EIGHTEENTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES Second Regular Session

SENATE

S.B. No. 1913



INTRODUCED BY SENATOR RISA HONTIVEROS

AN ACT

ESTABLISHING A TRANSITIONAL JUSTICE AND RECONCILIATION MECHANISM TO ADDRESS THE LEGITIMATE GRIEVANCES OF THE BANGSAMORO PEOPLE AND INDIGENOUS PEOPLES, CREATING FOR THE PURPOSE THE NATIONAL TRANSITIONAL JUSTICE AND RECONCILIATION COMMISSION FOR THE BANGSAMORO AND INDIGENOUS PEOPLES IN THE BANGSAMORO AUTONOMOUS REGION, APPROPRIATING FUNDS THEREFOR

EXPLANATORY NOTE

The Philippine Constitution hereby declares that the State values the dignity of every human person and guarantees full respect for human rights. In fulfillment of this obligation, the State adopts generally accepted principles of international law as part of the law of the land. The Philippines adheres to international human rights law and conventions, including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment and Punishment (UNCAT). It also takes into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the UN General Assembly on December 16, 2005.

Republic Act No. 11054, otherwise known as the "Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao" which was approved into law on July 27, 2020 mandates the enactment of "a transitional justice mechanism to address the legitimate grievances of the Bangsamoro people and the indigenous peoples, such as historical injustices, human rights and marginalization through unjust dispossession of territorial and propriety rights and customary land tenure." The establishment of mechanisms for transitional justice is also mandated in the Comprehensive Agreement on the Bangsamoro signed between the Philippine Government and the Moro Islamic Liberation Front (MILF) on March 27, 2014. The Framework Agreement on the Bangsamoro's (FAB) Annex on Normalization specifies that the two parties "must work out a program for transitional justice to address the legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations and marginalization through land dispossession."

Following RA 11054, this bill takes into account the report of the Transitional Justice and Reconciliation Commission (TJRC) for the creation of a National Transitional Justice and Reconciliation Commission on the Bangsamoro. The Commission shall implement the 'dealing with the past' framework - which includes ensuring the victims of the conflicts' right to know, right to justice, guarantee of non-recurrence, and right to reparation - that is sensitive to the Bangsamoro and Filipino context, informed by gender and cultural sensitivities, and includes a perspective for healing and reconciliation. This bill also integrates the recommendation to create a Civil Society Forum for Transitional Justice and Reconciliation in the Bangsamoro which will actively engage and work in partnership with the Commission to implement its mandate. The TJRC was the body created through the Annex on Normalization to "undertake a study and recommend to the Panels the appropriate mechanisms for transitional justice and reconciliation." Its report and recommendations were produced through a complex consultation process that included at least 3307 individuals (1867 men and 1349 women) in Basilan, Sulu, Tawitawi mainland and Island, Zamboanga Peninsula, Central Mindanao, Lanao del Norte and Lanao del Sur, South Cotabato, Sultan Kudarat, Sarangani, and General Santos (SOCSKSARGEN), and Indigenous Peoples' Areas.

Finally, this bill recognizes and protects the rights of non-Moro Indigenous Peoples within the Bangsamoro Autonomous Region, guarantees their inclusion in the transitional justice mechanisms, and ensures that their rights provided under the Constitution, national laws particularly RA 8371, otherwise known as "Indigenous Peoples' Rights Act of 1997" are not in any way diminished.

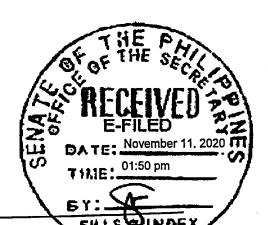
Consistent with the TJRC recommendations, the Immediate passage of this Bill is earnestly sought to address the deepest pains and hurts of the Bangsamoro people, the indigenous peoples in the Bangsamoro Region in Muslim Mindanao, and of the Filipino society at large to "prevent a resurgence of armed conflict and to provide conditions for durable peace".

RISA HONTIVEROS Senator

EIGHTEENTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES Second Regular Session

SENATE

S.B. No. _1913



INTRODUCED BY SENATOR RISA HONTIVEROS

AN ACT

RECONCILIATION AND TRANSITIONAL JUSTICE **ESTABLISHING** GRIEVANCES ADDRESS THE LEGITIMATE MECHANISM TO BANGSAMORO PEOPLE AND INDIGENOUS PEOPLES, CREATING FOR THE PURPOSE THE NATIONAL TRANSITIONAL JUSTICE AND RECONCILIATION COMMISSION FOR THE BANGSAMORO AND INDIGENOUS PEOPLES IN THE BANGSAMORO AUTONOMOUS REGION, APPROPRIATING FUNDS THEREFOR

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Short Title. - This Act shall be known as the "Transitional Justice and 1 Reconciliation for the Bangsamoro and Indigenous Peoples in the Bangsamoro 2 Autonomous Region Act." 3

Sec. 2. Declaration of Policy. - Section 11 of Article II of the 1987 Constitution of the Republic of the Philippines declares that the State values the dignity of every human, person and guarantees full respect for human rights.

By virtue of Section 2 of Article II of the Constitution adopting generally accepted principles of international law as part of the law of the land, the Philippines adheres to international human rights laws and conventions, the Universal Declaration of Human

9 Rights, Including the International Covenant On Civil and Political Rights (ICCPR) and the 10

Convention Against Torture (CAT) and other Cruel, Inhuman or Degrading Treatment or

11 Punishment which imposes on each State party the obligation to enact domestic

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legislation to give effect to the rights recognized therein and to ensure that any person

whose rights or freedoms have been violated shall have an effective remedy, even if the 14

violation is committed by persons acting in an official capacity. In fact, the right to a 15

remedy is itself guaranteed under existing human rights treaties and/or customary

international law, being peremptory in character (jus cogens) and as such has been 17

recognized as non-derogable. 18

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In accordance with the Comprehensive Agreement on the Bangsamoro signed between 19

the Philippine Government and the Moro Islamic Liberation Front, and the Organic Law

for the Bangsamoro Autonomous Region in Muslim Mindanao, It is hereby declared a 1 policy of the State to establish a Transitional Justice and Reconciliation Mechanism to 2 address the legitimate grievances of the Bangsamoro people and the Indigenous Peoples, 3 such as historical injustices, human rights violations, and marginalization through unjust 4 dispossession of territorial and propriety rights and customary land tenure. 5 Towards this end, the State shall: 6 (a) Take appropriate legislative and administrative and other appropriate 7 measures to prevent violations; 8 (b) Investigate violations effectively, promptly and thoroughly and impartially, 9 and where appropriate, take action against those allegedly responsible in 10 accordance with domestic and international law; 11 (c) Provide those who claim to be victims of a human rights or humanitarian 12 law violation with equal and effective access to justice, irrespective of who 13 may ultimately be the bearer of responsibility for the violation; and 14 (d) Provide effective remedies to victims, including reparation. 15 (e) Provide guarantees of non-repetition. 16 For this purpose, a National Transitional Justice and Reconciliation Commission for the 17 Bangsamoro and Indigenous Peoples in the Bangsamoro Autonomous Region shall be 18 established to formulate and implement inclusive and gender-sensitive plans and 19 programs to ensure the recognition, respect, protection, and promotion of these rights. 20 Sec.3. Definition of Terms. - As used in this Act: 21 (a) Armed conflict - in the context of Mindanao and the Sulu archipelago is 22 non-international in character, in that it involves fighting between 23 governmental forces and nongovernmental armed groups or between 24 such groups alone. 25 (b) Historical Injustice - includes acts committed and transactions entered into 26 by State and non-state actors with the Bangsamoro and other inhabitants 27 of the Mindanao and Sulu archipelago that have placed Bangsamoro 28 people and Indigenous Peoples at a political, economic, social and cultural 29 disadvantage and, while having occurred in the distant past, have not 30 been properly addressed, and continue to impact their lives today. 31 These acts have gender dimensions, which may include, but are not 32 limited to: disregard for established customs, women's economic 33 insecurity underpinned by patriarchy, and vulnerability to conflict-related 34 sexual and gender-based violence (SGBV) such as rape, sexual abuse and 35

trafficking.

- (c) *Human rights* are basic rights and freedoms inherent to all "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" as well as non-distinction "of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Human rights are inherent, indivisible, and inalienable. Every human being has civil, political, economic, social, and cultural rights that must be observed, guaranteed, and upheld at all times whether in times of peace and, even more so, during periods of war and armed conflict.
- (d) Land dispossession includes dispossession by ostensibly lawful means, such as public land laws but may have been attended by force, duress, intimidation, stealth, and deception;
- (e) Legitimate grievances refer to grievances that are rooted or grounded on objective conditions and circumstances (i.e. objective grievances) like landlessness, poverty, unemployment, widespread discrimination and abuses, ethnic dominance, inter-group hatred, political/economic exclusion or injustice. These grievances have gender dimensions, which may include, but are not limited to differential impact of armed conflict on men and women and heightened conflict-related experiences and impacts as a result of traditional gender roles.
- (f) Marginalization refers to the political and economic disenfranchisement that the Bangsamoro people, Indigenous Peoples and other Inhabitants of the Mindanao and Sulu archipelagos have suffered due to unjust national laws, programs and policies, as well as government neglect and failure to address destructive and exploitative actions of non-state actors;
- (g) Marginalization through land dispossession is understood as the impact of unjust national laws, programs and policies on cultural identities and ways of living, on political, social and economic conditions, on ancestral domains, and on migration since the late colonial period until the present time.
- (h) Mass Atrocity Crimes refers to three legally defined international crimes: genocide, crimes against humanity and war crimes. The definitions of the crimes can be found in the 1948 Convention On the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions and

Its 1977 Additional Protocols, and the 1998 Rome Statute of the International Criminal Court, among other treaties.

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- (i) Transitional justice means the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale abuses, in order to ensure accountability, serve justice and achieve reconciliation which include criminal prosecutions, truth telling, reparations program and institutional reform.
- (j) Victims of violations of International human rights law and International humanitarian law are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Furthermore, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

Sec. 4. National Transitional Justice and Reconciliation Program for the Bangsamoro and Indigenous Peoples. – There is hereby established a Transitional Justice and Reconciliation Program for the Bangsamoro and Indigenous Peoples, herein referred to as the "Program," which shall address legitimate grievances of the Bangsamoro people and Indigenous Peoples, historical injustices and human rights violation, including marginalization through land dispossession, with the following aims:

- (a) Provide venues for the victims of the Bangsamoro conflict to be heard --- particularly the most vulnerable such as women, children and Indigenous Peoples --- and set up mechanisms for the investigation of mass atrocity crimes and of serious human rights violations of international human rights law and international humanitarian law, and enable inquiries into specific events of the armed conflict;
- (b) Contribute to the resolution of outstanding disputes in conflict- affected areas in the Bangsamoro and address the legacy of land dispossession with concrete measures to provide redress;
- (c) Provide effective counteractions to impunity, by promoting accountability and strengthening the rule of law in relation to past and present

- atrocities, including crimes identified under international conventions to which the Philippines is a signatory;
 - (d) Promote the healing and reconciliation among the Bangsamoro, the Indigenous Peoples, other inhabitants in the Bangsamoro autonomous region, and the Filipino society at large;
 - (e) Provide solid foundations and guarantees for non-recurrence; and
 - (f) Work with transitional justice institutions in the Bangsamoro such as the Bangsamoro Human Rights Commission (BHRC) and/or a regional transitional justice body in the documentation and investigation of egregious violation of international human rights law and international humanitarian law during the armed conflict.

Sec.5. National Transitional Justice and Reconciliation Commission for the Bangsamoro and Indigenous Peoples In the Bangsamoro Autonomous Region. — There is hereby created a National Transitional Justice and Reconciliation Commission for the Bangsamoro and Indigenous Peoples in the Bangsamoro Autonomous Region, hereinafter referred to as the 'Commission.' The Commission shall design and formulate mechanisms to implement the program and supervise such implementation. In formulating the mechanisms, the Commission shall be guided by a gender-sensitive framework of dealing with the past that respects, protects, and fulfills the right to truth, right to justice, and right to reparation of the victims and ensure non-recurrence of any violation, and that seeks to uphold the rule of law and end impunity, prevent violence and adhere reconciliation, and realize conflict transformation.

For this purpose, the Commission shall adopt its own operational guidelines and rules of procedure.

Sec. 6. *Composition.* — The Commission shall be composed of a Chairperson and four (4) regular Commissioners to be appointed by the President. The Chairperson shall be responsible for the overall supervision of the Commission and each of the four (4) Commissioners shall be responsible of the four (4) Sub- commissions under section 8 of this act. There shall be gender balance in the composition of the Commission.

The Executive Director of the Commission who is and likewise appointed by the President and two (2) representatives from civil society shall sit as non-voting members of the Commission. The representatives of the civil society, who are selected by civil society, shall have a wide network of organization and connection with grassroots conflict – affected communities.

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The Chairperson, the Commissioners and the non-voting members must be citizens of the Philippines and of proven expertise on transitional justice, competence, integrity, probity, and independence.

Sec. 7. *Powers and Functions.* — The Commission shall have the following powers

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34 35 and functions:

- (a) Conduct a nationwide information, education, and dissemination program for the popularization of the rationale and principles of transitional justice and reconciliation, as well as its implementing mechanisms;
- (b) Investigate, study, recommend measures for the resolution of cases of individuals and communities adversely affected by armed conflict, serious violations of human rights and international humanitarian law, and outstanding land disputes in the conflict-affected areas, generally and as provided in the mandates of the sub-commissions. Pursuant to this, the Commission and its Sub-Commissions may take testimony or receive evidence, administer oaths, summon witnesses, and require the production of documents by subpoena duces tecum. Additionally, the Commission and its Sub-Commissions shall practice victim-centered and gender-sensitive approaches in investigating, studying, and recommending measures to address mass atrocity crimes against the Bangsamoro and Indigenous Peoples;
- (c) Determine the factors that contribute to impunity in relation to past and present atrocities, and recommend appropriate action to dismantle impunity, promote accountability, and strengthen the rule of law;
- (d) Coordinate with the public and private sectors in the formulation of short, medium term, and long-term programs under a comprehensive approach to transitional justice and reconciliation;
- (e) Call upon other government agencies, including government owned and controlled corporations and government financial institutions, for any support it needs to carry out its mandate;
- (f) Submit to the President recommendations for further action, including proposed bills on matters requiring legislative action, when necessary, to fully implement its proposals and programs;
- (g) Using the whole of nation approach, establish an inter-governmental relations with regional TJ mechanisms. It shall provide technical support to the regions if necessary; and

(h) Perform other functions as may be necessary for the effective discharge of its mandate.

The roles and function of the Commission shall be regularly reviewed and updated to respond to the changing realities on the ground.

- Sec. 8. Organizational Structure and Staffing Pattern. Within three (3) months from the convening of the Commission, the organizational structure and staffing pattern shall be formulated and finalized in coordination with the Department of Budget and Management. To assist the Commission the performance of its duties, four (4) Subcommissions are hereby created, which shall deal with specific aspects of transitional justice for the Bangsamoro and Indigenous Peoples within the Bangsamoro Autonomous Region:
 - (a) Sub-Commission on Bangsamoro Historical Memory, which shall have the following specific functions:
 - a. To contribute to confidence building in communities affected by the conflict through fact finding and truth seeking, while ensuring their protection, safety and dignity. In particular, the sub-commission shall listen to the testimony of in closed or public hearings, in order to collect statements and evidence related to violent events. Due sensitivity to accounts of women who have been victims of gender-based and sexual violence shall be observed, specifically the conduct of video recorded testimonles, in the presence of a gender expert, to be presented in closed hearings.
 - b. To investigate serious violations of international human rights and international humanitarian law, focusing, among others, on specific emblematic cases of mass atrocity crimes, of land dispossession, and of conflict-related sexual and gender-based violence to determine whether such forms of violence were practiced as a deliberate strategy of war in the Bangsamoro conflict;
 - c. To publish series of reports on the result of its investigation in cases of international human rights law and international humanitarian law violations, inclusive of analyses (such as, but not limited to gender analysis) of the findings and recommendations related to individual, collective, and symbolic forms of reparations, accountability of crimes committed, institutional reforms, and reconciliation; and

1	d. To establish gender-disaggregated databases on violations of
2	International human rights and international humanitarian law in
3	the Bangsamoro from 1948 until the present, particularly a
4	database on conflict-related human casualties.
5	(b) Sub-Commission against Impunity and on the Promotion of Accountability
6	and Rule of Law in the Bangsamoro, which shall be responsible for the
7	following:
8	a. To identify, investigate, and recommend policies, operational
9	means, and concrete measures to address and overcome practices
10	of impunity at all levels, whether of a technical, political, or financial
11	nature and whether related to past or present atrocities;
12	b. To request disciplinary procedures against public officials who fail
13	to cooperate or who obstruct justice and the rule of law; and
14	c. To study and recommend for the creation of relevant justice
15	mechanisms such as, but not limited to, a special international
16	humanitarian law court, that shall particularly undertake judicial
17	cases on past and present atrocity crimes.
18	(c) Sub-Commission on Land Dispossession in the Bangsamoro, which is
19	authorized:
20	a. To address issues related to land dispossession, use and tenure in
21	the conflict-affected areas in the Bangsamoro by developing or
22	implementing a dispute resolution mechanism for land conflicts,
23	including Indigenous Peoples (IPs) claims on ancestral domains,
24	and for identifying lands where there are competing claimants;
25	b. To create a database on actual ownership in the Bangsamoro and
26	on land dispossession that may be used to support legal
27	proceedings and restitution or reparation programs, including
28	cadastral, geo-tagged, and community-based participatory
29	mapping sets; and
30	c. To support the overall redesign of land services in the Bangsamoro
31	by recommending changes in the legal framework and all
32	procedures related to land titling, registration, taxation, and
33	management, including the claims of Indigenous Peoples on
34	ancestral domains, for legislation.
35	(d) Sub-Commission on Bangsamoro Healing and Reconciliation, which is
36	empowered:

a. To Identify and support traditional practices of reconciliation at the 1 community level; 2 b. To develop and promote a meaningful process for national 3 reconciliation with a view to encouraging cultural and attitudinal change; 5 c. To support the other three (3) sub-commissions in the 6 implementation of their mandate by shaping and promoting a 7 reconciliatory vision for each of them; and d. Ensure the meaningful participation of victims and/or their families, 9 including women and other vulnerable groups, in the proceedings 10 of the Commission and its Sub-commissions. 11 Each Sub-commission shall cooperate with relevant national, regional, and local 12 institutions, both governmental and non-governmental, in the exercise of its mandate. 13 Moreover, each sub-commission shall ensure the meaningful participation of women in 14 the processes that will be undertaken, taking into consideration their experiences relevant 15 to the objectives of transitional justice. 16 Sec. 9. National Consultation Process. - The appointment of members of the 17 Commission shall be made through broad, inclusive, transparent, and gender-fair national 18 public consultations. 19 For this purpose, the Office of the Adviser on the Peace Process (OPAPP) shall propose 20 to the President a selection and appointment process for the members of the Commission. 21 This selection and appointment process shall include the appointment of a Selection 22 Committee composed of representatives of national, regional, and local sectoral 23 stakeholders. The Selection Committee, after its convention, shall select, from the pool 24 of nominees, the persons who shall be included in the short lists of nominees from which the President shall appoint the members of the Commission. The Selection Committee 26 and the Commission shall ensure the inclusion of women in its membership, 27 corresponding to representatives of national, regional and local sectoral stakeholders. 28 The Commission, whenever it deems appropriate, shall likewise conduct national public 29 consultations in formulation of the implementing mechanisms of the Program. 30 Sec. 10. Advisory Board. — There is hereby an Advisory Board composed of 31 32 qualified individuals, including women, with proven expertise in the fields of transitional justice and reconciliation, to be appointed by the President. 33 The Commission may likewise engage or contract the services of resource persons, 34 professionals and other personnel determined by it as necessary to carry out its mandate. 35

Sec. 11. *Secretariat.* – The Commission shall organize its Secretariat, headed by the Executive Director, which shall provide administrative and technical support.

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Sec. 12. Engagement with Civil Society. – The Commission shall actively engage and work in partnership with civil society organizations. It shall create a Civil Society Forum For Transitional Justice and Reconciliation for the Bangsamoro and Indigenous Peoples in the Bangsamoro Region to provide venues for civil society to support the Commission implement its mandate, monitor its work, and enhance the voices of victims to ensure that their needs are articulated and addressed.

Sec. 13. *Duration.* – The Commission shall operate for a period of six (6) years from the effectivity of this Act or upon completion of the purposes for which it was created, whichever comes first. However, it may continue to operate for another three (3) years upon the approval of the President.

Sec. 14. *Appropriation.* – For the initial operating expenses of the Commission to carry out the mandate of this Act, the amount of One hundred million Pesos (P100,000,000.00) is hereby appropriated from the Contingent Fund of the Office of the President on the year this Act is approved. Thereafter, it shall submit to the Department of Budget and Management its proposed budget for inclusion in the General Appropriations Act.

The Commission is likewise authorized to accept donations, contributions, grants, bequests of gifts from domestic or foreign sources, for purposes relevant to its mandate and functions, in accordance with applicable laws and rules and regulations subject to government accounting and auditing rules and regulations.

Sec. 15. *Implementing Rules and Regulations.* – Within ninety (90) days from the approval of this Act, the Commission shall promulgate rules and regulations implementing the provisions of this Act. The Implementing Rules and regulations issued pursuant to this section shall take effect thirty (30) days after its publication in two (2) newspapers of general circulation.

Sec. 16. *Repealing Clause.* – All laws, orders, issuances, rules and regulations inconsistent herewith are repealed or modified accordingly.

Sec. 17. Separability Clause. — If any provision of this Act is declared unconstitutional, the remainder of this Act or any provision not affected thereby shall remain in full force and effect.

Sec. 18. Saving Clause. — This law shall not in any manner diminish the rights and benefits of Indigenous Peoples under the Philippine Constitution, international treatises and conventions, national laws, particularly RA 8371, otherwise known as the "Indigenous Peoples' Rights Act of 1997" and RA 11054, otherwise known as "Organic Law For The

- 1 Bangsamoro Autonomous Region In Muslim Mindanao", and other laws pertaining to
- 2 Indigenous peoples in the Bangsamoro Autonomous Region.
- Sec. 19. Effectivity. This Act shall take effect fifteen (15) days after its publication
- in a newspaper of general circulation or Official Gazette.

 Approved,