



What now for transitional justice?

Transitional justice is a variety of processes and strategies where a society comes to terms with mass atrocity crimes that happened in the past, usually during armed conflict or period of authoritarian regimes.

According to Mayesha Alam (2014), it comes into a time when a state or society is in transition, “emerging out of mass political violence and socioeconomic upheaval, undertaking transitional justice initiatives can have transformative effects on the state’s political institutions, social cohesion, rule of law, and even economic viability.” For the International Center on Transitional Justice (ICTJ), transitional justice is “a response to systematic and widespread violation of human rights” and “seeks recognition for the victims and to promote possibilities for peace, reconciliation, and democracy.”

NATIONAL TRANSITIONAL JUSTICE INITIATIVES

The Philippines in 1986 was a transitional justice moment with the ouster of then President Ferdinand Marcos. Thereafter, President Corazon Aquino came out with Proclamation No. 1 where she pledged “to do justice to the numerous human rights violations” of the Marcos Martial Law regime. As such, a new constitution was crafted with one of the longest human rights provisions in the world along with the creation of the Commission on Human Rights (CHR). Other transitional justice initiatives were the establishment of the Presidential Committee on Human Rights, Office of the Ombudsman, and the Philippine Commission on Good Governance (PCGG); the passage of the Comprehensive Agrarian Reform Program (CARP); and reactivating the peace negotiations. These were just some institutional measures to advance the guarantee of non-recurrence pillar of transitional justice.

In light of the right to reparation pillar, the Philippines saw the passage of Republic Act 10368 or “An Act Providing for the Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime, Documentation of Said Violations, Appropriating Funds therefor and for Other Purposes” (“Human Rights Victims Reparation and Recognition Act of 2013”). This law created the Human Rights Victims Claims Board (HRVCB)

tasked, among others, to “receive, evaluate, process and investigate applications for claims” under RA 10368. The HRVCB supposedly received around 75,000 plus applications and of which, 11,000 plus were awarded claims of human rights violations. Another institutional body created under the law was the Human Rights Violations Victims’ Memorial Commission (HRVVMC) mandated for “the establishment, restoration, preservation, and conservation of the Memorial/Museum/Library/Compendium in honor of the HRVVs during the Marcos regime.” Supposedly, a museum for this purpose would be constructed in the University of the Philippines Diliman.

For the right to truth/know pillar, there were documentation of human rights violations during Martial Law by various civil society organizations. Unfortunately, judicial mechanisms and criminal prosecution for human rights violations did not materialize. Needless to say, no one seemed to have been held accountable for these violations. And with the current political leadership configuration in the country, what can we realistically expect on the matter of transitional justice?

LESSONS FROM THE BANGSAMORO

The Bangsamoro in Mindanao can be said to have experienced armed conflict atrocities, particularly during the reign of Martial Law in the 1970s. It comes under the purview of transitional justice precisely because of atrocity crimes that happened during the armed conflict. Its transitional justice discourse falls under the context of armed conflict situations.

The concept of transitional justice was part of the Framework Agreement on the Bangsamoro (FAB) between the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF). Under the provision on normalization, it stated that the “Parties agreed to work out a program for transitional justice to address the legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations.” Of all of the peace agreements negotiated and signed, only the FAB and the Comprehensive Agreement on the Bangsamoro (CAB) specifically provided for transitional justice.

The Transitional Justice and Reconciliation Commission (TJRC) was the

body borne out of the CAB under the Annex on Normalization. It was mandated by the peace panels to “undertake a study and to make recommendations with a view to promote healing and reconciliation of different communities that have been affected by the conflict.” The TJRC Report, launched in March 2016, presented their key findings and analysis on legitimate grievances, historical injustice, human rights violations, and marginalization through land dispossession. They also recommended the Dealing with the Past (DwP) framework that relates transitional justice with the rule of law, ending impunity, and conflict transformation.

The passage of the Bangsamoro Organic Law (BOL) and the establishment of a government in the Bangsamoro were also transitional justice measures. The GPH and MILF likewise have agreed on a transitional justice roadmap. Those measures that are implemented by the government itself are undertaken by the Inter-Cabinet Cluster Mechanism on Normalization (ICCMN).

At the national legislative front, we saw the filing of House Bill 4003 and Senate Bill 1913 in the 18th Congress.

WHAT NOW FOR TRANSITIONAL JUSTICE?

We cannot return to the 1986 moment but surely, we can create a new moment.

A moment that may begin with an acknowledgement and public apology of atrocities of the past. A moment that can take its cue from the Bangsamoro experience of creating a mechanism to study what are the transitional justice issues and concerns in the country. A moment that can produce a national transitional justice framework and not just piecemeal mechanisms that do not connect with one another. A moment that can produce a societal dialogue on transitional justice measures from below. A moment where a nation acknowledges its hurts and remembers its own failures.

And moment where we can transition to healing and reconciliation and be citizens that our country deserves. We must not miss the moment ever again. ■



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of P16.7 billion — to the state-owned Power Sector Assets and Liabilities Management Corp. (PSALM). These two electric cooperatives (ECs) could be the reason why PSALM asked for P16 billion in budgetary support for 2021 and 2022. So, taxpayers from Zamboanga to Visayas to Luzon are subsidizing these ECs as they extract more “free electricity” from PSALM. Wow. This is one more reason why the National Electrification Agency (NEA) that supervises all ECs should go, and all ECs should become private distribution utilities, supervised and monitored by the Securities and Exchange Commission (SEC) and not by a political agency like the NEA.

Meanwhile, Department of Energy (DoE) data show that in 2021, the Philippines produced 103,448 gigawatt-hours (GWH) of electricity, more than 2020’s 101,800 GWH but still lower than 2019’s 106,000 GWH. Coal’s share in installed capacity is still at around 35% of the total but contributed 57.5% in actual power generation in 2021.

Malampaya gas generation is declining, from 19,500 GWH in 2010 and 2020 to 18,300 GWH in 2021. The shares of geothermal and hydro are increasing slightly, and wind-solar’s contribution is only 2.6% of total generation in 2021, still insignificant even if the Renewable Energy law was enacted in 2008 and feed-in tariff (FIT) or assured high prices for 20 years was granted in 2012 or a decade ago (Table 3).

I am hoping that the Ferdinand Marcos, Jr. administration will realize that energy rationing, giving unnecessary priorities to intermittent renewables and discouraging investments in thermal power generation, will be counter-productive economically. The right energy mix should be done by the consumers themselves, not by government’s Executive or Legislative branches, nor by environmental and climate lobby groups. ■

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Japan’s assertive foreign policy can start in Southeast Asia

By Clara Ferreira Marques

“UKRAINE today may be East Asia tomorrow,” Japanese Prime Minister Fumio Kishida told an international security gathering in Singapore, a catchphrase that speaks to the harsh lessons learnt over the past few months. Better deterrence and response capabilities, he told a room packed with defense officials and diplomats, will be “absolutely essential if Japan is to learn to survive in the new era and keep speaking out as a standard-bearer of peace.” Cranking up rhetoric, though, is the easy part.

Russia’s invasion of Ukraine has jolted the pacifist nation into making bigger promises on spending, security, and a foreign policy that relies on more than economics — welcome news for allies eager to have a muscular Japan discouraging provocations from its nuclear-armed neighbors. Tokyo now needs to overcome what remains of domestic resistance, free up funds, and strengthen alliances, and fast. But this “courteous power” can already use diplomatic tools to do more for the “rules-based free and open international order” that Kishida talked up at the Shangri-La Dialogue on Friday. He could do worse than to start in Southeast Asia. It’s a region that, like much of the emerging world, has largely distanced itself from allies’ response to President Vladimir Putin’s aggression, and where Japan has more credibility than most.

Ukraine has made even Tokyo’s most ardent pacifists realize that a totally unprovoked war is not a distant prospect. It’s a tough neighborhood: North Korean missiles, Russian saber-rattling around islets it says are part of its Kuril chain and Japan calls its Northern Territories, and tensions in the East China Sea — never mind the dramatic consequences of a Chinese invasion of Taiwan. Joint military exercises by Russia and China have done little to ease nerves. Little wonder that even if an overhaul of Japan’s constitutional article forbidding “land, sea, and air forces, as well as other war potential,” remains unlikely, public opinion is shifting, and limits are becoming more flexible, with counterstrike capabilities now up for discussion. Even Kishida, whose family hails from Hiroshima and is less hawkish than others in his party, is pledging a substantial increase in defense spending, a step further from the pacifist mindset of recent decades.

Even so, it will be challenging to move quickly at home. Kishida gave no specifics, but an increase in the defense

budget to 2% of gross domestic product, or NATO levels, as his party has proposed — roughly doubling the current share — may be a tough sell in practice, given post-pandemic demands and already stretched public finances. Kishida can still add manpower to the Self-Defense Forces, as Japan’s military is known, bolster missile defense and cybersecurity (a major concern), while working on strengthening the alliance with America — though Kishida has, for now, pushed aside nuclear sharing, or the possibility of hosting US nuclear weapons on Japanese soil.

But Japan, which has already broken with precedent by accepting refugees and sending bulletproof vests to Ukraine, can take other steps to protect not just itself but the rules-based order it depends on, with more forceful diplomatic efforts to help widen the alliance of nations condemning Russia’s aggression and pushing to isolate its economy. Southeast Asia is a good place to begin.

With the exception of Singapore, which has imposed unilateral sanctions for the first time in more than four

decades, the region has largely sought to remain neutral in the conflict. That’s due in equal parts to the power of Russian weapons exports, deep-seated anti-Western sentiment, Soviet-era ties, disinformation — and of course diplomatic disengagement on the part of the wealthy world, not to mention sheer distance. Just a day after Kishida addressed the Singapore gathering, Indonesian Defense Minister Prabowo Subianto, whose country has refused Ukraine’s request for weapons, defended what he called strategic neutrality, with a reference to former South African leader Nelson Mandela’s comment when asked in a US interview about Cuba’s Fidel Castro: “Your enemy is not necessarily my enemy.” It’s a position Russia is exploiting as the food crisis worsens, which will be used to weaken support for Ukraine as the war grinds on. And it’s an issue the West is not doing enough to tackle.

Southeast Asia is important, not just as a grouping of important emerging economies but because this year, it has the global spotlight: Indonesia chairs the G20, which will meet in Bali in November, and Thailand will host the Asia-Pacific Economic Cooperation’s economic leaders summit. So it matters when Cambodia, the current chair of ASEAN, joins with Indonesia and Thailand to issue a statement on their respective meetings that skirts the small matter of a war of conquest entirely, in favor of working “with all partners and stakeholders.”

Japan is already engaged with the region and in his first months, Kishida has visited Cambodia, Vietnam, Indonesia, Thailand, and Singapore, and welcomed Malaysia’s prime minister in Tokyo. It’s also the region’s most trusted partner, not to mention a leading investor. But as with its investment, diplomatic efforts have been patient and understated, and far more is needed. There is an uncomfortable colonial past and officials will be dealing with reluctant and distracted governments — Indonesia, for one, is already beginning to look ahead to a 2024 election. It will also have to steer away from values conversations around political systems. Singapore’s defense minister is right that there will be “few takers for a battle royale on that basis.”

But stronger economic ties will help, as will military supplies to reduce dependence on Russia, not to mention coordinating food aid and support where needed as the conflict in Ukraine fuels a surge in prices and hunger. Persistent diplomacy too. Avoiding another aggressor trampling over smaller neighbors demands it. ■

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