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ARTICLE

Contextualising the absence of standardised approaches to transitional justice in the Philippines

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Abstract

The professionalisation, institutionalisation and standardisation of transitional justice has often been critiqued for pushing more informal, vernacular or experimental approaches off the radar. While this concern is legitimate and needs to be addressed, this article explores the continued relevance of standardised approaches, and of a shared language of transitional justice more specifically. I develop this argument against the background of recent events in the Philippines where, in May 2022, Ferdinand Marcos Jr., son of the former dictator, won the presidential elections. In this article I show that there has been a multiplicity of context-sensitive, vernacular and experimental transitional justice initiatives to deal with intersecting and multilayered legacies of violence, but that what has been missing is an overarching framework as expressed through the discourse of transitional justice, and the potential to forge collaborations and coalitions on the basis thereof. The case of the Philippines hints at the potential of a more ecological understanding of transitional justice in which justice actors involved in standardised and vernacular, formal and informal, state and non-state, top-down and bottom-up approaches recognise each other and certain shared objectives through the shared language and normativity of transitional justice.

Keywords: transitional justice; standardisation; contextualisation; accountability; innovation; state-centric approaches

1 Introduction

On 9 May 2022, Ferdinand Marcos Jr., better known as Bongbong Marcos, won the presidential election in the Philippines. His electoral victory was the apogee of over a decade of disinformation campaigns on social media, and several efforts at erasing the violent legacies of Ferdinand Marcos Sr. from public debate and educational curricula. The return of the Marcoses to the presidential palace raises obvious questions about the ways in which the Marcos legacy has been dealt with in the Philippines, and about the – limited – impact of transitional justice efforts that were undertaken in the past four decades, notably in the domain of truth, memorialisation and non-recurrence. The most pressing question in this regard is how it is possible that, in spite of a range of initiatives in these domains, a widely-shared public narrative about the crimes and abuses of the Marcos dictatorship never consolidated.

In this article, I first provide the historical and contextual background to the Philippines' entrenched transition away from the Marcos dictatorship. I then describe the contours of the historical and contemporary transitional justice landscape. I use the debate on standardisation and contextualisation of transitional justice to structure this exercise. In the discussion, I reflect on how the relative lack of standardisation as expressed through a transitional justice discourse, along with the initial lack of institutionalised state-backed attempts at transitional justice, created spaces for experimentation and innovation, but also shaped the transition towards democracy in the

Philippines in specific ways. I conclude by zooming out from the specific context of the Philippines and reflecting on what this case can add to the broader theoretical debate about the contextualisation vs standardisation of transitional justice.

The mapping of the transitional justice landscape is based on a study of secondary literature and primary sources (such as Republic Act 10 368, the report published by the Transitional Justice and Reconciliation Commission (TJRC), proceedings of Transitional Justice and Reconciliation (TJR) Cluster of the Inter-Cabinet Cluster Mechanism for Normalization, etc.) and on interviews with twenty-seven transitional justice practitioners and justice actors, active in government, NGOs, grassroots organisations or collectives. Interviews took place between October and December 2022 and lasted just over an hour on average. I relied on the support of two local research assistants to transcribe and interpret interviews. The ethics and data management procedures for this research project 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 transcripts, recurrent themes were identified, influenced by the theoretical framework and by newly emerging ideas. Relevant text segments were then re-visited in light of emerging concepts and notions. In addition to these interviews, I also attended several events related to transitional justice, such as book launches, movie screenings, expositions and memorialisation initiatives.

2 Historical background to the entrenched transitions of the Philippines

This article focuses on transitional justice efforts dealing with the legacy of the Marcos dictatorship. Ferdinand Marcos Sr. came to power through democratic elections in 1965, and declared Martial Law in 1972, reigning the country in a dictatorial manner until 1986, when he was ousted through the EDSA People Power Revolution and fled with his family to Hawaii, where he died in exile in 1989 (Mendoza, 2013). The Martial Law era was characterised by the suspension of civil rights, the state taking over most media channels and many corporations, the arrest of many opposition members and political opponents and overall gross human rights violation. Official records documented 3,257 extrajudicial killings, 35,000 documented cases of torture, 70,000 incarcerations and between 700 and 1,600 disappearances (Robles *et al.*, 2016).[1] In addition to these direct violations of human rights, the Marcoses have been documented to have embezzled and misappropriated billions of public funds for their personal benefit, channelling the money to offshore accounts (Celoza, 1998). These massive economic crimes, fraud and cronyism destabilised the economy and depleted state institutions of necessary resources, also after the Marcoses were ousted (Salonga, 2000).

This was only one of the challenges faced by the incoming administration of Corazon 'Cory' Aquino in 1986, further exacerbated by the instability of the Aquino administration which faced multiple attempted coups by Marcos loyalists and various factions of the army. Three such coups took place in Aquino's first year in office alone (McCoy, 2001). This political and economic reality shaped both the nature of the Philippines' transition to democracy, as well as the nature of the transitional justice initiatives that were developed. It resulted in an entrenched transition towards democracy, in which continuity co-existed with disruption.

The entrenched nature of the transition can also be explained in relation to the multiplicity of co-existing conflicts and their legacies. In addition to the Marcos dictatorship, transitional justice tools have also been mobilised in the context of the Bangsamoro conflict in the Autonomous Region in Muslim Mindanao, where the peace accords contained explicit references to transitional

[1]The number of disappearances is lower than that of many other dictatorships at the time, which has been explained in light of the 'culture of fear' and scare tactics of the regime whereby, rather than disappearing people, there were 2,520 documented cases of *salvagings*, whereby people's tortured and maimed bodies would be left in the streets as a warning for others (McCoy, 2001, p. 129).

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justice, and installed a Transitional Justice and Reconciliation Commission along with various other transitional justice provisions (Lara and Champain, 2009; Transitional Justice and Reconciliation Commission, 2016). In the context of the government's ongoing struggle with fighting factions of the communist CPP-NPA, too, references to transitional justice have been made as a means for conflict resolution (Garcia, 2017). Moreover, several societal actors have been exploring the merit of transitional justice to hold accountable Duterte and his administration for gross human rights violations and extrajudicial killings committed in the context of their violent war-on-drugs.[2] The responses to these violent legacies, however, shaped up in different eras and followed different logics. Mapping their various dynamics of standardisation and contextualisation would therefore fall beyond the scope of this article. In the discussion and conclusions, however, I return to these multiple layers of transitional justice when developing the notion of a transitional justice ecology, in which various initiatives influence and shape one another in various ways.

3 Transitional justice in context

I analyse the contours of the historical and contemporary transitional justice landscape using as an organising principle the debate about the standardisation and contextualisation of transitional justice, and how this affects the emergence of narratives about past violence.

3.1 The standardisation vs contextualisation debate

While having its roots in contexts of violence and political transition, transitional justice soon travelled to a variety of contexts; and while initially being heavily shaped by the experimentation of both policy-makers and affected groups responding to this violence, it soon became a highly standardised field of policy, practice and rhetoric (de Greiff, 2012; Roht-Arriaza and Mariezcurrena, 2006). Popular demands, policy responses to them, bottom-up initiatives and solutions proposed by a variety of justice actors in response to legacies of gross human rights violations, have been moulded into what is today commonly referred to as the 'pillars' of transitional justice (Zunino, 2019). These five (formerly four) pillars revolve around transitional justice's normative ambitions of justice, truth, reparations, non-recurrence and memorialisation, and tend to be considered as an overarching framework within which responses to legacies of violence are ideally formulated (Destrooper *et al.*, 2023).

This standardisation of transitional justice has entailed several other dynamics, which are commonly mentioned in the same breath, even if they refer to analytically distinct processes. One of those parallel evolutions within the broad field of transitional justice practice and policy is the prioritisation of state-driven initiatives. As the state came to be seen as both a perpetrator of past violence but also a crucial partner for installing comprehensive nation-wide responses to this violence that would require the kind of resources, institutions and moral imprimatur that other actors could hardly be expected to possess, the theory, policy and practice of transitional justice increasingly focused on what actions states could and should take to reckon with legacies of past large-scale violence (McAuliffe, 2017). This relates to another parallel evolution, namely the legalisation of the field. The consolidation of the pillars of transitional justice and the foregrounding of state-centric approaches went hand-in-hand with a growing concern with criminal accountability, and with justice understood as something that is primarily obtained via legal avenues (McEvoy, 2007). This evolution reflected a more general belief, around the turn of the century, in the robustness of (international and hybrid) criminal justice procedures

[2]Following these attempts at accountability, the International Criminal Court (ICC) commenced an investigation of crimes within the jurisdiction of the Court allegedly committed on the territory of the Philippines between November 2011 and March 2019 (when the Philippines withdrawal from the Rome Statute took effect) in the context of the 'war on drugs' (ICC, 2021).

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(McAuliffe, 2013; Roht-Arriaza, 1999) – even if these sometimes ill-aligned with justice perceptions, needs and priorities of victims when these reflected a more holistic approach to justice (Robins, 2017; Rooney, 2007). The evolution also aligned with the professionalisation of the field, which led to the emergence of a growing number of think-tanks, study centres and consultants. This sometimes interfered with the voice and agency of local justice actors whose agendas and approaches did not neatly fit standardised, state-centric, legal or professional approaches to transitional justice (McEvoy and McConnachie, 2013). Jointly, these evolutions implied the institutionalisation of the field, which manifests itself through the emergence and cementing of semi-permanent structures, organisations and institutions which have transitional justice as their 'core business', both at the domestic level (e.g. Ministries of Transitional Justice) and at the international level (e.g. a Special Rapporteur on Justice, Truth, Reparation and Non-recurrence), and both on the side of governmental actors and on the side of non-governmental actors (such as the International Center for Transitional Justice). This, in turn, resulted in top-down transitional justice efforts often overshadowing bottom-up initiatives. Along with this, a normalisation has taken place, whereby the norms and approaches presented as the standardised transitional justice toolkit have come to play a decisive role in how transitional justice processes shape up in practice, notably by underlining the importance of adopting said blueprint as a means to achieve more just, peaceful and democratic societies (Gissel, 2017).

Hence, while the dynamics of standardisation, state-centricity, legalisation, professionalisation, institutionalisation, normalisation and preference for top-down initiatives are intricately and inevitably related, they are not analytically the same. What they have in common, though, is that, jointly, they facilitated the expansion of transitional justice to a growing number of cases that qualify as potential candidates for transitional justice initiatives. This seemingly practicable and systematic standardised approach co-exists with the broad normative objectives of transitional justice, which in and of themselves hold a visceral appeal for societies coming to terms with legacies of violence.

The unforeseen, but by no means unforeseeable, consequence of this migration of transitional justice to a variety of contexts, including those which defy the parameters of the settings for which standardised transitional justice was designed, has been contextualisation, vernacularisation and experimentation (Sharp, 2014). Ensuring accountability for past wrongdoings necessarily looks very different in cases where these wrongdoings were primarily caused by overbearing states with excessive power, than in cases where these wrongdoings emerged in the context of, for example, a failed state or where there has been no landmark regime change. Attention for these dynamics of contextualisation, vernacularisation and experimentation, has also grown in transitional justice scholarship and practice (Firchow and Selim, 2022; Bell *et al.*, 2007). These processes of contextualisation have been equated with more attention for non-state actors (such as civil society organisations, artist, or victim collectives) and their role in structuring and ensuring the sustainability of transitional justice processes (Evrard *et al.*, 2021), for legal pluralism or non-legal approaches to justice (Menkel-Meadow, 2014), for the role of everyday practices and of justice actors whose engagement in the justice process does not stem from their professional role, for the unruly and diverse justice practices developing beyond the institutional level (Breslin, 2017), for a critical assessments of transitional justice's normalisation (Turner, 2017) and for more attention to bottom-up initiatives (Kurze *et al.*, 2015). This renewed attention to and importance of contextualised approaches to transitional justice also highlights the experimentation and innovation happening as part of and in reaction to the standardisation of transitional justice. While standardised blueprints may have enhanced the circulation of transitional justice as a global approach to deal with legacies of violence, it is precisely this mobilisation of transitional justice in a wide variety of contexts that necessitates the adaptation of the standardised approaches to local circumstances and the creative application of some of transitional justice's toolkit.

The growing attention to and prominence of these contextualised approaches to transitional justice underline the need for an actor-oriented understanding of transitional

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justice (Nyamu-Musembi, 2002), which directs our research focus towards questions about how and when transitional justice mechanisms and norms are (not) mobilised by actors on the ground, what these actors' intentions and perspectives are and how existing norms interact with local contexts of power and meaning (Levitt and Merry, 2011; Nelken, 2017). These contextualised justice practices can, sometimes more effectively, contribute to the normative ambitions of transitional justice, even when they are not framed as transitional justice per se or cannot easily be understood within a standardised framework of transitional justice.

3.2 Transitional justice and the emergence of narratives about past violence

In the context of this article, it is also crucial to highlight the implications of an actor-oriented perspective in terms of how narratives about the past shape up and why they are important.

First, proposing an actor-oriented understanding of transitional justice also means that one seeks to understand each of its normative objectives (and the avenues for reaching them) in ways that reflect actors' preferences and realities. When it comes to establishing the truth about past violence, for example, it is important to clarify that, in the context of this article, when I explore the emergence of encompassing narratives about past violence, I do not refer to a unified and fixed narrative, but rather to the emergence of a shared framework, rooted in certain established facts, within which various memories and narratives can co-exist and enter into generative dialogue with one another. This could be understood along the lines of what the South African Truth and Reconciliation Commission referred to as the fourfold conceptualisation of truth (forensic/factual, social/dialogic, personal/narrative and restorative/healing), whereby each form of truth is characterised by its own dynamics and various forms of truth co-exist in ways that seek to 'achieve "objectivity" while acknowledging contending subjectivities' (Posel, 1999, p. 5). These subjectivities, as Posel further argues, may be 'truthful' to those proposing them, but they co-exist with 'facts' which are also available to the truth commissioners who 'write the past in a way which transcended conflicting perspectives' and that all could consent to (1999: 6). This aligns with what other scholars have referred to as 'thick' truth narratives (Herremans and Destrooper, 2022). Such narratives, while authoritative, are not absolutist or homogenising and allow for the existence of multidirectional memories and relational approaches to past events (Rothberg, 2022; 2009).

In this context, this article draws attention to the role transitional justice initiatives can play in shaping such a 'thick' truth narrative about the nature of the violent past, within which multitudes of dynamic and truthful narratives may meet. The article is positioned within the expressivist turn of transitional justice, which means that I consider (transitional) justice processes – implicitly or explicitly – to express a justice ideal and send a message about what is considered a crime, what we find (un)acceptable harm, what causes moral outrage, and what kind of justice can be aspired (Miller, 2008). These processes, moreover, partly due to their imprimatur of (semi-)legality have norm-setting power. They affect how the story about past human rights abuses is written and remembered (Posel, 1999) and can direct as well as constrain our actions, perceptions and experiences (Sander, 2019; Stahn, 2020; Giles, 2019). According to this perspective, the absence or malfunctioning of such institutions and processes may be a factor in explaining why a widely-shared public narrative about the crimes and abuses of past regimes does not emerge, which, as I will show in the next section, is highly relevant in the context of the Philippines.

4 The Martial Law era transitional justice landscape

When it comes to the violent legacies of the Martial Law era, the Philippines has sometimes been described as an example of 'extreme impunity', partly because of the amnesties and (in)formal inaction in the domain of accountability of the Aquino administration and its successors (McCoy, 141). Yet, this is not the whole picture, and several initiatives that could logically be labelled as

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transitional justice have been taken. This section paints the broad contours of that landscape, following the logic of the five transitional justice pillars.

4.1 Justice and accountability

Justice and accountability are arguably the domain in which the least formal initiatives have been taken, at least at the domestic level. The abovementioned threats to the first Aquino government, combined with the Marcoses' ongoing influence over the domestic justice system created a situation of de facto impunity for most human rights violations. Especially in the domain of civil and political rights violations, judicial inquiry into the authoritarian past has been largely made impossible or abandoned domestically (Garcia, 2021).[3] To this day, no one among Marcos's associates or family has been held criminally accountable domestically.

Ferdinand Marcos Sr. was, however, prosecuted in the US 9th Circuit Court of Hawaii, where he was then residing. In 1987, faced with an unresponsive government and an impossibility to prosecute domestically, 10,000 victims, represented by a US lawyer, filed a class action against Marcos, under the Alien Tort Statute (ATS).[4] In 1992, a jury found Marcos liable under the concept of command responsibility, awarding the plaintiffs extraordinarily high damages of close to two billion US dollars in 1994–1995 (Ela, 2017). While often seen as a success story, this case was contested, among other things, because some argued that instead of taking the quest for accountability elsewhere, the focus should have been on creating robust judicial institutions and processes domestically, so that everyone would have access to legal remedies going forward (Davidson, 2017). The remoteness of the trial moreover meant that forensic evidence about the gross human rights violations happening under Marcos, found their way into the public debate in the Philippines with difficulty and that the abovementioned expressive function of the trials has been limited domestically.

4.2 Truth

In the domain of truth, the Aquino administration installed two formal initiatives: the Presidential Commission on Good Government (PCGG) and the Presidential Committee on Human Rights (PCHR), which were not labelled as truth-seeking or transitional justice per se, had a range of normative objectives that partly overlap with those of standardised truth commissions (Carranza, 2008). The absence of a more standardised approach to truth-seeking was explained by an interviewee who was at that time close to the Aquino administration as follows,

> 'I don't know of any agency that might have taken it up or handled it. For sure it would have been viewed as a partisan given the atmosphere at that time … First of all, who's in charge of such a Commission and how do you select them? I mean the simplest thing is that they would have to be women and men … whose commitment to truth and justice would be unassailable, but in a highly divided society like ours, I don't know how that would have worked.'[5]

This same interviewee went on to warn about seeing the PCGG as a truth commission per se, because it did not have the ambition of reconciliation. Indeed, the PCGG's mandate did not explicitly reference the normative objectives of a standard truth commission, such as

[3]There have been a few court cases domestically, but those relate to economic crimes and corruption charges, rather than dealing with mass atrocities.

[4]This would become the first time a former head of state was held liable for massive violations of human rights in another country under ATS. 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 U.S. Court of Appeals for the Ninth Circuit (Te, 2011, p. 145).

[5]Interview 221128_023.

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reconciliation, repair or shaping an authoritative historical narrative. As such, the visibility of its work has been limited since it did not systematically engage in outreach, for example by holding public hearings aimed at impacting the public debate. However, because it responded to the draining of government coffers and corruption, its mandate foregrounded the investigation of cases of graft and corruption by the Marcos regime, the recovery of ill-gotten wealth accumulated by the Marcoses and their associates and the adoption of non-recurrence safeguards. This focus on economic crimes was unique (Roht-Arriaza, 2016), and hints at a context in which there was significant experimentation in terms of what these sorts of mechanisms could do.[6]

Initially, the work of the PCGG was complemented by that of the PCHR, whose primary function was to investigate 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 state agents. Yet, soon after its establishment and *before* it had finalised its report, the PCHR was replaced with the independent Commission on Human Rights (CHR).[7] This absence of an authoritative record establishing facts which all could consent to, contributed to the further invisibilisation of gross human rights violations and violations of civil and political rights.[8]

Against this background, several other societal actors explicitly took the task of truth-seeking and -telling upon themselves. As an interviewee working for a leading national newspaper at that time argued, journalists, for example,

> '... knew that there was a very weak committee and that is why they became the Truth Commission in many ways. They felt that it was their mandate to uncover that ill-gotten wealth of the Marcoses through investigations. During that period, [the newspaper] had a human rights desk. I was assigned to cover the human rights movement. Just that. Which meant going with human rights groups to dig up mass graves, et cetera. So as to remedy to an extent, the failings of the presidential committee, the weak presidential committee on human rights'.[9]

While important, reading this quote in light of the abovementioned reference to deep societal divisions, raises the question of whether such attempts at unveiling the truth had the same status as that of truth commission reports.

Also, CSOs played an important role in the domain of truth, and in what would currently be called the domain of memorialisation (see below). These actors' distrust vis-à-vis government meant that they self-organised and established their own initiatives, often experimenting with different approaches, rather than, for example, partnering with government, or pressuring government to play a more active role in this domain.

[6]The political transition in the Philippines took place just before the wave of political transitions in Latin America that is often seen as the driver of transitional justice's consolidation as a field.

[7]Formally, the new CHR was to investigate past violations, but its power has been limited by the Supreme Court to making recommendations for prosecution and investigation, and making findings of fact (Akmaliah, 2012). This effectively limited the ability of the CHR and led to a reinterpretation of its role as promoting and protecting human rights in a general sense, and of monitoring the Philippine government's compliance with international treaty obligations on human rights. This reflects the objective of preventing the recurrence of past abuses and violations (Tugade, 2020, p. 14), but overwrites the truth-seeking function.

[8]The PCGG is still active today, but has been subject to harsh criticism. Thirty-five years after its establishment, it still has not determined the scope of plunder committed under Marcos, with estimates ranging between five and fifteen billion US dollars (Pampolina, 2011). Moreover, it managed to recover only around three billion of this ill-gotten wealth, and is officially still pursuing the rest. Furthermore, it has been subject to political influence and pressure, especially since 2016.

[9]Interview 221122_021.

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4.3 Reparations

Reparations is the domain in which the state has been most active, albeit many years after the fall of the Marcos dictatorship. In 2013, Congress approved Republic Act No. 10 368, aimed at restoring victims' honour and dignity (Tugade, 2020). The law envisioned the recognition of victims of the Marcos regime and is the first instance of transitional justice rhetoric explicitly entering debates about how to deal with the Marcos legacy. Seventy-five thousand victims of Martial Law submitted affidavits to the Human Rights Victims Claims Board (HRVCB) established through the so-called Reparations Law; 11,103 claims reached the evidentiary threshold (sometimes more than thirty years after the violations had taken place) and were granted monetary reparations for human rights violations by the Marcos regime (Garcia, 2021).[10] One of the former commissioners of the HRVCB referred to this limited number of recognised cases as 'truth lost in preparation', to underline the effect of over three decades of stalling the reparation process.[11] While the primary aim of the law was reparation, there was an important truth and memorialisation component written into it, notably because the law foresaw symbolic reparation in the form of the establishment of a Freedom Memorial Museum, which is to showcase the nature and extent of the violence and send a 'never again' message. As an interviewee who was involved in drafting the bill argued, through the provision of public hearings, victims were given an opportunity to engage in what could de facto be called truth-telling (even if it was not called that for reasons of political sensitivity). This memorialisation and truth-telling function has arguably become more important than the monetary reparations themselves, as it has created an official and established record about past violations which could serve as a bulwark in campaigns of historical revisionism, and even as a baseline for pursuing accountability.[12]

4.4 Memorialisation

As such, the most extensive memorialisation program currently shaping up is that of the Human Rights Violations Victims' Memorial Commission (better known as the Memorial Commission), established by the Reparations Law to create and preserve the Freedom Memorial Museum (encompassing a museum, memorial and library) and to advise on teaching and curriculum development regarding the Martial Law era violence. The director of the Commission reflected on the importance of increasing the visibility of the 11,103 approved claims by arguing that this high number of claims recognised by the state:

> '... 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 ... the documents that were submitted to the Claims Board will all be preserved by the Memorial Commission. So those documents are important when historians want to investigate this part of our history'.[13]

The funding for the museum, like that for the monetary reparations under the Reparations Law, comes from confiscated ill-gotten wealth. However, despite resources being available, Congress refused to release the budget for the Freedom Memorial Museum until January 2023, meaning that the Memorial Commission has had to improvise and work on the basis of ad hoc, online and partner activities for almost ten years (Cruz, 2022). This resulted in the development of a range of innovative memorialisation initiatives, which responded to this lack of resources, as well as the fact

[10]The head of the commission estimates that another 200,000 victims did not submit their files because they did not know of the process, were too late or did not have access (Interview 221115_011).

[11]Interview 221115_011.

[12]Interview 230117_026.

[13]Interview 211116_012.

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that the Philippines has a very young population that is highly reliant on social media as news providers, which allegedly creates a particularly fertile breeding ground for disinformation campaigns.[14] The Memorial Commission started from these two realities to develop a memorialisation programme based on creative and context-sensitive approaches such as living libraries, Wikipedia *editathons* to counter co-ordinated disinformation campaigns, or TikTok battles around issues of human rights, justice and dictatorship.[15]

Beyond this government initiative, a densely populated memorialisation landscape emerged in the past decade, populated mostly by CSOs and collectives that often explicitly steer away from collaborating with government, because of a perceived unreliability on the side of government. 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 is 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 to avoid recurrence (Claudio, 2010, p. 38). Bantayog, too, steers clear from working with government as much as possible. As one interviewee formerly involved in the organisation argued,

> '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. And it has remained independent since the time it was founded.'[16]

More recently, a range of memorialisation initiatives entered the scene, including the Martial Law Files, the Martial Law Online Museum, 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 ones rooted in artistic practice. These initiatives, too, were described by interviewees who were involved in them as instances of the community taking action rather than leaving everything to the government.[17] This boom of memorialisation activities can be attributed to a number of factors. On one hand, Bongbong Marcos entering national-level politics was a wake-up call, making it clear how far-reaching and deeply-rooted the disinformation campaigns and historical revisionism had already gone. On the other hand, several interviewees who have been active in grassroots organisations for decades, argued that in the immediate post-Marcos era, memorialisation had to compete with other justice priorities for limited time and resources, and many activists were convinced at that time that the brutality of the regime would always be remembered, leading them to prioritise other initiatives in the immediate post-Marcos period.[18] Many of these initiatives had been forward-looking rather than backward-looking, which explains the current boom in memorialisation initiatives that seeks to fill this gap. As several interviewees who are part of this 'memory boom' argued, though, the memorialisation landscape continues to be rather fragmented, partly because organisations find it difficult to identify joint priorities and approaches, partly because their decentralised approach is perceived to offer protection from potential government actions against CSOs.[19]

4.4 Measures of non-recurrence

Institutional and constitutional reform received significant attention in the immediate post-Marcos years, when several mechanisms were introduced that attempted to dismantle Marcos's

[14]Interviews 221115_011, 221118_016.
[15]https://kssp.upd.edu.ph/news-events/102-jose-w-ka-pepe-diokno-tiktok-competition
[16]Interview 211128_023.
[17]E.g. interview 211108_001.
[18]Interviews 221128_023, 221118_015, 221116_012, 221110_004.
[19]E.g. interview 221105_022.

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institutional legacy. The new 1987 Constitution provided the groundwork for the abovementioned PCGG and the PCHR, as well as re-installing a bicameral congress, separation of powers and a Bill of Rights (Te, 2011, p. 148).[20] As an interviewee close to the EDSA People Power Revolution remarked though,

> '[W]e had an incredibly good constitution, the 1987 Constitution. It institutionalised civil society, participation in government ... So what were the lacunae, the blind spots? The blind spot was human rights. I mean, we all knew that people were victimised, but we thought things were moving along, that it was progressing.'[21]

Beyond this new constitution, the Aquino administration saw the reform of state institutions implicated in gross human rights violations as a priority for its democratic transition and focused on 'democratic structures, civilian oversight of security forces, a functioning judicial system, and the rule of law' as matters of non-recurrence (Tugade, 2020, p. 5). This has included monitoring mechanisms, for example of the national security institutions. As part of these efforts, both the government of Cory Aquino and later that of Benigno Aquino Jr. actively pursued vetting policies. These programs have often been criticised, however, amongst other things because the overall impact of most of these measures has been limited since in practice many members of the old regime stayed in place and were never held accountable or publicly condemned for their crimes during the Martial Law era. As one interviewee, who is a legal practitioner and NGO leader, argued,

> 'Although democratisation started in 1986, the justice system was never strengthened. During martial law, Ferdinand Marcos controlled the legislature and he controlled the judiciary ... The lawyers knew that if they wanted to win cases, they had to be very close to the established networks, which were never dismantled after Marcos fell ... Ever since Marcos' time there has been continuity.'[22]

While understandable in light of Aquino's fragile position, the compromises that were made have cast a profound shadow over the actual reforms and policies put in place and arguably stripped those of their preventive potential.

Moreover, the domain of education, a crucial realm of non-recurrence, has been left virtually untouched throughout, and most strikingly so since 2016, when a 'new direction' in the teaching of the Martial Law period was introduced, which stresses economic advances and development projects that were implemented under Marcos Sr.[23] Already before 2016, human rights violations were only hinted at in one paragraph that dealt with the growing power of the military and arrests of opponents (Corpuz-Uminga, 2015),[24] since then the method has changed to asking students how they feel about the Marcos rule, rather than teaching them facts. As one expert observer argued based on their analysis of history textbooks,

> '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

[20]With this constitution, president Cory Aquino voluntarily ended her revolutionary government and its vast powers stemming from the 'Freedom Constitution'.

[21]Interview 211110_004.

[22]Interview 221117_013.

[23]Interview 221219_025, 221117_014, 221111_005.

[24]The author's finding is based on an analysis of the course module 'Ang Pilipinas Sa Ilalim Ng Batas Militar' (The Philippines under Martial Law) produced under Project EASE – Effective and Alternative Secondary Education (Bureau of Secondary Education).

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> interview older people, ask them how they feel 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.'[25]

Currently the Secretary of Education is Sara Duterte, which makes most civil society actors sceptical about positive changes in this domain in the coming years.

5 Interrogating the absence of standardised transitional justice

The section above showed that several initiatives that could logically be labelled as transitional justice have been developed and implemented in the Philippines, but that in the first decades after the fall of the dictatorship, these initiatives were ad hoc and there was limited co-ordination. This absence of an overarching standardised framework can be understood in light of the political and global context at that time. Yet, it has had several, arguably negative, consequences. In this section, I first zoom in on the absence of a transitional justice discourse in the immediate post-Marcos period, and then examine the consequences thereof through the lens of standardisation and contextualisation debate introduced above to understand how the absence of an overarching approach to transitional justice has influenced the dynamics of transitional justice initiatives in practice. I argue that precisely this absence of a standardised transitional justice framework and discourse in the immediate post-Marcos years, makes this a case which fundamentally differs from what Cath Collins refers to as 'post-transitional justice', and that it should therefore be analysed on its own terms (2010). I then explore how more standardised attempts at transitional justice have altered the broader transitional justice landscape in the Philippines.

5.1 The language of transitional justice

While several transitional justice initiatives have been taken, both by the state and by civil society actors, a co-ordinated effort to deal with the violent legacy of the Marcos dictatorship has been missing, and the transitional justice initiatives that have been developed, have not always been labelled as such. A former commissioner of the PCGG explained this absence of explicit references to transitional justice by arguing that,

> 'the PCGG was meant to be a transitional justice process when it was created, but it was created at the time when there was no such thing called transitional justice in terms of the vocabulary, the concept'.[26]

Beyond this temporal dimension of the Martial Law transition preceding the paradigmatic transitional justice processes and shaping up at a time when the discourse of transitional justice was not yet commonplace, there is also the element of contextualisation and prioritisation which explains why the language of transitional justice was absent for a long time. As one long-standing practitioner-activist underlined,

> 'It almost seems very aspirational for the people that we work with, and even for organisations. So, it's relevant, but it's interesting in the sense that conceptions of justice in the Philippines have been so eroded, it's almost hard to dream about it, because if you're inside the system, you have to fix so many things before you even get to the basic stuff like even basic criminal justice and all of that – what more transitional justice. But yes, I would be the first to admit that it is relevant. It's a goal.'[27]

[25]Interview 221128_023.
[26]Interview 221216_024.
[27]Interview 221117_014.

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What I tried to show in the previous section is that in many ways, practitioners within governmental institutions and beyond were 'doing transitional justice' before they were 'talking transitional justice'. The discourse of transitional justice only became prominent in the early 2010s, when the then-Commissioner for Human Rights, Chito Gascon, explicitly sought to mainstream transitional justice in the work of the Commission for Human Rights, which led several practitioners, scholars and activists to also mobilise this discourse. Part of this emergence of transitional justice as an explicit overarching framework for thinking about questions related to the legacy of Martial Law, has been the formation of an informal association called the Transitional Justice League. The League sought to reframe several existing initiatives in the domain of human rights and justice through the lens of transitional justice, and as such to propose a more encompassing and widely shared framework for action following the rhetoric and the pillars of transitional justice. As one of the founding members of the League explained,

> 'We did a couple of activities then, like introducing modules on transitional justice and pushing for certain policies, and reflecting on what kinds of bills we can support, what laws we can push for … And we did some analysis. For example, what seems to be happening now is that the gaps or deficiencies in transitional justice may be responsible for our return to many of the practices that have been done during the Marcos era, or basically the return to authoritarianism … And transitional justice is a more holistic approach.'[28]

This statement is reflective of a more widely shared belief among contemporary justice actors dealing with the legacies of Martial Law, namely that the comprehensiveness which is contained in the discourse and practice of transitional justice, is what has been missing in terms of how the violence was initially dealt with. A former commissioner on the PCGG, for example, argued that the absence of an overarching well-structured transitional justice framework, meant that many options to deal with violent legacies of the Marcos dictatorship have not initially been pursued, and that, for instance, various avenues for truth-telling were left unexplored and criminal justice was not prioritised when opportunities for doing so presented themselves, for example under the Benigno Aquino Jr. presidency.[29]

5.2 Consequences of the initial absence of a standardised approach

First, one of the main consequences of justice actors doing transitional justice, without calling it transitional justice, is that there has in the early years been no reference to the comprehensiveness and encompassing nature of the transitional justice framework. Various initiatives have been taken, both governmental and non-governmental, yet, the absence of a shared language and framework challenged the extent to which smaller CSO initiatives that de facto contributed to the core normative objectives of transitional justice (such as truth, repair, recognition, memorialisation, reconciliation) have been willing and able to align their agendas. This has resulted in a fragmented CSO landscape characterised by dispersed approaches, challenges related to upscaling, limited societal impact and various important components of dealing with the past remaining under-addressed. As one interviewee indicated, this lack of a shared language has not only challenged the emergence of a co-ordinated program, it has also challenged the emergence of a historical meta-narrative about the Martial Law era, because there was never a unified attempt at establishing the facts in an authoritative way.[30]

Second, whereas standardised approaches to transitional justice typically hinge upon the actions taken by the transitional state, in this case, the absence of such a standardised approach

[28]Interview 221108_003.
[29]Interview 221216_024.
[30]*Ibid*.

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aligned with CSOs pre-existing strategy of bypassing the state. Initial scepticism (and later fear) meant that in the first decades after the fall of the Marcos regime, most CSOs in the broad realm of transitional justice neither sought to collaborate with government, nor to make advocacy or demands vis-à-vis government the crux of their operational model. This can to some extent be observed in every domain discussed above, but is most visible in the domain of justice and truth. In the domain of justice, for example, citizens, in the absence of options to prosecute domestically, rather than pressuring the state to fundamentally reform the justice system, launched a class action against the Marcoses in the US. In the domain of truth, rather than pushing for an official truth commission, journalists and CSOs came to see themselves as legitimate truth-seeking bodies. Also, in the domain of memorialisation, CSOs have been important drivers of the process, even if the state-led Memorial Commission is currently becoming a dominant player in the field. While there were obvious reasons for CSOs to take matters into their own hands (including the fragility of the first transitional government of Cory Aquino and later threats against civil society by government actors), the non-engagement with the state, has de facto let the state off the hook, and pre-empted a number of crucial elements of transitional justice from materialising, including domestic criminal justice and state-sanctioned truth-telling. What is striking is that this absence of state-led backward-looking initiatives also challenged the impact of those forward-looking initiatives in which the state was in fact involved from the start (such as constitutional and institutional reform). This dynamic, too, contributed to the absence of an overarching authoritative public narrative about the nature of the violence that took place under the Marcos regime, as state-sanctioned bodies (such as courts or state-sanctioned truth commissions) tend to weigh more effectually on the creation of public narratives.

Third, the absence of a standardised approach to transitional justice has arguably weakened the rootedness of these justice initiatives in internationally acknowledged human rights principles. As several interviewees argued, those initiatives that were taken, were often responses to windows of opportunity opening up or to other socio-political dynamics, rather than being part of an overarching strategy aimed at justice and better protection of human rights. This can, for example, be observed in the fact that even if there was a constitutional reform immediately after the fall of the dictatorship, human rights considerations did not explicitly drive or characterise this reform process. Nor were human rights topics ever mainstreamed in educational reform.

5.3 Standardisation and experimentation

Around the early 2010s then, the discourse of transitional justice became more prominent and transitional justice increasingly and explicitly came to be referenced by actors within and outside of government as a relevant framework to address violent legacies in a more encompassing way than had been done until then. This can be observed in the context of the Reparations Law, but also in operational documents of the Commission for Human Rights, and the work of activists, scholars and practitioners, who united in the Transitional Justice League. Also, beyond the Martial Law legacy, transitional justice discourse became increasingly prominent around that time. In 2010, for example, upon taking office, incumbent president Benigno Aquino Jr. established the Philippine Truth Commission (PTC), which, while stalled in its tracks because of a ruling of the Supreme Court, was tasked to achieve a degree of accountability by investigating allegations of graft, economic abuse and massive corruption in the previous Macapagal-Arroyo administration. By labelling this Commission a truth commission, Aquino explicitly inscribed it within the broader discourse of transitional justice, hinting at its broader normative objectives of not just establishing the truth, but also of, for example, accountability and reparations. Around the same time, the transitional justice language also enters the peace negotiations over the conflict in the Autonomous Region of

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Muslim Mindanao.[31] None of these examples, however, followed a highly standardised approach or pathway, either because of their focus (e.g. the PTC), their foregoing of the silo'd pillars of transitional justice (e.g. the Reparations Law), or their temporal focus (e.g. the broad temporal mandate of the Mindanao TJRC).

In fact, it can be observed that experimentation characterised the – formal and informal – transitional justice process, both before and after these standardised initiatives emerged and the discourse of transitional justice was explicitly mobilised. In the immediate post-Marcos period, experimentation with what we would now coin transitional justice can be observed, for example, in victims seeking accountability through a class action in the US when the domestic justice system proved to be unresponsive, or in the mandate of the PCGG which was a pragmatic response to the difficulty of foregrounding explicit violations of civil and political rights but nevertheless showed how truth mechanisms can deviate from the typical focus on civil and political rights, and pay more attention to economic and social rights and economic crimes instead. Also after standardised transitional justice rhetoric gained traction among justice actors, a significant degree of experimentation could still be observed, not only on the side of CSOs, but also, and notably, on the side of government, where, for example, the very wording of the Reparations Law was a creative and contextual response to the political reality of that time as it sought to frame a potentially explosive idea (of truth-telling and accountability) in the language of a much less threatening initiative on memorialisation. Also, the way in which the Memorial Commission that was established through this act has approached its work can be read as an example of experimentation, innovation and contextualisation, and of pushing the boundaries of how memorialisation is typically approached in standardised transitional justice.

Beyond this, the mobilisation of the standardised transitional justice discourses has also functioned as a means to open up the justice imagination (Herremans and Destrooper, 2021), and has pushed actors to formulate ambitious and encompassing justice agendas and priorities, such as the Reparations Law, which drew on the transitional justice rhetoric and imaginary to gain legitimacy and change the dynamics of the debate about the Martial Law era. It pushed the notion of reparative justice into a debate where this had not been present before – beyond the plaintiffs in the US class action – and as such put the question of how to deal with the Marcos legacy back on the agenda by tapping into the explicitly expressivist potential of transitional justice efforts.

As such, I argue that the case of the Philippines can be read as an illustration of both the continued importance of standardised approaches to deal in a structured and encompassing way with legacies of violence, as well as of the room and need for experimentation and contextualisation within and beyond such an approach. It illustrates the need for an eco-systemic approach to transitional justice in which standardisation and innovation, state-centred and CSO-led initiatives, legal and non-legal approaches and top-down and bottom-up initiatives co-exist, recognise and reinforce each other. Interestingly, the Philippines also offers pointers of what such an eco-systemic approach could look like, and how contextualisation, experimentation and innovation with standardised transitional justice approaches can work, even – and specially – in adversarial political contexts. The reliance on a Reparation Law as a stepping stone for truth-telling and potentially even accountability, in a context where the latter would have been impossible because of political pushback, is only one example thereof.

That there are indications of what a transitional justice eco-system could look like, does not, of course, make the Philippines a textbook case of a successful transitional justice process, quite the contrary. The fact that more than three decades passed before there were any systematic attempts to deal with Marcos's legacy, means that a lot of potential was 'lost in preparation'. In that sense, the Philippines almost constitutes the mirror image of what Cath Collins (2010) describes as post-

[31]While such an analysis is beyond the scope of this article, it is plausible that the international attention to the Bangsamoro conflict and the presence of international actors and consultants there is one of the elements explaining the explicit attention to transitional justice. This may in turn have fed back into the debates about how to deal with the Marcos legacy.

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transitional justice, in the sense that here there was no co-ordinated transitional justice effort in the immediate post-transition period, and that the recent arrival of transitional justice as a more encompassing framework in itself constitutes the 'post'. This late arrival of transitional justice as an encompassing mobilising discourse and operational framework, may have had the unforeseen consequence of not streamlining early initiatives and leaving room for experimentation, it also raises questions about the long-term effects of the absence of such and encompassing approach, notably in terms of historical revisionism and democratic backsliding.

6 Concluding remarks

While many – justified – critiques of standardised transitional justice have been raised in the past decades, the Philippines is a case that speaks to theoretical debates about standardisation-vs-contextualisation by underlining the continued value of mobilising a standardised and encompassing approach to transitional justice, as well as underlining the room for contextualisation, experimentation and innovation that continues to exist alongside institutionalised initiatives.

It can be observed that around the early 2010s, when the discourse and imaginary of transitional justice were finally mobilised in the Philippines, this sparked a number of justice efforts – including backward-looking ones – that had been missing until then, and that alluded to a more ambitious agenda than had been in place until then. Since then, a transitional justice eco-system started to emerge that is characterised by standardisation and innovation, state-centred and CSO-led initiatives, legal and non-legal approaches, formal and informal processes, professionalisation and grassroots work, institutionalisation and everyday practices, normal-isation and experimentation and top-down and bottom-up initiatives. This underlines the complementarity of various initiatives in terms of focus, form and function. Moreover, this dynamic ecology in which multiple initiatives influence and shape one another in various ways, does not only encompass initiatives related to Marcos' Martial Law period. It also counts with initiatives shaping up on the context of the Bangsamoro Peace Agreements (where a TJRC recently published its findings), the struggle with the fighting faction of the communist CPP-NPA, and most recently, the debate about how to deal with Rodrigo Duterte's violent 'war on drugs' and with the extra-judicial killings that characterised it.

The case thus illustrates the co-existing and mutually influential spatio-temporal layers of transitional justice, whose interaction merits further examination. In sum, even if transitional justice's impact has been limited because of the decades-long absence of an encompassing approach, today, transitional justice has become a multi-focal and highly contextualised practice in the Philippines – and it has required the mobilisation of a standardised transitional justice discourse to facilitate this.

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