

Episode 5, Season 4 (26 January 2023)

## Does the re-election of Bongbong Marcos mean that transitional justice has failed in the Philippines?

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**Brigitte:** Welcome to this new episode of Justice Visions, where today, we'll talk about the Philippines. Because in May 2022, Ferdinand Marcos Jr., better known as Bongbong Marcos, and the son of former dictator Ferdinand Marcos won the presidential elections in the Philippines. The vice-presidential elections were won by Sara Duterte, daughter of the former authoritarian president Rodrigo Duterte. So, in today's episode we'll talk about what to make of this if we look at it through the lens of transitional justice. And Tine, you just returned from fieldwork in the Philippines. So maybe you want to start by just describe the historical context, for our listeners who are not familiar with it?

**Tine:** Of course. So Ferdinand Marcos, senior that is, like many dictators, came to power through democratic elections, but then in 1972, he declared Martial Law. And this marked the beginning of 14 years of one-man rule, which lasted until 1986, when he was ousted by the EDSA People Power Revolution and exiled to Hawaii. And so during that period, that Martial Law period, there were massive economic crimes, fraud, cronyism. The Marcoses have been proven to have embezzled and misappropriated billions of public funds for their personal benefit, channelling the money to offshore accounts. But there was also the suspension of civil rights, the state took over many media channels, opposition members were arrested, political opponents were targeted, more generally, there were gross human rights violations: over 3.000 extrajudicial killings, 35 000 documented cases of torture, 70,000 incarcerations – what is strikingly in the Philippines disappearances amounted to around 1.600, which is relatively low, if you compare it to other dictatorships at the time. And some would argue that that was precisely because of the scare tactics of the Marcos regime whereby, rather than disappearing people, there were *salvaging*s, so people's tortured and maimed bodies would be left, or even displayed in the streets as a warning for others. It was a very brutal dictatorship.

**Brigitte:** Right, and then to link this back the main goals of transitional justice, the return to power of the Marcoses, raises obvious questions – not in the least regarding the aim of non-recurrence.

**Tine:** That's true that this very much seems like an instance of recurrence, right, the son of the former dictator now returning to power, to the presidential office? A couple of things are striking from the point of view of transitional justice and especially of non-recurrence. And the first is, of course, that what we see is that during his electoral campaign, Bongbong Marcos, or BBM, as he is popularly referred to, he himself actually already very explicitly tried to make that distinction between him as a Marcos returning to power, which he tried to argue was not at all the same as a return to human rights violations or economic crimes, etc. So he had this rhetoric going on saying, you know, I'm not my father. Look at my track record. Look at my policy. That kind of

thing. And so he's really aware of those connotations of his name, trying to distance himself from that relation with human rights and economic crimes. Now, of course, the other thing is that for someone with that name to at all be elected to that office, I think it's clear that quite a bit of historical revisionism has been happening and that's what we've been seeing since, for the past ten years that there has been a systematic campaign, mostly, of course, below the radar, of the Marcos family to weigh on the public discourse, to recast the historical narrative about the Marcos era, about the martial law era, erasing the crimes and the human rights violations from public discourse.

**Brigitte:** Right, the Martial Law era, which you just mentioned, and which ended in 1986, when Marcos was ousted, then Cory Aquino becomes president – and she starts a transitional justice process, correct?

**Tine:** Well, yes and no. We should keep in mind that this is 1986, so this is before, let's say the poster children of transitional justice, it's before the South African transitional justice process, before the fall of many Latin American dictatorships. And so, we see a range of initiatives that you could logically label transitional justice: there's a constitutional reform process, there are vetting procedures (contested ones that is), there are attempts at reform of the police and the military (with little success), there are a number of initiatives in the domain of truth, memorialization. But by and large the language of transitional justice is missing. It's just not quite mainstream yet at that point, and so there isn't that overarching framework, that comprehensive approach that we now call transitional justice just isn't so mainstream yet, so initiatives are more dispersed, maybe more ad hoc, if you will.

**Brigitte:** So would you argue that the lack of an overarching framework of transitional justice results in a fragmented process of dealing with that legacy of violence?

**Tine:** Well, to some extent, it does. Of course, there is also the political reality: the Aquino presidency was a very unstable one: she was under constant threat from the military: the military which had played a very ambivalent role during the martial law era, but then also during the toppling the Marcos dictatorship. There were several attempted coups, six, depending on how you count. There really was very limited room for accountability in a situation where a lot of the old regime, and a lot of the military commanders, too, were still in place. And then there is the fact that, CSOs, they were mostly either exhausted after 14 years of dictatorship and after the People Power Revolution, or as some of my interviewees mentioned that they were on a high after the revolution, or were assuming that democracy would take care of itself, that achievements would not be turned back. Of course, if you look at the situation today, things are a bit more uncertain. But that's a story you hear from many activists, that there was so much confidence in the idea of linear progress that maybe not enough attention has been paid to truth processes, to memorialization, to cementing a collective historical narrative about the dictatorship that would be difficult to undermine. It seemed so obvious that these crimes would always be remembered.

**Brigitte:** But there were some initiatives, and some of these we will be talking about today.

**Tine:** Yes, and if we look at formal or state-sanctioned initiatives, I think two really stand out. One is the Presidential Commission on Good Governance, which was

established immediately after the fall of the dictatorship, so it was one of the first acts of Cory Aquino, and which wasn't exactly a truth commission, but it did have a mandate to go after the ill-gotten wealth of the Marcoses, and to establish what had happened in terms of fiscal fraud, in terms of economic crimes, and it also, to some extent, engaged in outreach on that topic, so there was an obvious truth dimension there. The other state-sanctioned mechanism, is the Human Rights Violations Victims Memorial Commission, or MemCom, which was established much later, in 2013, so about 30 years after the fall of the dictatorship, as an attempt to offer recognition and reparations to victims of the dictatorship, and also really to cement a public narrative.

**Brigitte:** And you talked about that first initiative, the Presidential Commission on Good Governance (PCGG) with Ruben Carranza, who is currently a senior expert on reparations at the International Center for Transitional Justice, but who was also a commissioner on the PCGG between 2001 and 2004. Let's listen to that interview.

**Ruben:** The PCGG was a post-dictatorship Revolution Commission. Initially, the idea in 1986 after the Marcos dictatorship fell was to create one big commission for both human rights violations of the dictatorship and corruption by the dictatorship. But the political leaders at that time, who discussed this thought it would have been too broad a mandate, so they split the big commission into two, one for human rights violations and then another for corruption and recovering ill-gotten wealth from the Marcoses. So the PCGG was created separately from the Presidential Commission on Human Rights (PCHR), and the PCGG was given the mandate to recover ill-gotten assets, work with prosecutors to prosecute the Marcoses and their cronies both in the Philippines and in other countries, including in Switzerland.

**Tine:** the PCGG, with its focus on economic crimes, was in many ways unique in the transitional justice landscape. It had to plot its own course of action. What do you think its main contributions to the transitional justice process have been, and what could maybe have been approached differently?

**Ruben:** Well, you're right and the two important things about the PCGG was how organic it was, that there was no precedent that could be found at that time in terms of creating a post-dictatorship Commission to specifically go after the dictator and his cronies. And the second aspect of this was that the PCGG had truth-seeking power as well. So it wasn't just to litigate and recover assets, but it could actually find out why the dictator was able to amass so much ill-gotten wealth, and then report about that to the Filipino people. Of course many other things could have been done better by the PCGG. The things that it could have done better would have been to decide and prioritise which cases to go after first, but instead the PCGG went after most of the biggest cronies, and initially it worked, but eventually it succumbed to the dysfunction of Philippine politics, to the corruption that was still entrenched in society.

**Tine:** Would you say that the PCGG's focus on economic crimes led to a blind spot for human rights violations perpetrated by the Marcos regime – especially with the PCHR ceasing to exist before it could submit its report?

**Ruben:** I think the problem, the initial problem with having the PCGG continue to exist, was that there was no corresponding PCHR. So there was no corresponding Commission to go after human rights violators, or that was the perception. First of all, that the dictator was accountable for economic crimes and corruption, but apparently,

human rights violations were less important, and perhaps postponable in a way, as far as perception was concerned, which was of course not true, but it also led to a larger problem, which was the fact that the Philippine military and police were never subjected to accountability, were never reformed in a way that was far-reaching and deep. With no one going after them, they felt that they could even have more power and as much impunity as they wanted, which today still exists. That was the initial problem. The later problem was for transitional justice, not just in the Philippines, but elsewhere in the world, the perception that you could have a transitional justice that focuses only on one aspect of violations, but not another. And this problem, I think, continues to affect the way we design transitional justice mechanisms. Although there has been some level of acceptance now that many of these violations do take place and do happen simultaneously, and perhaps should be addressed concurrently.

**Tine:** One attempt at addressing some of the blind spots of the initial transitional justice process was, R.A. 10368. Why was that such an important piece of legislation, and why did it materialize only in 2013?

**Ruben:** I think it's partly because transitional justice in the Philippines became so focused on going after the Marcoses where they were, which was in this case the United States, that there was no large strategy, there was no comprehensive design for transitional justice in the Philippines. And so over the years there were just fragmented efforts and no attempt at consolidating them. So that it was both strange and perhaps inevitable that it was only when we recovered ill-gotten assets from the Marcoses that there was enough momentum and - literally - capital to design the reparations programme. But that required a reparations law. The fact that it took another ten years after I first drafted the reparations bill in 2003 - it was only passed as law in 2013 - that delay was precisely a consequence of not having a transitional justice strategy. You allowed the Marcoses to build enough power to resist, and overtime, the longer it took, the more power they recovered. So recovering ill-gotten wealth was what I was doing, what we were doing, but the Marcoses were recovering power as well.

**Tine:** An important element of the reparations bill was the establishment of a memorial commission, which we'll talk about more later in this episode. Was that a reaction to the initial absence of a formal truth commission or institutionalized memorialization efforts?

**Ruben** I'll answer that question from a very personal perspective. When I was drafting the bill, I incorporated what I have described as a backdoor truth-seeking processes into the reparations process. In other words, I wanted the reparations institution to be created by the law to actually hold public hearings to actually give opportunities to victims who came forward seeking reparations to also do truth-telling in public if they wanted, and the final law actually gave them the authority to conduct hearings, which in the end they never did and they said it was for lack of time and lack of capacity to do so. But there was that possibility. I called it backdoor truth-telling because, had it been frontdoor truth-telling, the Marcoses and their cronies would have fought so hard that the whole law would never have been passed. It would have been killed outright so you insert it at the back, see if they notice it, and they did not. But at the same time there was a front door effort which was the memorialization Commission and to me, I felt that they would not resist it as much because it was explicitly backward looking. In other words, it wasn't going to build the basis for criminal prosecution or for further asset recovery. It was memorialization. The idea, at least on the surface, was that people

would recall the past rather than go after them in the future. I think it was also, and this was not intentional, I think it also became the memorialization part that's become one of the most important legacies of the law. Even during the return to power of the Marcoses that there is that possibility that even after they try to erase the history of the dictatorship, you will still have an official basis to recall the past and maybe even to pursue accountability.

**Tine:** Looking at the current political situation in the Philippines, which element from the transitional justice toolkit, or which approach to transitional justice, do you feel holds the best potential for ensuring non-recurrence of further violence/human rights violations?

**Ruben:** That's difficult to answer and I think part of the difficulty is the fact that the Marcoses have had a long period of time to plan how they would fight back, plan how they would revise history and amass the resources they need to do that. On the other hand, you have Filipino activists and whatever institutions that remain, MemCom is one of them, just trying to survive. So memorialization will be important for mobilising younger people who are confused by the historical revisionism being done by the Marcoses, but not entirely convinced by it.

**Brigitte:** What strikes me most is how much time was needed for that reparation bill to be passed

**Tine:** That's right, and of course that means that the number of claims that were filed, on the one hand, is only the tip of the iceberg, but also that, of all those claims that were submitted, over 75,000, only 11,103 were granted reparations. I think that's still massive, and highly significant, if you think about it: this means that more than 11,000 people were still capable, sometimes more than 30 years after the violations took place, to submit affidavits with the required forensic evidence to back up their story. In that sense, this is a huge number. As Ruben mentioned, even if it's only the tip of the iceberg, these are victims that are formally acknowledged by the state, these are cases where the state has recognized that, yes, human rights violations took place under the Marcos dictatorship. And that cannot be taken back. And in this current era of fake news, of disinformation, and of historical revisionism, that number is hugely important, as a sort of unshakeable referent.

**Brigitte:** Right, and that also goes to the point about how that history of violence is remembered, and to the memorialization component of the law, because testimonies of victims were not only collected in the context of monetary reparation orders, but the idea was also to use these as the backbone for memorialization efforts. And you talked about this issue with Chuck Crisanto, who is the director of the MemCom. Let's listen to how he describes the work of the Human Rights Violations Victims Memorial Commission, as it's called officially.

**Tine:** So as the director of the MemCom, you're in charge of building the Freedom Memorial Museum. For a while, that seemed like a tricky endeavour, because you had the files in your archive. The design for the museum had been selected. But funds were not being released. Just a few weeks ago, that changed: the budget has now been signed and approved by the President, and the work on the construction of the museum can now start. Congratulations! But for this interview, I was wondering if you could maybe first tell us a bit more about how you approached your memorialization work up until

a few weeks ago, when it was still uncertain whether that physical structure would at all become a reality?

**Chuck:** Even before the physical museum is to be built, the Memorial Commission has engaged in human rights education programs, and in this regard, we have tried to reach our audiences through different platforms. And the audience we're trying to reach are young people. So we are on Facebook, on Instagram, on TikTok, on YouTube, as well as on our website, which has proved to be beneficial due to the lockdown wherein the entire public sector did not distribute textbooks and so the fight, or the battle, for memory was on the Internet. In this regard, the Memorial Commission also ran Wikipedia edit-a-tons, in our battle for memory so that resources and references of students who want to look at, or scholars who want to look at what happened during that period can readily log in and see some of our material online.

**Tine:** This move to social media platforms is really interesting I think, because, indeed the Philippines has a very young population, which mostly has no first-hand experience of the Martial Law Era. It's really interesting how you tried to address that problem by trying to activate young people themselves to engage with and share these truths, for example by organizing TikTok battles and competitions. We'll link to that in the shownotes, because it's a really inspiring example of how to use social media in memorialization work. The other thing I wanted to ask you about are the educational materials that you just mentioned, because, of course, since 2016 there has been a lot of controversy about the new approach to teaching martial law history. How is that situation today, and do you engage in that debate as the director of the MemCom?

**Chuck:** The vice President, Sara Duterte, who sits as the Secretary of the Department of Education, recently, in the last month or so, came out with a public pronouncement, describing what she was doing in the early 1980s, and she says that at that time she was so busy in order to support her grandmother. Her grandmother, Nanay Soling as we fondly call her, led the Yellow Friday movement in Davao City, in protest against the dictator.

**Tine:** Yes, for our international listeners who are not familiar with the context, this might be news, that the grandmother of Sara Duterte and the mother of Rodrigo Duterte, was actually a movement leader against the Marcos dictatorship. And so you say that Sara recently referenced her resistance activities in a public pronouncement, right?

**Chuck:** That pronouncement gives us hope that she is open and that she will allow us, the memorial commission, to have a partnership with the Curriculum Development Bureau, who is in charge of developing material for all public textbooks. We tried in the last administration, but we never made any headway in that regard. Perhaps this year we may see some changes. After the president won in the May 2022 elections, there was fear that even my commission, the memorial commission, would be obliterated. Now in 2023, facing the New Year, President Bongbong Marcos did not obliterate our agency.

**Brigitte:** What really strikes me here is that optimism and creativity in making sure that something happens: the TikTok challenges, trying to mobilize the legacy of Soledad Duterte.

**Tine:** Yes, and I think that's a kind of creative energy that you observe among many members of civil society. On the one hand, of course, many people are tired, some activists even use the word PTSD: the return of the Marcoses has really shocked and depressed many people in civil society, but on the other hand, there is so much resilience, there are so many smaller initiatives, for example in the domain of arts and museum or curators, all engaging with and trying to navigating that really difficult political context, that shrinking space.

**Brigitte:** Right, this is hugely important because, for now we were only talking about two state-sponsored initiatives.

**Tine:** That's right, and we haven't even started to address initiatives that exist beyond, or in parallel, or often in opposition to government. There are so many artists for example creating work engaging with various dimensions of this historical violence, artists trying to destabilize that narratives that people are fed with 20 times per hour through social media, no? And that tries to leave as little room as possible for doubt, galleries and museums curating exhibitions, universities organizing documentary and movie screenings. Just to still try and destabilize that narrative.

**Brigitte:** So today there is a vibrant landscape of memorialization?

**Tine:** I would say at least more and more vibrant. I think that on the one hand, before May 2022, under Duterte, everyone was just so focused on all the EJK's, on all the killings and the violence that took place in the context of Duterte's hyper-violent war on drugs, that there was little room for anything else, and then, at the same time, the re-election of BongBong Marcos made it blatantly clear how far historical revisionism had been going, and had gone already. So I think these two combined, the end of the Duterte administration and the in-your-face-nature of the Marcoses historical revisionism, have really pushed truth and memory about the martial law period to the top of many activists' agenda.

**Brigitte:** Right, and we'll also link to a piece that [Rappler](#), the Nobel Peace Prize Winning newspaper from the Philippines did on this issue of misinformation.

**Tine:** Yeah, it's really interesting. And just quickly for our listeners who have noticed this, it's also, of course, great news that just recently the verdict came in that Maria Ressa [the founding editor of Rappler], who won the Nobel Peace Prize, has won the court case against her allegedly for fiscal fraud. So that's a bit of positive news here.

**Brigitte:** For now, and to wrap up our episode, the question that we normally ask of all our interviewees, this time we didn't ask them, but I'll ask you Tine, since you're just back from a period of fieldwork in the Philippines: where are you looking for inspiration, which evolutions do you see that you find promising for the future of transitional justice?

**Tine:** One of the interesting things that I'm that I've been observing is how some form of standardization and really having that overarching discourse of 'TJ' is important. And the reason I'm saying that is that, of course, in the past decade there have been so many critiques of standardized transitional justice as being too legalistic, too stodgy, too institutionalized, too much of a blueprint, all of that. I mean, don't get me wrong, I've

been part of that critique. But I think the Philippines is a case that shows the merit of actually having that standardized overarching framework because it wasn't there, and that led to a very fragmented approach. And at the same time, I think that another thing that the case shows is that a lot of innovation, a lot of contextualization of *bricolage*, if you will, is still possible and important even within that standardized framework. So, for example, what Rubén was saying about the focus on economic crimes, about getting backdoor truth-telling in. So that is one thing, the place of standardization. The other thing I think is really relevant to mention is that often when we talk about truth, there's this almost implicit assumption that the mere fact of truth-seeking or truth-telling will in some way mean that those difficult truths will find their way into society, into public discourse, and will affect society. And that, of course, is an assumption that really needs to be unpacked. What we see here is that if people are constantly fed the same disinformation, for example, through social media, about what happened under Marcos, then just getting the truth out there, so to speak, doesn't dent those beliefs automatically. So I think we need much more research on how these truths are received in society. And there I think that, for example, the artistic practices that we only touched upon, constitute interesting ways to think about pathways of impact that we could explore further.

**Brigitte:** We'll share some of those examples in our shownotes for our listeners, and thank you for this conversation, thanks to our interviewees and to our listeners, and we'll be back next month with a new episode.

**Tine:** Thank you.