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Bangsamoro Autonomous Region in Muslim Mindanao
Cotabato City

Second Parliament
BANGSAMORO TRANSITION AUTHORITY

First Regular Session

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Private Member Bill No. 21

Bangsamoro Autonomous Region in Muslim Mindanao
Parliament
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AN ACT
PROVIDING FOR THE DOCUMENTATION OF HUMAN RIGHTS VIOLATIONS
DURING THE ARMED CONFLICT IN MINDANAO, RECOGNITION OF
VICTIMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Bangsamoro Transition Authority in session assembled:

CHAPTER I
Preliminary Provisions

Section 1. Short Title. — This Act shall be known as the “Bangsamoro Armed Conflict Human Rights Violations Documentation Act.”

Section 2. Declaration of Policy. — Section 2 of Article II of the 1987 Constitution of the Republic of the Philippines declares that the State adopts generally accepted principles of international law as part of the law of the land. Section 11 of Article II of the Constitution declares that the State values the dignity of every human person and guarantees full respect for human rights. By virtue of these provisions, the State adheres to international human rights laws and conventions, including the International Covenant on Civil and Political Rights

(ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Humanitarian Laws.

Pursuant to these, and taking into account the Report of the interim Transitional Justice and Reconciliation Commission in March 2015, it is hereby declared the policy of the Bangsamoro Government to enact mechanisms to address the past human rights violations committed against the Bangsamoro people and non-moro indigenous peoples and other past and present inhabitants of the Bangsamoro Autonomous Region with a view to promoting healing and reconciliation using the 'dealing with the past' framework.

As an initial step towards this end, it is the obligation of the Bangsamoro Government to acknowledge the violations of international human rights laws and the international humanitarian law committed against these persons during the decades of armed conflict in Mindanao, including those committed by State actors and by State-affiliated armed groups, through a systematic and permanent mechanism of documentation.

Furthermore, it is the obligation of the Bangsamoro Government to recognize the individual victims of these human rights violations to ensure that they or their families benefit from social protection measures and other monetary and non-monetary reparations included in the transitional justice packages to be administered by the Bangsamoro Government.

Finally, it is the obligation of the Bangsamoro Government to ensure that the acknowledgment of past human rights violations and the recognition of the victims shall form part of the construction of the Bangsamoro Historical Memory.

Section 3. *Definition of Terms.* — As used in this Act:

- a. *Human rights violation* refers to any act or omission in contravention of the rights defined under the ICCPR, the ICESCR, and other international human rights laws to which the Philippines is a State-Party, regardless of the date of ratification, as well as the international humanitarian law, committed between March 18, 1968 until February 6, 2019 by State actors and State-affiliated armed groups in the context of the armed conflict in Mindanao;
- b. *Human rights violation victim* refers to a person who identifies with the Bangsamoro people and/or non-Moro indigenous peoples and/or other inhabitants of the Bangsamoro Autonomous Region between March 18, 1968 until February 6, 2019, whose human rights were violated by State actors and State-affiliated armed groups, including, but not limited to, the following:
 - i. Persons killed, Persons killed, tortured, raped and/or sexually assaulted, mutilated, and/or injured;
 - ii. Internally displaced persons;

- iii. Widows and orphans of war; and
 - iv. Persons whose properties were destroyed or forcibly taken.
- c. *State Actors and State-Affiliated Armed Groups* refer to persons acting in an official capacity and/or agents of the State which shall include, but not be limited to, the following:
- i. Any member of the former Philippine Constabulary (PC), the former Integrated National Police (INP), the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), and the Civilian Home Defense Group (CHDG), as well as any civilian attached thereto; and any member of a paramilitary group even if one is not organically part of the PC, the INP, the AFP, the PNP or the CHDF so long as it is shown that the group was organized, funded, supplied with equipment, facilities and/or resources, and/or indoctrinated, controlled and/or supervised by any person acting in an official capacity and/or agent of the State as defined herein, such as, but not limited to, the *Ilagâ*, the *Blackshirts*, the *Barracudas*, the Civilian Armed Force Geographical Unit (CAFGU), the Civilian Volunteer Forces, and the Special CAFGU Armed Auxiliary (SCAA);
 - ii. Any member of the civil service, including persons who held elective or appointive public office at any time between March 18, 1968 until February 6, 2019; and
 - iii. Any person or group/s of persons acting with the authorization, support or acquiescence of the State during the period between March 18, 1968 until February 6, 2019.
- d. *Report of the Transitional Justice and Reconciliation Commission* refers to the 151-page Report of the Transitional Justice and Reconciliation Commission published with a Philippine Copyright in 2016.

Section 4. Role of the Bangsamoro Human Rights Commission. — Consistent with the relevant provisions of the Bangsamoro Autonomy Act No. 4 or the ‘Bangsamoro Human Rights Act of 2019’ (hereinafter the ‘BAA No. 4’), the Bangsamoro Human Rights Commission (hereinafter the ‘Commission’) shall be tasked to:

- a. Establish the facts in relation to incidents and allegations of human rights violations through different information-gathering methods;
- b. Assess such facts in the light of international human rights laws and the international humanitarian law;

- c. Reach conclusions with regard to the existence of a human rights violation and, where possible, the identities of the human rights violation victims and, where relevant, the alleged perpetrators;
- d. Issue narrative reports with recommendations for reparation to different government instrumentalities of the Bangsamoro Government; and
- e. Create a database of these human rights violations including a registry and sectoral mapping of identified human rights violation victims.

In the performance of these mandates, the Commission may enter into Memorandums of Agreement with the Commission on Human Rights, the Human Rights Violations Victims' Memorial Commission, the former Regional Human Rights Commission of the former Autonomous Region in Muslim Mindanao, and other government instrumentalities for the sharing of relevant information and data.

CHAPTER II

Documentation of Past Human Rights Violations

Section 5. *Creation of a Special Office for the Documentation and Investigation of Past Human Rights Violations within the Commission.* — There is hereby created a special office (hereinafter the 'Office') within the Commission which shall provide substantive and technical expertise and support in the documentation and investigation of human rights violations in emblematic cases in the past and other armed conflict-related incidents between the period March 18, 1968 and February 6, 2019.

It shall be headed by a Director no lower than a Salary Grade 28 career officer and shall have a technical staff consisting of, at the minimum, five (5) legal officers, five (5) researchers, five (5) human rights investigators, five (5) administrative support staff, one (1) security officer, and one (1) data and knowledge management officer.

When necessary, the Commission may hire additional contractual employees or contract a service provider to augment the services of the Office, including interpreters, translators, and verbatim note takers; *Provided*, that the maximum contract amount per year shall not exceed more than fifteen percent (15%) of the total annual operating budget of the Office.

Section 6. *Emblematic Cases in the Past.* — In the process of documenting and investigating past human rights violations, the Commission shall give focus to the following emblematic cases that show patterns of international human rights law and international humanitarian law violations as identified in the Report of the Transitional Justice and Reconciliation Commission:

- a. Disproportionate use of force and commission of mass atrocity crimes by State actors:
 - i. Jabidah massacre;
 - ii. The ‘burning of Jolo’ in February 1974; and
 - iii. Malisbong Massacre.
- b. Violations committed by State-affiliated armed groups:
 - i. The campaign of the Ilagâ in Mindanao in 1970-1972;
 - ii. Manlili Massacre;
 - iii. Massacres in Lamitan City, Tuburan, and Bagumbayan in Sultan Kudarat;
 - iv. Maguindanao/Ampatuan Massacre;
 - v. Killings by the SCAA employed by David M. Consunji, Inc. from 1986-1990;
 - vi. Tingin-Tingin Massacre; and
 - vii. Pata Massacre.
- c. Internal displacements triggered by the following events:
 - i. When fighting erupted in Upi and in Cotabato in 1970-1971;
 - ii. After the Ilagâ launched its campaign of terror against the Moro and indigenous civilian population before 1977;
 - iii. When the MNLF clashed with the AFP before 1977;
 - iv. Clashes between government forces and the MILF between 1996 and 2000; and
 - v. Fighting between military and rebel forces in February 2003 and August 2008.

Section 7. Reporting Obligation. — Within three (3) years from the enactment of this law, the Commission shall publish a public narrative report on its findings, conclusions, and recommendations on the emblematic cases in the past and other cases of human rights violations committed between March 18, 1968 and February 6, 2019; *Provided*, that the publication of this report shall not prejudice the subsequent applications for recognition as a victim of the human rights violations subject of the report.

Section 8. *Work Period; Sunset Clause.* — The Office shall complete its work, including the transfer of all documents to the assigned office or institution, within two (2) months after the publication of the report, as provided in Section 7 of this Act. After such a period, it shall become *functus officio*.

CHAPTER III

Recognition of Human Rights Violation Victims and Creation of a Database of Human Rights Violations

Section 9. *Recognition of Human Rights Violation Victims.* — Any person who is a human rights violation victim may file for recognition in accordance with the provisions of this Act and the BAA No. 4.

The Commission shall establish a system to receive, evaluate, process, and investigate applications to be recognized as a human rights violation victim, without prejudice to the existing systems of the Commission under the BAA No. 4, as well as the system for the documentation and investigation of past human rights violations, as provided in Chapter II of this Act.

Section 10. *Conclusive Presumption that One is a Human Rights Violation Victim.* — As applicable, the human rights violation victims recognized under Republic Act No. 10368 or the ‘Human Rights Victims Reparation and Recognition Act of 2013’ shall be extended the conclusive presumption that they are human rights violation victims under this Act.

Section 11. *Creation of a Database of Human Rights Violations and Individual Victims.* — The Commission shall create and maintain a comprehensive regional database of human rights violations which shall include data on individual human rights violation victims disaggregated by sector. Sectoral categories shall include, but not limited to, the following:

- a. Sex;
- b. Age;
- c. Socio-economic status;
- d. Membership to an indigenous cultural community;
- e. Internal displacement status;
- f. Armed conflict categorization: civilian, former or transitioning combatant, or State agent; and
- g. Widow and/or orphan of war status.

Section 12. *Deduplication.* — The Commission shall employ deduplication methods or techniques to ensure there are no redundancies in the data pertaining to an individual human rights violation victim.

CHAPTER IV General Provisions

Section 13. *Standard of Proof.* — The Commission, in reaching conclusions on the existence of a human rights violation and/or on the identity of a human rights violation victim, shall not be required to apply a criminal law standard of proof of ‘beyond reasonable doubt’ and may adopt its own standard to make a finding of fact depending on the information to which the Commission has access; *Provided*, that the Commission shall clearly indicate in their rules of procedure the standard of proof they adopted and shall include an explicit reference and explanation in their reports.

Section 14. *Concurrent Application of International Human Rights Laws and the International Humanitarian Law.* — International human rights laws and the international humanitarian law shall have concurrent application or dual applicability in the determination of the existence of a violation, subject to other principles of legal interpretation for the resolution of normative conflicts.

Section 15. *Integrating Gender Analysis.* — A gender perspective shall be integrated throughout the process of documenting the human rights violations, including in the gathering of information, in assessing the information collected, and in reporting the conclusions.

Section 16. *Role of the Bangsamoro Government.* — The relevant entities of the Bangsamoro Government shall support the mandate of the Commission by ensuring:

- a. The Members of the Commission and its agents have freedom of movement throughout the Bangsamoro Autonomous Region, unhindered access to all places and establishments, and freedom to meet and interview representatives of national, local, and military authorities, community leaders, non-government organizations and other institutions, and any such person whose testimony is considered necessary for the fulfillment of the mandate;
- b. Unhindered access for individuals and organizations wishing to meet the Commission;
- c. The Members of the Commission and its agents have free access to all sources of information, including documentary material and physical evidence;
- d. Appropriate security arrangements for the Members of the Commission or its agents during field work; and

- e. Protection of victims and witnesses and all those who come into contact with the Commission, and an undertaking that no such person shall, as a result of such contact, suffer harassment, threats, acts of intimidation, ill-treatment or reprisals.

Section 17. Confidentiality and Data Protection. — The Commission and all its agents shall respect the confidentiality of persons who cooperate in the fulfillment of the Commission's mandate under this Act and of the information it gathers.

The Commission shall include in its procedures detailed protocols on confidentiality of information and measures for data protection which shall include, among others, protocol on informed consent on using and sharing information, redaction of original materials before sharing them, handling and storing personal information, and the applicable provisions under Republic Act No. 10173 or the 'Data Privacy Act of 2012.'

CHAPTER V

Final Provisions


Section 18. Appropriations. — The amount necessary to implement this Act shall be sourced from the regular budget of the Commission.

Section 19. Implementing Rules and Regulations (IRR). — Within thirty (30) days from enactment, the Commission shall promulgate the necessary IRR and procedures for the effective implementation of this Act. The IRR and procedures shall be effective fifteen (15) days after its publication in a newspaper of regional circulation in the Bangsamoro Autonomous Region.

Section 20. Separability Clause. — If any part, section, or provision of this Act shall be held invalid or unconstitutional, the remainder of the law or the provisions not otherwise affected shall remain valid and binding.

Section 21. Repealing Clause. — All regional laws, orders, rules, and regulations or parts thereof which are inconsistent with this Act are hereby repealed or modified accordingly.

Section 22. Effectivity Clause. — This Act shall take effect fifteen (15) days after its publication in the Official Gazette or a newspaper of local circulation in the Bangsamoro Autonomous Region in Muslim Mindanao.


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Member of Parliament