

# BEYOND LEGAL TRANSFORMATION: ASSESSING THE IMPACT OF TRANSITIONAL JUSTICE MECHANISMS IN THE PHILIPPINES\*

*Ruby Rosselle L. Tugade\*\**

## ABSTRACT

The democratic transition experienced by the Philippines more than thirty years ago ushered in a constitutional order that guarantees non-recurrence of its authoritarian past. The 1987 Philippine Constitution paved the way for the creation of an independent Commission on Human Rights. State legislation also created transitional justice mechanisms such as the Presidential Commission on Good Government for the recovery of ill-gotten wealth and, more recently, the Human Rights Victims' Claims Board for the distribution of reparations. This paper examines the impact of these transitional justice mechanisms addressing Marcos-era violations in the Philippines. With the ongoing negation and negotiation of the Marcos-era narrative in Philippine society, this paper seeks to assess the net effect of deploying transitional justice as a framework in shaping law and policy within the context of the Philippines after redemocratization.

## I. INTRODUCTION

The 2016 national elections in the Philippines was a time of reckoning—framed by President Benigno Simeon Aquino III in his last State of the Nation Address as a “referendum for the Straight and Righteous Path”<sup>1</sup>—as a decisive moment for the prospects of democracy for the

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\*\* Member, Philippine Bar; Master of Laws (cand.), United Nations Interregional Crime and Justice Institute; Juris Doctor, University of the Philippines (2016); Vice Chair, PHILIPPINE LAW JOURNAL (Volume 88); Bachelor of Arts in Political Science, *cum laude*, Ateneo de Manila University (2010). This work is a product of the author's independent research and are solely reflective of her own views.

<sup>1</sup> Benigno S. Aquino III, Sixth State of the Nation Address (July 27, 2015), *available at* <http://www.officialgazette.gov.ph/2015/07/27/english-president-aquino-sixth-sona/>

country. As the results of the election came in, the choice made by the Philippine electorate became clear: the victory of iron-fisted Rodrigo Duterte and the tightly contested vice-presidential race between Maria Leonor “Leni” Robredo and Ferdinand “Bongbong” Marcos, Jr., son of former dictator Ferdinand E. Marcos, indicated the shortfall of the country’s democratic restoration and consolidation.

The legal framework for redemocratization was laid out in the Philippine Constitution, ratified on February 2, 1987. Cecilia Muñoz-Palma, during her acceptance speech as president of the 1986 Constitutional Commission, spoke of the aspirations of the framers of the charter to draft “a basic law that serves the good of all the Filipino people, preserves its territorial integrity, respects human dignity and protects basic human rights and freedoms, gives justice to all that no one may be exploited or trampled upon.”<sup>2</sup> The framers of the Constitution ensured human rights were given emphasis as a response to the authoritarian regime of Ferdinand Marcos, which also saw a spate of human rights violations.

In institutional terms, several mechanisms were introduced in the post-dictatorship legal order. First, the 1987 Constitution guaranteed the establishment of an independent Commission on Human Rights (CHR), tasked with the investigation of all forms of human rights violations involving civil and political rights. President Corazon Aquino, then exercising her legislative powers under the revolutionary government, issued Executive Order No. 1, series of 1986, which provided for the creation of the Presidential Commission on Good Government (PCGG). The law gave the PCGG the mandate of recovering the ill-gotten wealth amassed by President Ferdinand E. Marcos, his immediate family, relatives, and close associates. In 2012, President Benigno S. Aquino III signed into law Republic Act No. 10368, or the Human Rights Victims Reparation and Recognition Act of 2012. The law established the Human Rights Victims’ Claims Board (HRVCB), a quasi-judicial body tasked with the adjudication of claims for reparations of human rights violations victims of the Marcos regime.

These institutions form part of the transitional justice mechanisms dealing with the Philippines’ authoritarian past. More than 30 years after its transition from dictatorship to democracy, the Philippine state encountered serious challenges in their efforts to exact accountability from the Marcos family for the abuses committed during their 14-year Martial Law rule. There were threats from the Duterte administration to defund the CHR and abolish the PCGG. Meanwhile, the HRVCB’s work was limited by its statutory

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<sup>2</sup> I RECORD CONST. COMM’N 7 (June 2, 1986)

lifespan. The question on assessing the impact of these institutions on Philippine society is far more compelling: with the return of the Marcoses to positions of influence and power, what has been the effect of legislating social transformation in post-authoritarian Philippine society?

Part I of this paper tackles transitional justice in post-authoritarian societies and how its concepts have been legally transplanted in the Philippines. Part II discusses the three institutions pertinent to this paper: the CHR, the PCGG, and the HRVCB. This section looks at the legal bases, challenges, and other issues that surround these institutions. Part III examines the tenuous relationship between human rights law and its practice in the Philippines. This section offers insight as to how authoritarian nostalgia and reemergence are due in part to the Philippines' strictly legalist approach to transitional justice.

## II. TRANSITIONAL JUSTICE AND THE PHILIPPINES

The United Nations defines transitional justice as the “full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation.”<sup>3</sup> These processes and mechanisms include both judicial and non-judicial mechanisms such as individual prosecutions, reparations, truth-seeking, institutional reforms, and/or vetting and dismissals.<sup>4</sup> Transitional justice mechanisms apply to societies recovering from armed conflict or repressive regimes that tend to produce dire consequences to the rule of law and to human rights as they happened.

Transitional justice is “based on the assumption that gross human rights violations cause serious harm to its victims and should therefore be redressed.”<sup>5</sup> This assumption carries with it two assertions: *first*, gross human rights violations disrupt the fabric of society and the very lives of its victims; and *second*, in order to somewhat repair the ruin caused by such violations, some form of redress must be made. These modes of rectification could range from reparations to the right to truth. Different mechanisms of transitional justice may co-exist with one another.

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<sup>3</sup> Report of the Secretary General, The rule of law and transitional justice in conflict and post-conflict societies, at 4, U.N. Doc. S/2004/616 (Aug. 23, 2004).

<sup>4</sup> *Id.*

<sup>5</sup> Clara Sandoval Villalba, *Transitional Justice: Key Concepts, Processes and Challenges*, 6, available at [http://repository.essex.ac.uk/4482/1/07\\_11.pdf](http://repository.essex.ac.uk/4482/1/07_11.pdf).

Essential to transitional justice is the reformation of state institutions implicated in the commission of gross human rights violations. The state institutions which helped perpetuate the conflict or the repressive rule must be reformed into ones that would sustain peace and protect human rights. Institutional reform is closely linked to guarantees of non-repetition because without such reform, transitional justice would be unable to prevent such crimes and human rights violations from occurring again.<sup>6</sup> In order to prevent the recurrence of past abuses, it is essential to identify and transform such structures into institutions that promote peace, protect human rights, and establish respect for the rule of law. With the reformation of older or, alternatively, the establishment of new public institutions, institutional reform enables transitional governments to prevent the recurrence of future human rights violations.

Generally, in international law, a breach by a state of an international obligation entails, *inter alia*, the state's responsibility to cease that wrongful act and prevent its repetition.<sup>7</sup> Article 30 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts deals with two separate but linked issues raised by the breach of an international obligation: the cessation of the wrongful conduct and the offer of assurances and guarantees of non-repetition by the responsible party. This could possibly lead to the repair of the legal relationship affected by the conduct creating the breach. Cessation is the negative aspect of future performance while assurances and guarantees of non-repetition serve as preventive functions. They may likewise be described as a positive reinforcement for future acts.<sup>8</sup>

The dictatorial regime of President Ferdinand Marcos produced a rippling effect in Philippine society that could very well be characterized as a breach by the State of its responsibility to its people. By placing the entire Philippines under Martial Law through Proclamation No. 1081, Marcos installed what could be "the greatest dominance of state over society the Philippines has seen."<sup>9</sup> The regime resulted in various gross violations of

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<sup>6</sup> *Id.* at 9.

<sup>7</sup> International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, art. 30, 2001, *available at* [http://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf).

<sup>8</sup> International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, at 88, 2001, *available at* [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf).

<sup>9</sup> PATRICIO ABINALES & DONNA AMOROSO, STATE AND SOCIETY IN THE PHILIPPINES 205 (2005).

human rights as well as a massive embezzlement of public funds by Marcos' family and cronies.<sup>10</sup>

Martial Law under Marcos created a human rights crisis. In quantifiable terms, 3,257 were killed, 35,000 tortured, and 70,000 incarcerated.<sup>11</sup> In fact, in the case of *Republic v. Sandiganbayan*,<sup>12</sup> the Philippine Supreme Court ordered the forfeiture of ill-gotten wealth of more than 658 million dollars, plus interest, in favor of the Republic of the Philippines. These staggering numbers exhibit the need for mechanisms to exact accountability from the perpetrators of injustice during the Martial Law regime.

For some scholars, four processes are involved at the core of transitional justice: the *justice process*, which focuses on accountability; the *truth process*, which involves investigation of the atrocities committed during the past regime; the *reparations process*, to give redress to victims; and the *institutional reform process*, which ensures non-repetition or non-recurrence.<sup>13</sup> A review of the transitional justice mechanisms introduced in the Philippines—or, at least, those addressed towards the past Marcos regime—would show that out of the four processes, the succeeding regimes focused mostly on institutional reform, and only later did they introduce the reparation process.

Transitional justice involves a bundle of rights to which victims of mass atrocities are entitled—there is an *individual right* on the part of the victims themselves, but there is also a *collective right* on the part of society. Corollary to this, there is an *obligation* on the part of the State to ensure such rights are enjoyed by the victims and by society at large.<sup>14</sup> Mirroring the four processes constituting transitional justice, these are the *right to know*, the *right to justice*, the *right to reparation*, and the *guarantee of non-recurrence*.<sup>15</sup>

After the Marcoses fled to Hawaii following the 1986 People Power Revolution, victims began to institute actions that would build the foundation of the framework for justice directed against the former first family. Civil

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<sup>10</sup> ALTERNATIVE LAW GROUPS, A RESEARCH SCOPING MAJOR AND OUTSTANDING ISSUES ON TRANSITIONAL JUSTICE IN THE PHILIPPINES i (2018).

<sup>11</sup> 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 131 (2001).

<sup>12</sup> Republic v. Sandiganbayan, G.R. No. 152154, 406 SCRA 190, July 15, 2003.

<sup>13</sup> Villalba, *supra* note 5, at 3.

<sup>14</sup> Swiss Peace, *A Conceptual Framework for Dealing with the Past*, 3, available at [http://archivesproject.swisspeace.ch/fileadmin/user\\_upload/archivesproject/Publications/DwP\\_Conceptual\\_Framework\\_October2012.pdf](http://archivesproject.swisspeace.ch/fileadmin/user_upload/archivesproject/Publications/DwP_Conceptual_Framework_October2012.pdf)

<sup>15</sup> *Id.*

lawsuits were filed before the courts of Hawaii, praying for damages for various alleged acts of human rights violations.<sup>16</sup> However, the litigation involving the Marcos estate was “handicapped” as the Philippine government had not conducted a formal investigation of the mass atrocities committed by the regime.<sup>17</sup>

The transitional justice process in the Philippines in the aftermath of the Marcos regime was largely lodged into the vessel that was the 1987 Constitution. Constitutionalism as a response to past repressive regimes is a strategy of post-conflict or democratically emerging societies. According to Teitel, in periods of political change, constitutionalism stands in a “constructivist” relationship to the prevailing political order.<sup>18</sup> To trigger large-scale political change, transitional constitutions, aside from their foundational purpose, serve as a response to past regimes. This ensures that the emerging political order incorporates the necessary changes and transformations which, in a sense, embody lessons from the past and contain promises for the future.

The deliberations of the Constitutional Commission of 1986 reflected such aspirational motives. During the inaugural session of the constitutional convention, the vice president of the commission, former Justice Ambrosio Padilla stated:

The writing of a constitution, truly reflective of the sentiments, ideals and aspirations of our people, is the most important task of this generation. It is a task that will place our nation, long derailed by 14 years of martial misrule, back on the tracks of constitutional democracy, which is the key to political stability and economic recovery.<sup>19</sup>

Sentiments similar to this prefatory statement are repeated throughout the records of the constitutional convention. This attitude towards the crafting of the constitution was carried throughout the deliberations by the drafters who, in one way or another, were part of the wide opposition against the dictatorship. The 1987 Constitution, when viewed in this regard, is the culmination of the ideals that reject the Marcosian rule and began the transition towards a more liberal order.

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<sup>16</sup> Ellen Lutz, *The Marcos Human Rights Litigation: Can Justice be Achieved in U.S. Courts for Abuses that Occurred Abroad?*, 14 B. C. THIRD WORLD L.J. 43 (1994).

<sup>17</sup> *Id.* at 46.

<sup>18</sup> RUTI TEITEL, *TRANSITIONAL JUSTICE* 191 (2000).

<sup>19</sup> I RECORD CONST. COMM'N 7 (June 2, 1986)

Institutional reform was the road taken by the first Aquino administration in the path to democratic transition. Institutional reform that guarantees non-recurrence presupposes “democratic structures, civilian oversight of security forces, a functioning judicial system, and the rule of law.”<sup>20</sup> The first Proclamation issued by President Corazon Aquino promised to reorganize the government and to grant justice to the victims of human rights violations.<sup>21</sup> Proclamation No. 2 shortly followed, revoking President Marcos’ Proclamations No. 2045 and 2045-A, thereby lifting the suspension of the privilege of the writ of habeas corpus “so that this guardian of liberty and freedom may be available to all.”<sup>22</sup> Proclamation No. 3, adopting the provisional freedom constitution following the revolution, clearly contained in its mandate, among others, the recovery of ill-gotten wealth and national reconciliation.<sup>23</sup>

The ratification of the 1987 Constitution brought to life a new set of Declaration of Principles and State Policies in Article II, which included the following salient provisions:

Section 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

Section 3. Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

The 1987 Constitution also contained an article on Social Justice and Human Rights.<sup>24</sup> An independent CHR was created by constitutional fiat, and later on declared effective by Executive Order No. 163 issued by President Corazon Aquino. The Constitution created the CHR such that it “could not be abolished by ordinary legislation.”<sup>25</sup> The Constitution likewise retained the authority to issue sequestration or freeze orders in relation to the recovery of

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<sup>20</sup> Swiss Peace, *supra* note 14, at 6

<sup>21</sup> Proc. No. 1 (1986).

<sup>22</sup> Proc. No. 2 (1986).

<sup>23</sup> Proc. No. 3 (1986).

<sup>24</sup> CONST., art. XIII.

<sup>25</sup> JOAQUIN BERNAS, THE INTENT OF THE 1986 CONSTITUTIONAL WRITERS 1008 (1995).

ill-gotten wealth.<sup>26</sup> In another *Republic v. Sandiganbayan* case, the Supreme Court observed that “the framers of the Constitution were fully aware that absent Section 26 [of the Transitory Provisions], sequestration orders would not stand the test of due process under the Bill of Rights.”<sup>27</sup> Legally, the prevailing political order at the time went to such great lengths to ensure the orderly transition to democracy and to make accountable the perpetrators of past injustices.

In what symbolically appeared to be a continuation of his mother’s work, President Benigno S. Aquino III signed into law Republic Act (“R.A.”) No. 10368, which began the reparations process for the victims of Martial Law and more importantly embodied:

[T]he policy of 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 and restore the victims’ honor and dignity.<sup>28</sup>

The steps, taken collectively, were intended to dismantle the Marcosian institutional and social legacy.

### III. INSTITUTIONS FOR TRANSITIONAL JUSTICE IN THE POST-MARCOS ERA

#### A. The Philippine Commission on Good Government

The PCGG, created by Executive Order No. 1, s. 1986, was the first mechanism introduced by the then-newly installed administration of Corazon Aquino in making the Marcoses and their cronies accountable in some form. By virtue of Executive Order No. 2, President Corazon Aquino froze all assets and properties that the Marcoses and their associates had interest in.<sup>29</sup> Further, it authorized the PCGG to “request and appeal to foreign governments wherein any such assets or properties may be found to freeze them and

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<sup>26</sup> CONST., art. XVIII, § 26.

<sup>27</sup> *Republic v. Sandiganbayan*, G.R. No. 104768, 407 SCRA 10, July 21, 2003.

<sup>28</sup> Rep. Act No. 10368 (2013), § 2.

<sup>29</sup> Exec. Order No. 2 (1986).



otherwise prevent their transfer, conveyance, encumbrance, concealment or liquidation.”<sup>30</sup>

Various powers were granted to the PCGG through the President’s exercise of legislative powers under the revolutionary government. The PCGG, with the assistance of the Office of Solicitor General and other government agencies, was empowered to file cases, whether civil or criminal, with the Sandiganbayan.<sup>31</sup>

Jurisprudence has also helped elucidate the powers and functions of the PCGG. In *Cojuangco v. PCGG*<sup>32</sup> for instance, the Supreme Court outlined the PCGG’s powers as follows:

1. To conduct an investigation including the preliminary investigation and prosecution of the ill-gotten wealth cases of former President Marcos, relatives and associates, and graft and corruption cases assigned by the President to it;
2. Issue sequestration orders in relation to property claimed to be ill-gotten;
3. Issue “freeze orders” prohibiting persons in possession of property alleged to be ill-gotten from transferring or otherwise disposing of the same;
4. Issue provisional takeover orders of the said property;
5. Administer oaths and issue *subpoenas* in the conduct of its investigation;
6. Hold any person in direct or indirect contempt and impose the appropriate penalties as provided by the rules.

The PCGG, in the exercise of its power to issue a sequestration or takeover order, makes a determination of whether or not there is a *prima facie* basis for filing proceedings before the Sandiganbayan.<sup>33</sup> The Executive Orders pertaining to the powers and functions of the PCGG are to be read in conjunction with R.A. 1379, which allows the forfeiture of unlawfully acquired property by any public officer in favor of the State. Pursuant to the transitory provisions of the 1987 Constitution, the PCGG’s power to issue sequestration and freeze orders shall remain operative for not more than 18 months after the ratification of the charter.<sup>34</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> Exec. Order No. 14 (1986), §§ 1-2.

<sup>32</sup> *Cojuangco v. PCGG*, G.R. No. 92319, 190 SCRA 226, Oct. 2, 1990.

<sup>33</sup> Renan Ramos, *Civil Forfeiture Proceedings in the Philippines: The Long Road Ahead*, 86 PHIL L. J. 484 (2011).

<sup>34</sup> CONST., art. XVIII, § 26.

In the 1987 case of *BASECO v. PCGG*,<sup>35</sup> the Supreme Court explained in detail the powers of the PCGG as well as the limitations of such powers and its authority. Plainly, the Court held the PCGG to be a conservator, not an owner, of the property sequestered, frozen, or provisionally taken over. Thus, the PCGG is only an administrator of the properties and cannot exercise acts of strict dominion. It is for the Sandiganbayan to decide with finality cases involving the issue of whether or not property should be forfeited and transferred to the State.<sup>36</sup> As of 2015, there were 282 pending PCGG cases before various courts.<sup>37</sup>

According to its publicly available 2015 annual report, the PCGG recovered the total amount of P170,447,347,523.52 since its creation in 1986.<sup>38</sup> The same report also stated the cost of operation to recovery ratio of the PCGG was 1.72% to 98.28%. A major development came in May 2018, however, when the House of Representatives, on a 162-10 vote, approved on its third and final reading House Bill No. 7376,<sup>39</sup> the main purpose of which is to augment the functions of the PCGG to the Office of the Solicitor General, and consequently, abolish the PCGG.

In response to the news of the possible abolition of the PCGG, Imee Marcos, daughter of President Marcos, welcomed the proposed bill as a positive development.<sup>40</sup> Groups of Martial Law victims publicly expressed opposition to the proposed abolition. Notwithstanding the criticism many of these groups previously conveyed as regards the PCGG, its complete abolition was still seen as something that would bring about a far worse situation.<sup>41</sup>

Admittedly, the PCGG was not without its own internal issues. In their 2015 annual report, the commission expressed how it had become susceptible to political influence. It was reported that when its leadership

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<sup>35</sup> *Bataan Shipyard and Eng'g Co., Inc., v. PCGG*, G.R. No. 75885, 150 SCRA 181, May 27, 1987.

<sup>36</sup> *Id.*

<sup>37</sup> PCGG, *Accomplishment Report 2015*, 25, available at <http://pcgg.gov.ph/wp-content/uploads/2016/12/Accomplishment-Report-FY-2015.pdf>.

<sup>38</sup> *Id.* at 8.

<sup>39</sup> H. No. 7376, 17<sup>th</sup> Cong., 2<sup>nd</sup> Sess., § 2 (2018), available at [http://www.congress.gov.ph/legisdocs/first\\_17/CR00658.pdf](http://www.congress.gov.ph/legisdocs/first_17/CR00658.pdf).

<sup>40</sup> Amita Legaspi, *Imee welcomes House passage of bill seeking PCGG abolition*, GMA NEWS ONLINE (PHIL), May 18, 2018, available at <https://www.gmanetwork.com/news/news/nation/653812/imee-welcomes-house-passage-of-bill-seeking-pcgg-abolition/story/>.

<sup>41</sup> Jeffrey Damicog, *Rights group oppose PCGG abolition*, MANILA BULLETIN, May 18, 2018, available at <https://news.mb.com.ph/2018/05/18/rights-group-oppose-pcgg-abolition/>.

appears to lack the virtues attached to the office, “political capital and support for the Commission wanes and wavers[.]”<sup>42</sup> Former PCGG Chairperson Andres Bautista himself admitted that many fiscal agents of the commission have run sequestered assets to the ground. This is attributed “in large part to the absence of an independent central asset management agency to maintain, conserve, and protect the sequestered and forfeited assets.”<sup>43</sup> Externally, the PCGG is also seen as “a target for charges of corruption, favoritism and incompetence.”<sup>44</sup>

In 2017 and 2018, the courts separately adjudged former PCGG Chairperson Camilo Sabio to be administratively and criminally liable for acts committed while he was the head of the agency. The Sandiganbayan ruled in *People v. Sabio*<sup>45</sup> that the former chairperson was guilty of violating R.A. No. 3019 for “(1) not undertaking the required procurement process; and (2) subjecting government funds to unnecessary expenditure without the pre-allocation and necessity for the same.” Meanwhile, the Supreme Court affirmed Sabio’s administrative liability in *Sabio v. Field Investigation Office, Office of the Ombudsman*<sup>46</sup> for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.

The PCGG’s envisioned function to recover ill-gotten wealth is linked to the fuller picture of achieving justice from perpetrators of abuse during the Martial Law regime. Exacting justice for economic crimes committed by a past regime provides a more comprehensive account of the atrocities committed by that regime. It also correlates the index of corruption of a dictatorship to its commission of human rights abuses. Moreover, economic crimes committed by a regime can determine the type of remedy or the resources that can be allocated for other transitional justice mechanisms.<sup>47</sup> The amount of the wealth recovered by the Philippine government was used as funding for the reparations process mandated by R.A. No. 10368.<sup>48</sup>

When the leaks of the so-called “Panama Papers” came into light in 2016, the names of the Marcoses were among those included in the exposé.

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<sup>42</sup> PCGG, *supra* note 37, at 31.

<sup>43</sup> Ramos, *supra* note 33, at 494.

<sup>44</sup> Jon Quah, *Combating Asian Corruption: Enhancing the Effectiveness of Anti-Corruption Agencies*, 2 MD. SERIES IN CONTEMP. ASIAN STUD. 57 (2017).

<sup>45</sup> SB-12-CRM-0014-15 (SBN, June 22, 2017).

<sup>46</sup> *Sabio v. Field Investigation Office*, G.R. No. 229882, 855 SCRA 293, Feb. 13, 2018.

<sup>47</sup> Ruben Carranza, *Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?*, 2 THE INT’L. J. OF TRANSITIONAL JUST. 321 (2008).

<sup>48</sup> Rep. Act No. 10368 (2013), § 7.

The Marcoses were among the first “kleptocracies” that exploited the offshore banking system to hide stolen wealth.<sup>49</sup> The Marcos family and their cronies utilized domestic and foreign corporate vehicles to facilitate money laundering, with the cash eventually finding its way to foreign bank accounts in Switzerland and the US, for instance.<sup>50</sup>

Given that the Marcosian legacy included the draining of government coffers, the PCGG’s mandate was sorely necessary during the time of transition. The 1987 Constitution itself solidifies this reflection from the past—the State is given the right to recover properties unlawfully acquired by public officials or employees.<sup>51</sup> The issue on the Marcos’ ill-gotten wealth has also helped reform the international banking system.<sup>52</sup>

However, as the PCGG is repeatedly met with controversy and unsatisfactory assessment, its legacy and reputation as an institution for transitional justice will always be put into question. The reputational consequences of the corruption allegations against its former commissioners fuel all but cynicism over the institution.<sup>53</sup> Finally, the offer of the Duterte administration to settle with the Marcos family in relation to their amassed wealth<sup>54</sup> places the PCGG in the middle of an awkward political compromise.

Despite the crusade of the post-Marcos liberal order to restore anti-corruption in governance, a deeply embedded legal institution like the PCGG in that political order has stumbled in the face of political realities. While the foundation laid down at the inception of the first Aquino administration is legally reinforced, the execution of its aims is found wanting.

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<sup>49</sup> Nick Davies, *The \$10bn question: What happened to the Marcos millions?*, THE GUARDIAN (ENG.), May 7, 2016, available at <https://www.theguardian.com/world/2016/may/07/10bn-dollar-question-marcos-millions-nick-davies>.

<sup>50</sup> DAVID CHAIKIN & J.C. SHARMAN, CORRUPTION AND MONEY LAUNDERING: A SYMBIOTIC RELATIONSHIP 170-71 (2009).

<sup>51</sup> CONST., art. XI, § 15.

<sup>52</sup> Elizabeth Olson, *Ferdinand Marcos’s Swiss Bank Legacy: Tighter Rules for Despots and Criminals*, THE NEW YORK TIMES, Oct. 23, 1998, available at <https://www.nytimes.com/1998/10/23/world/ferdinand-marcos-s-swiss-bank-legacy-tighter-rules-for-despots-and-criminals.html>.

<sup>53</sup> Jonathan T. Pampolina, *Desperate Transitional Times, Desperate Transitional Measures: Using Transitional Justice Mechanisms in Confronting Corruption in the Philippines*, 85 PHIL. L. J. 4 (2010).

<sup>54</sup> *Duterte confirms talking with Imee on return of Marcos wealth*, ABS-CBN NEWS (PHIL.), Sept. 3, 2017, available at <https://news.abs-cbn.com/news/09/03/17/duterte-confirms-talking-with-imee-on-return-of-marcos-wealth>.

## **B. The Commission on Human Rights**

The duty to ensure the protection of human rights requires not only a general obligation to prevent the possibility of future violations, but also the specific obligation to prevent the recurrence of past violations. In turn, the obligation to prevent a violation's recurrence is based not only on the need to protect, but also on the need to make reparations. In international human rights law, states necessarily have this obligation to cease a violation and prevent its repetition because of their duty to comply with their obligations under international law.

States shall ensure that victims do not experience re-victimization. They must undertake institutional reforms and other measures necessary to guarantee the consolidation of the rule of law and the protection of human rights. These include the repeal and prevention of the passage of laws which contribute to or authorize violations of human rights as well as the enactment of measures necessary to ensure respect for human rights. In undertaking institutional reform, States must take all necessary measures, including legislative and administrative reforms, to ensure that public institutions are organized in a manner that ensures respect for these principles.

Preventing recurrence does not entail dealing with an abstract threat, but rather confronting specific acts committed in the past that may be committed again in the future and studying them in terms of their causes, effects, agents, resources, and the structures used to make them happen. Guarantees of non-recurrence aim at preventing the recurrence of specific human rights violations that happened for a certain set of circumstances existing in a concrete context. Effective prevention cannot just deal with the individual circumstances of human rights violations, but must also address their structural roots.

National Human Rights Institutions ("NHRIs") are among the structures a country may establish during a period of transition as part of its institutional reform efforts. The UN General Assembly adopted in 1993 the Principle Relating to the Status of National Institutions ("Paris Principles"), which enumerated the competence and responsibilities of NHRIs. NHRIs are autonomous government agencies which essentially promote, protect, and fulfill international human rights norms in the domestic sphere. The rise of NHRIs is attributed to the leadership of the United Nations in international affairs.<sup>55</sup> Thus, while the Paris Principles remain to be a normative template

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<sup>55</sup> Sonia Cardenas, *Emerging Global Actors: The United Nations and National Human Rights Institutions*, 9 GLOBAL GOVERNANCE 23, 23-42 (2003).

and a highly political document, it is persuasive enough to urge different states to conform with its contents.

While the CHR—established by constitutional fiat in 1987—predated the Paris Principles, its functions are aligned with those described in the document. As an NHRI, the CHR enjoys accreditation status “A” from the Global Alliance of National Human Rights Institutions (“GANHRI”) for its full compliance with the Paris Principles.<sup>56</sup> The Paris Principles prescribes NHRIs to be established by either constitutional or legislative text, to have recommendatory powers, and to be the bridge between the domestic human rights situation and the United Nations organizational system or other international or foreign institutions.

NHRIs are avenues by which international human rights law and international human rights norms are domesticated. In turn, by having a seat at the UN Human Rights Council, NHRIs have the unique opportunity to shape standards and norms at the international level.<sup>57</sup> In establishing NHRIs in countries transitioning from conflict or authoritarianism to a more democratic order, emerging regimes exhibit their commitment to enforcing human rights law and norms. Of note is the thematic diversity of NHRIs. The flexibility in the organization and function of these institutions is important in tailor-fitting the mandate to the needs of the country.

In guaranteeing the existence of the CHR’s place in the 1987 Constitution, the framers envisioned the CHR as a watchdog against violations of human rights to avoid a repetition of the abuses during the Marcos regime. Its powers and functions are provided for by Article XIII, section 18 of the Constitution.<sup>58</sup> Executive Order No. 163 s. 1987 declared the effectivity of the CHR’s creation under the Constitution and reiterates the same powers and functions in the charter.

What links the idea of transitional justice to NHRIs is that such structures are modes of implementing the four aspects of transition. Some NHRIs may possess quasi-judicial powers which enable them to make determinations of whether or not human rights violations were committed. This, in turn, leads to prosecution and accountability.

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<sup>56</sup> Global Alliance of National Human Rights Institutions, *Chart of the Status of National Institutions – Accreditation Status as of 26 May 2017*, available at [https://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](https://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf) (last accessed Nov. 6, 2018).

<sup>57</sup> HUMAN RIGHTS, STATE COMPLIANCE, AND SOCIAL CHANGE: ASSESSING NATIONAL HUMAN RIGHTS INSTITUTIONS 3 (Ryan Goodman & Thomas Pegram eds., 2011).

<sup>58</sup> CONST., art. XIII, § 18.

The CHR, as established by the 1987 Constitution, is a specific mechanism for the guarantee of non-recurrence. This idea can be traced to the intent of the framers during the deliberations of the 1986 Constitutional Commission. Commissioner Nolleto, during the deliberations, stated:

We should not miss that golden opportunity of creating this very important body on the sad experiences during the Marcos regime. We are learning lessons from history. But if we remain adamant by not adopting remedies to avoid the condemnable practices of the past regime—I refer to the Marcos regime—then history might repeat itself [...] By setting up the Commission on Human Rights as a veritable watchdog and guardian of our people against violations of human rights, we manifest to the world our respect for human dignity and honor.<sup>59</sup>

The mandate of the CHR embodies the goals envisioned by the framers in establishing a constitutional body that would promote and protect human rights. The creation of the CHR by constitutional fiat, alongside other mechanisms of checks and balances in the 1987 Constitution, reflect the objective of preventing a repetition or recurrence of past abuses and violations.

Under the aegis of the 1987 Constitution, the CHR is provided with a variety of other powers and functions: the provision of legal assistance, the exercise of visitorial powers over places of detention, recommendatory powers to Congress, the establishment of a program of research, education, and information for human rights, the power to monitor compliance with treaty obligations, and the grant of immunity from prosecution.

In broad strokes, the CHR has mainly assumed the role of monitoring the Philippine Government's compliance with international treaty obligations on human rights.<sup>60</sup> As an NHRI, the CHR actively attempts to bridge between international norms and domestic law through its inclusion as an implementing or monitoring agency of domestic statutes that touch on human rights. Several laws enacted by Congress provide for specific types of rights that fall under the protection of the CHR, such as R.A. No. 7610,<sup>61</sup>

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<sup>59</sup> RECORD CONST. COMM'N PROC. & DEBATES 3.

<sup>60</sup> CONST. art. XIII, § 18, ¶ 7.

<sup>61</sup> Rep. Act. No. 7610 (1992).

R.A. No. 9262,<sup>62</sup> R.A. No. 9344,<sup>63</sup> R.A. No. 9372,<sup>64</sup> R.A. No. 9745,<sup>65</sup> R.A. No. 9851,<sup>66</sup> R.A. No. 9710,<sup>67</sup> and R.A. No. 11063.<sup>68</sup>

The CHR was crafted into existence as a guarantee of non-recurrence and non-repetition. The question, however, of whether the institution has been able to do so in its 31 years of existence is a separate matter altogether. In two particular instances, the Supreme Court had the opportunity to interpret the constitutional provisions outlining the powers of the CHR.

*Cariño v. Commission on Human Rights*,<sup>69</sup> decided four years after the ratification of the 1987 Constitution, set the precedent that effectively defined the powers of the CHR. In a dispute involving the right of public school teachers to peacefully assemble, the Supreme Court held the CHR had no quasi-judicial powers. At best, the CHR's power was to investigate and make findings of fact.

Three years later, in *Simon v. Commission on Human Rights*,<sup>70</sup> the Court resolved that the CHR did not have the power to issue a cease and desist order against the local government's demolition of roadside stores, which the petitioners in the case argued was a violation of their economic rights. The Court stated the government act in question cannot be classified as a human rights violation involving civil and political rights. To justify this conclusion, the Court relied on the intent of the framers of the charter who "envisioned a Commission on Human Rights that would focus its attention to the more severe cases of human rights violation," such as those that occurred during the Marcos regime.

These two decisions, taken together, produce an interpretation which limits the powers of the CHR and virtually transformed it into what the framers of the 1987 Constitution feared was a "paper tiger." While the Court's zealotry in defining the mandate of the CHR referenced the aims of the framers of the constitution, their decisions have effectively narrowed down and limited the ability of the CHR to protect abusive acts of the State.

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<sup>62</sup> Rep. Act. No. 9262 (2004).

<sup>63</sup> Rep. Act. No. 9344 (2005).

<sup>64</sup> Rep. Act. No. 9372 (2007).

<sup>65</sup> Rep. Act. No. 9745 (2009).

<sup>66</sup> Rep. Act. No. 9851 (2009).

<sup>67</sup> Rep. Act. No. 9710 (2009).

<sup>68</sup> Rep. Act. No. 11063 (2017).

<sup>69</sup> *Cariño v. CHR*, G.R. No. 96681, 204 SCRA 483, Dec. 2, 1991.

<sup>70</sup> *Simon v. CHR*, G.R. No. 100150, 229 SCRA 117, Jan. 5, 1994.



The anti-illegal drugs campaign initiated by the administration of President Duterte has severely strained the already-limited absorptive capacity of the CHR. In 2017, the House of Representatives approved a budget of PHP 1,000 for the Commission, which CHR Chairperson Jose Luis Martin Gascon denounced as a “whimsical and capricious display of vindictiveness” from the House. Some legislators went as far as to argue that the CHR’s operation and existence was invalid to begin with.<sup>71</sup>

The CHR has been at the frontline against President Duterte’s anti-illegal drugs campaign, a human crisis situation that had not been seen by the Philippines since the Marcos regime. As such, the CHR found itself enmeshed early on in the brutalist rhetoric of the Duterte administration, through which it had eventually come to be the recipient of numerous offensive attacks.<sup>72</sup> The CHR’s performance of its mandate was tagged by President Duterte as an “obstruction of justice,” at one point even goading members of the public to shoot at CHR personnel.<sup>73</sup> The increasingly muddled discourse on human rights in the Philippines has created confusion among the public as to the CHR’s mandate. In popular exchanges on the internet, supporters of the Duterte administration are quick to ask: “*Nasaan ang CHR?*” (“Where is the CHR?”) even within the context of common crimes—cases outside of its constitutional mandate.

Despite the integration and mainstreaming of human rights education in the Philippines,<sup>74</sup> the specific legal interpretation of the CHR’s mandate seems to have been lost in its translation to everyday parlance. This presents a challenge to the CHR—whose powers are already narrowly tailored by judicial interpretation—in the context of an ongoing human rights crisis. Coupled with regression to and nostalgia for authoritarianism, even an existing constitutional basis appears to be a weak safeguard for democracy.

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<sup>71</sup> Vince Nonato, *House gives CHR P1,000 budget, slashes drug rehab funds by 75%*, INQUIRER WEBSITE, available at <https://newsinfo.inquirer.net/930239/house-gives-chr-p1000-budget-slashes-drug-rehab-funds-by-75>

<sup>72</sup> Nicole Curato, *Flirting with Authoritarian Fantasies? Rodrigo Duterte and the New Terms of Philippine Populism*, 47 J. OF CONTEMP. ASIA 10 (2016), available at <http://content.csbs.utah.edu/~mli/Economics%205430-6430/Curato-Duterte%20and%20Philippine%20Populism.pdf>

<sup>73</sup> Audrey Morallo, *Duterte: Shoot CHR personnel if they obstruct justice*, PHIL. STAR WEBSITE, available at <https://www.philstar.com/headlines/2017/08/17/1729880/duterte-shoot-chr-personnel-if-they-obstruct-justice>

<sup>74</sup> UNESCO, CURRICULUM DEVELOPMENT AND REVIEW FOR DEMOCRATIC CITIZENSHIP AND HUMAN RIGHTS EDUCATION 36 (2015).

As with the PCGG, the observable pattern continues with the CHR that the agency has found itself tangled in the precarious politics of survival in present-day Philippines.

### **C. The Human Rights Victims' Claims Board**

Reparations, as a transitional justice mechanism, was historically focused on drawing accountability from the defeated State in post-conflict situations. However, reparations evolved over time to focus on restoring, repairing, and rehabilitating the dignity of victims of human rights violations.<sup>75</sup> Behind this mechanism is the assumption that human rights violations produce harm on individuals and communities. The type of reparations awarded can take different forms: material reparations or compensation, which can include return of property taken from victims, or material or symbolic reparations such as rehabilitative support to the victims.<sup>76</sup>

R.A. No. 10368, which established the HRVCB and recognized the existence of violations and victims during the Martial Law era, provided for classes of reparations that eligible claimants under the law are entitled to. Aside from *monetary reparations* sourced from the sequestered assets of the Marcoses, the human rights violations victims are likewise entitled to *nonmonetary reparations*.

The nonmonetary reparations include the rendering of services of other agencies of the Philippine government, specifically the Department of Health (DOH), the Department of Social Welfare and Development (DSWD), the Department of Education (DepEd), the Commission on Higher Education (CHED), and the Technical Education and Skills Development Authority (TESDA).<sup>77</sup> Aside from the HRVCB, R.A. No. 10368 mandates the establishment of a Human Rights Violations Victims' Memorial Commission that will maintain a memorial, museum, or library "in honor and in memory of the victims of human rights violations" whose names shall be inscribed in a Roll of Victims.<sup>78</sup>

Hence, the thrust of R.A. No. 10368 is two-fold: to provide reparations on the one hand, and to memorialize victims on the other. A

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<sup>75</sup> Kathy Powers & Kim Proctor, *Victims' Justice in the Aftermath of Political Violence: Why Do Countries Award Reparations?*, 13 FOREIGN POL'Y ANALYSIS 2 (2016).

<sup>76</sup> *Id.*

<sup>77</sup> Rep. Act. No. 10368 (2013), § 5. Human Rights Victims Reparation and Recognition Act of 2013.

<sup>78</sup> § 26.

lacuna is present in the law as it stands. *First*, there is no provision for community reparations. Individualized reparations are sometimes insufficient to recognize and address the harm caused to the community and its collective.<sup>79</sup> *Second*, R.A. No. 10368 does not establish an independent truth commission to function as a fact-finding body as to what really occurred during the Martial Law era.

The limited statutory lifespan of the HRVCB also stood as a limit to its efficacy to fully render a comprehensive review of all claims that were lodged before it. Originally, the HRVCB was only to have a lifespan of two years from the time R.A. No. 10368 took effect. R.A. No. 10766 amended the original law creating the HRVCB and extended its statutory life to an additional two years.

Out of more than 75,000 claims brought before the HRVCB, the Board declared 11,103 claims as eligible. Due to difficulties encountered by successful claimants in getting their reparations, President Duterte signed a joint resolution approved by Congress extending the availability and release of funds for the victims.<sup>80</sup> Several days after signing this resolution, however, President Duterte made a public statement questioning the existence of ill-gotten wealth amassed by the Marcoses.<sup>81</sup> With the contradiction between government action and pronouncements with respect to the legacy of Martial Law and the right of the victims to an effective remedy, a singular, solid commitment to redress and reconciliation remains elusive for the most part.

#### IV. LEGAL FORM OVER SUBSTANCE: THE DEFICIT OF SUBSTANTIVE JUSTICE IN THE POST-MARCOS ERA

In various attempts to deliver justice to the victims of human rights violations during the Martial Law era, it is evident that the Philippines has largely resorted to the legalization of norms and codification of rules. Relying exclusively on either strict formalism in law or a pure substantive notion of justice can produce both inadequate or problematic results.

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<sup>79</sup> Naomi Roht-Arriaza, *Reparations Decisions and Dilemmas*, 27 HASTINGS INT'L & COMP. L. REV. 187 (2004).

<sup>80</sup> Alexis Romero, *Duterte OKs longer period for martial law victims' claims*, PHIL. STAR WEBSITE, available at <https://www.philstar.com/headlines/2019/03/02/1898014/duterte-oks-longer-period-martial-law-victims-claims>.

<sup>81</sup> Arjay L. Balinbin, *Duterte questions ill gotten-wealth claim vs Marcos*, BWORDL ONLINE WEBSITE, available at <https://www.bworldonline.com/duterte-questions-ill-gotten-wealth-claim-vs-marcos>.

There is legal formalism when “the mere invocation of rules and the deduction of conclusions from them is believed [to be] sufficient for every authoritative legal choice”;<sup>82</sup> meanwhile, substantive notions of justice “requires that rules be interpreted in terms of ideals that define the conception of justice.”<sup>83</sup> Formalism can produce the stability needed in a legal ecosystem, while substantive notions of justice removes impersonality in the process of redistribution. However, strict formalism restricts the area for flexibility and might warp standards under the need to generalize. Heavy reliance on substantive notions of justice could produce instability as the application of law becomes too individualized and leaves to decision-makers a wide area of unchecked discretion.

The post-Marcos era strategy of codification of human rights, as Judge Pangalangan has observed, resulted from the attempt to “de-ideologize” human rights in order to minimize controversy and disagreement among anti-Marcos forces, which was constituted broadly by groups and individuals from the different parts of the political spectrum.<sup>84</sup> The constitutional order brought about by the removal of the Marcoses from power still hinges itself on a politics of reflex action and embodied mainly by State institutions.

Majoritarian institutions such as the Supreme Court and the human rights regime established under the post-Marcos legal and political order paved the way for the greater “judicialization” of politics.<sup>85</sup> In a rather large-scale attempt at rehabilitating the much-emasculated legal system under the Marcos regime, the expanded *certiorari* power of the courts under the 1987 Constitution provided the judicial branch with the mechanism to embroil itself in what would otherwise be considered political questions.

The link between historical learnings from Martial Law to the expanded *certiorari* jurisdiction of courts found in the present constitution is as direct as it can be. In *Francisco v. House of Representatives*,<sup>86</sup> the Court found itself quoting heavily from Chief Justice Roberto Concepcion’s sponsorship speech of the constitutional provision expanding the ambit of judicial review:

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<sup>82</sup> ROBERTO MANGABEIRA UNGER, *LAW IN MODERN SOCIETY* 194 (1976).

<sup>83</sup> *Id.* at 195.

<sup>84</sup> Raul C. Pangalangan, *Human Rights Discourse in Post-Marcos Philippines*, *HUM. RTS. IN ASIA* 62 (2011).

<sup>85</sup> C. Neal Tate, *The Judicialization of Politics in the Philippines and Southeast Asia*, 15 *INT’L POL. SCI. REV.* 190 (1994).

<sup>86</sup> *Francisco v. Nagmamalaskit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, G.R. No. 160261, Nov. 10, 2003. (Emphases supplied.)

Fellow Members of this Commission, *this is actually a product of our experience during martial law*. As a matter of fact, it has some antecedents in the past, but *the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it*. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." *The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime.*

At this juncture, it is worth reiterating that the 1987 Constitution essentially functioned—and continues to do so—as a sharp antithesis to the legal regime that emerged during the Marcos era. This has resulted in the creation of a *rule of law* that is largely a *rule by law*—that is, the legal architecture dominating much of political life.

Human rights, which itself requires a holistic understanding, cannot be distilled into a pure legal form. The values associated with human rights “require constant reexplication and struggle,”<sup>87</sup> and all conceptualizations of human rights must be examined in light of the context in which they are embedded. The requirements of delivering transitional justice weaves in well with this idea. While societies in transition are largely sculpted by the reliable tools of the law, crafting a forward destiny depends, too, on an appreciation of societal factors.

While reliance on law as a source of exacting justice and reconciliation appears to be the most logical and authoritative approach, such is not beyond fault. Specific to societies in transitions, “grand schemes” of State-driven justice “fail spectacularly” because they tend to oversimplify matters.<sup>88</sup> Such mechanisms tend to overlook the needs of communities that have been directly impacted by the harms produced by human rights violations. There is also the issue of the willingness of a governing regime to implement

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<sup>87</sup> A. Belden Fields & Wolf-Dieter Narr, *Human Rights as a Holistic Concept*, 14 HUM. RTS. Q. 6 (1992).

<sup>88</sup> Kieran McEvoy, *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, 34 J. L. & SOC'Y 424 (2007).

mechanisms for transitional justice, as in the case of contemporary Philippines.

Reconciliation, a core element of transitional justice, remains largely elusive in the Philippines. In writing about the right of Martial Law victims to compensation, Van Dyke notes there are several strategies that may bring about reconciliation in a society: 1) apologies for the wrong; 2) investigation and accounting; 3) compensation for the victims; and 4) prosecution of the wrongdoers.<sup>89</sup> In this menu of strategies, the Philippines has so far only implemented a limited form of accounting and a distribution of individual reparations. To this day, the Marcos family has refused to publicly recognize any systematic wrongdoing or abuse committed by their patriarch, or by anyone else in the family.<sup>90</sup> The lack of apology stems from the absence of a definitive investigation and fact-finding of the scale of abuses that occurred during Martial Law.

No truth commission has ever been established by law, and the possibility of such a body emerging may not be forthcoming. In *Biraogo v. Philippine Truth Commission*<sup>91</sup>—though applied to the past administration of President Gloria Macapagal-Arroyo—the Supreme Court foreclosed the possibility of a truth and reconciliation commission against a particular regime for violation of the equal protection clause. Further, the more successful litigation against the Marcoses occurred in foreign jurisdictions. More recently, the Court of Appeals denied the enforcement of a foreign judgment awarding a class of victims with compensation.<sup>92</sup> Finally, in *Ocampo v. Enriquez*,<sup>93</sup> the Court opened the floodgates to the effect that there is no legal impediment to the posthumous recognition of Ferdinand Marcos as a hero.

Thus, while legalism provided a veneer by which to project the appearance of a commitment to delivering justice to Martial Law victims, there appeared to be gaping cracks which prevent the fulfillment of a holistic form of justice. What is largely missed in statecraft is largely the result of

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<sup>89</sup> Jon Van Dyke, *The Fundamental Right of the Marcos Human Rights Victims to Compensation*, 76 PHIL L. J., 74, 176.

<sup>90</sup> Ayece Macaraig, *Marcos on dad's regime: What am I to apologize for?*, RAPPLER WEBSITE, available at <https://www.rappler.com/nation/103772-bongbong-marcos-regime-no-apologies>.

<sup>91</sup> *Biraogo v. Phil. Truth Comm'n*, G.R. No. 192935, 637 SCRA 78, Dec. 7, 2010.

<sup>92</sup> Ina Reformina, *Court affirms rejection of \$2-billion compensation claim over Marcos estate*, ABS-CBN NEWS WEBSITE, available at <https://news.abs-cbn.com/news/01/05/18/court-affirms-rejection-of-2-billion-compensation-claim-over-marcos-estate>.

<sup>93</sup> *Ocampo v. Enriquez*, G.R. No. 225973, 807 SCRA 223, Nov. 10, 2016.

politics, and in the case of transitional justice mechanisms in the Philippines, their past successes and present problems are the result of the very same.

*Transition* implies kineticism and the movement from one phase to another—a passage within the course of history. Justice based on this idea must then be able to keep up with the ebb and flow of a society. An artifice made from law functions to the full extent that it provides the framework for justice; however, law must always interface with political realities. The rule of law—often conceptualized as a stable continuity—is tested in times of transition.<sup>94</sup> Laws as they are crafted and implemented are examined against their supposed normative aims. In the case of a post-dictatorship Philippines, the lofty ideals of law that fosters a prosperous democracy and respects human rights will always be appraised against the need to make realistic political compromises.

## V. CONCLUSION

Marcos apologia and nostalgia persist to this day, and no lasting consequence has been felt by the perpetrators of abuse during the Martial Law era. The human rights abuses of this era have dealt a significant blow to different communities. Historical revisionism has seeped into contemporary culture and, to some extent, has been validated by sovereign acts or omissions.

The transitional justice mechanisms discussed in this paper have served their function in a redemocratized Philippines, but much remains to be done in delivering justice to the human rights violations victims during Martial Law. Other social institutions should continue to be involved alongside the legal interventions already introduced to address the problem of authoritarian nostalgia and historical revisionism. Pedagogy and culture must necessarily evolve to bring forth the reconciliation of Philippine society in order to fully address the past. Forty-six years since the declaration of Martial Law, its specters haunt the pockets of Philippine society. At this juncture, it might do well to do away with its persistent ghost.

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<sup>94</sup> Teitel, *supra* note 18, at 12.