

07 May 2021

Dr. Fabian Salvioli

Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence

c/o the Office of the High Commissioner for Human Rights
United Nations at Geneva
Switzerland

Dear Dr. Salvioli:

This report is submitted by the Center for International Law Manila (“CenterLaw”), a non-governmental organization whose primary purpose is to advocate for the recognition and application of international law norms in the Philippines.

The contents of this report respond to the call for inputs regarding mechanisms in the field of truth, justice, reparation, memorialization and guarantees of non-recurrence to address gross human rights violations and serious violations of international humanitarian law committed in colonial contexts. In particular, CenterLaw’s submission focuses on the Philippine State’s response to the call for transitional justice measures relating to violations committed during the Japanese Occupation from 1942-1945.

CenterLaw has served as representative of and legal counsel to members of the *Malaya Lolas* organization in various legal fora. *Malaya Lolas* is a group of women who survived the “comfort system” of sexual exploitation instituted by the Japanese occupying forces in World War II. CenterLaw engaged in strategic litigation before the Philippine Supreme Court in a petition seeking to compel the Philippine State to espouse the claims for reparations of women survivors. More recently, CenterLaw made a submission to the Office of the High Commissioner for Human Rights through the Special Rapporteur on Violence Against Women, its Causes and Consequences, pointing out the consistent refusal of the Philippine State to espouse such claims.

It is our hope that through this submission, the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence will knowuuu7 more of the challenges, lessons, and opportunities faced by survivors of colonial occupation that persist to this day in the Philippines.

Yours sincerely,



Joel R. Butuyan
Chair
Center for International Law Manila

Gilbert T. Andres (SGD.)

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Nicolene S. Arcaina

A handwritten signature in black ink, starting with a large 'N' and ending with a long, sweeping horizontal stroke.

Shawn Dustin B. Coscolluela

A handwritten signature in black ink, beginning with a large 'S' and ending with a horizontal line.

Sabrina Victoria M. Dayao

A handwritten signature in black ink, starting with a large 'S' and ending with a horizontal line.

Raphael Lorenzo A. Pangalangan

A handwritten signature in black ink, starting with a large 'R' and ending with a horizontal line.

Ruby Rosselle L. Tugade

**RESPONSE TO THE QUESTIONNAIRE ON TRANSITIONAL JUSTICE MEASURES TO ADDRESS THE
LEGACY OF SERIOUS VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW COMMITTED
IN COLONIAL CONTEXTS**

- 1. Please indicate which mechanisms have been established in the concerned country to hold accountable persons accused of committing or bearing responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in investigating, prosecuting and sanctioning such crimes.**

Philippine colonial history stretches back over five centuries and may be predominantly divided into three periods: the Spanish Regime (1521-1898), the American Regime (1898-1946), and the Japanese Occupation (1942-1945). At the outset, it is acknowledged that little has been said of the legacies of the Spanish and American colonial experiments in terms of Transitional Justice. For this reason, the present submission focuses on the Japanese Occupation and the post-war mechanisms adopted thereafter.

Two species of accountability devices were adopted to address the crimes of the Second World War: (i) domestic mechanisms and (ii) mechanisms with a foreign element. The first refers to the establishment of the People’s Court and the National War Crimes Office (hereinafter, the “NWCO”) established by then President Manuel L. Quezon, while the latter refers to the American Military Commission (hereinafter, the “AMC”) established in the Philippines by General Douglas MacArthur, and (iii) the International Military Tribunal for the Far East (hereinafter, the “Tokyo Tribunal” or the “IMTFE”).

The *ratione materiae* of the AMC and IMTFE generally embraced what is now recognized as international crimes. The AMC, having jurisdiction over War Crimes alone, is most known for the trial and conviction of General Tomoyuki Yamashita—a conviction that was later upheld by the Philippine and US Supreme Courts in Yamashita’s *habeas corpus* petitions.¹ On the other hand, the Philippines played an active role in the Tokyo Tribunals by sending Associate Supreme Court Justice Delfín J. Jaranilla to sit as IMTFE Judge.

The domestic mechanisms took a drastically different approach. Prosecutions were bifurcated between the War Crime Trials before the National War Crimes Office and the “Treason Trials” before the People’s Court. The NWCO was “charged with the responsibility of accomplishing the speedy trial of all Japanese accused of war crimes committed in the Philippines[.]”² A reported 155 Japanese soldiers and civilians were arraigned before the NWCO, 138 of whom were convicted, and 79 of whom were sentenced to death.³ On the other hand, the People’s Court had

¹ *Yamashita v. Styer* G.R. No. L-129 (19 December 1945) 75 SCRA 563, p. 570; *In re. Yamashita*, 327 US 1, 1946, p. 37.

² Executive Order No. 68, s. of 1947., “Establishing a National War Crimes Office and Prescribing Rules and Regulations Governing the Trial of Accused War Criminals”

³ Konrad M. Lawson, “Universal Crime, Particular Punishment: Trying the Atrocities of the Japanese Occupation as Treason in the Philippines, 1947–1953” 17 *citing* Nagai Firipin to tainichi senpan saiban, 200. See Chamberlain’s Appendix 1 for a list of cases and outcomes, Chamberlain, *Justice and Reconciliation*, 235-247.

“jurisdiction to try and decide all cases of crimes against national security committed between [8 December 1949] and [2 September 1945].”⁴ Its organic law further provided that “where, in its opinion, the evidence is not sufficient to support the offense charged, the People's Court may, nevertheless, convict and sentence the accused for any crime included in the acts alleged in the information and established by the evidence.”

While the NWCO tried the crimes committed during the Japanese Occupation as War Crimes as defined in international law, the People’s Court applied the *lex generalis* of Criminal Law: the Revised Penal Code. “War Crimes” were thus instead qualified and prosecuted as the “Crime of Treason.” As advanced by Associate Justice Gregorio Perfecto of the Philippine Supreme Court:

Treason is a war crime. It is not an all-time offense. It cannot be committed in peace time. While there is peace, there are no traitors. Treason may be incubated when peace reigns. Treasonable acts may actually be perpetrated during peace, but there are no traitors until war has started.⁵

By trying war crimes as treason, the prosecutorial approach sought justice for political perfidy over personal victimhood. It was disloyalty and betrayal to the mother state that was tried, not the killings of Filipino/a brethren and sistren. Indeed, violent acts of Japanese soldiers and civilians and Filipino collaborator alike were not considered to be separate crimes but mere manifestations of the crime of treason.

Sexual violence was a prominent feature of Japan’s military conquest. Over a thousand women were forced into ‘comfort stations’, yet not a single Japanese soldier or civilian was tried for systematic rape. The Philippine courts themselves grappled with the “political” nature of what was then defined as a “Crime Against Chastity.” In cases of treason, the crime of rape was relegated as aggravating circumstance. Notably, however, in *People v. Perez*, it was ruled that “securing sexual slaves for the occupation forces did not constitute acts of treason. Therefore, rape was not a war crime.”⁶

That rationale likewise took shape on an international level. While the IMTFE tried Japanese officials for a wide variety of War Crimes and Crimes Against Humanity committed during the war, there were no prosecutions for the rape and sexual slavery suffered by the victims of the “comfort system”.

2. Please indicate which measures have been established in the concerned country to inquire on and establish the truth about gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were established, please indicate how was the outcome of the inquiries

⁴ Commonwealth Act No. 682, s. 1945, “An Act Creating a People’s Court and an Office of Special Prosecutors for the Prosecution and Trial of Crimes Against National Security Committed During the Second World War, and for Other Purposes.”

⁵ *Laurel v. Misa*, G.R. No. L-409, 30 January 1947.

⁶ G.R. No. L-856, 18 April 1949.

made public and conveyed to victims and civil society in the affected country as well as to civil society in the former colonizing power. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

No truth commission or any similar truth-finding mechanism has been established in the Philippines upon its declaration of independence from successive colonial powers. In educational institutions in the Philippines, there is ambivalence, at best, surrounding the treatment of colonial legacies. Some authors have noted the “positive portrayal” of the country’s legacy of colonialism in educational textbooks that persists to this day.⁷ In this vein, arriving at the truth of the extent and impact of colonialism in the Philippines remains elusive. Combined with “limited apologies” from the Japanese as a colonial power,⁸ knowledge on their colonial legacy in the Philippines is heavily reliant on oral histories.⁹ Study of these histories are done mainly through the academic establishment or private efforts.

Limited fact-finding commissions were officially established in the Philippines, though none relating to the periods of colonialism. A truth commission was in place pertaining to the Philippines’ post-conflict context but was prematurely terminated due to lack of resources and support.¹⁰ In a 2010 Decision, an issue pertaining to the establishment of a truth commission was litigated before the Philippine Supreme Court.¹¹ The Supreme Court rejected the Executive branch’s establishment of a truth commission instituted to investigate a previous administration. While the Supreme Court’s decision struck down the truth commission, it expressly stated that “this is not the death knell for a truth commission” if equal protection is guaranteed.

The Transitional Justice and Reconciliation Commission (TJRC), established to address the Bangsamoro conflict in the Southern Philippines,¹² conducted a “listening process” which captured information regarding indigenous and Moro comfort women in Mindanao during the Japanese occupation.¹³ The TJRC’s mandate is limited to the Bangsamoro conflict in the Philippines, and

⁷ Mark Maca and Paul Morris, “Education, national identity, and state formation in the modern Philippines.”, in CONSTRUCTING MODERN ASIAN CITIZENSHIP, Edward Vickers and Krishna Kumar, eds., 139, (2014).

⁸ Richard John Galvin, *The Case for a Japanese Truth Commission Covering World War II Era Japanese War Crimes*, 11 TUL. J. INT’L. & COMP. L. 59, 77 (2003).

⁹ Fernando A. Santiago, Jr., “The Relevance of Oral History in the Philippines.”, in PAMANANG LOCAL: ESSAYS ON LOCAL HERITAGE PRESERVATION, Emmanuel Franco Calairo, ed., 107-136 (2017).

¹⁰ Eric Brahm, *Uncovering the Truth: Examining Truth Commission Success and Impact*, 8 INT’L. STUD. PERSPECTIVE, 16, 18 (2007).

¹¹ *Biraogo v. The Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010.

¹² See Annex on Normalization attached to the Framework Agreement on the Bangsamoro between the Government of the Philippines and the Moro Islamic Liberation Front, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_140125_AnnexNormalization.pdf.

¹³ See Footnote 120, Report of the Transitional Justice and Reconciliation Commission, available at <https://asiapacific.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2016/10/tjrc%20report.pdf?la=en&vs=4426>.

the way it was able to gather such narratives were merely incidental. This is owing to the absence of a dedicated truth and reconciliation commission in the Philippines pertaining to its colonial history.

- 3. Please indicate which measures have been established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such processes were established, please indicate which type of reparation was provided to victims (for example: restitution, compensation, satisfaction, and /or rehabilitation). If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

No institutionalized reparations system has ever been established in the Philippines that pertains to its colonial past. Since 1998, Filipina comfort women who were subjected to systematic rape and sexual slavery during the Japanese occupation have struggled to obtain reparations.¹⁴ The claims against the Japanese government were coursed through the relevant offices of the Executive Department, namely the Department of Justice and Department of Foreign Affairs. Their pleas, however, were ignored by the Philippine government whose officials maintained the position that compensation has been fully satisfied by Japan's compliance with the Peace Treaties.¹⁵

In 2004, surviving comfort women in the Philippines belonging to the Malaya Lolas organization, represented by the Center for International Law, filed a Petition for Certiorari before the Philippine Supreme Court. The Petition sought to compel the government to specifically demand an official apology from the State of Japan and legal compensation for the systematic rapes. The Petition also sought a declaration that the waiver of claims of Filipina comfort women be deemed void as it conflicted with *jus cogens* norms and concomitant *erga omnes* obligations of states to prosecute crimes against humanity and war crimes.

In a unanimous decision, the Supreme Court denied the Petition in 2010, stating that it is “not within [their] power to order the Executive Department to take up the petitioners’ cause.”¹⁶ The Supreme Court, speaking through Justice Mariano Del Castillo, stated that it “greatly sympathize[d] with the cause of petitioners” and “cannot begin to comprehend the unimaginable horror they underwent at the hands of the Japanese soldiers.” Further, they were “deeply concerned that, in apparent contravention of fundamental principles of law, the petitioners appear to be without a remedy to challenge those that have offended them before appropriate fora.” At best, the Supreme Court said that it can only urge and exhort the Executive Branch to take the appropriate action.

The 2010 Decision, however, became the source of further controversy when allegations of plagiarism surfaced against the Del Castillo *ponencia*. Members of the University of the

¹⁴ Petition, *Vinuya vs. Executive Secretary*, G.R. No. 162230.

¹⁵ *ibid.*

¹⁶ *Vinuya vs. Executive Secretary*, G.R. No. 162230, April 28, 2010.

Philippines College of Law faculty pointed out in a public statement that the 2010 Decision contained inappropriately-attributed and misrepresented works of foreign scholars. These foreign scholars also wrote to the Philippine Supreme Court to express concern about the use of their work in a manner inconsistent with what they propounded in their publications. Ultimately, the Philippine Supreme Court dismissed the plagiarism charges against Justice Del Castillo¹⁷ and subjected the faculty members to disciplinary proceedings.¹⁸

With the *Vinuya vs. Executive Secretary* decision affirmed in a 2014 Resolution on the petitioners' Motion for Reconsideration, the prospects for obtaining reparations for Filipina comfort women from the Japanese government remain elusive. The larger implication of the decision in *Vinuya* is that demanding State responsibility for large-scale war crimes and crimes against humanity is relegated to the whims and caprices of political actors.

In 2016, domestic remedies having been exhausted, the Malaya Lolos through Centerlaw, submitted a communication formally requesting that UN Special Rapporteur on Violence Against Women and UN Special Rapporteur on Contemporary Forms of Slavery to urge the government of the Philippines to reverse the ongoing denial of justice and espouse the Petitioners' claims against the Japanese government.

- 4. Please indicate which measures have been established in the concerned country to memorialize the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If yes, please indicate whether memorialization processes were established in the affected country and /or in the former colonizing power. If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

Much controversy surrounded the efforts at memorializing the atrocities that occurred during the Japanese occupation in the Philippines. In December 2017, the City of Manila sanctioned the erection of a comfort woman statue along Roxas Boulevard, a major thoroughfare in the country's capital city.

The statue bore a marker from the National Historical Commission of the Philippines and became the subject of a complaint from the Japanese government.¹⁹ The Department of Foreign Affairs became involved in the controversy, indicating that the comfort women statue raised a diplomatic

¹⁷ A.M. No. 10-7-17-SC, In the Matter of the Charges of Plagiarism, et al., against Associate Justice Mariano C. Del Castillo, October 15, 2010.

¹⁸ A.M. No. 10-10-4-SC, Re: Letter of the UP Law Faculty, March 8, 2011.

¹⁹ Paterno R. Esmaguél II. "What's wrong with this statue of a comfort woman in Manila?", Rappler.com, available at <https://www.rappler.com/nation/comfort-woman-statue-roxas-boulevard-manila-issues>.

concern.²⁰ The statue was eventually removed from its location.²¹ Philippine President backed the removal of the statue, and instead suggested that it be placed on private property.²² The statue's present location is now unaccounted for after its surreptitious removal from its original site.

Similar to other countries which sought to memorialize gross violations that were perpetrated by the Japanese imperial forces, Manila faced immense diplomatic pressure from Japan. Memorialization efforts continue to be frustrated owing to the bilateral relations with the former occupying power.

- 5. Please indicate which measures have been established in the concerned country to guarantee non-recurrence of the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

Whether tried as War Crimes or Political Crimes (i.e., Treason), the prosecution of atrocities committed during the Japanese Occupation but were ultimately undone through a series of executive clemencies granted for Japanese war criminals and Filipino collaborators.

In 1948, President Manuel Roxas issued Proclamation No. 51 granting “full and complete amnesty to all persons accused of any offense against the national security for acts allegedly committed to give aid and comfort to the enemy during the last war.” A mere two years from the establishment of the People’s Court, the Amnesty was ratiocinated on the fact that “no final judgments convicting any one of the accused have been rendered” [...] the question of collaboration is essentially political in nature and should be settled in accordance with the conscience of the majority of the people[.]”²³

It was believed that the crimes charged against political collaborators “were not voluntary on their part or, in effect, were performed by them in the sincere belief that it was their patriotic duty to execute them in the interest of the safety and well-being of their countrymen who were then at the mercy of the enemy.” Further, public officials who had worked with the Japanese forces were said to have done “everything in their power to minimize the atrocities of the enemy and to prevent the carrying out of his purpose to induce or compel the Filipino people to arm themselves against the allied nations[.]” The Amnesty, however, excluded persons who voluntarily took up arms against the allied nations or members of the resistance forces.²⁴

²⁰ Jose Rodel Clapano. “DFA questions Manila execs on comfort woman statue”, The Philippine Star, *available at* <https://www.philstar.com/metro/2017/12/18/1769713/dfa-questions-manila-execs-comfort-woman-statue>.

²¹ Rappler. “Comfort woman statue in Manila removed”, Rappler.com, *available at* <https://www.rappler.com/nation/comfort-woman-statue-manila-removed>.

²² CNN Philippines Staff. “Duterte backs removal of comfort woman statue from gov't property”, CNN Philippines, *available at* <https://cnnphilippines.com/news/2018/04/29/Duterte-backs-removal-comfort-woman-statue.html>.

²³ Proclamation No. 51, s. 1948, “A Proclamation Granting Amnesty”.

²⁴ *ibid.*

Five years later, barely a decade after the war, President Elpidio Quirino issued a Proclamation pardoning 105 Japanese prisoners of war. Quirino is cited explaining: “I do not want my children and my people to inherit from me hate for people who might yet be our friends, for the permanent interest of the country.”²⁵

The Proclamation commuted the death sentences of 52 war criminals to life imprisonment. Come 15 July 1953, all Japanese POWs were released and repatriated.²⁶

The Philippine government, however, has relied on its ratification of the Convention on the Elimination of Discrimination Against Women as parts of its efforts against the repetition of historical atrocities. It has also claimed that it has sought to guarantee against sexual violence by adopting and implementing reforms in its domestic law, particularly the *Anti-Trafficking in Persons Act of 2003*²⁷ and the *Magna Carta for Women*.²⁸ Codified law notwithstanding, the Philippine government has argued that both international and domestic laws are only prospective in application, and do not apply to the atrocities of the Second World War. Further, as earlier discussed, any form of reparation that may be supported by these later laws have been interpreted to have been “waived” pursuant to the *1951 Treaty of San Francisco*.

²⁵ A Tale of Two Presidents: Normalization of relations with Japan, Philippine News Agency 22 May 2018 available at <https://www.pna.gov.ph/articles/1036022>.

²⁶ *ibid.*

²⁷ Republic Act No. 9208 (2003)

²⁸ Republic Act No. 9710 (2009)