucial importance to reacquiring their ill-gotten wealth and using it to indemnify their victims. Furthermore, collecting testimonies in pursuit of reparation is in and of itself a truth-telling process.
4. **Guarantee of nonrecurrence:** The removal of an authoritarian ruler offers no guarantees that authoritarianism will not return, or that acts associated with the tyrant will no longer be practiced. The practices of torture, summary execution, and enforced disappearance did not vanish after Marcos, although the democratic space and the more liberal atmosphere allowed for greater freedom and capacity to monitor and document them. Institutional changes created policy environments that facilitated stronger human rights protections, including ratifying a new constitution with robust human rights provisions, building institutions for accountability such as the CHR and the PCGG, implementing security and judicial reforms, enacting human rights-related laws, and allowing a free press. These actions have led to more

proactive, albeit imperfect, checks among the branches of government and mechanisms that provide stronger penalties for human rights violations.

Lingering factors, however, erode whatever guarantees of nonrecurrence have been reached. First, armed conflict constitutes a major fly in the transitional justice ointment. Peace negotiations have been attempted, but with limited success. As violent resistance has continued, so have resultant violations of human rights and humanitarian law. It is important to reiterate that the perpetrators come from both sides. More violations are committed by security forces, given that they are backstopped by an entire state apparatus, but acts of atrocity perpetrated by insurgent forces cannot be ignored. The Muslim rebels have a history of rampaging in communities, while the communist rebels have carried out bloody internal purges, among other revolutionary excesses. These should all be part of the reckoning, because it is the business of transitional justice to address all facets of an experience. Attempts to include transitional justice in the peace agenda, however, have met with varying success. It was integral to the Bangsamoro peace process, which now faces the hard part of implementing the recommendations. For the CPP-NPA, transitional justice took the form of the joint agreement called CARHRIHL, which achieved little.

Second, the systemic changes that are expected from a society that has gone through a major shift have not been realized. The post-Marcos transition occasioned not the birth of a new democratic order, but a return to the pre-Marcos kind of liberal democracy with elite dominance in the economic and political spheres. To be sure, this is preferable to outright dictatorship. But the old ills have not been fixed: Rent-seeking remains a staple feature of governance, with government contracts, appointments, policies, and even elective posts being treated as tradeable goods among those who hold the reins. Elections remain opportunities to acquire lucrative posts, with the electorate becoming the vote-contingent beneficiaries of political patronage. Spots of effective and responsive governance across the archipelago are few and far between. Despite modest economic growth over the past several years, poverty, inequality, and deficient social services continue to breed social discontent. The vicious cycle remains: Unjust social structures lead to unrest, which the state tries to contain, which in turn exacerbates armed resistance. This description is, however, in danger of being simplistic. The role of ideology, with its own power agenda, should also be taken into consideration, for it complicates governance and the pursuit of reform and directly affects human security.

Ultimately, the failings of transitional justice cannot be ignored because they have a huge cost: the threat of a return to the old ways. The nation is feeling that now, with the gradual but unremitting return to authoritarian rule under current president Duterte. The inadequate level of justice for past crimes, insufficient reforms, continuing poverty and inequality, deep dissatisfaction, and the lack of learning from the brutal lessons of martial law have made citizens vulnerable to the enticements of a right-wing populist who promised an iron fist to solve the nation's ills. The iron-fist promise was immediately fulfilled, but never the solutions. Filipinos are now witnessing the gradual erosion of the building blocks of democracy and justice, like *déjà vu*. These developments and circumstances combine to make transitional justice not only relevant but imperative. Transitional justice for the country was unfinished business before Duterte, and the excessive injustice that is taking place under his watch is surely one more addition to its expanding ledger.

Appendix

The TJR Cluster's Four Working Groups: Key Activities and Member Agencies

The following is a list of working groups, action plans, and responsible agencies under the Transitional Justice and Reconciliation (TJR) Cluster of the Inter-Cabinet Cluster Mechanism for Normalization (ICCMN), which leads the implementation of the TJRC recommendations for the Bangsamoro peace process.

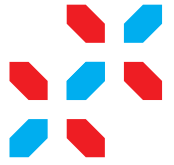
WORKING GROUP	KEY ACTIVITIES	MEMBER AGENCIES
Truth/History	Documentation of human rights violations; integration of Moro and indigenous peoples' histories in the national narrative; cultural and historical archiving, storage, and preservation.	National Commission on Indigenous Peoples (NCIP)—Co-Chair National Commission on Muslim Filipinos (NCMF)—Co-Chair Department of Education (DepEd) Commission on Higher Education (CHED) National Historical Commission of the Philippines (NHCP) National Archives of the Philippines (NAP) National Commission for Culture and the Arts (NCCA)
Justice and Reparations	Research of human rights violations, including priority cases like Palimbang massacre and Jolo burning; justice to victims or their beneficiaries through prosecution and/or reparation; legislation of TJR special jurisdiction court; amnesty program.	Department of Justice (DOJ)—Co-Chair Department of Social Welfare and Development (DSWD)—Co-Chair National Security Council (NSC) Department of the Interior and Local Government (DILG) Department of National Defense (DND) Commission on Human Rights (CHR) Human Rights Violations Victims Memorialization Commission (HRVVMC)

WORKING GROUP	KEY ACTIVITIES	MEMBER AGENCIES
Land	Identification and mapping of disputed lands with overlapping resource use and land tenurial instruments; dialogue and other conflict-resolution measures.	National Commission on Indigenous Peoples (NCIP)—Co-Chair Department of Agrarian Reform (DAR)—Co-Chair Land Registration Authority (LRA) Department of Environment and Natural Resources (DENR) Department of Justice (DOJ)
Guarantee of Non-recurrence	Security sector reform (including review of security force deployment to Mindanao), integration of transitional justice and reconciliation agenda in national and local policies; national inquiry on human rights violations of internally displaced persons; inclusive economic growth and stable livelihoods.	Armed Forces of the Philippines (AFP) Philippine National Police (PNP) Office of the Presidential Adviser on the Peace Process

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