

FROM MARCOS TO ANOTHER AQUINO: IMPUNITY, ACCOUNTABILITY AND TRANSITIONAL JUSTICE

edited by Steffen Rudolph



Ruben Carranza

(Philippines) Director of the Reparative Justice Program at the International Center for Transitional Justice (ICTJ), where he works with victims' communities and reparations policymakers in different post-conflict and post-dictatorship countries. From 2001–2004, he was the Commissioner in charge of recovering ill-gotten wealth from the Ferdinand Marcos family. From 1998–2000, he was an Assistant Secretary of National Defense in the Philippines, where he developed his expertise in security, peace-building and conflict issues.

Carranza discusses the notable progress in resolving the problems of extrajudicial killings (EJKs) and enforced disappearances (EDs). The paper provides information on past and present attempts on transitional justice-seeking efforts in the Philippines and other countries. The author illustrates the options for a future national monitoring mechanism through transitional justice lens. He comes to the result, that success will only be achieved once a multi-stakeholder owned national monitoring process has determined that these crimes have been eradicated in the Philippines. This is an abridged version of a September 2010 paper written for the European Union-Philippines Justice Project (EPJUST).

The Opportunity of President Aquino

In many countries in which state and non-state armed groups have committed human rights violations, confronting impunity and pursuing accountability for those violations is challenging. Due to local activism or to international pressure, governments sometimes react, - but these efforts will fall short if they do not include the elements of transitional justice in their approach. Transitional justice is not an alternative to seeking redress through the criminal justice system; rather, it offers mechanisms that can be combined with or may sometimes be more feasible or appropriate than relying on prosecutions and courts. These mechanisms include truth commissions, administrative reparations programs, the vetting of officials involved in abuse and other institutional reforms. These mechanisms have been used in post-conflict and post-dictatorship settings. In some cases, timing and sequencing considerations may require that the persons responsible for human rights violations and other abuses are no longer able to ensure impunity for themselves or for their subordinates; that may be when the opportunity to hold them accountable will arise. That is the kind of opportunity that is now available to President Benigno Aquino III.

Impunity under the Arroyo Presidency

During the Arroyo-Presidency „the number of politically motivated killings in the Philippines rose significantly¹. Steps undertaken by the government, such as the ‘Task Force Against Political Violence’ were

inadequate or ineffective. The Melo-Commission-Report and the Alston-Report pointed out that elements of the Armed Forces of the Philippines (AFP) were responsible for a significant number of EJK cases and that the Philippine National Police (PNP) is at best reluctant if not unable to investigate members of the military who might be implicated. President Arroyo ordered the same institutions and agencies implicated in both reports to “actively support and participate in carrying out the mandate of the Task Force”. Asking the AFP to be part of an investigation of its own human rights record reinforces impunity and demonstrates that the Arroyo administration’s efforts were token at best. Certainly, none of the measures taken by Arroyo resembled any effort at reparations for victims or toward seriously reforming the military.

Lessons in Truth-Seeking from the First Aquino Presidency

In his first State of the Nation Address, Aquino said he would establish a truth commission to deal with the legacy of past abuse by the former president. This is not the first time, such an attempt has been made in the Philippines. His mother, then President Corazon Aquino created the Presidential Commission on Good Government (PCGG) to recover the ill-gotten wealth of the Marcoses and the Presidential Committee on Human Rights (PCHR) to investigate and prosecute human rights violations under the dictatorship. The PCHR had the investigative and recommendatory powers of a truth commission for past human rights violations; but it never fulfilled expectations because it operated in a fragile, post-dictatorship environment.

1) U.N. General Assembly. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Alston Addendum Mission to (the) Philippines, (A/HRC/8/3/Add.2, p. 2) 16 April 2008.

President Corazon Aquino found herself in a position of weakness vis-à-vis the perpetrators of human rights violations. Unlike the PCHR, the PCGG continued to function, but was hobbled by the fact that those it investigated controlled and influenced the dictatorship's human rights violators who were now the sources of instability for Mrs. Aquino's government. Still, the transitional justice architecture developed by the first Aquino government was, at least in design, both logical and comprehensive. It saw the mutually-reinforcing character of impunity for economic crimes and impunity for human rights violations.

Truth-Seeking under President Benigno Aquino

President Benigno Aquino's first executive order is an echo of his mother's own first act as President. President Aquino's Executive Order No. 1 created "the Philippine Truth Commission"². The commission has a limited mandate to investigate reports of graft and corruption. It does not have any mandate to investigate violations of human rights, particularly EJKs and EDs that took place under the Arroyo administration. This shortcoming is a missed opportunity; however, - the experiences elsewhere³ show, the opportunity to address these violations isn't completely lost. In many cases the possibility to prosecute perpetrators of human rights violations weakens over time due to the loss of evidence and the unwillingness of witnesses to come forward.

What Can Be Done: Truth-Seeking, Reparations and Prosecutions

The experience of the Philippines and other countries show that large-scale corruption and human rights abuses go hand-in-hand under a dictatorship. The impunity for one

kind of abuse reinforces the impunity for the other kind. For a transitional justice to be effective, it may be necessary to address these abuses simultaneously. The corruption-only mandate of the Philippine truth commission – whose legality is still pending at the Supreme Court as of this writing – is inadequate as a truth-seeking process. What is it meant to investigate and where is that meant to lead? Is the new commission meant primarily to conduct investigations that can sustain criminal prosecution? Or is it meant to draw a broader narrative about what happened in the last nine years under the Arroyo administration? At the risk of over-generalization, truth commissions are probably more useful when used to challenge official versions (or denials) of the past instead of being used primarily to assemble evidence for criminal prosecutions.

A truth-seeking process challenging official versions of past violations would have been of decisive importance in challenging the Arroyo administration's narrative about EJKs and EDs. The Arroyo Task Force against political violence⁴ tended not only to excuse and rationalize the acts of individual perpetrators in the military but to exonerate the State and its security institutions from the responsibility to protect and prevent anyone from EJKs and EDs. The underlying flaw of the Arroyo administration's approach to these violations was never premised on acknowledging State responsibility.

With respect to reparations for victims of EJKs and EDs, no step was ever taken during the Arroyo administration. The right to reparations consists of material and symbolic forms of acknowledgement. The Aquino government is in a position to take steps to provide reparations but it has not done so. An approach that combines reparations, prosecutions and truth-seeking would ensure a more integrated

approach to justice than the halting, ad-hoc efforts that the Aquino administration has taken so far.

What could be the solution?

With respect to EJKs and EDs in particular, the recommendations of the Melo Commission and the Alston report would be meaningless unless they are implemented and monitored. A national monitoring mechanism (NMM) for these human rights violations is one step toward making remedies available to victims and their families as well as ensuring that impunity is addressed. In terms of investigation and prosecution, the NMM can monitor the progress of specific cases and provide the kind of information needed to push a criminal case involving an EJK or ED to its resolution. By systematically identifying victims, reparations can be considered, designed and implemented, regardless of the pace in which prosecutions move forward. But while a case-based monitoring mechanism can help identify the obstacles to pursuing accountability through the criminal justice system, it will not by itself identify and suggest ways to deal with the underlying causes of the violations and the institutional forces that maintain impunity. The Commission on Human Rights (CHR) with its broad constitutional mandate has been suggested as the appropriate monitoring institution, but it is questionable if the CHR has enough capacity to take on all the cases of the Arroyo-period. It may be not only useful but necessary to build into this monitoring function a substantive role for civil society and a significant degree of victim participation in the monitoring process. Lessons from Cambodia or Peru suggest that local rather than national organizations may be the practicable way to integrate civil society in the process. Another approach rests on confronting impunity not only at the level of the

2) EO No. 1, Creating the Philippine Truth Commission of 2010, Section 1 (2010).

3) The experiences in Chile, Peru, Indonesia and South Africa suggest that addressing impunity for human rights violations and corruption work best when they are done simultaneously.

4) See http://www.epjust.org/downloads/MONOGRAPH/From%20Marcos%20to%20Another%20Aquino_Impunity,%20Accountability%20and%20Transitional%20Justice%20in%20the%20Philippines.pdf

individual perpetrator, but at the level of the State and its institutions. In other countries the truth commission has taken on a monitoring function, but in a way that spans longer periods, a wider range of violations and recommendations that not only include prosecution, but also reparations, the vetting of officials linked to violations and institutional reforms. These commissions concentrate more on the truth about the use of EJKs and EDs as instruments of repression, intimidation or warfare rather than to establish a prima facie case for prosecution. By assigning institutional responsibility where warranted and recommending individual prosecution if enough oral and documentary basis came to the commission's possession, these truth commissions opened up a wider public discussion about human rights and the right of victims to reparations for the violations that took place.

Conclusion: The Road Taken by the Aquinos

In the absence of a truth commission, it may make more sense to create a commission vested not only with the function of monitoring cases of EJKs and EDs that have been acknowledged by the State, but also with the function of acknowledging cases that have been denied by the State, or disputed by suspected perpetrators and excluded from previous investigative efforts.

At the same time, because truth-seeking should call for public engagement, the situation of victims

of EJKs and EDs as well as of other human rights violations might cease to be seen as merely an offshoot of armed conflict between the military and non-State political groups. It might even draw greater attention to their root causes, such as unimplemented land reform, urban poverty and other economic and social rights violations. From the perspective of the victims of unresolved human rights violations the new Aquino administration represents the second chance of having human rights violations examined by a political leadership unencumbered by complicity in those abuses.

Problematically from the perspective of those advising President Aquino, the context is merely of transitioning from one administration to another. Within this narrow perspective, Aquino has an even narrower approach, focusing only on Mrs. Arroyo's corruption instead of casting a wider net of justice.

Nonetheless, by creating a truth commission as his first exercise of executive power, President Aquino has also demonstrated his awareness of the value of truth-seeking as a transitional justice mechanism. The second Aquino administration can draw inspiration from the first Aquino administration, and recognize that truth-seeking and the pursuit of accountability cannot be confined to one regime and to a narrow set of abuses. If it does so, then it is more than likely that the Aquino administration can still take the right road, the one the President's mother had started to take, and which the son should not find difficult to follow. ■



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IPON AND THE INSTRUMENT OF HUMAN RIGHTS OBSERVATION

The International Peace Observers Network (IPON) is a German independent non-intervening and non-profit organisation which aims for improving the human rights situation in the Philippines by sending observers to conflict areas.

The Instrument of human rights observation is based on the idea that, if a country has ratified the UN "Universal Declaration of Human Rights" (and/or other relevant international declarations on human rights), it is therefore responsible to enhance, respect, and implement human rights. If a country does not follow these responsibilities independent international observers will document these violations of human rights and bring it to public attention. IPON follows this legalistic approach to human rights. Since 2006 IPON accompanies organisations of human rights defenders (HRD) in the Philippines, starting with the request of the farmers organisation KMBP (Kilusang Magbubukid ng Bondoc Peninsula) in Bondoc Peninsula, Quezon Province. Since 2008 IPON observers are present

in Negros Occidental accompanying the HRD of TFM (Task Force Mapalad). IPON will not intervene in any internal conflict and will not interfere in the strategies of the accompanied HRD. The organisation will only go into a conflict area after a request from a human rights defender organisation and after preliminary studies which include an examination whether the instrument of human rights observation is suitable for the present situation.

The work of IPON is based on four pillars:

Presence: The IPON observers will be present at the side of HRD who are exposed to human rights violations because of their work. Their presence is supposed to prevent assaults and enable the unhindered work of the HRD. The presence of international observers is believed to rise the inhibition threshold for encroachments.

Accompanying: HRD are accompanied to different ventures like political actions, meetings with governmental institutions, or conferences. In some cases individuals who are especially endangered get company by IPON members.

Observation: It can be difficult to get unfiltered information from conflict areas. The possibility to document events in situation makes the reports of the IPON observers very valuable. The documentations always take place in regard of human rights. Because of the legalistic approach the role of the state actors is essential in the critical analysis of the human rights situation.

Informing action: The information that has been gathered directly in the conflict area and has been analysed by the observers are brought to the attention of an international public. IPON is in touch with different institutions of the Philippine state and points out their responsibility of implementing human rights. In Germany the reports are handed over to the public. They serve as a basis for the work of organisations, pressure groups and politicians. This way the international pressure on the Philippines to guarantee human rights rises. IPON is convinced that the publication of human rights violations will finally lead to their decrease and prevention.



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DCBUFAI/ MAKABAYAN-Pilipinas (in process)

TFM (Task Force Mapalad)

AIMS AND SCOPE

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