

Understanding the Unforeseen Consequences of an Incomplete Transitional Justice Ecology in the Philippines

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Abstract

The Philippines is not typically the focus of transitional justice (TJ) scholarship. Yet, it has had to deal with violent legacies pertaining to each generation of TJ and has installed several TJ initiatives in response to this. This has given rise to a densely populated TJ landscape, spanning different periods and regions and including both formal and informal initiatives within various TJ pillars. In spite of this plethora of initiatives, the Philippines can hardly be called a ‘successful’ case of dealing with violent legacies – with the recent election of Bongbong Marcos as the most striking example thereof. In this article I argue that this can be understood in light of the absence of a genuine TJ *ecology*: there has not been an encompassing approach in which various kinds of initiatives interact with each other based on intersecting normative objectives. I argue that the case of the Philippines holds broader lessons regarding the importance of a more ecological understanding of TJ.

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Transitional justice, accountability, non-repetition, criminal justice, critical studies

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Introduction

On 10 May 2022, Ferdinand ‘Bongbong’ Marcos Jr won the presidential elections in the Philippines. The running mate of the son of former dictator was Sara Duterte, daughter of outgoing authoritarian president Rodrigo Duterte. The Marcos-Duterte electoral victory was the seemingly inevitable culmination of a decade of (social) media campaigning casting the Marcos era as one of the prosperity and security choosing to overwrite the authoritarianism, gross human rights violations, and excessive economic crimes of the regime (Tugade, 2020). The return of the Marcoses to the presidential palace, from which they were ousted in 1986 after popular protests, raises questions about the country’s democratic restoration and consolidation and about the effects of over three decades of transitional justice (TJ) initiatives.

This article examines how we can understand the relative lack of ‘success’ in the context of TJ, despite a plethora of initiatives. I will argue that part of the explanation lies in the absence of an ecological approach to TJ, that is, a situation in which the various nodes of a range of initiatives interact with one another to form a tight-knit and encompassing approach to dealing with violent legacies. The article thus inscribes itself in debates over standardisation and contextualisation of TJ, and seeks to bridge these seemingly opposing strands of literature through the notion of TJ *ecologies* (Evrard et al., 2021). I use the concept of ecologies to highlight the importance of (and interaction between) encompassing and holistic standardised TJ processes as well as context-sensitive initiatives that are implemented in locally relevant ways.

By analysing past and ongoing transitional justice efforts in the Philippines through the lens of critical TJ scholarship, I will argue that despite the existence of a complex TJ landscape in which many of the recommendations emerging from critical TJ scholarship can be observed, the socio-political impact of these initiatives has been limited. I will argue that this is because several dimensions of standardised TJ (such as criminal prosecutions, backward-looking retributive approaches, and early state-led TJ initiatives) have been missing and that an encompassing approach has been absent. Both elements have hampered the emergence of a genuine transitional justice ecology.

The article is based on a desk study of primary sources and secondary literature as well as on interviews with 27 TJ practitioners and justice actors, active in government, non-governmental organisations, and grassroots organisations. The interviews took place in the Fall and Winter of 2022 and lasted just above 1 hour on average. The research was approved by the ethics board of the Faculty of Law and Criminology of Ghent University, and ethics and data management procedures were reviewed and approved by the European Research Council. All interviewees were informed about the nature of the research project and signed a consent form. Through iterative rounds of reading recurrent themes were identified shaped by the theoretical framework as well as by newly emerging ideas. In addition to these interviews, I also attended several events related to TJ, such as book launches, movie screenings, memorialisation and remembrance initiatives, etc.

In the remainder of this article, I first present the historical and contextual background of the Philippines’ complex and intertwined legacies of violence. I then outline the

theoretical framework inspiring the analysis. Subsequently, I present an overview of the TJ initiatives that have been developed. This is important given the scarce attention for the Philippines in TJ literature. It is also the basis for examining the limited – and sometimes adverse – effects of these initiatives. To this end, I develop the notion of an incomplete TJ ecology and reflect on how it is useful for studying TJ processes beyond the Philippines.

A Long and Intertwined History of Violence

The Philippines' history of violence is a long and multi-dimensional one with roots that can be traced back to the Spanish and American colonial periods. While only the most violent conflicts and periods are mentioned here, these cannot be understood without reference to longer colonial legacies of harm, violence, and injustice.

Marcos' Martial Law Era

After coming to power in 1965, Marcos declared Martial Law in 1972, suspending the Constitution and allowing him to rule in an authoritarian way until February 1986. During this period the regime eliminated democratic institutions, engaged in economic crimes, and perpetrated gross human rights violations and outright violence against citizens and perceived opponents (Celoza, 1998; Thompson, 1996). In economic terms, the 2016 'Panama Papers' showed the Marcoses to oversee one of the first 'kleptocracies' with them taking over businesses, awarding government contracts to cronies and exploiting offshore banking systems to launder and amass millions worth of public funds for their personal benefit (Tugade, 2020: 11). In terms of outright violence, opponents were commonly rounded up and detained in camps and detention centres where they were physically and psychologically tortured (Pampolina, 2011: 833; Hapal, 2016; Robles et al., 2016). Reports speak of 3,257 killed, 35,000 tortured, and 70,000 incarcerated. This is likely a gross underestimation (Transitional Justice and Reconciliation Commission, 2016).

When opposition leader and former senator Benigno Aquino was assassinated in 1983 at Manila International Airport in front of a crowd of foreign journalists, much of the international community turned against the regime and anti-Marcos protests began to emerge (Davidson, 2017: 262; Tugade, 2020). This culminated in the February 1986 EDSA People Power Revolution which overthrew Marcos and became the link to the transitional government led by Corazon 'Cory' Aquino, widow of the assassinated senator (Buenrostro and Cabbab, 2019: 7).

Entrenched Legacies of Violence

Upon coming to power, Cory Aquino had to deal with this legacy of authoritarianism and gross human rights violations while being continuously challenged by the army and facing six (failed) coup attempts between 1986 and 1990. At the same time, she also had to deal with the ongoing violent actions of communist fighting factions of the Communist Party of

the Philippines-New People's Army (CPP-NPA). The instability and vulnerability of her government and the continued influence of various factions within the military and the Philippine National Police challenged her potential to introduce sweeping reform – a reality which would also plague her successor, Fidel Ramos, himself a former general (McCoy, 2001: 141). The democratic transition was further challenged by the rise to power of Gloria Macapagal-Arroyo, who assumed the office of president in 2001 after President Joseph Estrada was ousted by a second 'People Power Revolution'. Like Marcos, Macapagal-Arroyo declared martial law (albeit only for a certain territory), was charged with corruption and plundering government funds and had a record of human rights violations including unsolved extra-judicial killings and enforced disappearances (Te, 2011). She too was succeeded, in 2011, by an Aquino: Benigno III, son of Cory Aquino. Most recently, President Duterte's hyper-violent war-on-drugs has triggered a crisis unseen in the Philippines since the Marcos era. This has gone hand in hand with a polarising and violence-inciting rhetoric attacking domestic and international human rights and social justice activists and practitioners (OHCHR, 2019).

Mindanao and the Sulu Islands

In addition to the nation-wide realities and legacies of violence, the situation in the Southern island of Mindanao and the Sulu Islands constitutes a specific dynamic of conflict and violence. This region has historically been inhabited by various Islamised ethno-linguistic groups collectively known as the Bangsamoro. When a third wave of Christian settlers entered the area during Marcos' rule this was accompanied by further structural land dispossession, the use of disproportionate force and continued mass atrocity crimes by the military against the Moro civilian population (Transitional Justice and Reconciliation Commission, 2016).¹ This direct violence added onto a reality of ongoing structural violence, forced displacement, state-sponsored land-grabs and the illegal exploitation and destruction of natural resources by foreign actors and the State as well as cultural violence rooted in colonial policies that destroyed existing cultural, political, and judicial structures in order to undermine the political autonomy of Moros and indigenous peoples.² This culminated in 30 years of armed conflict between the Philippine government and insurgent groups with the displacement of millions of civilians as a result (Martial Law Files, 2012). In 2014, the Comprehensive Agreement on the Bangsamoro was signed.

While it is generally agreed that a long-term result of this direct, structural, and cultural violence has been that both Muslim and indigenous groups on these islands have faced marginalisation, impoverishment, discriminatory access to resources, education and political power and psychological trauma, the lack of public attention and systematic official documentation of human rights violations is troubling and conducive to revisionist arguments and denial (Transitional Justice and Reconciliation Commission, 2016).

In the next section I argue that these circumstances make the lens of TJ a relevant perspective for analysing how the long and intertwined history of violence in the Philippines was dealt with.

Critical TJ Studies

Over the past three decades TJ has become the dominant paradigm for addressing legacies of authoritarianism and large-scale violence, and for disrupting dynamics contributing to this (Shaw and Waldorf, 2010). Where the past is defined by violence, TJ postulates that recognition of, and accountability for, past wrongs is necessary to break these cycles of violence and ensure a peaceful and just future (Quinn, 2014). A paradigm emerged which posits that societies need to deal with their pasts for their futures to become more peaceful, just, and stable, and that implementing the five so-called pillars of TJ (i.e. trials, truth, reparations, measures of non-recurrence, and memorialisation) are the most appropriate way for structuring this endeavour. Because of TJ's visceral normative appeal and the broad relevance of these pillars, the contexts in which TJ was implemented quickly expanded, leading to the further standardisation of the TJ toolkit, which came to serve as a blueprint to develop TJ interventions in a diverse range of contexts (Gissel, 2017). This standardisation triggered a wealth of critical scholarship relevant for the next section of this article.

A first critique revolves around the fact that, as legal scholars and practitioners came to dominate the field of TJ, the pillar of (criminal) justice became the central focus of many TJ programmes. This focus on criminal prosecutions has been critiqued for crowding out alternative notions of justice and leading to reductionist understandings of justice (Miller, 2008). This critique was generative for the field as it led to a growing engagement with non-judicial, para-judicial or extra-judicial TJ initiatives and concerns. Examples thereof can be seen in the growing attention paid to pre-trial activism (such as documentation efforts by civil society organizations (CSOs)) (Fuller and Weizman, 2021), a focus on the communicative and expressive function of justice processes (Stahn, 2020), and in the extent to which justice processes are only one node in a broader TJ approach (Turner, 2017).

This point about the over-emphasis on criminal justice is also related to the critique that TJ practitioners have internalised the bias of prioritising crimes that constitute violations of civil and political rights at the expense of more systematic attention for economic, social, and cultural rights violations (Schmid and Nolan, 2014). This bias is representative of a broader dichotomy in human rights discourse whereby civil and political rights violations are seen as justiciable while socio-economic rights are seen as non-justiciable matters of development programmes. This bias has not only manifested itself in the pillar of (criminal) justice, where narrowing the scope of investigation to gross violations of civil and political rights arguably serves the practical purpose of focusing attention and maximising limited resources, but also came to characterise much of the activities developed under the other pillars. As Carranza (2008: 310) argues,

[t]he prevailing assumption seems to be that truth commissions, human rights trials and reparations programs are meant to engage mainly, if not exclusively, with civil and political rights violations that involve either physical integrity or personal freedom, and not with violations of economic and social rights, including such crimes as large-scale corruption and despoliation.

Critical TJ scholars argue that the inclusion of economic crimes and corruption in TJ mechanisms would close an impunity gap regarding economic crimes and lead to a fuller account of the legacy of abuse as well as providing financial means to support transitional societies (also see Pampolina, 2011).

A third and related critique has been that TJ scholars and practitioners have been too concerned with the backward-looking function of punishing (mostly individual) perpetrators rather than being genuinely forward-looking (Sarkin, 2018). Early hopes that backward-looking trials and truth commissions would give rise to robust, inclusive democracies have not been fulfilled (Roht-Arriaza, 2016: 1). In response to this, voices have gone up to pay more attention to the preventive and forward-looking function of TJ, notably as it relates to the pillar of non-recurrence (e.g. Fernandez Tome, 2019). Moreover, non-recurrence is often interpreted in this context as relating to both direct violence (such as the demobilisation of armed groups, vetting, and security sector reform) as well as broader societal conflicts (such as programmes addressing root causes of conflict) (Roht-Arriaza, 2016: 7).

A fourth critique regarding standardised TJ concerns its focus on the state and the neglect of informal spaces of TJ organised by civil society. All four pillars of TJ have traditionally been interpreted in a state-centric way (Hamber and Lundy, 2020). For instance, the foregrounding of criminal justice, which relies on state institutions, can be seen as an example of how state-centric processes entail a substantive focus on those dimensions of a transition that belongs to the realm of the state. Similar dynamics can be observed in the other TJ pillars. This led to a renewed attention among critical scholars and practitioners for non-state and civil society initiatives which might more easily accommodate the needs, priorities, and voices of those who experienced violence (Evrard et al., 2021).

In the next section, I use this four-fold critique as a lens to structure the overview of TJ efforts in the Philippines.

An Extended and Multi-Layered Transition and an Incomplete TJ Ecology

The Philippines has been referred to as an ‘extended transition’ to describe the various temporalities and geographies of transition as well as the multiple legacies of violence that have required a response (Buenrostro and Cabbab, 2019). Since 1986 several TJ initiatives have been taken, covering these various periods, regions, and kinds of violence, with the most active periods revolving around the two Aquino presidencies of the late-1980s and early-2010s (Te, 2011: 136). This has resulted in a densely populated TJ landscape, even if many initiatives, especially early ones, did not typically self-identify as such, or did not explicitly adopt the rhetoric of TJ. Moreover, the extended and multi-layered nature of the transition defeats TJ’s dominant working hypothesis of there being a rupture that constitutes a clean break with the past (Obel Hansen, 2017; Turner, 2017). In fact, the violence as well as the initiatives to deal with it are ongoing, overlapping, and often intertwined. In this section, I give a comprehensive overview of the most important TJ initiatives dealing with these multi-layered legacies of violence, highlighting overlaps as well as blind spots.

Initiatives Related to Marcos' Martial Law Era

Justice. In spite of multiple TJ initiatives being taken, domestic criminal prosecutions related to the Marcos dictatorship have been mostly absent. Formal amnesties and informal inaction made judicial inquiry into the authoritarian past largely impossible domestically (McCoy, 2001: 129). This can be understood in light of the highly unstable presidency of Cory Aquino, who, while publicly expressing support for the fight against impunity, eventually abandoned all attempts to prosecute the military for past crimes. Domestic criminal prosecutions against the Marcoses in the immediate post-Marcos years were further hampered because Aquino refused to allow Marcos back into the country citing national security and fears that this would destabilise government (Te, 2011: 145). This *de facto* impunity turned into *de jure* impunity under her successor, Fidel Ramos (McCoy, 2001: 141). As such, criminal accountability has been lacking for crimes perpetrated during the Martial Law era, with no cases being filed against Marcos in the Philippines up until his death (Carranza, 2008).³ While there were some prosecutions of economic crimes domestically, those followed an anti-corruption logic, seeking to prevent corruption rather than pushing for accountability or retribute measures for past action (Carranza, 2008: 317). Thus, there has not been a large-scale formal criminal investigation of the mass atrocities committed by the Marcos regime (Tugade, 2020: 5), and the domestic outcry against the violence perpetrated by the Marcos regime has been limited.

Marcos was, however, held liable for human rights violations in the United States, where he had fled after his ousting. Faced with an impossibility to prosecute domestically, over 10,000 victims, represented by a US lawyer, filed a class action against Marcos before the US Court of Appeals for the Ninth Circuit under the Alien Tort Statute (ATS) in 1987 (Ela, 2017: 3). In 1992, the jury found Marcos liable under the concept of command responsibility, awarding the plaintiffs exemplary and compensatory damages of almost two billion US dollar in 1994–1995 (Mendoza, 2013: 116). This was the first time a former head of state was held liable for massive violations of human rights in another country under ATS.⁴ It was also one of the most contested TJ initiatives though. Several domestic justice actors lamented that instead of taking the quest for accountability elsewhere, there should have been efforts to push the state to ensure robust judicial institutions and processes domestically so that all Filipinos would have access to legal remedies going forward (Ela, 2017: 11). Furthermore, the process nourished tensions domestically because the damages for the plaintiffs would come from Marcos' ill-gotten wealth stashed in Swiss bank accounts. These were the same resources that the Presidential Commission on Good Government (PCGG, see below) targeted to secure collective reparations for a broader segment of the victimised population (Ela, 2017: 3). Lastly, the remoteness of the case and the approach of the class counsel have been critiqued for side-lining victims, undermining litigants' control over the process and overlooking their priorities.⁵ This remoteness also led to limited domestic visibility of the case. This is important when considering that judicial proceedings can contribute to the consolidation of a formal historical record of violence and to the emergence of collective memories. Here, given the remoteness and the priorities of the

class counsel, the potential of this case in shaping and cementing a historical narrative of the Marcos era was sidelined (also see Marshall and Hale, 2014: 313). The narratives of violence produced in affidavits and in victim and expert testimonies at trial, for example, have not been widely diffused in the Philippines due to their remoteness and difficulty in accessing them (Davidson, 2017: 273). Mendoza (2013: 117) argues that, because of this, the trial did not bring a form of closure as it failed to accord victims or survivors the chance to inform the general public of what had really happened.

To some extent, this changed during the 2016 Supreme Court case on the reburial of Marcos Sr.'s remains on the Heroes Cemetery. For several days during the oral arguments, Chief Justice Maria Lourdes Sereno gave victims of Marcos' Martial Law a platform to narrate their stories of harm and victimisation asking them about experiences of torture, mutilation, and lost loved ones (Supreme Court, 2016). In doing so, she organised proceedings as a public hearing and almost as a truth-telling process, thereby adhering to the notion that litigation can be a practice of not only truth-seeking but also memorialisation and commemorative work with a more ambitious extra-legal and societal character. This practice of seeking to mobilise judicial proceedings as a site for constructing narratives around contested legacies of harm can partly be understood as a response to the absence of a formal truth-telling process in the immediate post-Marcos period, as I discuss in the next section.⁶

Truth. One of Cory Aquino's first acts as president was the creation of two entities which, though not formally labelled as such, had several characteristics of truth mechanisms: the PCGG and the Presidential Committee on Human Rights (PCHR).

The PCGG constituted a response to Marcos' corruption and draining of government coffers. Its mandate includes investigating cases of graft and corruption under the Marcos regime, recovering ill-gotten wealth accumulated by the Marcoses and their cronies, and adopting safeguards to avoid recurrence (Davidson, 2017: 266). Because of this mandate and powers, the PCGG has sometimes been approached as a truth-seeking initiative (Carranza, 2008; Tugade, 2020: 9). This makes it one of the few formal TJ initiatives globally whose mandate is focused on corruption and economic crimes rather than on issues related to civil and political rights violations. This mandate has been cited as evidence that truth mechanisms can examine and report on legacies of corruption, economic crimes and other socio-economic rights violations (Carranza, 2008: 322; Pampolina, 2011: 833). The PCGG was also unlike most other formal truth mechanisms in that it did not have a set timeline or closing date but instead operated with an open-ended mandate as well as an explicitly forward-looking logic. This forward-looking function consisted of reviewing the context of corruption, unravelling the economic structures facilitating this, and proposing mechanism to protect the new democratic institutions from being vulnerable to the same corrupting influence, as well as recovering ill-gotten wealth to fund a comprehensive agrarian land reform programme (Pampolina, 2011: 834).

While these elements could be seen as a corrective to TJ's typical non-engagement with economic crimes and limiting temporal mandates, in practice the work of the

PCGG has been subject to criticism. For one, 35 years after its establishment, it has not determined the scope of plunder and pillage committed under Marcos, with estimates of Marcos' ill-gotten wealth ranging between five and fifteen billion US dollar. Moreover, it managed to recover only around three billion US dollar of this ill-gotten wealth and is officially still pursuing the rest (Lustre, 2016). Furthermore, because of the limitations in its mandate, it has not contributed to 'reconciliation and healing' from Marcos authoritarian rule (Pampolina, 2011: 834): unlike some of the most well-known (e.g. South Africa) or recent truth commissions (e.g. Tunisia), the PCGG did not complement its truth-seeking function with a truth-telling logic, meaning that there were no public hearings seeking to shape the public debate.⁷

The work of the PCGG was initially complemented by that of the PCHR whose primary function was to investigate complaints or cases of 'unexplained or forced disappearances, extra-judicial killings, salvagings, massacres, torture, food blockades and other violations of human rights, past or present, committed by officers or agents of the national government or persons acting in their place or stead or under their orders, express or implied' (President of the Philippines, 1986: 4[a]). In 1987, the PCHR was replaced with the Commission on Human Rights (CHR) (Constitutional Commission of the Republic of the Philippines, 1987: XIII.17), making the PCHR one of few truth mechanisms that did not successfully complete its report (Christie, 2002).⁸

Reparations. During the presidency of Benigno Aquino Jr., Congress approved the Human Rights Victims Reparation and Recognition Act (R.A. 10 368). The law was seen as an opportunity to recognise victims of search, arrest, involuntary exile, sexual offence, and other human rights violations perpetrated by the Marcos regime (Davidson, 2017: 272). The law established the quasi-judicial Human Rights Victims' Claims Board (HRVCB), which processed claims, assessed their veracity, established the extent of the human rights violations and determined the corresponding (monetary) reparation and/or recognition through a point system (Tugade, 2020: 17). It also featured a substantial non-monetary component (including access to healthcare, social welfare, and education) and furthers symbolic reparations through the establishment of a Memorial Commission that is in charge of establishing a Freedom Memorial Museum and library in honour and memory of the victims of human rights violations (Tugade, 2020). This system allows victims to register themselves without claiming reparations. As the director of the Memorial Commission argued, 'at least that demonstrates that human rights violations were not an invention of somebody's imagination. The human rights violations did happen and they happened on a considerable scale'. This memorialisation function of the Reparation Law, perhaps unintentionally, became an important element in the official recognition of the state's responsibility. It is complemented with various CSO initiatives, which are the focus of the next section.⁹

Memorialisation. Whereas the abovementioned justice, truth, and reparation pillars are typically more state-driven, the realm of memorialisation is where, in addition to the work of the Memorial Commission, many CSO initiatives can be found in the

Philippines.¹⁰ A densely populated memorialisation landscape emerged in the past decade made up mostly by CSOs and collectives that often explicitly steer away from collaborating with government, as an interviewee of one of these organisations argued.¹¹

The Monument of Heroes (*Bantayog ng mga Bayani*), which is dedicated to the memory of those who resisted the Marcos dictatorship, is arguably the most important initiative in this domain and the only one to have roots going back to the Marcos dictatorship. It is organised around the explicit ‘never again’-objective of reminding the Filipino people of the horrors of dictatorship (Claudio, 2010: 38). As an observer argued,

You know, we never had the Truth Commission here [...] maybe the idea was to have an independent initiative because it would mean that whoever came to power, that initiative would then be independent, not the object of any kind of, you know, change in politics depending on the change in administration.¹²

Recently, a range of memorialisation initiatives started to complement the work of Bantayog, including the Martial Law Files, the Martial Law Online Museum, and the Martial Law Chronicles Project, the online Museum of Courage and Resistance, and the Bantayog Online Museum, along with a multitude of smaller grassroots initiatives, including initiatives rooted in artistic practice. Also, among librarians a movement emerged that approached libraries as memory spaces and repositories of evidence during and after the Martial Law years, collecting materials for informational, historical, and legal inquiries and for justice efforts more generally (Buenrostro and Cabbab, 2019: 8). For example, the University Library of Diliman was initially a safe haven for underground, anti-government publications and other unpublished materials, which after being hidden from the public for 30 years, now constitute the Philippine Radical Papers (Buenrostro and Cabbab, 2019: 9). Since the coming to power of Duterte, many of these initiatives experience increasing pressure and threats as well as attempts to co-opt historical narratives (Buenrostro and Cabbab, 2019).

These initiatives are sometimes described as instances of ‘communities in action’¹³ and can be understood as a response to historical revisionism as well as to the fact that there had been little emphasis on backward-looking initiatives in the early post-Marcos period.¹⁴

Measures of Non-Recurrence. Some of the early state-centred attempts at TJ could be understood as pertaining to the forward-looking pillar of measures of non-recurrence. In institutional terms, several mechanisms were introduced in the post-dictatorial legal order intended to dismantle the Marcos institutional and social legacy. First, the 1987 Constitution provided the groundwork for the abovementioned PCGG, PCHR, and later the HRVCB. It also initiated the process of re-democratisation by re-installing a bicameral congress, separation of powers, and a Bill of Rights (Te, 2011: 148). With this constitutional reform process Aquino voluntarily curtailed the vast powers of her government stemming from the ‘Freedom Constitution’.

Second, and related to this new constitution, the Aquino administration identified the reform of state institutions implicated in the commission of the gross human rights violations as the most important dimension of its democratic transition and argued in favour of ‘democratic structures, civilian oversight of security forces, a functioning judicial system, and the rule of law’ to prevent the recurrence of future human rights violations (Tugade, 2020: 5). This also included monitoring mechanisms, for example in the national security institutions (Transitional Justice and Reconciliation Commission, 2016). Yet, the impact of these reforms has been limited, as I will discuss below.¹⁵

Third, the governments of Cory Aquino and Benigno Aquino have actively pursued vetting policies. While vetting is typically seen as a measure of non-recurrence, it is dubitable if this was indeed the Aquinos’ normative objective given the way in which the programmes were structured. The programmes seemed to be more of a tool for settling political scores, being too general, lacking of notice or right to be heard, and eventually failing to remove those most responsible for human rights violations from important positions in the administration and the army (Te, 2011: 152; McCoy, 2001: 139). Many of those targeted managed to stay or return to positions of power or were eased out without any further negative consequences.

Fourth, in the domain of education there has been limited attention for the violations perpetrated by the Marcos regime. An analysis of the educational curriculum showed that the module on Marital Law elaborated expansively on Marcos’ reasons for adopting the Martial Law and on the social and economic advances it facilitated while only alluding to human rights violations in one paragraph covering the growing power of the military and arrests of opponents (Corpuz-Uminga, 2015; Salaverria, 2012). Under Duterte the situation became more complex. This has seen the Department of Education formally adopting a ‘new direction’ in the teaching of Martial Law which emphasised the need to discuss in classrooms the prevalence, logic, justifiability, and historical context of human rights violations during the Martial Law period. As one interviewee argued about this policy,

There is also a tendency among the textbooks today to treat the study of Martial Law as a matter of opinion or feeling. There are these exercises that they make the students do, like interview people, ask them how they thought about Martial Law. But there is a short supply of facts that the students need to do in order to think critically about what happened.¹⁶

At the same time, then-Secretary Briones was herself a victim of the Marcos regime and was in a personal capacity an important voice in the public debate warning people about the dangers of forgetting.

In addition to this complex TJ landscape related to Martial Law, several TJ initiatives have been developed in relation to other realities and legacies of violence.

Initiatives Related to the Autonomous Region of Muslim Mindanao

While the 1987 peace talks between the government in Manila and the MNLF led to the constitutional acknowledgement of the Autonomous Region in Muslim Mindanao,

violent conflict in the region continued until 2014 because the MNLF was replaced by the secessionist MILF, the Estrada administration employed brutal war tactics, and atrocities (mostly by paramilitary Christian settlers) against Muslims continued (Adam, 2017). The peace agreement of 2014 foresaw federalisation as well as several TJ provisions (Lamchek and Radics, 2021). These Mindanao-specific TJ provisions were deemed necessary because the impact of the abovementioned TJ initiatives has been limited with respect to the conflict in Mindanao (Transitional Justice and Reconciliation Commission, 2016).

The most important of these TJ initiatives is arguably the establishment of the Bangsamoro TJ and reconciliation commission (TJRC) which was mandated to undertake a study and make recommendations to promote healing and reconciliation among the different communities affected by the conflict in Mindanao and the Sulu archipelago. After an extensive consultation process, which was coined a 'listening process', the TJRC published its report in 2016 explicitly adopting a framing that acknowledges the ongoingness of violence and harm, stresses the role of the Philippine state in assuming its responsibility for the harm, and references the ambition of non-recurrence throughout, hinting at the importance of the rule of law, security, and development for lasting peace. In fact, some commentators underlined the importance of *not* approaching the TJRC as a truth commission given that its mandate casts it rather as a preliminary mechanism to study and recommend to the parties what might be useful, considering human rights violations as well as much broader issues of political and economic marginalisation, land and resource issues, thus expanding the typical framing of standardised truth commissions (Roht-Arriaza, 2016: 36).

Two years after the TJRC's report, in 2018, the Special Committee on Peace, Unity, and Reconciliation adopted House Bill No. 5669 which envisions peace and development throughout the country particularly through the establishment of a TJ and Reconciliation Program for the Bangsamoro including the establishment of a National TJ and Reconciliation Commission for the Bangsamoro tasked with formulating and implementing plans and programmes to address 'legitimate grievances of the Bangsamoro people, historical injustices, human rights violations, and marginalisation through land dispossession' (Galvez, 2018).

While mentioning prosecutions and reparations, these pillars have been less present as the mandate strongly emphasises truth and measures of non-recurrence.

Initiatives Related to Other Types of Violence and Injustice

In 2010 Benigno Aquino established the Philippine Truth Commission (PTC) which was tasked with investigating allegations of graft, economic abuse, and massive corruption in the previous Macapagal-Arroyo administration (Pampolina, 2011: 841). Like the PCGG, the PTC's mandate revolved around large-scale corruption and explicitly excluded other gross human rights violations such as extra-judicial killings. With a mandate limited to fact-finding and investigation the PTC enjoyed considerable political goodwill. Nevertheless, it was challenged before the Supreme Court barely a month after its

establishment. The Court ruled that the PTC was ‘unconstitutional for violating the equal protection clause of the Constitution because it singles out only the “previous administration” in the scope of its inquiry’ (Te, 2011: 150).¹⁷ The creation of the PTC can nonetheless be seen as an indication that TJ approaches had by then moved from the periphery to the centre of policy options available for investigating and prosecuting harm caused by previous regimes – even in the absence of a major political overhaul.

With regards to the conflict between the government and communist forces, TJ initiatives have been virtually absent so far because of the lack of a comprehensive peace agreement with the CPP-NPA. Nevertheless, arguments have been voiced in favour of establishing a truth commission on torture by the CPP-NPA against its own members (Garcia, 2017, 2021), and during the hearing about the abovementioned TJ bill for Bangsamoro, Presidential Peace Adviser Jesus Dureza argued that the TJ process was not to be limited to the Bangsamoro, and that the intention was to develop a similar programme of negotiations with the CPP-NPA.

Furthermore, several societal actors have been exploring the merit of TJ to hold Duterte and his administration accountable for gross human rights violations. Most notably for the extra-judicial killings committed in the context of the violent ‘war on drugs’. Following efforts to seek criminal accountability at the international level, the International Criminal Court commenced an investigation of crimes within the jurisdiction of the Court allegedly committed in the Philippines between November 2011 and March 2019 (when the Philippines withdrawal from the Rome Statute took effect) (ICC, 2021). Other dimensions of TJ have been less prominent with regards to this specific legacy of violence.

Also the nexus between colonial harm and TJ has been explored in the Philippines, and most notably by the TJRC, which has throughout its report put the emphasis on how much of the violence and harm can be traced back to several waves of land disposition that started under the Spanish and US colonial rules, during which, in addition to this land dispossession, there was ethnolinguistic discrimination, the reconfiguration of political arrangements, and other forms of institutionalised harm being inflicted upon Bangsamoro people. The report laments the erasure of harm done to Bangsamoro from popular history writing and teaching, and seeing this as a plausible first step towards acknowledgement and reconciliation. In this context, however, accountability or repair is scarcely mentioned.

Unforeseen Effects of an Incomplete TJ Ecology

A mapping of past and existing TJ initiatives creates the impression of a densely populated TJ landscape with different generations, geographies, pillars, and mechanisms of TJ addressing various dimensions and various kinds of violent legacies. Moreover, this complex TJ landscape features many of the characteristics that critical TJ scholars have identified as crucial elements of TJ: criminal justice does not overshadow all other initiatives; economic, social and cultural rights, as well as economic crimes and root causes of conflict are included in the work of some of the most important initiatives;

state-led initiatives have had a forward-looking focus; and informal spaces and initiatives have been drivers of various dimensions of the TJ process. Yet, when looking at the reality on the ground, the Philippines can hardly be argued to constitute a 'success story' of democratic consolidation or sustainable peace. Even before the return of the Marcoses to the presidential palace, Philippine politics were becoming more authoritarian and violent under Rodrigo Duterte, history about Martial Law was being rewritten, and civil society activists indicated feeling more unsafe than during the Marital Law era (Buenrostro and Cabbab, 2019: 11). This raises the question why, in spite of this densely populated and seemingly promising TJ landscape, the typical normative objectives of TJ did not materialise.

In this section I argue that many initiatives have indeed been developed, often in ways that were (sometimes inadvertently) in line with critical TJ approaches, but when we examine how each of these approaches played out in practice we can observe a degree of neglect of some more 'steady-state' TJ approaches (Teitel, 2003), such as criminal prosecutions, holding state-actors accountable, and backward-looking retributive processes at the domestic level. Moreover, the multitude of initiatives has not led to the emergence of an actual transitional justice ecology in which various initiatives closely interact with each other. I expand on these points by applying the four-fold critique of standardised TJ to the mapping developed in the previous section in order to critically assess which lessons the case of TJ in the Philippines holds for TJ scholarship and practice more broadly.

First, because a range of political factors hampered domestic prosecutions in the immediate post-Marcos years, the Philippines inadvertently and out of necessity became a case that responded to the critique that criminal prosecutions may be too dominant within TJ and crowd out other justice avenues. In the absence of prosecutions, various complementary avenues have indeed been explored. In practice though, despite the existence of multiple TJ initiatives, many of the extra-judicial killings and disappearances that marked the Marital Law era have remained unsolved with no significant strides taken towards identifying perpetrators or uncovering orders that allowed these killings and disappearances to take place. Despite the existence of various truth and memorialisation initiatives, this virtual lack of domestic prosecutions did not only mean that the truth about a wide range of violations remained elusive and that no criminal accountability materialised, it also meant that no historical record about this violence emerged that had the imprimatur of an official legal record created in the context of a court case (Miller, 2008; Stahn, 2020). As such, when disinformation campaigns were set up, there was hardly a consolidated narrative to reckon with. Even progressive leaders, like Benigno Aquino, had difficulty identifying specific historical narratives to resist the historical revisionism that started shortly after he took office.¹⁸ The abovementioned Supreme Court hearing of 2016 sought to remedy this lack of an authoritative public record through oral hearings of victims. However, this initiative materialised 30 years after the facts and had no direct implication for further accountability processes. Criminal accountability has so far also been lacking regarding the violence perpetrated during the conflict in Mindanao, the economic crimes and gross violations of human

rights of the Macapagal-Arroyo administration, the communist violence by and against members of the CPP-NPA, and the human rights violations of the Duterte administration. In all but the war-on-drugs context, other kinds of TJ initiatives were installed.

Second, the above mapping shows that the TJ landscape in the Philippines also responds to the critique that TJ's pre-occupation with (violations of) civil and political rights, decreased attention for (violations of) economic, social and cultural rights, and that impunity can be more effectively tackled if accountability for corruption and economic crimes are also foregrounded (Carranza, 2008: 311). TJ initiatives regarding Martial Law have focused on economic crimes and corruption and the Bangsamoro TJ process explicitly foregrounded structural and historical violence and economic, social and cultural rights violations. In practice though, especially when it comes to the Martial Law era, this attention for corruption and economic crimes has gone hand in hand with the invisibilisation of civil and political rights violations and atrocities committed by the Marcos regime, as neither accountability nor truth mechanisms dealt with them. The PCGG's focus on corruption and economic crimes was never met with similar attention for violations of civil and political rights because the PCHR failed to produce its report and was replaced by a successor body with a different mandate. Moreover, The PCGG had an open-ended mandate. This too is in line with several critical TJ approaches that contested the temporal limitations of standardised TJ processes. In this case however, the open-ended mandate challenged the PCGG's potential contributions to truth-telling, as the PCGG too did not produce a final encompassing report. This contributed to the invisibilisation of gross human rights violations perpetrated under Marcos and made it possible for the Marcoses to refuse to publicly acknowledge and even deny these violations.

Third, Philippine TJ regarding Martial law and Bangsamoro aligned with critical TJ scholars' proposal of foregrounding the forward-looking function of TJ interventions more explicitly. Here too we see that this has been implemented in a context where the backward-looking dimensions of TJ have been largely overlooked. While constitutional – and to some extent institutional – reform and (transformative) reparations have been central components of dealing with the Martial Law legacy, and reform and reconciliation were central in the Bangsamoro TJRC report, the cases also show that the quality and meaningfulness of forward-looking policies is questionable when a backward-looking component is absent. While the near-impossibility of implementing more backward-looking and retributive policies can be understood in light of the political reality, the compromises that have been made have cast a profound shadow over those dimensions that were put in place and arguably stripped those of their preventive or transformative potential.

Fourth, the case – again to a significant degree inadvertently – responds to critical TJ scholars who problematise standardised TJ's pre-occupation with the state and argue in favour of exploring the importance of informal spaces of TJ. These informal spaces and initiatives, more so than the state, have been at the heart of TJ in the Philippines, especially in the context of the Martial Law legacy, and sometimes to the detriment of attention for, collaboration with, or pressure on the state to take its responsibility. More specifically, it can be observed that the prominence of non-state initiatives, especially

before the 2013 Reparations Law, and again since the presidency of Duterte, can primarily be understood as a response to the inaction by the state. For instance, the abovementioned memorialisation efforts have explicitly positioned themselves as an alternative for (non-existing at first, and later dysfunctional) state-sanctioned memorialisation and truth-seeking. This is less pertinent in the case of Bangsamoro where a major state-led truth process and TJ initiatives have shaped the dynamics, and where state-led and non-state-led initiatives were arguably more complementary. This suggests that CSO initiatives are important in and of themselves (like in the case of Bangsamoro or the campaign to take Duterte to the ICC) to push for formal initiatives. Yet, there is a real risk when informal spaces and initiatives must fill a vacuum created by state inaction. The case shows how formal state-led initiatives come to be crucial to ensure the various elements mentioned above, including legal accountability and state-sanctioned narratives about violence, are accounted for.

In addition to adding nuance to some of the most explicit critical transitional justice scholarship and underlining the importance of complementarity, at an overarching level, the case also illustrates the importance of an ecological perspective, or a perspective in which the interaction of this multitude of initiatives is foregrounded. The TJ landscape in the Philippines is both densely populated and dynamic, demonstrating many elements promoted by critical TJ approaches. Yet, upon closer analysis two observations stand out. First, the various TJ initiatives co-exist but do not constitute an *ecology* in which the various nodes of an encompassing approach interact with one another to form a tight-knit approach to justice. Despite critiques of standardised TJ, such a holistic approach is precisely the potential strength of a standardised approach. In this case however, a comprehensive TJ strategy has been missing, both regarding the overarching intertwined and complex legacy of violence, as well as regarding each of its exponents. This can partly be explained by the early transitional justice initiatives dealing with Marital Law taking shape when the paradigm of TJ was still nascent and partly by the political context in which these initiatives were taken. Second, those progressive elements characterising some elements of the TJ landscape have not been introduced as part of an encompassing approach or attempt to contextualise standardised TJ but have instead been matters of necessity. These potentially transformative elements have been implemented *en lieu* of, rather than in addition to, standardised approaches to TJ that foreground criminal justice, attention to civil and political rights, backward-looking retributive approaches and formal spaces of TJ.

With regards to the Martial Law era, for example, in spite of the multitude of initiatives that was taken, it is the lack of an encompassing approach and the incompleteness of the TJ ecology that can account for some of the most obvious shortcomings of how the Marcos legacy was dealt with: the lack of criminal prosecutions hampered the emergence of a state-sanctioned historical record, the near-exclusive attention for economic crimes made it easier to brush off the table the atrocities of the regime; the lack of retributive justice allowed Marcos' cronies to stay in positions of power untainted; and the lack of genuine state-driven initiatives prior to 2013 put the burden of change on the shoulders of CSO. As such, the lack of a genuine TJ ecology in which the elements of a holistic and

encompassing standardised TJ approach co-exist and interact with more contextualised, innovative, creative, and informal elements that meaningfully complement this standardised approach arguably paved the way for the revisionist discourse and the ensuing political dynamics that can be observed today.

Concluding Remarks

In this article I demonstrated that a complex TJ landscape has developed in the Philippines, in which, moreover, many of the recommendations emerging from critical TJ scholarship can be observed. At the same time, the reality on the ground shows a worrisome evolution towards more authoritarianism and the continued violations of human rights. I argue that to understand the limited socio-political impact of this plethora of TJ initiatives we should consider the fact that only isolated measures have been promoted while a holistic strategy for 'dealing with the past' has been missing and many initiatives do not consider their own work to be part of a more comprehensive TJ ecology. This is true both with regards to each individual legacy of violence (Martial Law, Bangsamoro, CPP-NPA, Macapagal-Arroyo, Duterte's war-on-drugs, etc.), as well as with regards to the overall reality of entangled and multi-layered entrenched legacies of violence. In the absence of a holistic approach or strategy individual initiatives have found it difficult to find and recognise each other and to collaborate in reaching their overlapping normative objectives. There has been limited interaction between the various nodes within this incomplete TJ ecology with most initiatives have existed in relative isolation from others.

Moreover, given that there was no holistic TJ strategy, various initiatives, that could arguably be seen as progressive and as meeting some of the recommendations made by critical TJ scholars, have failed to live up to their promise. On the one hand, they were not embedded in a broader ecology in which also more standardised approaches existed to complement these innovative and creative contextualised approaches, while on the other, those dimensions that could be argued to meet some of the parameters of critical TJ were often implemented out of necessity (e.g. because a more standardised approach was not available) rather than being reflective of a conscious attempt at contextualisation or innovation. In other words, several crucial elements are missing from this TJ ecology. Notably those that have been the backbone of standardised TJ practice and scholarship, such as criminal prosecutions, early and systematic attention to civil and political rights violations, backward-looking retributive approaches, and genuine state-led TJ initiatives.

As such, the case of the Philippines underlines the importance of interpreting the recommendations of critical TJ scholarship not as alternatives but as complements to the standardised TJ approaches. These should be seen as jointly constituting a dynamic TJ ecology. The Philippines can indeed be read as a case in point that TJ can cover more and different ground than standardised approaches might lead us to believe. However, its flawed TJ ecology also serves as a warning sign about the risks of getting pushed off the table when innovation and contextualisation happen merely as matters of political calculation or pragmatism, rather than as consciously developed elements of a holistic and ecological approach to TJ. In this case, the effects have notably

included diverting the public's attention away from the gravity of gross human rights violations and atrocities committed by the Marcos regime while hampering the consolidation of an authoritative narrative about this – which is all the more problematic in light of current campaigns of historical revisionism. This relates to another issue which requires further attention, namely, the prevalent scepticism among the Philippine population regarding transitional justice efforts. Exploring this scepticism and how it relates to the incomplete TJ ecology constitutes an interesting avenue for further research.

This is crucial, considering that the Philippines continues to endure conflicts that could benefit from a more encompassing and ecological approach to transitional justice. These insights are also meaningful beyond the Philippines. Even if the Philippines is not typically the object of TJ scholarship, its experience of dealing with multi-layered entrenched legacies of violence offers important insights into how current scholarship on contextualised vs standardised TJ could be bridged by focusing on the need to support the development of genuine TJ ecologies in which standardised and contextualised initiatives co-exist and interact as part of a broader attempt to work towards shared normative objectives.

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Notes

1. This included the 'burning of Jolo' in February 1974, which was part of a ground and aerial offensive against Moro National Liberation Front (MNLF), and the 'Malisbong massacre', where military and paramilitary forces killed an estimated 1,500 Moro men and boys and raped an unknown number of women and girls on a naval vessel anchored offshore (Transitional Justice and Reconciliation Commission 2016, p. 31). On the longer history of Christian settlement, see (Kadir bin Che Man (1987).
2. This cultural violence can be traced back to the brutal decade-long campaign to impose US sovereignty in Mindanao and the Sulu archipelago waged by American colonial authorities from 1903 to 1913. Colonialism imposed the private property model over traditional usufruct stewardship-based land use and management, which had a devastating effect on economic, social, and cultural life (Transitional Justice and Reconciliation Commission, 2016, p. 58; also see Abinales, 2002).
3. While no criminal cases were brought before court, the Philippine Supreme Court in 2003 ordered the forfeiture of 658 million US dollar ill-gotten wealth in favour of the Republic of the Philippines.

4. The case was supported by Aquino who, together with her Justice Minister, submitted an opinion that Marcos was not entitled to immunity and filed an *amicus curiae* Brief before the (Te, 2011: 145).
5. Attn. Swift, the class counsel, welcomed support from activist organisations as he built the case, but did not see the case as a vehicle to support those organisations or to advance their political agenda. In his efforts to secure compensation for individuals, he repeatedly blocked these organisations' attempts to play a formal role (Ela, 2017: 24).
6. Following her organisation of, and dissenting opinion in, this case, Chief Justice Sereno was later dismissed on debatable grounds.
7. Interviews 221128_023, 221216_024.
8. The powers of the CHR have been limited by the Supreme Court to making recommendations for prosecution and investigation, and making findings of fact (Akmaliah, 2012). This effectively limited its initial mandate and led to a reinterpretation of its role, in line with classic National Human Rights Institutions, as promoting and protecting human rights in a more general sense, and of monitoring the Philippine government's compliance with international treaty obligations on human rights. This reflects the objective of preventing a repetition of past abuses and violations (Tugade, 2020: 14), but overwrites a truth-seeking function.
9. Interview 221115_011.
10. Memorialisation is sometimes considered as a separate fifth pillar of TJ, but I discuss it under reparations here because of the explicit link between symbolic reparations and memorialisation in the Philippines.
11. Interview 211128_023.
12. Interview 211128_023.
13. Interview 211108_001.
14. Interview 221128_023, 221118_015, 221116_012, 221110_004.
15. Interview 221117_013.
16. Interview 221128_023.
17. Nevertheless, and unlike Marcos, Macapagal-Arroyo still had to stand trial for a charge of electoral sabotage and another for plunder (Te, 2011: 152).
18. For example, when presented with the request of the Marcos family for a hero's burial, Aquino was reluctant to mobilise against this or to reference gross human rights violations, instead organising a national survey to gauge how people felt about this. Even after a – tight – vote against the hero's burial, Aquino took a long time to state publicly, and for the first time, that Marcos was no hero but a dictator who ravaged a people and plundered a country (Guinto, 2011).

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