On the Occasion of the Commemoration of the 42nd Anniversary of the Declaration of Martial Law

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Martial Law Experiences and Learnings Towards Transitional Justice

delivered by

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Good morning!

It is an honor to be here today, in this momentous commemoration of the 42nd anniversary of the declaration of Martial Law

It has been said that what we need to know about the past is that, no matter what has happened, it has all worked together to bring us to this very moment.

I have no reason to doubt the truth and wisdom of those words because, true enough, two score and two years ago, words were spoken by one man that simultaneously plunged our nation into one of the darkest chapters of its history, and yet, in so doing, also paved the way for our return to the Rule of Law when, more than a decade later, those who stood at the altar of peaceful
Revolution collectively and firmly put their foot down and said, “Enough is enough.”

Now, here we stand, within the premises of an institution that did not even exist then; at a time when Democracy and Freedom are at their highest peak; when people are at their liberty to do and say as they will, and answer, not to the whims or political caprices of a strongman who rules by force under an authoritarian regime, but to the tenets of a Constitution that was truly ordained and promulgated by the Filipino people, and laws passed and enforced by their duly elected representatives and leaders.

I daresay, we may not be here, enjoying the liberties most of our people now take for granted, and looking back to the past and onwards to the future with the wisdom cemented by stark experience, if it weren’t for the horrors, sacrifices and unimaginable courage of the countless men and women we solemnly remember and honor today — not as victims, but as heroes, upon whose blood, sweat and tears, and those of their families and loved ones, our nation as we know it today, was built upon.

Some may say that we needed the lessons of the Martial Law years to put us on the right path. I do not know if I believe that there are such things as necessary evils; that people had to die, or worse, to show us, the future generations, how to live and how not to live, but I do believe that since the Martial Law years are now an indelible and irreversible part of the fabric of our history, we are bound to honor the lives that were lost by living each moment as the moment we make the choices that will make everything, if not new, then, at the very least, right.

Which is why, though we are gathered today to look back to the teachings and harsh realities of the past, we are not dwelling thereon. Instead, our feet are firmly planted in the present, concentrating on what we can do right now to make sure that the future is secure from future similar abuses.

Even the term “transitional justice” has no meaning without the context of the past. As symbolically optimistic the term is, it has, in its very definition, its roots in violence and repression. It is that middle ground that has the capacity of delivering us from darkness into light, where the values of social trust, stability, peace
and democracy can be the reality. Its success, of course, lies in our hands, and how well we deliver justice — not retribution, not vengeance, not even simply “criminal justice”, but true and complete Justice, characterized by recognition of victims, self-awareness of our faults and weaknesses and, ultimately, our commitment to a better governmental structure and our ability to deliver it.

The Philippines’s system of transitional justice, I am proud to say — at least, as proud as one can be when the premise is a time as deplorable as the Martial Law years — is one of the more robust in the world: it spans everything from criminal prosecution, paradigm shifts in Constitutional and Legal Regimes, compensation legislation, human rights protection legislation, institutionalized changes to prevent human rights abuses, and administrative enhancements to immediately detect and address those that will be committed.

It has been two decades in the making, and the path began, poetically enough, with the regime of the widow of one of the most prominent victims of the Martial Law regime, who was herself the rallying point and instrument of social change that brought the dictatorship down, nearly twenty years ago.

At the very start of the Cory Administration, it was quite clear how the Marcoses were to be dealt with. Not by revolutionary justice, but through constitutional means. The only extra-constitutional legacy brought down from that time was the establishment of the PCGG through the very first executive and legislative act of the Cory revolutionary government. The Marcos regime committed a myriad of criminal acts that can be classified into two major divisions. The first is violations of Human Rights and rights under the Bill of Rights. The second is the plunder of the country’s wealth through various means, such as kickbacks and commissions, having controlling interest in corporations who get government contracts, giving favors to crony capitalists who also served as Marcos dummies, using powers of the presidency under the dictatorship to personally acquire land and other properties belonging to others without or with minimal compensation, etc.

The second was immediately dealt with through the creation of the PCGG and should have served as a perfect model of transitional justice insofar as recovery of ill-gotten wealth is
concerned in terms of the immediate and revolutionary nature of the mode (although eventually even the powers of the PCGG were to be watered down eventually under the 1987 Constitution and the Supreme Court).

The first classification of Marcos crimes, the human rights violations (arbitrary arrests and detention, torture, enforced disappearance, extra-legal killings, etc.) were to be dealt with generally under the provisions of the new Constitution not even specifically as Marcos violations of human rights, but to be treated like any other violation whether committed by Marcos or future administrations.

The solutions, as we have seen, have not been perfect, but we had to start somewhere.

Two problems are readily identifiable with the way the post-dictatorship government dealt with the first class of Marcos crimes (HRVs). The CHR was supposed to be the main vehicle for serving transitional justice on the first class of crimes of the Marcos regime. But in fact, its mandate was general, not specific on the Marcos crimes, unlike the PCGG which was specific on Marcos ill-gotten wealth. Thus, the first problem was no specific government agency or multi-sectoral entity was established to specifically deal with Marcos human rights violations. It was presumed by many that this task clearly belonged to the CHR. But it appeared that the powers of the CHR were appropriate for an independent commission investigating the human rights record of an incumbent administration. This is why independence from the government or administration in power was essential.

However, for purposes of bringing to justice the crimes of a dictator in a post-dictatorship liberation government, the entity that should be charged with such mandate should be a political agency directly accountable to the revolutionary government and the people who carried it to power. The political will of that agency to bring HR violators of the Marcos regime to justice will, therefore, depend on the political will of the revolutionary government. However, as can be seen with the Cory experience, the problem with this model is that the work of such political agency meting out transitional justice would likewise contend with the politics of appeasement suffered by the revolutionary government. When the Cory administration was subjected to a series of military
uprisings, transitional justice was sacrificed in exchange for the military’s support.

The series of coups experienced under the Cory administration clearly and singularly dealt the most severe blow to the cause of transitional justice in the post-dictatorship era. When investigation and prosecution of the institution that was the primary instrument of repression of the dictatorship has completely ceased in the name of survival and stability of the Cory government, all opportunities for the immediate and early resolution of Marcos HR violations all but vanished.

The Second problem, other than the nature of the CHR as an agency with a general mandate, is the fact that the CHR was not even endowed with enough powers needed to serve transitional justice on the HR violations of the Marcos regime. Even when broad powers were contemplated by the Constitutional Commission for the CHR, and appropriate provisions were written in the 1987 Constitution for this purpose (e.g., provide appropriate legal and preventive measures for the protection of human rights), these were still severely restricted by a Supreme Court that was already acting within the confines of familiar constitutional doctrines, and thus chose to rule that the CHR had more limited rather than broad powers intended for it by the framers of the Constitution.

These two problems on the nature of the agencies set up by the Cory government for transitional justice highlight the importance of a Truth Commission. A Truth Commission could have answered most of the shortcomings experienced in the PCGG-CHR set-up of the Cory government. The closest we are now coming to a Truth Commission is the Human Rights Claims Board established under Republic Act No.10368, otherwise known as the “Human Rights Victims Reparation and Recognition Act of 2013.”

For the first time, we are undergoing an official documentation and accounting of the HR violations committed under the Marcos dictatorship on a per individual basis. The major problem with this of course is that this is all happening 28 years after the fall of the dictatorship; 28 years late, but hopefully not yet too late to serve the ends of justice. Most probably, all the crimes complained of in the individual accounts of claimants would have prescribed by now, thus failing the primordial concern of
transitional justice, meting out justice on the tyrant and the instruments of his repression.

Yet, the importance of the Human Rights Claims Board cannot be understated. Symbolic compensation would serve as official testimony that the crimes have been committed, and that the crimes of the dictatorship were not just imagined by the generations who suffered them. This is why it is important that all the victims of the dictatorship should file their claims now, if not for reparations, then for posterity’s and justice’s sake. This process will serve as the memorial of a nation to all the victims of martial law, maybe not in the scale of what is achieved under a Truth Commission, but in its own right as an accounting, not reckoning, of what has been done to this nation and its people.

And, indeed, just as important, if more so than an accounting past transgressions, is the establishment of such a reckoning point, at which we take stock of everything that has led us to this moment, in an effort not to prevent that which History is proverbially and notoriously wont to do: repeat itself.

Hence, under the present Administration, further Transitional Justice mechanisms were put in place, including the issuance of Administrative Order No. 32 on 23 November 2012, creating a high-level inter-agency committee (IAC) to address extra-judicial killings (EJKs), enforced disappearances, torture and other grave human rights violation.

The AO35 ushers in a paradigm shift that significantly changes the way prosecutors discharge their tasks. AO35 adopted the composite team approach whereby prosecutors and investigators collaborate, coordinate and cooperate in the investigation and case build-up of AO35 cases.

Composite Special Investigation Teams (SITs) and Special Oversight Teams (SOTs) were created to fast track the investigation of the priority EJK cases and monitor their progress at each level, to wit: police investigation, preliminary investigation and trial. Special Tracker Teams (STTs) were also created to undertake manhunt of accused who are at large.

Major Human Rights Legislations have also been passed in the recent past, including Republic Act No. 9745, otherwise known
as the “Anti-Torture Act of 2009”, Republic Act No. 9851, otherwise known as the “Philippine Act on Crimes against International Humanitarian Law, Genocide and Other Crimes Against Humanity”, Republic Act No. 10353, otherwise known as the “Anti-Enforced or Involuntary Disappearance Act of 2012”, and, as mentioned earlier, Republic Act No. 10368, otherwise known as the “Human Rights Victims Reparation and Recognition Act of 2013,” which is the first compensation law in Asia that puts on record the responsibility and accountability of the State for the HRVs committed under a previous regime, for which the government has set aside ₱10 Billion specifically for the compensation of human rights violation victims. As of date, a total of 16,328 applications for claims have been received by the HRVCB, and a Joint Resolution has been drafted purportedly to extend the period of time within which the victims’ heirs/kin may file their claims before the HRVCB.

However, there is still much to be done in the future. Foremost of which is what I want to address presently.

In our quest for justice, it is so easy to paint the perpetrators as monsters. To label them with words that dehumanize them, and highlight an evil nature that we deem is the root of the nefarious abuses they were apparently capable of achieving. We call them dictators. We call them butchers. One thing we must never, ever forget, however, is that they were human beings like you and me. They were people. None of them bore the proverbial sign of the beast that would have warned us of the destruction they were capable of. Wala sa mukha nila ang kabuktutan ng kanilang puso. Marahil, ni hindi nila nakita ang kadiliman sa sarili nilang hangarin.

As we write our future, we must not forget that Marcos was once a duly elected leader. It would be simplistic to label him a monster and dictator, and forget that his power started from somewhere.

We are at a point in our political history where we will need all the lessons of our past. There are proposals to change our Charter – the very Charter that was the direct and nearly immediate product of the EDSA Revolution. The Charter in which we sought to pour in the safeguards that will prevent the rise of another authoritarian ruler, or corrupt rulers who would prostitute
the wealth of our nation for their personal interests. It is at this
time that the lessons of Martial Law shall be best put to use – not
just by our leaders or government officials, but us, the ordinary
people, the electorate, the sovereign Filipino people.

We must guard our freedoms and the safeguards we have
established for ourselves.

*Kailangan nating maging maalam at makialam sa mga
nangyayari sa ating kasalukuyan. Kailangan natin ang mga
tulad ni Felixberto “Ka Bert” Olalia, Sr. sa mga araw na ito, at sa
mga buwan at taong darating.*

*Nakapanghihilakbot kung iisipin na ang mga pang-aabuso,
pangungurakot, pagmamanipula ng mga proyekto at kalakalan
sa gobyerno, ang nepotismo, dinastiya at kroniyismo na matagal
na nating ikinakabit sa pangalang Marcos ay naririran pa rin sa
ating lipunan, subalit parang bale-wala na sa atin ang
nakatatakot na implikasyon ng mga ito. Manhid na ba tayo sa
mga “nakagawian na”? Kung gayon, marahil ay itinatakwil na
natin an gating katapatan sa tinatawag nating “Transitional
Justice” dahil babalik at babalik rin pala tayo sa mga kabuktutan
ng nakaraan.*

*Kailangan nating labanan ang pagkamanhid na ito.*

*Kailangan nating maging matalino at tapat
sa paggamit
ng ating mga karapatan, lalo na sa pagpili ng ating susunod na
mga pinuno ng Bayan. Kung hindi, lahat ng sakripsiyon at
pinaghirapan ng mga pangalang nakapaloob sa Martial Law
Files, at iba pang nabura na sa ating kasaysayan pero pilit
nating ginugunita, ay mapapawalang-halaga.*

Let us not allow this to happen. There are no monsters in
this world. It is people who do evil things to other people. We
must not forget that, lest we leave our doors open for those who
will continue to abuse our country and our people in order to
amass personal wealth, power and influence. In the cryptic words
of Pulitzer prize-winning journalist Katherine Anne Porter, “The
past is never where you think you left it.” In our situation, we
might be unpleasantly surprised to find, we haven’t left it that far
behind. That, far from making a transition, we are, in fact, trapped
in a vicious cycle that those who profit from the *status quo* would
want to entrench us in, while they lull us to complacency with their empty promises, while their hands perform magic tricks that transform the government into their own money-making venture. (Perfect example: the Napoles/PDAF Scam)

Perhaps that is the hardest lesson of the Martial Law Experience: that we, as a people, can be fooled, and that the greatest betrayal comes from those in whom we put our faith and confidence in.

The coming months and years, especially the coming national elections, is the time when our maturity as a nation, and our ability to put to use what we have learned, will be tested.

I, for one, am confident that the Filipino people are not as naïve as we once were. We are no longer swayed by charismatic people who wave, dance and sing their way to our ballots. We now look for substance, performance and, most important of all, integrity. That is the challenge we are facing, and on which the success of our Transitional Justice efforts lies.

As Mother Teresa once said, “Yesterday is gone. Tomorrow has not yet come. We have only today. Let us begin.”

_Maraming salamat po._