



Report of the Transitional Justice and Reconciliation Commission





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**Transitional Justice and
Reconciliation Commission**

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FOREWORD

Dear Reader,

Before you begin reading, I ask you to pause for a moment and to allow me to share some personal thoughts about the journey that led to the creation of this report.

It has been a painful, sometimes almost unbearable experience. At times, even unreal: people, situations, contexts, and stories seem to blend and resemble one another. The endless stories about killing, violence, spoliation, abduction, rape, exclusion, displacement. Yet, the stories are real - each one unique - and the wounds are fresh even after years and the broken memories continue to haunt men, women, and children, their homes, their communities, their landscapes.

There is a penetrating, chilling contrast between the beauty of the Bangsamoro, indigenous and Philippine people, their extraordinary hospitality, their kindness, their ancient culture, the beauty of the surrounding landscape and the permanent, shocking ugliness of everything that has been touched by war, violence, greed, disrespect, and deep neglect.

There is also a deep ambiguity: So many books, academic studies, media reports, film documentaries have been published both in the Philippines and abroad about the origin of the conflict and its consequences. Yet, the violence continues and it continues to generate new forms of dehumanization. As Commissioners, we constantly asked ourselves: Is there anything new to be said? Anything new that can be done?

So, let me tell you straightaway, dear Reader: There is nothing 'new' in this report - nothing that you, as an informed person, would not be in a position to know already. There is, however, something 'new' in this report that can perhaps inspire you or even change the way you look at life. You can listen to your fellow Filipinos, Bangsamoro and indigenous people, women and men like you, and you can try to imagine their reality. Indeed, this report is about listening, convening, and acting together.

- Listening: Many people affected by the conflict, men, women and children, farmers, fishermen, teachers, community leaders, accepted to talk to the TJRC, because they believed that we would listen to them attentively and that their testimony would be heard. They shared their stories - and also their silence when words failed them. They also shared their hopes, their visions for the future. Indeed, although they were at times driven from their homes and suffered unimaginable hardships, they are still remarkably alive and they stretch out their hands to you.

- Convening: Many people from all walks of life, and from all over Philippines – public officials, academic experts, religious and business leaders, teachers, members of the military and police, men and women – accepted to meet with us, to share their experience and knowledge. Often they expressed shame about what has happened and continues to happen; the estrangement imposed upon Bangsamoro or indigenous people; they witnessed scenes of extreme violence; or saw how people lost their loved ones, their place. Some told us that violence, neglect, and impunity are destroying the country as a whole by undermining its core moral values and its sense of solidarity as a nation. Some spoke about what can and shall be done to make sure that there is a future for the Philippines and the Bangsamoro.

Dear Reader,

This is their report. It speaks about their pain and about their hope. It says that it is both possible and feasible to say ‘yes’ to peace and to a common destiny. It says that the ones who say ‘yes’ to mutual respect, to compassion, to social justice are the future of the nation, the future of the Bangsamoro and the Philippines. By choosing life over death, peace over war, empathy over indifference, these women and men are the heroes of this story. You can join them.



Mò Bleeker, Chairperson
Transitional Justice and Reconciliation Commission (TJRC)
Cotabato City and Manila, 10 February 2016

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The TJRC takes the sole responsibility for the report, its content and the materials presented in this publication. The TJRC makes no statements or warranties about the completeness of any information contained in this publication.

ACRONYMS

AFP	Armed Forces of the Philippines
ARMM	Autonomous Region in Muslim Mindanao
ASG	Abu Sayyaf Group
BBL	Bangsamoro Basic Law
BCMS	Bangsamoro Conflict Monitoring System
BDA	Bangsamoro Development Authority
BIAF	Bangsamoro Islamic Armed Forces
BIFF	Bangsamoro Islamic Freedom Fighters
BLBAR	Basic Law on the Bangsamoro Autonomous Region
BSDU	Barrio Self-Defense Unit
CAB	Comprehensive Agreement on the Bangsamoro
CAFGU	Citizen Armed Force Geographical Unit
CARL	Comprehensive Agrarian Reform Law
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
CCP	Cultural Center of the Philippines
CEDAW	Convention on the Elimination of Discrimination Against Women
CHDF	Civilian Home Defense Force
CHED	Commission on Higher Education
CHR	Commission on Human Rights
CIIF	Coconut Industry Investment Fund
CRC	Convention on the Rights of the Child
CSC	Civil Service Commission
CSO	Civil Society Organization
CVO	Civilian Volunteer Organizations
DA	Department of Agriculture
DAR	Department of Agrarian Reform
DBM	Department of Budget and Management
DENR	Department of Environment and Natural Resources
DepEd	Department of Education
DFA	Department of Foreign Affairs
DILG	Department of Interior and Local Government
DMCI	David M. Consunji, Inc.
DND	Department of National Defense
DOJ	Department of Justice
DSWD	Department of Social Welfare and Development
DwP	Dealing with the Past
EDCOR	Economic Development Corps
FAB	Framework Agreement on the Bangsamoro
FIND	Families of Victims of Enforced Disappearances

ACRONYMS

GPH	Government of the Philippines
GRP	Government of the Republic of the Philippines
HMC	Historical Memory Committee
HRVCB	Human Rights Victims Claims Board
IBP	Integrated Bar of the Philippines
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Convention on Economic, Social, and Cultural Rights
ICHDF	Integrated Civilian Home Defense Forces
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
IHRL	International Humanitarian Rights Law
IOM	International Organization for Migration
IP	Indigenous Peoples
IPRA	Indigenous Peoples' Rights Act
ISIS	Islamic State of Iraq and Syria
JAGO	Judge-Advocate General's Office
LA	Land Authority
LASEDECO	Land Settlement Development Corporation
LEO	Law Enforcement Operations
LGU	Local Government Unit
LMB	Land Management Bureau
MAG	Medical Action Group
MCPA	Moro Christian People's Alliance
MILF	Moro Islamic Liberation Front
MINDA	Mindanao Development Authority
MNLF	Moro National Liberation Front
MOA-AD	Memorandum of Agreement on Ancestral Domain
MOU	Memorandum of Understanding
MPRC	Moro People's Resource Center
NARRA	National Resettlement and Rehabilitation Administration
NCCA	National Commission for Culture and Arts
NCIP	National Commission on Indigenous Peoples
NCMF	National Commission on Muslim Filipinos
NDCP	National Defense College of the Philippines
NEDA	National Economic and Development Agency
NFDC	National Film Development Council
NGO	Nongovernmental Organization

NHCP	National Historical Commission of the Philippines
NLSA	National Land Settlement Administration
NPA	New People's Army
NSCWPS	National Steering Committee on Women, Peace, and Security
NTJRCB	National Transitional Justice and Reconciliation Commission on the Bangsamoro
NUC	National Unification Commission
OPAPP	Office of the Presidential Adviser on the Peace Process
PAO	Public Attorney's Office
PC	Philippine Constabulary
PCGG	Presidential Commission on Good Government
PCHR	Presidential Committee on Human Rights
PCW	Philippine Commission on Women
PD	Presidential Decree
PDP	Philippine Development Plan
PMA	Philippine Military Academy
PNP	Philippine National Police
PNPA	Philippine National Police Academy
RA	Republic Act
RCBW	Regional Commission on Bangsamoro Women
RCPA	Rice and Corn Production Administration
RHRC	Regional Human Rights Commission
RRUC	Regional Reconciliation Unification Commission
SCAA	Special CAFGU Armed Auxiliary
SEARC	Southeast Asia Research Center
SoCSarGen	South Cotobato, Sarangani, and General Santos City
TFDP	Task Force Detainees of the Philippines
TJRC	Transitional Justice and Reconciliation Commission
TORs	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
US	United States
VAW	Violence Against Women
WB	World Bank

ACRONYMS



*Transitional Justice
and Reconciliation Commission*

EXECUTIVE SUMMARY



TJRC Listening Process Kick-Off Workshop,
February 2015

I. TJRC Mandate, Composition, and Methodology

The Transitional Justice and Reconciliation Commission (TJRC) was established as part of the Normalization Annex of the Framework Agreement on the Bangsamoro (FAB) and, as such, was mandated **to undertake a study and to make recommendations** with a view to promoting healing and reconciliation among the different communities affected by the conflict in Mindanao and the Sulu archipelago.

The Peace Panels constituted the membership of the TJRC as follows:

Chairperson: Ms. Mô Bleeker, Special Envoy, Swiss Federal Department of Foreign Affairs
Government of the Philippines (GPH) Delegate: Atty. Cecilia Jimenez-Damary
GPH Alternate Delegate: Atty. Mohammad Al-Amin Julkipli
Moro Islamic Liberation Front (MILF) Delegate: Atty. Ishak Mastura
MILF Alternate Delegate: Atty. Abdul Rashid Kalim
Senior Adviser: Mr. Jonathan Sisson, Swiss Federal Department of Foreign Affairs
Senior Gender Adviser is Dr. Ma. Lourdes Veneracion-Rallonza

The TJRC is supported by office staff based in Manila and in Cotabato City.

The TJRC was mandated to propose appropriate mechanisms:

- To address **legitimate grievances** of the Bangsamoro people;
- To correct **historical injustices**;
- To address **human rights violations**;
- To address **marginalization through land dispossession**.

The TJRC subsequently designed and implemented an elaborate **Consultation Process** that focused on the four topics of its mandate and involved community-based ‘listening process’ sessions, study group reviews of existing research, as well as key policy interviews. Additional independent research projects on particular subjects related to its mandate were also carried out.

In all, the TJRC conducted ‘listening process’ sessions in more than 210 Moro, indigenous, and settler communities in Mindanao and the Sulu archipelago, involving some 3,000 community members and local officials. The TJRC also engaged with a wide range of experts from the Bangsamoro region and at the national level, including peacebuilding and human rights practitioners, community and religious leaders, academics and scholars of Bangsamoro history and culture, public servants, and representatives of the security and private sectors.

Based on the findings of the Consultation Process, the TJRC produced its own analysis of the issues related to its mandate and of the root causes of the current conflict. In the view of the TJRC, the four topics of its mandate are interrelated and intertwined: The Bangsamoro narrative of historical injustice is based on an experience of grievances that extends over generations, particularly with respect to land dispossession and its adverse effects upon their welfare as a community as well as their experience of widespread and serious human rights violations.

Moreover, the TJRC came to the conclusion that these issues are the result of three interlocking phenomena—**violence, impunity, and neglect—which, in turn, are rooted in the imposition of a monolithic Filipino identity and Philippine State by force on multiple ethnic groups in Mindanao and the Sulu archipelago that saw themselves as already preexisting nations and nation-states.**”

II. The Bangsamoro Opportunity

Armed conflict in Mindanao has had tragic consequences for the Bangsamoro and indigenous peoples and for Filipino society at large. Over the past four decades, an untold number of people in Mindanao and the Sulu archipelago have been subjected to immense suffering due to vertical and horizontal violence. They have lost family members; they have been driven from their homes and have lost their lands and livelihoods. Incidents of violent conflict and systematic discrimination and exclusion have become a collective experience and memory. The people of the Bangsamoro are poor and tired and they want peace.

At the same time, the Philippines as a nation has not remained unscathed. The prolongation of the armed conflict has generated pockets of malgovernance, violence, and corruption. It has eroded the values of the nation and undermined trust between citizens and the State. On another level, the conflict has cost the Philippines precious time and opportunities. It has effectively hindered decades of potential social and economic development and weakened the quality of democracy and of human security. With the appearance of new armed groups and new forms of violence (e.g., international terrorism and drug-related crime), an environment of multidimensional conflict has begun to take hold in the Philippines.

In this context, bringing peace to the Bangsamoro in a durable manner offers a unique opportunity for the Philippines—the opportunity for a modern nation-state to emerge that is capable of managing the diversity of peoples and communities inherent to any modern democracy in a constructive manner based on equality of opportunity and on the rule of law. Similarly, the Bangsamoro aspire to a political framework, which shall enable the practice of good governance, the development of the Bangsamoro region and people, and the possibility for them to proudly assert their identity, and constructively engage with their own multiethnic constituency.



IDB personnel conducts inspection and inventory on the weapons that were turned over. (© OPAPP)

Both the Government of the Philippines and the Moro Islamic Liberation Front deserve to be commended for their commitment to the peace process during seventeen years of protracted negotiations. As a result, the two parties were able to sign the historic Comprehensive Agreement on the Bangsamoro (CAB) on March 27, 2014. Thus, the TJRC prefers to speak of a **‘Bangsamoro opportunity’** rather than of a ‘Bangsamoro problem.’ The implementation of the CAB is a unique and extraordinary opportunity not only for Bangsamoro, but also for the whole Filipino nation:

- It offers an opportunity for the historical and cultural resilience of the Bangsamoro and indigenous peoples to be recognized as a vibrant and constructive part of the Philippines, based on the acknowledgement of plural identities.
- It offers an opportunity for the Philippine State to assume the political and moral responsibility for all of its peoples by opening and strengthening spaces for political debate and for the nonviolent management of conflicting views and interests.
- It offers an opportunity for the Philippines to join hands with the Bangsamoro and indigenous peoples to promote the rule of law, security, and development in the Bangsamoro as a potential model for the rest of the country.
- It offers an opportunity for the Philippines and the Bangsamoro to embrace diversity as one of the key human resources of its society.
- It offers an opportunity for the Philippines to become a champion in the protection of diversity and of territorial integrity at the regional and international levels.

III. ‘Dealing with the Past’ towards Healing and Reconciliation

The recommendations of the TJRC are elaborated with the intention of opening the path for a joint Bangsamoro and Filipino process of ‘dealing with the past’ that can address both the root causes of the conflict and their consequences, while building on the extraordinary Bangsamoro and Filipino capacity for resilience.

The TJRC is convinced that the transitional justice mechanisms proposed below, when implemented with a conflict transformation perspective in mind, are suited to address the complex of grievances of the Bangsamoro people cited in its mandate. Moreover, they will provide a solid basis for healing and reconciliation between the different communities directly affected by the conflict as well as between the Bangsamoro and the Filipino society at large.

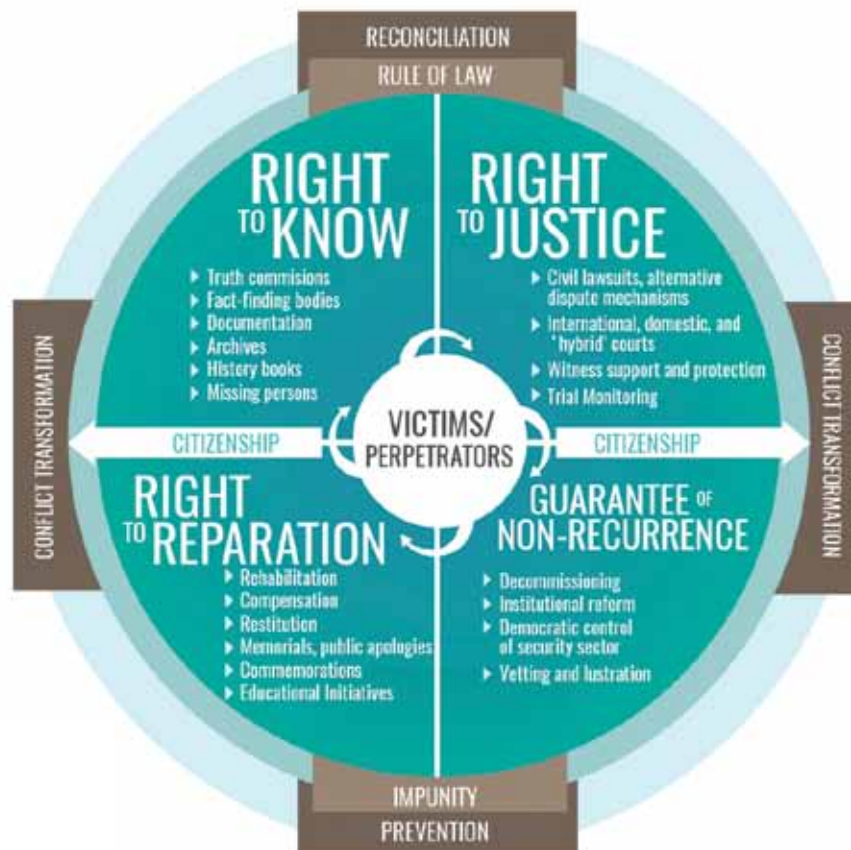
The TJRC has adopted a conceptual and analytical framework for transitional justice (or what it prefers to call ‘dealing with the past’) that is inspired by the United Nations (UN) principles against impunity, which have the force of customary international law. In this regard, the TJRC highlights the fact that the principles against impunity are based on the rights of victims to seek redress for past abuse and on the obligations of the State to ensure accountability for wrongs committed. Moreover, initiatives related to truth seeking, justice, reparations, and institutional reform offer a mutually reinforcing framework that is needed in the struggle against impunity and to strengthen the rule of law (see Figure ES-1 for the TJRC ‘Dealing with the Past’ Framework).

Figure ES-1 TJRC ‘Dealing with the Past’ Framework

The DWP Framework

REFERENCES

Federal Department of Foreign Affairs | swisspeace
Based on the principles against impunity by Louis Joinet & Diane Orentlicher





President Benigno Aquino III talks with IDB Chair Haydar Berk as he inspects the weapons turned over by the MILF. He is joined by Secretary Teresita Quintos Deles, MILF Chair Ebrahim Murad, Secretary Mar Roxas, and Government Peace Panel Chair Miriam Coronel-Ferrer. (© OPAPP)

At the same time, the TJRC proposes a future-oriented approach to ‘dealing with the past’ that is sensitive to the Bangsamoro and Filipino context. While addressing legitimate grievances, historical injustice, and the effects of marginalization through land dispossession, ‘dealing with the past’ also strives to prevent the recurrence of human rights violations. To do so, a combination of short-term, medium-term, and long-term interventions are required to create conditions in which the root causes of political and social conflict can be addressed by nonviolent means. The support provided to existing national and regional institutions and the creation of additional transitional justice mechanisms recommended by the TJRC shall contribute to an environment of trust building and power sharing that respects the historical diversity of the Philippines and the Bangsamoro region.

IV. Complementing Past and Existing Efforts and Ensuring a Strategic Approach

Many efforts have been initiated by government and civil society in the Philippines to address the violent legacy of the Marcos era. There are a number of good examples of ‘dealing with the past,’ among them the recent ongoing efforts to compensate the victims of Martial Law undertaken by the Human Rights Victims Claims Board (HRVCB). Initiatives have also been launched by previous administrations to mainstream human rights education and monitoring in the national security institutions as well as to identify and protect archives related to human rights violations under Martial Law.

Nevertheless, the impact of these initiatives has been limited with respect to the conflict in Mindanao, notably in providing satisfactory redress to victims and in preventing the recurrence of violations. There

are a number of reasons why past government initiatives related to transitional justice have failed to live up to expectations:

- They have not been effective in addressing the root causes of violence.
- They were not implemented as a result of broad and transparent consultations.
- They promoted isolated measures, instead of a holistic strategy, for ‘dealing with the past.’
- They did not succeed in ending conflict-related violence and thus failed to draw a line between before and after the period of wrongdoings and injustices.
- They did not contribute to the prevention of revisionist discourse and denial about the abuse committed in the past.

Nevertheless, important steps have been taken. We note the significant contribution towards healing and reconciliation made by President Benigno S. Aquino III when he publically acknowledged the grievances of the Moro people in a speech:

As a congressman, I had come to understand that the degree of resentment in the hearts of the Bangsamoro people was, on a large part, a result of land grabbing and the opportunism of some of our less scrupulous compatriots. Taking advantage of the illiteracy of our indigenous peoples who did not know that their lands had to be registered under their name, these lettered Christians sought control of the lands our Moro and other indigenous peoples called home. This, in turn, led to a struggle of our Moro brothers to reclaim what was rightfully theirs. Given the many deaths, which were the result of the conflict that raged and festered for generations, one cannot help but wonder: If a law had been passed to protect the marginalized, like the Indigenous Peoples Rights Act (IPRA) we have now, could bloodshed have been avoided? Is it not right that as one of my predecessors once said: That those who have less in life should have more in law? I wondered: With all the hostility and animosity that once existed between brothers, how could one achieve the trust crucial in forging an agreement? (Speech at the International Conference on the Consolidation for Peace for Mindanao on June 24, 2014)

This statement underscores the reason why President Aquino has insisted on the passage of the Bangsamoro Basic Law not only as a means of implementing the peace agreement with the MILF, but also as a concrete manifestation of the Philippine government’s commitment to address Moro grievances.

V. Taking a Political Decision

The TJRC is aware that it will take time to address the issues underlined in its mandate in a coherent and comprehensive manner and to bring durable peace to the Bangsamoro as well as in the Philippines. Therefore, it proposes an **incremental and flexible approach that combines mutually reinforcing efforts in the fields of truth, justice, reparations, and guarantees of non-recurrence, while promoting reconciliation initiatives on the national, regional, and local levels.**

To this end, the TJRC developed a number of recommendations based on its Consultation Process. Aside from the recommendations listed below, there is a list of recommendations, stemming from the ‘listening process’ sessions, the study group reports, the key policy interviews, and other reports mandated by the TJRC; these are included in the TJRC report. These recommendations

must be discussed and further developed as a joint effort between the Government of the Philippines and the Bangsamoro authorities, on the one hand, and between government and civil society, on the other.

A sound political decision needs to be taken at the highest level by both parties to set the stage for a strategic approach to ‘dealing with the past’ for the Bangsamoro. Indeed, ‘dealing with the past’ must be fully integrated into the peace process to ensure its sustainability. As an intrinsic part of the Bangsamoro and national peace agenda, ‘dealing with the past’ shall be implemented through a series of short-term, medium-term, and long-term measures to be undertaken independently and co-jointly by the Bangsamoro and national authorities with the support of Philippine civil society and the international community.

VI. The TJRC Recommendations

The TJRC submits the following recommendations to the GPH and MILF Peace Panels for their consideration and action. All of these recommendations shall be informed by gender and cultural sensitivities and include a perspective for healing and reconciliation.



The TJRC recommends the following, in addition to the list of specific recommendations listed in the main TJRC report:

A. To the President, to create the **National Transitional Justice and Reconciliation Commission on the Bangsamoro** (NTJRCB)

1. The overall mandate of the NTJRCB shall be to implement the ‘dealing with the past’ framework, to promote healing and reconciliation, and to ensure that the following tasks are undertaken by four separate Sub-Commissions in cooperation with relevant existing institutions and actors:
 - a. To realize public and confidential hearings with the participation of victims of the conflict, to investigate serious violations of international human rights and international humanitarian law, and to implement remedies;
 - b. To contribute to the resolution of outstanding land disputes in conflict-affected areas in the Bangsamoro, to address the legacy of land dispossession, and to implement remedies;
 - c. To contribute to the dismantling of impunity, to the promotion of accountability, to the strengthening of the rule of law in relation to past and present wrongdoings, and to implement remedies;
 - d. To promote healing and reconciliation among the different communities affected by the conflict.
2. The NTJRCB shall operate for six years with the possibility of extending its mandate for another three years.
3. The NTJRCB shall ensure the implementation of the ‘dealing with the past’ framework and promote healing and reconciliation. Among other things, it shall operate by cooperating with existing institutions and building on existing local and national best practices in conformity with international standards, while taking into account lessons learned from other experiences. The NTJRCB shall establish memoranda of understanding (MOUs) to regulate the cooperation between its Sub-Commissions and the relevant existing institutions and organizations in their respective fields (see Figure ES-2 for the recommended structure of the NTJRCB and Figure ES-3 for the NTJRCB Sub-Commission structure and operation).

Figure ES-2 NTJRCB Overall Structure

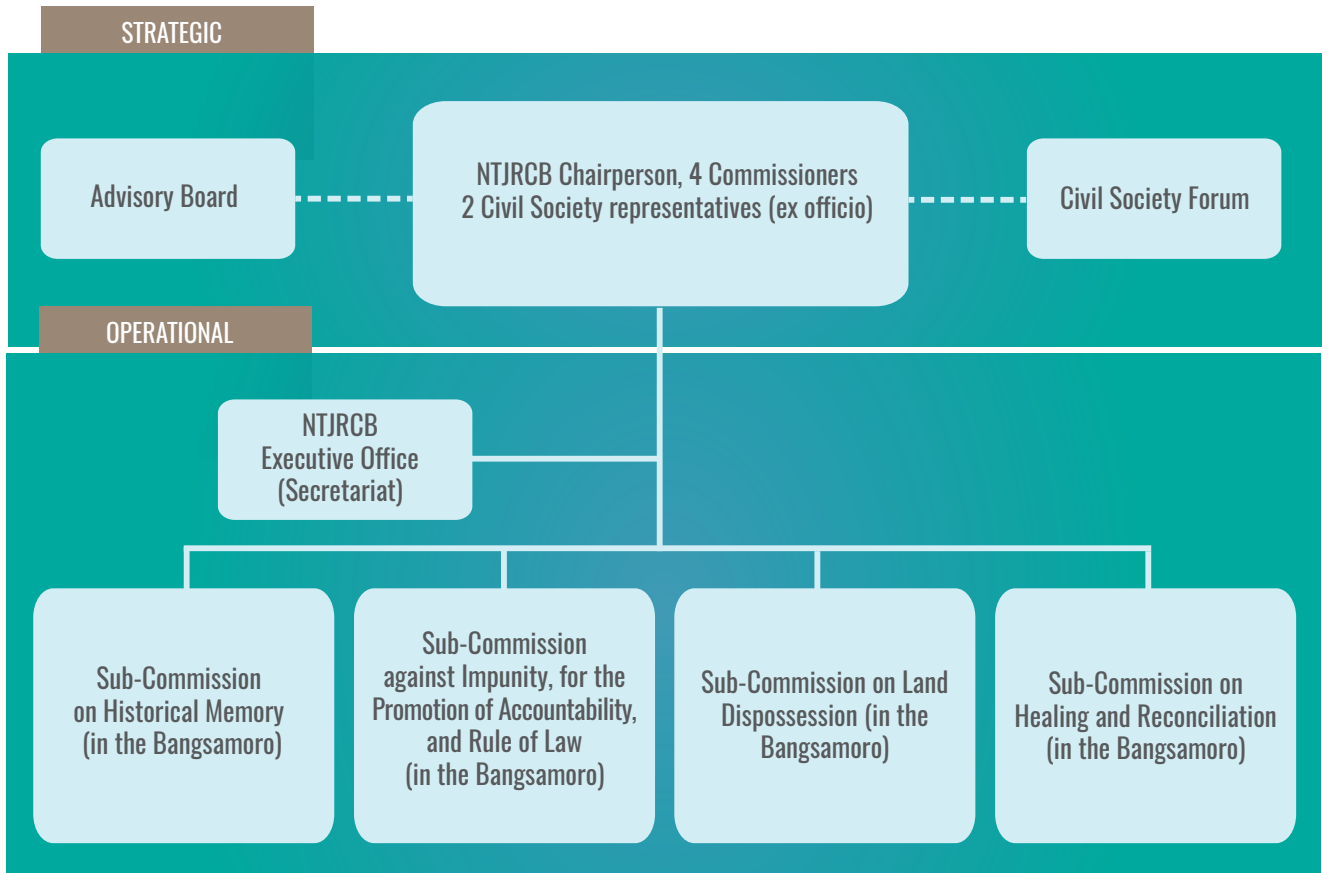
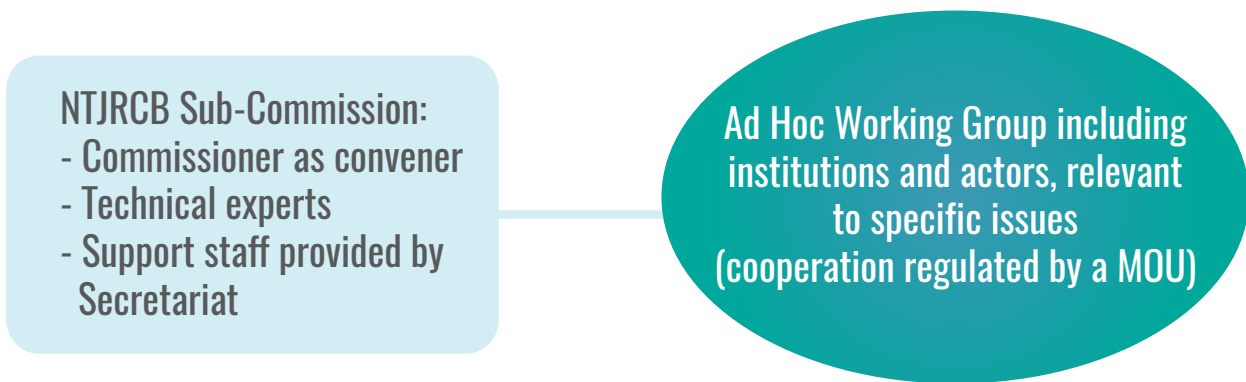


Figure ES-3 NTJRCB Sub-Commission Structure and Operation



4. The NTJRCB shall consist of seven persons, five of whom are voting members, appointed by the President: the Chairperson and the four Commissioners, who are responsible for convening the Sub-Commissions. Two representatives of Bangsamoro civil society are members of the NTJRCB with a status of ex officio, nonvoting members.
 5. All of the members of the NTJRCB shall be of Philippine nationality. The Chairperson and at least two of the four voting members of the NTJRCB shall be a Philippine national of Bangsamoro ancestry. At least one of the nonvoting civil society representatives shall be a Philippine national of Bangsamoro ancestry.
- B. To the President, to call upon civil society organizations to create a **Civil Society Forum for Transitional Justice and Reconciliation in the Bangsamoro**. The objective of the Civil Society Forum is to monitor and support the implementation of the NTJRCB mandate with a view to enhancing the satisfaction of victims and strengthening the guarantee of non-recurrence. The Civil Society Forum shall recommend a list of five names, from among which the President will choose two representatives to serve as nonvoting members of the NTJRCB.
- C. To the President, to authorize the NTJRCB to create an **Advisory Board**, composed of eminent national (and, if deemed useful, international) persons with proven expertise in the field of ‘dealing with the past’ and reconciliation. The objective of the Advisory Board is to provide advice to the NTJRCB and support to the overall process of transitional justice, healing, and reconciliation.

The TJRC strongly recommends that decisions be taken as soon as possible. With or without a Bangsamoro Basic Law, a solid, consistent ‘dealing with the past’ strategy shall be implemented in an incremental manner with a view to addressing the deepest pains and hurts of the Bangsamoro people and of Filipino society at large.

The TJRC regards this as necessary to prevent a resurgence of armed conflict and to provide conditions for a durable peace.

Kuala Lumpur, Malaysia, 10 February 2016



An old rundown school at Maguindanao turned into an evacuation site for more than 200 refugees. (© Leonard Reyes)



INTRODUCTION

The negotiators are to be commended for their foresight and appreciation of the urgent need to address the painful legacy of the violence and the root causes of the conflict, in order to ensure a successful transition to peace and the rule of law in the future Bangsamoro region.

Recognition is due to both the Government of the Philippines (GPH) and to the Moro Islamic Liberation Front (MILF) for their commitment to the peace process during 17 years of protracted negotiations. As a result of their engagement, they were able to sign the Framework Agreement on the Bangsamoro (FAB) on October 15, 2012 as well as the Comprehensive Agreement on the Bangsamoro (CAB) on March 27, 2014, which includes the Normalization Annex (signed on 25 January 2014) that provided for the creation of the Transitional Justice and Reconciliation Commission (TJRC). The decision to create an independent body to study and formulate recommendations on issues related to transitional justice and reconciliation as a central element of the Bangsamoro peace process. The negotiators are to be commended for their foresight and appreciation of the urgent need to address the painful legacy of the violence and the root causes of the conflict, in order to ensure a successful transition to peace and the rule of law in the future Bangsamoro region.

Indeed, the issue of transitional justice and reconciliation in other peace processes has often been treated as an afterthought, introduced to the post-conflict agenda only at the instigation of the international community and civil society. This has certainly been the case in peace negotiations in the past that have involved mainly, if not exclusively, the armed protagonists and have proceeded without consulting representatives of the victims and communities affected by conflict and without the participation of relevant civil society organizations. In recent years, progress has been made in the design of more inclusive peace processes. In Colombia, for example, victim associations have been given a voice in the negotiations. In South Sudan and in Mali, however, affected communities have still been largely left aside. As a result, the transitional justice mechanisms established in such contexts fail to benefit from the advantages of impartial and consultative processes, which are vital to building trust and reconciliation in fragmented societies.

Thus, the GPH and MILF Panels can be said to have set a new standard by including the establishment of the TJRC as an integral provision of the peace agreement. As such, it signals a consensus among the parties to the conflict to address by peaceful means what they agree to



Human Rights Archiving Workshop, May 2015

be some of the most contentious issues fueling the conflict: legitimate grievances of the Bangsamoro people, historical injustice, human rights violations, and marginalization through land dispossession. As a consequence, the TJRC has received a clear mandate to examine these issues and to make concrete recommendations regarding how they should be addressed.

Operationally, the TJRC opted for a problem-solving approach that combined a broad-based process of ‘listening’ at the community level with an expert review of relevant academic literature and field studies, as well as with a series of key policy interviews. In total, more than one hundred persons—women and men—from the Bangsamoro region and the national level actively engaged with the TJRC as facilitators, experts, or key informants in its consultation process. The profile of those who collaborated with the TJRC includes peacebuilding, conflict transformation, and human rights practitioners, community and religious leaders, academics and experts in Mindanao and Bangsamoro studies, public servants, and representatives of the security and private sectors.

This elaborate process of consultation shaped the TJRC’s understanding of the social, cultural, political, economic, and historical factors that gave rise to the conflict and have sustained it over decades. Moreover, it provided insight into the clan structure, institutional architecture, and means of governance in the Philippines and in the Bangsamoro. Additionally, the TJRC developed its own conceptual framework and analysis that informed its understanding of the results of the consultation process and crafted its recommendations accordingly, so that they would be at once realistic, feasible, sustainable, and—not the least—meaningful to the Bangsamoro people, to other affected communities in Mindanao, and to Philippine society at large.

The work of the TJRC was guided by several key principles that were practiced and respected in the course of carrying out its mandate: building local and national ownership, developing a Filipino and Bangsamoro approach to transitional justice and reconciliation, being sensitive to gender and culture, contributing to the process of conflict transformation and trust building, and keeping pace with the ongoing peace process.

It is important to note that other initiatives that could be associated with the universe of transitional justice have been previously attempted in the Philippines. These could be relevant to the pursuit of transitional justice in the Bangsamoro in the same manner that the way in which the past is dealt with in the Bangsamoro context could contribute to the country's capacity to provide justice, healing, and reconciliation.

For the TJRC, the four issues of its mandate are interrelated and intertwined: The Bangsamoro narrative of historical injustice frames their experience of legitimate grievances, particularly in relation to their social, political, and economic marginalization through land dispossession and their sense of victimhood in the face of widespread human rights violations committed against them. Moreover, the TJRC came to the conclusion that these issues have arisen as the consequence of three interlocking phenomena—violence, impunity, and neglect—that, in turn, are rooted in the imposition of a monolithic Filipino identity and Philippine State by force on multiple ethnic groups in Mindanao and in the Sulu archipelago that saw themselves as already preexisting nations and nation-states.

At this juncture in the peace process, it is important to emphasize that initiatives in transitional justice and reconciliation are not only crucial to the future of the affected communities in the Bangsamoro, but to Philippine society at large as well. By addressing these sensitive issues in a constructive manner, the Philippine government can indeed contribute to a sustainable peace based on the rule of law. Although the two parties signed the Framework Agreement on the Bangsamoro (FAB) and the Comprehensive Agreement on the Bangsamoro (CAB), at the time of the completion of the TJRC report, the Sixteenth Philippine Congress had not yet ended its deliberations on the proposed Bangsamoro Basic Law (BBL) that would provide the necessary political and institutional framework to implement the agreements. In the meantime, the situation on the ground remains volatile. Other armed actors continue to be active in Bangsamoro areas, and many communities in the region still lack access to basic services.

This report is based on the findings of the TJRC's in-depth and broad-based consultations. It is also the product of the deliberations of the Commission itself, an independent body composed of an equal number of Philippine Government and MILF delegates and two international (Swiss) experts who came to common conclusions. The TJRC assumes shared responsibility for the analysis of the findings as well as for the recommendations contained in this report.

The report itself is structured as follows:

Chapter 1 The Transitional Justice and Reconciliation Commission: Its Mandate, Composition, and Consultation Process Methodology. This chapter discusses the TJRC mandate, conceptual approach, and consultation process.

Chapter 2 Results of the TJRC Consultation Process: Main Findings. The key issues and challenges that emerged from the consultation process on the four areas of the TJRC mandate are summarized in this chapter, including how gender is implicated in legitimate grievances, historical injustice, human rights violations, and marginalization through land dispossession in the Bangsamoro.

Chapter 3 Violence, Impunity, and Neglect: The Imposition of a Monolithic Filipino Identity and Philippine State. In this chapter, the TJRC analyzes the main findings of the consultation process in light of the overriding themes of violence, impunity, and neglect, and their root causes in the imposition by force of a monolithic Filipino identity and Philippine State on the Bangsamoro.

Chapter 4 Recommendations. The conclusions drawn from the main findings and their analysis form the basis of the TJRC's proposals for addressing the four issues of its mandate with a view to promoting lasting reconciliation. It suggests a holistic approach to dealing with the past that shall be undertaken by the national and Bangsamoro authorities in cooperation with civil society. The recommendations focus on the creation of a National Transitional Justice and Reconciliation Commission on the Bangsamoro (NTJRCB).¹ The TJRC has formulated the mandate of the Commission, keeping in mind the legacy of many other transitional justice and reconciliation initiatives in the world.

In accordance with its mandate and in fulfillment of its terms of reference, the TJRC submits this report to the GPH and the MILF Peace Panels for their consideration and action.



CHAPTER 1

The Transitional Justice and Reconciliation Commission: Its Mandate, Composition, and Consultation Process Methodology

1.1 The TJRC Mandate

The Transitional Justice and Reconciliation Commission (TJRC) was officially launched in Kuala Lumpur on September 27, 2014. As formulated in its Terms of Reference² and with reference to the Framework Agreement on the Bangsamoro (FAB) on the legitimate grievances of the Bangsamoro, the TJRC is mandated to undertake a study and to recommend to the Panels the appropriate mechanisms with regard to the following:

- To address legitimate grievances of the Bangsamoro people;
- To correct historical injustices;
- To address human rights violations;
- To address marginalization through land dispossession.

In addition, the TJRC is requested to recommend programs and measures to promote the reconciliation of the different communities that have been affected by the conflict.

Within its mandate, the TJRC can also recommend immediate interventions in support of reconciliation and the healing of the physical, mental, and spiritual wounds of the conflict. In this regard, the TJRC did undertake confidential initiatives, which were reported to the Panels. The latter are not part of this report.

1.2. The Composition of the TJRC

The TJRC is composed of the following members:

Chair: Ms. Mô Bleeker, Special Envoy, Swiss Federal Department of Foreign Affairs

GPH Delegate: Atty. Cecilia Jimenez- Damary

MILF Delegate: Atty. Ishak Mastura

GPH Alternate Delegate: Atty. Mohammad Al-amin Julkipli

MILF Alternate Delegate: Atty. Abdul Rashid Kalim

Senior Adviser: Mr. Jonathan Sisson, Swiss Federal Department of Foreign Affairs

Senior Gender Adviser: Dr. Ma. Lourdes Veneracion-Rallonza

Office staff based in Manila and in Cotabato City support the TJRC.

1.3 The Methodology of the TJRC

As a means of implementing its mandate, the TJRC designed a complex consultation process that included academic research, expert and community consultations, and key policy interviews in different phases and in parallel with one another. The design of the consultation process was informed throughout by a gender approach. In addition, the TJRC developed its own website and scheduled meetings with different governmental and nongovernmental stakeholders associated with the peace process, as well as with concerned members of the international community.³ The Chair regularly informed the Panels of the progress of the TJRC.

1.3.1 The TJRC Consultation Process

The main constituent elements of the TJRC consultation process are described in Table 1 below.

Table 1. TJRC Consultation Process

<p>TJRC Listening Process</p>	<p>TJRC facilitator teams conducted consultations in 211 local communities affected by the conflict in the Bangsamoro region. During the consultations, the facilitators elicited the opinion of the community members concerning the four issues of the TJRC mandate and inquired about how they believed the issues should be addressed.</p>
<p>TJRC Study Groups</p>	<p>Some three dozen national experts, a majority of whom are Mindanao-based, worked in four separate study groups to compile, assess, and summarize existing research related to the four outstanding issues of the TJRC mandate with a view to identifying the main findings and potential gaps in existing research and in the implementation of recommendations.</p>
<p>Dealing with the Past Assessment (DwP)</p>	<p>An analysis was undertaken by the TJRC Senior Adviser of what has been done and with which results in the field of transitional justice in the Philippines. A separate study conducted by the Swiss Peace Foundation as part of the DwP Assessment was devoted to a mapping of archives documenting human rights violations. Both studies focused on the resources available and the challenges to be faced when engaging in process of ‘dealing with the past’ in the Bangsamoro.</p>
<p>Key Policy Interviews</p>	<p>The TJRC conducted lengthy interviews with more than a dozen policy makers in different fields to hear their views on the issues of the TJRC mandate and to gain their assessment of the recommendations proposed to address those issues.</p>

In all, the TJRC sought and listened to the opinions of more than 3,000 individuals: men and women from rural farming and fishing communities, MILF and MNLF combatants and their wives, Muslim and Christian clerics as well as traditional spiritual leaders, business and legal professionals, government officials, teachers and health providers, and members of the Philippine security sector such as the military and the police.

In the course of the consultation process, the TJRC reviewed numerous academic studies and agency reports published on the ‘Moro issue’, including early newspaper articles and other sources reporting on the conflict. Moreover, the TJRC sought the opinion of those widely recognized as knowledgeable about the situation in Mindanao and, as a consequence, held in-depth conversations with many public servants and distinguished members of civil society, including the business sector.

Figure 1. Locations where the TJRC Listening Process took place (Data indicated are approximations)



A broad-based Listening Process was conducted in communities located in Basilan, Central Mindanao, Lanao del Norte, Lanao del Sur, SoCSarGen (South Cotabato, Sarangani, and General Santos City), Sulu, Tawi-Tawi, and Zamboanga Peninsula. Listening Process facilitators also visited communities of indigenous peoples in Central Mindanao and in the MILF camps (Figure 1 shows where the TJRC Listening Process took place). Of the total number of participants in the Listening Process coming from Muslim, indigenous, and Christian communities, 68 percent were men whereas 32 percent were women. The participants, many of whom reside in conflict-affected areas, represented a broad range of perspectives from rural and urban backgrounds. The Listening Process also engaged with members of the Moro National Liberation Front (MNLF), but was not able to involve representatives of Bangsamoro expatriate communities.



The TJRC is neither a ‘truth commission’ nor an ad hoc official fact-finding body; it is an independent commission mandated to make a report and propose holistic measures to deal with the legacy of the past. Nevertheless, in the course of its consultation process, the TJRC received solid, concrete information about events, which can be categorized as serious violations of international human rights law (IHRL) and international humanitarian law (IHL). Some of this information is based on survivor testimony; other information is stored in archives and refers to atrocities that were committed several decades ago. In some cases, the testimonies described violent incidents that remain unknown to the public to this day. The majority of witness statements and records are backed up by previous reports, but some of them would require further investigation for confirmation. The TJRC shall address this issue in connection with its recommendations.

For the purpose of this report, however, the TJRC decided that the testimonies given and the information gathered would not be evaluated according to judicial standards. Rather, it would suffice if the information and testimonies were coherent with acknowledged literature and research on the subject matter. In particular, the TJRC paid attention that the statements associated with the Listening Process cited in its report are typical of the sentiment expressed by persons in different communities in different regions of Mindanao (Figure 2 shows a Listening Process in Bongao, Tawi-Tawi).⁴

Figure 2. TJRC Listening Process in Bongao, Tawi-Tawi (30 March 2015)





1.3.2 Developing a Context-Specific Approach to Transitional Justice and Reconciliation

Transitional justice is a political and legal concept that needs to be adapted to, appropriated by, and eventually transformed in accordance with the cultural patterns and socio-economic structures of each context in which it is practiced. The TJRC developed its own conceptual approach to transitional justice and arrived at a framework with its own vocabulary and cultural references, including attention to and practice of gender sensitivity, which the TJRC believes measures up to international standards and yet is close to the heart and the reality of the Bangsamoro people.

The TJRC bases its approach on the principles against impunity, which were developed in the 1990s at the United Nations (UN) Sub-Commission on the Protection and Promotion of Human Rights and now enjoy the status of emerging customary law.⁵ It also takes into account norms and standards in the field of transitional justice, as elaborated in other UN reports and resolutions.⁶ Moreover, the TJRC approach takes into consideration the framework of international human rights and humanitarian law and addresses root causes of the Bangsamoro conflict.

The TJRC used the Swiss Dealing with the Past (DwP) framework based on the ‘Joinet/Orentlicher’ principles against impunity as a conceptual scheme that is both practice- and process-oriented and includes conflict transformation as an important element.⁷ The four key principles that constitute the framework complement one another thematically and practically: the Right to Know, the Right to Justice, the Right to Reparation, and Guarantees of Non-Recurrence. The framework, as such, offers a constructive manner to deal with past wrongdoings, while supporting and strengthening the peace and conflict transformation process. Significantly, the framework suggests that some form of ‘dealing with the past’ on a societal level is a prerequisite for reconciliation.

The principles against impunity acknowledge and define the rights of victims to claim and the obligation of the State to provide remedies for serious violations of IHRL and IHL.



Taken together, the principles against impunity form the components of a holistic strategy to address grievances and past abuses. Moreover, the TJRC sees a potential framework for dialogue and trust building between State institutions and disaffected sectors of society through the acknowledgment of the rights of victims to assert and of the obligation of the State to provide remedies.

The TJRC prefers to use the expression ‘dealing with the past’ rather than ‘transitional justice’ because it is convinced that dealing with a legacy of violent conflict is not only—or even primarily—the task of legal professionals. On the contrary, just as a majority of the population in the Bangsamoro has been affected by the conflict in some form, so also everyone should be able to contribute in some way to the process of reconciliation. In this sense, ‘dealing with the past’ is both a top-down and a bottom-up process. Nevertheless, both terms, ‘dealing with the past’ and ‘transitional justice’ will be used interchangeably in this report.⁸

Transitional justice is not new to the Philippines; yet the country has not been successful in addressing the many forms of injustice stemming from impunity and other factors, nor has it been able to achieve reconciliation.⁹ For example, in the area of truth seeking, there have been a number of formal commissions of inquiry that were established to investigate specific events and wrongdoings. An infamous example are the two fact-finding commissions set up by President Marcos to investigate the assassination of Senator Benigno Aquino, Jr. in 1983.¹⁰ Two mechanisms were also initiated by President Corazon Aquino with a broader mandate to address the corruption and human rights violations that marked the Marcos dictatorship: the Presidential Commission on Good Government (PCGG)¹¹ and the Presidential Committee on Human Rights (PCHR).¹² More recently, President Benigno S. Aquino III, on his part, attempted to set up a truth commission to investigate corruption under the previous administration of President Gloria Macapagal-Arroyo.¹³ While the PCHR was superseded in 1987 by the Commission on Human Rights, the PCGG continues to operate, but has had limited success in recovering ill-gotten assets and fighting corruption. The Philippine Truth Commission of 2010, on the other hand, was declared unconstitutional by the Supreme Court.¹⁴ In the field of reparations, Republic Act (RA) 10368, known as the “Human Rights Victims Reparation and Recognition Act of 2013,”

established the Human Rights Victims Claims Board (HRVCB) to provide compensation and recognition to the victims of human rights violations during the Marcos dictatorship.¹⁵ As of 30 May 2015, the closure date for filing claims, the HRVCB had received some 73,000 submissions, a significant number of which from claimants residing in Mindanao.¹⁶ Due to the limited scope of the time frame cited in its mandate, the Claims Board cannot provide compensation for conflict-related human rights violations that took place before or after the Marcos period.

Taking note of such examples, it is important to draw lessons from the experience of transitional justice in the Philippines, as this has bearings on any future transitional justice initiatives in the Bangsamoro. One such lesson is that the lack of a holistic, comprehensive approach has limited the effectiveness of the individual mechanisms established, which often have an ad hoc character or are created without the support of complementary initiatives. In the aftermath of the Mamasapano incident of January 25, 2014, for example, at least eight different fact-finding investigations were undertaken, each of which conducted its own analysis of the event and produced its own set of recommendations. Likewise, the lack of an official truth-seeking body set up to examine the scope and nature of the human rights violations that occurred during the Marcos era and to determine the number and identity of the victims has severely hampered the effectiveness of the HRVCB. Another important lesson concerns the acknowledgment of responsibility for wrongdoings committed by the State, which calls not only for some form of individual or collective reparation, but also for concrete measures to prevent the recurrence of such violations. Indeed, often enough, individual measures are not enough in themselves; significant change in the prevailing political, social, and economic structures and institutional culture is required as a preventive course of action. These lessons—also supported by international experience—cannot be overemphasized. Given the less than desirable performance of past transitional justice measures, the country needs to improve its capacity to deal with the past. In this regard, the report of the TJRC and its recommendations with respect to ‘dealing with the past’ in the Bangsamoro should be seen as an opportunity.



1.4 Dealing with the Past and the Management of Diversity

The tragic Mamasapano incident and other violent events in the Bangsamoro region have triggered strong emotional reactions in the public sphere. These reactions reveal a deep division in Philippine society rooted in historical prejudice and mistrust among different ethnic and religious communities and exacerbated by the failure of the modern State to manage diversity constructively. The persistence of prejudice and mistrust is evident in the profound ignorance on the part of the majority population of the life and reality of the Bangsamoro and indigenous peoples and reflects an intolerance based on a rejection of ethno-religious differences. Forty years of armed conflict have only deepened the divisions on all sides. Unfortunately, despite its recent efforts to highlight the peace process, government policy has not been able to address this ‘us versus them’ mentality effectively.

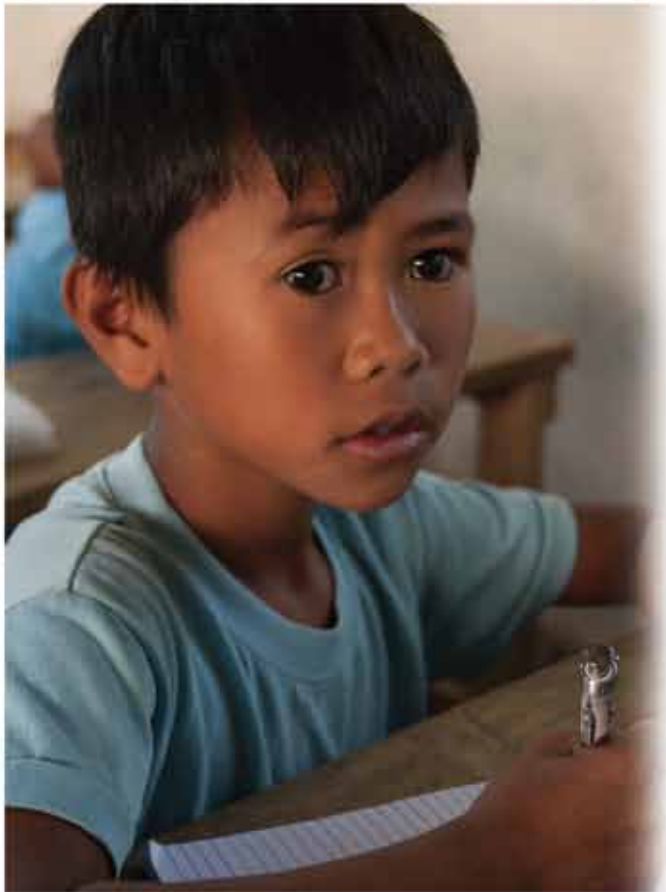
The TJRC notes with great preoccupation that there seems to be a deep indifference in Philippine society at large as to the situation of victims suffering the effects of protracted war, social and economic exclusion, and political marginalization in the Bangsamoro. Recent events and public posturing have considerably added to the complexity of the ongoing peace process and contributed to the current impasse in Congress concerning the proposed Bangsamoro Basic Law (BBL) bills.¹⁷

The passage into law of a BBL bill is a prerequisite for the creation of a new political entity in the Bangsamoro. Notwithstanding the current status of the proposed BBL legislation, ‘dealing with the past’ is, in any case, a joint endeavor, a shared task between the national and Bangsamoro authorities and institutions together with the Bangsamoro people. It will require the capacity to constructively manage ethno-religious diversity. This a challenge, but also an opportunity, which, if successful, augurs well not only for the Bangsamoro, but also for the inherently diverse nature of Philippine society. The recommendations of the TJRC are thus addressed to both the national government and to the Bangsamoro authorities and institutions.



CHAPTER 2

Results of the TJRC Consultation Process: Main Findings



From the outset, the TJRC regarded as its first priority clarifying the issues of its mandate—not simply on a theoretical or abstract level, but concretely with a view to understanding what the issues of legitimate grievances, historical injustice, human rights, and marginalization through land dispossession might mean to affected communities. In this way, the TJRC hoped to develop conceptual and analytical handles that would enable it to craft a strategy for transitional justice and reconciliation that would have meaning for the Bangsamoro people and to the country at large. As a result, the TJRC devised and put into practice a complex consultation process that produced a wealth of information and insights, which in turn provided the basis for the evidence-informed analysis that guided the TJRC in formulating its recommendations.

In this chapter, the TJRC will present its main findings in the sequence in which the issues are named in its mandate, namely legitimate grievances of the Bangsamoro people, historical injustices, human rights violations, and marginalization through land dispossession. Although the presentation of the findings occurs topic by topic, the TJRC emphasizes that in practical terms the issues often overlap and intertwine thematically and historically.

Notwithstanding the intensive data collection process that the TJRC undertook, the Commission does not claim to deliver information in its findings that is fundamentally new or that would contradict or even differ significantly from earlier studies and reports. Nor, for that matter, can the Commission claim that its findings are particularly wide-reaching or profound, given the limited time frame and resources with which it operated. Yet, it does claim to have conducted an extensive community-based ‘listening process’ during which, as community members themselves expressed it, they were asked their opinion on these matters for the first time.

In sum, the TJRC does believe that the combination of a ‘top-down’ and ‘bottom-up’ approach undertaken during its consultation process produced results that represent a broad consensus in the Bangsamoro. In this regard, it claims a high degree of credibility and legitimacy for the findings presented below.

2.1 Legitimate Grievances of the Bangsamoro

2.1.1 Defining Legitimate Grievances

In formulating the mandate of the TJRC, the Peace Panels identified the ‘legitimate grievances of the Bangsamoro people’ as one of the key outstanding issues and placed it first among the matters to be addressed.

For the TJRC Study Group on Legitimate Grievances, the issue refers 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.”¹⁸

“We lost the opportunity to develop as peoples; [this is] the reason why we are still marginalized until now”

Listening Process participant, Tuburan, Basilan, 25 April 2015

According to the TJRC Listening Process Report, ‘grievance’ can be “an act creating an injustice, an unjust act that can cause resentment.”¹⁹ In its various Listening Process sessions, the TJRC uncovered the meaning of ‘grievances’ as an expressed litany of wrongs, hurts, and harms that can be expressed as *‘hinanakit’* in Tagalog and *‘kaligutgot’* in Cebuano-Visaya; for the Maguindanao, it is akin to *‘lat a ginawa’* or a ‘broken self,’ which is a consequence of the feeling of resentment or pain towards others because of (harmful) actions they have done; while for the Maranao, it means *‘sesekaten a kabnar’* or ‘claiming rights.’ In the case of indigenous peoples, the term is understood as *‘ketete fedew’* or ‘bad feeling’ (Teduray), *‘maktan kabilahi-an ni angan-angan’* or ‘legitimate aspiration that was negated through the commission of unjust acts against them’ (Sama), *‘peddi atey/sukkal pangateyan’* or ‘something hurtful done against one’s heart’ (Yakan), and *‘karukkaan sin pangatayan’* or ‘intense harm caused on one’s heart’ (Tausug).²⁰

Throughout the Listening Process sessions, respondents associated ‘legitimate grievances’ with issues arising from social exclusion, marginalization, and even violence as a consequence of State policies, weak governance, non-recognition of distinctive identities and histories, and religious intolerance.²¹

In relation to the Bangsamoro struggle, the term ‘legitimate grievances’ surfaces as an issue tied to “government neglect and inaction in the face of Moro protests and grievances,” which in turn is perceived to be one of the “foundational causes of the Moro problem.”²² In this regard, the TJRC Study Group on Legitimate Grievances notes that the term gained conceptual currency in the Bangsamoro peace process following the response of the government of the United States (US) to a letter by Chairman Hashim Salamat, the late founder of the MILF, addressed to President George W. Bush, which conceded that “the Muslims in Southern Philippines have serious, legitimate grievances.”²³ This acknowledgment coming from the US Government paved the way to frame the redress of the ‘legitimate grievances of the Bangsamoro people’ as an integral part of the overall framework for peace, namely in the recognition of the right to self-determination.

In light of the discussions held during the Listening Process, the TJRC has come to the conclusion that grievances may be considered to be ‘legitimate’ when they are shared by a large number of the population affected by the conflict. In this case, a joint legacy of painful experience unites them in a common narrative vis-à-vis a State that is viewed as not having addressed their grievances or indeed as having ignored them.²⁴

2.1.2 Link with the Struggle for Self-Determination

Throughout the Consultation Process, the lack of recognition by the State of the Bangsamoro as a people with their own distinct social and cultural heritage and, politically and historically, as an independent nation-state was cited as a legitimate grievance. At various stages in modern history, the lack of recognition of a separate Moro identity has led to attempts at assimilation of the Moros, including the cooption of their traditional political leaders. Nevertheless, the perception of Moro ‘otherness’ persists, both as internalized self-awareness on the part of the Moros themselves and as an imposed identity marker by the State and the majority population. Together with the experience of discrimination, marginalization, and injustice, the lack of recognition of their autonomous existence as a people and a nation has fueled the struggle

for Moro self-determination.²⁵

In this regard, the TJRC observes that the logic of protracted armed conflict in the Bangsamoro is based on an inherent contradiction in self-understanding. On the one hand, the Bangsamoro regard the armed rebellion as a struggle to restore their 'stolen' sovereignty, to uphold their dignity as a people, and to respond to what is perceived as the State's disregard and neglect of the needs of marginalized communities. On the other hand, the violence orchestrated by the State is understood as the legitimate use of force against those that threaten its existence and security. This dichotomy is a reflection of the so-called 'clash of imagined nations,' whereby the Moro fight for the Moro homeland and nationhood, while the Philippine government defends territorial integrity and national sovereignty.²⁶

During the TJRC Consultation Process, it became increasingly apparent that the political struggle of the MNLF and the MILF has come to represent the legitimate aspirations of the Bangsamoro in response to their grievances. Their struggle builds its legitimacy on the separate and distinct history of Moro 'proto-states' over centuries, particularly the Sultanate of Sulu and the Sultanate of Maguindanao. As the late MILF founder Hashim Salamat said in an interview:

The main reason behind the struggle of the Bangsamoro Muslims is the illegal usurpation of their legitimate rights for freedom and self-determination. The Bangsamoro Muslims are the native inhabitants of the islands of Mindanao, Basilan, Sulu, and Palawan. They were independent hundreds of years before the creation of the Philippines by Spain and the USA, her colonial masters.²⁷

Listening Process in Maguindanao



In 2003, Orlando Cardinal Quevedo, Archbishop of Cotabato, acknowledged the link between the Moro grievances and the Moro struggle for self-determination when he stated: “It is on the basis of the historical record that I come to the following conclusion: for the Bangsamoro, the gradual loss of their sovereignty to the American government and later to the Philippine government was a fundamental injustice, even though some of their leaders who served in government might have acquiesced.”²⁸

2.1.3 Legitimate Grievances and Traumatic Experience

During the Listening Process when discussing legitimate grievances, it became evident to the TJRC that many members of the communities visited had undergone experiences that were severely traumatic in nature and, accordingly, have a very specific manner by which they call to mind and narrate their memory of those events. In a number of cases, the participants actually acted out scenes of violence that they had experienced in the past. It is crucial, therefore, in the view of the TJRC, to be aware of the differences between assessing facts and understanding how people perceive such experiences, when addressing the legacy of such a painful past. The distinction made by transitional justice bodies in other contexts between ‘truth’ based on fact-finding and forensic evidence and ‘truth’ related as the subjective narrative of victims has been useful to the TJRC in assessing the veracity of individual and collective grievances based on traumatic experience.

2.1.3.1 Intolerance toward Religious and Cultural Practices

In the Listening Process, the most common stories shared were experiences involving the intolerance for the beliefs and way of life of the Bangsamoro and indigenous peoples. Some told stories of discrimination: while growing up they were teased for being a Muslim, pejoratively called ‘muklo’ by Christian neighbors, schoolmates, and the larger neighborhood.²⁹ In some communities, the use of a hijab was strongly discouraged, if not banned outright. Indigenous peoples would commonly hear insulting remarks, describing them as ‘dirty’ and ‘nitibo’ or ‘native’—not in celebration of their rootedness to the land, but as a derogatory term meaning ‘uncivilized.’³⁰ The T’boli spoke of public school policies, prohibiting their children from speaking their native tongue while at school.³¹

On the surface, these taunts appear to be nothing more than what they are, namely vicious everyday expressions of ridicule toward Muslim and indigenous peoples. In fact, they are expressions of a prejudice that is deeply embedded in the psyche of Philippine society at large and, particularly, among many civil servants.

Another very disturbing example mentioned was the occupation and desecration of mosques by government soldiers, as documented, for example, in photojournalistic reports on the government assault against the MILF Camp Abubakar al-Siddique in Matanog town, Maguindanao in July 2000.³²

Intolerance toward cultural practices, however, is not limited to actions against the Moros by government or the majority population. Some indigenous participants in the Listening Process shared their experiences of older, traditional religious practices being heavily criticized, if not discouraged, for being un-Islamic. Intolerance in the Bangsamoro was thus found to have both vertical and horizontal dimensions. Not only does the majority population take a prejudicial attitude towards minority cultures, but some segments in the minority culture also discriminate against other representatives of minority culture, in this case against certain religious practices of the indigenous peoples.³³ A Key Policy Interview respondent referred to this as ‘double marginalization.’³⁴

2.1.3.2 Misrepresentation and Commercialization of Cultural Practices

During the TJRC consultation in T'boli, South Cotabato, some participants lamented that they feel a double violation in the fact that, on one hand, they are discriminated against, and, on the other, their material culture is being commercialized and exploited in cultural exhibitions. Traditional dances and clothing are presented for the purpose of entertainment without the necessary recognition of their being grounded on T'boli belief systems. There is indeed a deep contradiction between the commercialization of their culture and their daily lives. Instead of as a form of acknowledgment, public presentations of their culture as folklore are perceived as acts of blatant disrespect and disregard of the sanctity of their culture. This is true in particular for the T'boli, for whom cultural practice is a marker of identity or sacredness and indeed is an integral part of their way of living and being in the world.³⁵

The commercialization of traditional culture or its misuse as a consumable item without their consent or full participation was cited by the T'boli in the Listening Process as a grave assault against their dignity and identity.

2.1.3.3 Narratives of Mistrust and their Historical Roots

The TJRC Study Group on Legitimate Grievances concluded that the conditions that created mistrust among people are deeply rooted in the history of the region. They observed that the historical roots can be traced back to the period when traditional leadership structures of the Moro and indigenous communities were dismantled as a consequence of the strategy of integration into a single monolithic Filipino community.³⁶ The Listening Process confirmed this perception. What remained of traditional authority was considerably marginalized and became increasingly irrelevant. Eventually, even the structures themselves were forgotten. They were replaced by the popular narrative that described the Moro areas as wild, dangerous, and ungovernable except by force.³⁷ This would become, in turn, the justification used by the central government to mobilize military resources to handle tension in the region.

The TJRC Consultation Process identified the imposition of an exclusive, single nation model on politically and culturally diverse communities, nations, and ethnicities as one of the most powerful drivers of resentment and ultimately of the armed response. Over the past 40 years, the conflict in the Bangsamoro has had devastating consequences on community life, creating a deep-seated mistrust on horizontal level, pitting Christians against Muslims, Christians against fellow Christians, Muslims against Muslims, indigenous peoples against Christians and Muslims, and Muslims against Christians and indigenous peoples.³⁸

2.1.3.4 'Legitimate Grievances' and Gender

The TJRC Consultation Process revealed that the experience of 'legitimate grievances' in the Bangsamoro has a pronounced gender dimension. Men and women have been traumatically affected by the conflict in their everyday lives during decades.

Often enough the traumatic experience is associated with traditional gender roles. Men bear the burden of their role as the main provider for the family and suffer when they fail under the stress of poverty. In addition, they are challenged in their male identity by the predominant masculinity model,

which imposes the figure of the ‘hero’ or ‘warrior’ as a role model. Furthermore, women and men suffer from culturally specific forms of discrimination. Moro women are recognized as Muslim because of their visible identity markers (e.g., wearing of hijab and niqab), while young Moro men are often stereotyped as potential ‘terrorists.’ As a result, they encounter difficulties

in finding jobs, accessing higher education, and other opportunities. As the TJRC Listening Process disclosed, some Moro women, who stopped wearing a *hijab* because of discrimination, are afraid of gradually losing their identity.³⁹

The gender dimension becomes even more pronounced in periods of open armed conflict. Women are left alone with the responsibility for their family and household when their husbands leave to look for work elsewhere or join the armed rebellion. When fighting breaks out, they are often forced to take shelter in IDP camps alone with their children. Women and children are vulnerable to sexual abuse while living in the open space of the shelters and numerous cases of human trafficking have been reported.⁴⁰ In all of these situations, women carry the multiple burden of being ‘left behind’ to care for their children and earn a living for their families. According to a woman participant in the Listening Process:

*We live in poverty. When [our] husbands joined the revolution, the women were left to tend our farms. Some of us were widowed because their husbands were martyred. Only the wives were left to take care of the family. We could not ask support from the government, because they [would] know that our husbands were MILF members. The government will not help us.*⁴¹

The Consultation Process confirmed the well-documented connection between armed conflict and poverty in the Bangsamoro and shed additional light on the gender dimension. With respect to the level of poverty experienced, a male participant in the Listening Process spoke about a scene that he saw and can never forget: Moro women and children during harvest time picking up pieces of palay that fell to the ground, so that they would have rice to pound and feed their families.⁴²

“We have to lie about our religion to be hired.”

**TJRC Listening Process participant,
Zamboanga City, 28 May 2015.**

“As a consequence of the recurrence of the armed conflict, we were not able to finish our studies... pushing us to work as OFWs.”

**TJRC Listening Process participant,
Basilan, 25 April 2015**

For Moro women, poverty is associated with a lack of both livelihood and education, a circumstance that is aggravated by armed conflict. In the case of young indigenous women, their parents’ inability to send them to school has forced many of them to seek work in cities as domestic helpers.⁴³ On the other hand,

young Moro girls are often married off at an early age to escape poverty; others have been pushed into trafficking by their own families.⁴⁴ Additionally, women are also denied education because their parents fear that if they go to a formal school, they would end up either marrying a Christian or converting to Christianity.⁴⁵

Some Moro women also joined the armed struggle and fought for their rights because of their perception of experiencing ‘legitimate grievances.’⁴⁶ According to a Listening Process participant:

For us women who joined the struggle, we should have been given livelihood projects, educational opportunities, support [for a] source of income and support [for] a way we can live straightforwardly.”⁴⁷

A group of college students at Cotabato City.
(© Leonard Reyes)



The question of whether the participation of women as combatants has had an effect on gender relations and roles in their communities (e.g., challenging gender stereotypes) was not an issue that the Consultation Process addressed, but could be of value for further study.

2.1.4 Summary and Conclusions

The term ‘legitimate grievances,’ as elaborated above, covers a wide range of disparate issues which have fed and continue to feed the discontent and dissatisfaction of the Bangsamoro people. Accordingly, the ‘legitimate grievances of the Bangsamoro people’ may be understood as a collective designation for harms suffered whether they be political, economic, social, or cultural in nature.⁴⁸ These grievances have historical roots and are deep-seated. As such, they require the attention of a multifaceted, strategic approach that will meet the needs of a population living in a war-torn society. The Aquino administration has made efforts in this direction, providing what the President has called “legitimate responses to legitimate grievances.”⁴⁹ In a speech delivered by President Benigno Aquino III, he declared:

This is the truth: our brothers and sisters in Bangsamoro are not asking for something unreasonable; what they want—a decent and peaceful life—is what every Filipino desires. We also need to admit that we have had our own shortcomings. It is not written in our religion or laws that we should perpetuate the ills of the past. Today, we are given a new opportunity to right the wrongs, and I ask: Will we walk away now?”⁵⁰

Recognizing and responding to ‘legitimate grievances’ is key to rebuilding trust between the State and its citizens, between the Bangsamoro people and Philippine society at large, and specifically between the different communities affected by conflict in the Bangsamoro. There are, in fact, some recent initiatives that may serve as a precedence. A few months after the signing of the FAB, the Aquino administration inaugurated the Sajahatra Bangsamoro as a concrete effort to address the socio-economic situation of the Bangsamoro, in order to “uplift the health, education, and livelihood conditions of MILF communities.”⁵¹ Prior to this, the Bangsamoro Development Agency (BDA) was created in 2002 as part of the implementation of the Humanitarian, Rehabilitation and Development Aspects of the GPH - MILF Tripoli Agreement signed in 2001 to facilitate development of Mindanao conflict-affected communities. The establishment of institutions and mechanisms within the ambit of the peace process is important; even more, people need to feel their impact and results.

2.2 Historical Injustice

“We need to unburden ourselves. What happened to us years back cannot be forgotten, but we can at least hear similar stories from others, which can help us.”

Listening Process participant. Basilan, 9 June 2015

2.2.1 Defining Historical Injustice

The legitimate grievances of the Bangsamoro, as discussed above, can only be fully understood in light of the ‘historical injustices’ that the Bangsamoro have suffered. The TJRC Historical Injustice Study Group suggests that ‘historical injustices’ are “‘wrongdoings’ (*‘may pagkakamali’* in Tagalog; *‘damipaginontolan ko miyanga iipos a masa’* in Meranao; *‘kasa’an ta masa’* in Sinama; *‘kedusa or kedufang’* in Teduray) committed or sanctioned by governments (Spanish, American, and Japanese colonial governments and the Philippine Government) that hurt or harmed people (*‘may nasaktan/naagrabyado’*), affected relationships (*‘nawalan ng pakiramdaman/malasakit’*) repeatedly over time and were not (properly) addressed.”⁵² Such pain or hurt is no ordinary feeling, as it cuts deep into a people’s identity.⁵³ In this regard, the TJRC Historical Injustice Study Group and the TJRC Listening Process posit that, in relation to the Moro identity, historical injustices are manifested in the following manner:⁵⁴

- As experienced: The Bangsamoro experienced life as a proud and distinct people “being unconquered, but colonized at the turn of the 20th century and suffering dispossession from their lands (*‘paglapastangan at pag-isantabi ng karapatan ng sinaunang mamamayan sa lugar’* or ‘abuse and disregard of the rights of original inhabitants in places’)” which impacted on “their survival and well-being needs;”
- As perceived: Referring to the phenomenon of ‘othering’—“being ‘erased’ and excluded from public spaces and being associated by negative labels” (*‘pagwalang galang ng dignidad bilang isang natatanging grupo bilang Sama Dilaut’* or ‘disrespect for the dignity of the distinct group of Sama Dilaut’) that affected the Moros’ “sense of self and culture, behavior, and relationship with others;”
- As imagined: Pertaining to the Moro’s exclusion from the national narrative (*‘pagbura ng mahalagang istorya ng mga ninuno’* or ‘erasure of important stories of our ancestors’) that “influenced the Bangsamoro’s collective imagination and narratives of the ideal and the future.”

2.2.2 Patterns in Historical Injustice

The Historical Injustice Study Group identified several collective entities and groups that were perceived to have perpetrated and continue to perpetuate historical injustices: (a) State institutions;⁵⁵ (b) culture-bearing organizations like educational institutions as well as historians and media;⁵⁶ (c) Christian settlers; and (d) armed groups such as the Ilagâ/Ilagâ-ilagâ and Barracudas. Each of these entities may have acted in support of or as directed by an official/State policy or out of their own volition. They each bear the responsibility for historical injustice, but on different levels and in different respects.

Pre-colonial southern Philippines was home to many ethnolinguistic tribes, 13 of which were Islamized and 32 others, which are known collectively as ‘IPs’ or the indigenous peoples of Mindanao. These diverse groups produced thriving economies and polities. The sultanate of

“I think the war was purposely done to grab our lands.”

**Listening Process participant, Tamapkan,
Tawi-Tawi, 21 May 2015**



Focus Group Discussion with Historians,
April 2015

Sulu functioned as a sovereign state that maintained trading and diplomatic relations with countries such as China and other foreign entities. At the time of the arrival of Spanish colonizers, Muslims were in the process of expanding their territory and influence to Luzon.

In the course of colonial and postcolonial history, the political boundaries in Mindanao were reconfigured by such instruments as the Treaty of Paris of 1898 and acts of Congress, which resulted in the curtailment of the power of established Moro and indigenous political leaders and, accordingly, of their influence and importance. Orchestrated and gradual demographic shifts defined and solidified religious and ethnic divides among the people. The distinctiveness and diversity of the Bangsamoro and indigenous peoples of Mindanao were not recognized and celebrated nor were they harnessed and managed constructively. Instead, over the decades, State policies have excluded distinctiveness and diversity.

The policy of assimilation has been a root cause of land dispossession (through resettlement, corporatization, militarization), of suppression of the Moro's and indigenous peoples' ability to govern, and of the negation of their right to self-determination. The message conveyed to the TJRC through its Consultation Process has been that, throughout history in Mindanao, the Philippine State has endorsed warfare to protect territorial integrity over peoples' security. It has deployed State mechanisms to diminish self-governance, instead of promoting it; it used State security forces to harm, rather than to protect the population; it constructed a polity based on exclusion, rather than inclusion.

Several government administrations have undertaken measures to address these symptoms of malgovernance. Some initiatives showed promise of success, but none of them ever succeeded in addressing the root causes.

Historical injustices are not simply dramatic events that occurred in the past; they continue to exert influence upon Bangsamoro society in the present. The systematic nature of the harm done and the means necessary to realize such harm over decades and even centuries suggest that historical injustice is structural and is embedded in political policies and state institutions. Indeed, it shapes the social

structures and the cultural mindset of the country. Many of these injustices persist to this day, although their manifestations have taken other forms in the course of history.

Some of the concrete manifestations associated with historical injustice shared during the TJRC Listening Process sessions may be listed as follows:

- Non-recognition, exclusion, and sidelining in the Philippine national historical narrative of the ‘real’ or actual historical accounts of local Bangsamoro and indigenous heroes or personalities, who fought valiantly against foreign invaders and colonizers;
- Negative description of the exploits themselves, confirming the stereotypical images of the Moro and indigenous peoples as ‘wild savages’ who are both undesirable and untrustworthy;
- Failure to preserve historical sites associated with local heroes or local history or even the destruction thereof, as well as the deliberate exclusion of the memory of Moro leaders in localities currently dominated by Christian majorities, resulting in the erasure of a group of people in local history;
- Naming and renaming of places (and the associated celebrations thereof) in different parts of the ARMM and its contiguous areas in honor of colonial masters, foreign invaders, and settler families who have unjustly wrested control of the lands of the indigenous and Bangsamoro peoples;
- Repeated and prolonged experiences of enforced displacement;
- State-sponsored land-grabbing, rapacious and illegal exploitation of natural resources by foreigners or by the State, destruction of natural resources;
- The long-term, negative effects of atrocities committed during the Martial Law era on the well-being of the Bangsamoro people—many of whom are now displaced from their places of origin, marginalized and impoverished, hindered by low educational levels that perpetuate their poverty, deeply traumatized and psychologically disturbed;
- Forced integration into the Philippine political system, replacing traditional justice and governance structures with the present system that is highly vulnerable to corruption;
- Non-recognition of the *madrakah* system;
- Decisions regarding territorial matters, such as foregoing territorial claims on Sabah on behalf of the Sultanate of Sulu, that, as a result, affect certain sectors of the population like the Sama Dilaut, who are now considered as ‘illegal aliens’ in Sabah.

The indigenous peoples claim to be in a ‘worse’ position concerning the injustices they suffered compared to the Moros. They point out that they are regarded as an ‘insignificant other’ and are treated accordingly by the majority populations in Mindanao. For the Moro, they are ‘*kapir*’ or ‘non-believers.’ As such, historically and even until recent times, they have been subject to slavery and forms of indentured servitude. During the Listening Process sessions conducted among indigenous peoples, participants shared their belief that their marginalization and vulnerability as a community were consequences of colonial and postcolonial rule on their lives: “Even their inclusion in the Sultanates has highlighted their subordinate position vis-à-vis the Bangsamoro.”⁵⁸

“Occupying the land of the people, looking down at the culture and the identity of the people is not a democracy.”

Listening Process participant, Bongao, Tawi-Tawi, 20 March 2015

For both the Moro and indigenous peoples, State policies—particularly those related to land—were central to their experiences of historical injustice, as these “laws led to the disenfranchisement of the Bangsamoro and indigenous populations of their ancestral lands and their bases of social formation.”⁵⁹ As confirmed by a Key Policy Interview respondent, such policies of disenfranchisement did indeed emanate from the State.⁶⁰ Additionally, abuses committed by State agents (i.e., police and military) allegedly in support of these policies, inflicted deep harm on the Moro and the indigenous people and deepened divisions between them.

2.2.3. Misrepresentation and Profiling: Undermining Muslim and Indigenous Peoples Narratives of History

A particular strand in the articulation of historical injustice during the Listening Process was a range of stories pertaining to the denial and misrepresentation of the lives, fates, and martyrdom of Moro leaders and warriors who resisted firstly Spanish rule and later American rule beyond the years when the Filipino anticolonial wars officially ended in 1902.⁶¹ What frustrates those who spoke in the TJRC consultations is that the Moro political

“...pinawalang saysay ang kasaysayan...”
(*“...devaluation of the essence of history...”*)

**TJRC Study Group on Historical Injustice
Draft Report, p. 10.**

resistance, rebellion, martyrdom, and continuing struggles are either denied or represented as irrational acts of banditry and criminality in the media—in the past, for example, during the resettlement campaigns of the 1950s and during the years of the current armed conflict. This persistent denial and revisionist interpretation of history contradicts the foundational Moro narrative, which links their current armed struggle for justice and freedom with their historical anticolonial—a struggle that, in their view, not only paralleled, but also in some instances even surpassed historic acts of anticolonial resistance in other parts of the Philippines.⁶²

Numerous testimonies bitterly recalled how the stories of fearless acts of resistance by Moro *datu* and warriors were left out of history books and consigned into oblivion.⁶³ Even worse, instead of depicting Moro martyrs and fighters as heroes, they are portrayed as villains in the few books that feature them and circulate as part of the national curriculum for public schools.⁶⁴

“...*pagbura ng mahalagang istorya ng mga ninuno...*” (“...*erasure of important stories of our ancestors...*”)

TJRC Study Group on Historical Injustice Draft Report, p. 10.

The media narratives about the Moro and indigenous peoples further reinforce negative perceptions, for example, when they highlight the religious identity of criminal suspects as Muslims.⁶⁵ In the few occasions when heroic Moro constituents are featured in print and electronic media accounts, their portrayal still comes across as that of villainous characters out to tear apart the delicate fabric of social relations in Mindanao. The entertainment media are also responsible for portrayals of the Bangsamoro as villainous characters in cinema and radio.

2.2.4 Silencing of Women’s Agency and Victimization

The different manifestations of historical injustice also have a profound gender dimension. Listening Process participants cited numerous cases of gender discrimination in the disregard for established customs, for example in dismantling the *Panglima* system together with traditional forms of governance, such as the Moro Sultanates, the *Timuay* system of the *Tedurays*, and the *Sama* system of leadership. Starting in 1946, the Americans mobilized the *Panglima*, who had traditionally served as counselors of the Sultan, to serve as barangay heads. In the process, men replaced the female *Panglima*, whose role in the community was then limited to that of a traditional healer.⁶⁶

Other narratives of historical injustice with gender undertones pertain to the economic insecurity of women. Traditional patriarchal culture has assigned them roles in the domestic realm. Their families do not see the need for them to pursue higher education since they will be married off anyway. In conflict-affected communities, however, women are often forced to seek means of livelihood elsewhere, requiring skills that are not limited to their familiar domestic roles.⁶⁷

The situation of armed conflict, as many women respondents in the Listening Process stated, increased their vulnerability.⁶⁸ Stories of Moro women being abducted, raped, sexually abused, and killed by State security forces are numerous. During the Listening Process, participants told stories of women who defaced themselves and otherwise spoiled their appearance, so that the soldiers would not find them attractive; others tried to keep their children close to them as a deterrent factor, thinking that the soldiers would not take an interest in them because they were mothers. These strategies proved to be ineffective, as even the mothers were not spared; soldiers took them away for sexual pleasure and later returned them to their respective husbands and families.⁶⁹ The victimized women’s own families and communities now stigmatize them for having ‘brought’ shame upon them. The women themselves can only suffer in silence.

It is important to note as well that most of trafficked women from Mindanao come from conflict-affected communities.

2.2.5 Summary and Conclusions

Viewing the patterns of ‘historical injustice’ as a whole, it becomes apparent that the Moro narrative is excluded from the national discourse that serves as the justification for the existence of the Philippine nation-state. The Philippine colonial experience, as revealed in the writings and teaching about the pivotal episodes of history, politics, society and culture, is silent about it. Participants in several Listening Process sessions pointed to the exclusion of the history of resistance to colonial rule by the Bangsamoro in the official national narrative of nation making as an act of historical injustice by itself.

The question of Bangsamoro history and culture is, in fact, addressed in the draft Bangsamoro Basic Law (BBL).⁷⁰ In Article IX, Section 20 of the draft BBL, a provision exists that would create a “Bangsamoro Commission for the Preservation of Cultural Heritage.” The Commission is granted the primary responsibility of writing the history of the Bangsamoro people. That same body is also given the task of managing Bangsamoro historical and cultural sites. Moreover, in February 2015, Senator Juan Edgardo Angara filed Senate Bill 2474, the proposed “Bangsamoro History, Culture, and Identity Studies Act,” as a measure that would introduce Bangsamoro history and culture into the formal school curriculum in the Philippines. In addition, it would introduce the teaching of the Arabic language as an elective course at the high school and university levels.

As the public debate in the aftermath of the Mamasapano incident has shown, prejudice and mistrust toward the Bangsamoro is deeply ingrained in Philippine society. The bill submitted by Senator Angara is intended to confront that legacy and is, as such, a positive development. Yet, there are many practical issues that need to be addressed before such a program could be implemented. There is not only the challenge of producing a pedagogically sound textbook on the history of the Bangsamoro and indigenous peoples, but also the problem of training a new generation of teachers to work with it. The standard of education in the Autonomous Region in Muslim Mindanao (ARMM) is admittedly low, and the teaching of Bangsamoro history and culture must be seen as part of the challenge in reforming the educational system as a whole in accordance with the K-12 curriculum. Politically and culturally, the challenge is one of identity. After decades of war, there are deep divisions among different population groups living within the boundaries of the future Bangsamoro region. It remains to be seen whether the idea of a Bangsamoro ‘people’ can be framed in a way which transcends the ethnopolitical divisions that have frustrated past attempts to unite the region’s inhabitants around a shared vision of the common good.

2.3 Human Rights Violations

“People [were] so stressed with house burnings and by the deaths and disappearances of family members. I wanted to end [my] life as well rather than live in the army evacuation camp”

Listening Process participant, Sarangani, 23 March 2015

Human rights, as set forth in the Universal Declaration on Human Rights (UDHR), 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 nondistinction “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.”⁷¹ 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.

In the course of the research of various TJRC Study Groups as well as during the Listening Process, the violation of economic, social, and cultural rights of the Moro and indigenous peoples figured prominently in the discussions on legitimate grievances, historical injustice, and marginalization through land dispossession. Additionally, the Listening Process confirmed that mass atrocity crimes had been committed in the past, and that these crimes should be acknowledged and acted upon. Moreover, it uncovered narratives of violence, involving serious violations of international law, that have not been made public until now.

The violations of political and civil as well as economic, social, and cultural human rights of the Bangsamoro and the indigenous peoples are a significant part of their historical experience and continue to be part of their current narratives. The cumulative effect of historical injustices and continuing human rights violations should not be underestimated, as it has had a dramatic impact on the life and consciousness of the Moro and the indigenous peoples.

2.3.1 Defining Human Rights Violations

The Study Group on Human Rights Violations focused on violations of International Human Rights Law (IHRL), particularly civil and political rights, as well as on violations of International Humanitarian Law (IHL) in the context of armed conflict in the Bangsamoro. In legal terms, the context of ‘armed conflict’ has a particular significance. According to international law, a distinction is drawn between international and non-international armed conflict. In Mindanao and the Sulu archipelago, armed conflict is non-international in character, in that it involves fighting between governmental forces and nongovernmental armed groups or between such groups alone.

The commission of IHRL and IHL violations in the Bangsamoro must therefore be understood in light of the complex dynamics of non-international armed conflict. In this case, the Philippine state bears legal responsibility for **vertically-sourced, top-down direct violence** and may be held accountable for violations perpetrated by its armed forces and by any affiliated non-state actors or paramilitaries. Violations of this kind against the Bangsamoro and indigenous peoples can be regarded as institutionalized violence generated by, in connection with, and in support of state policies.⁷³ On the other hand, **vertically-sourced, bottom-up direct violence** is that which emanates from non-state armed groups like the MILF, which are involved in separatist and rebel movements against the state. These groups can also be held accountable for IHRL and IHL violations, stemming from their actions.⁷⁴

It is important to note that, in the conflict in Mindanao, there are other **forms of violence that are horizontal in nature**, which means that they consist of acts of violence committed by members of the same or different communities against one another, i.e. non-separatist, inter- or intra-ethnic, clan or gang violence. In addition, more complex forms of violence emerge when **vertical and horizontal types of violence** intersect, for example when actors involved in vertical conflicts (both top-down and bottom-up) engage in a horizontal conflict or vice versa. In Mindanao, there are not only numerous cases of clan violence that fit this description, but also cases of separatist violence.

2.3.2 Patterns of IHRL and IHL Violations

2.3.2.1 By State Actors: Disproportionate Use of Force⁷⁵ and Commission of Mass Atrocity Crimes

There are claims that the Philippine state employed disproportionate use of force and committed mass atrocity crimes against the Moro civilian population both before and during the period of Martial Law, purportedly in connection with the efforts of the military to quell armed resistance by the rebels. One of the most infamous early incidents is the so-called “Jabidah massacre” that allegedly took place on March 18, 1968 on Corregidor Island. This event, which involved the execution by government forces of at least 23 young Muslim recruits, is generally acknowledged to have sparked the beginning of the armed Moro resistance in Mindanao.⁷⁶ A number of cases are well documented by witness testimony during the period of Martial Law, for example the so-called ‘burning of Jolo’ in February 1974, in which the military command ordered a ground offensive, accompanied by massive aerial and naval bombardments, against MNLF forces deployed in the city. The result was the flight of thousands of refugees and the destruction of two-thirds of the city. Another serious case concerns the so-called ‘Malisbong massacre’ that took place some few months later in September 1974 in a coastal village located in Palimbang town, Sultan Kudarat province. It is alleged that the Philippine military and paramilitary forces killed an estimated 1,500 Moro men and boys, who were held in a local mosque, and raped an unknown number of women and girls on a naval vessel anchored offshore.⁷⁷ In addition, some 300 houses were burned to the ground by government forces. On September 24, 2014, 40 years after the events, the Chairperson of the Commission on Human Rights officially acknowledged the massacre in a visit to the site and proposed that the survivors file claims for compensation with the HRVCB.⁷⁸

During Listening Process sessions, stories were told of mass atrocities allegedly committed by government forces against the Moro civilian population. Two events, known to local people as



Listening Process in Tawi-Tawi

the ‘Tran incident’ and the ‘Tong Umapuy massacre,’ but little known to the wider public, stand out. The ‘Tran Incident’ refers to a large-scale military campaign against the MNLF in central Mindanao in June-August 1973. In the Listening Process session, participants spoke of the massacre of Moro civilians from the Barangay Populacion in the town of Kalamansig, Sultan Kudarat province by military forces during that campaign. The soldiers separated the men and women; the men were confined in a military camp, interrogated, and tortured, while the women with their children were taken aboard naval vessels and raped. In the end, the men as well as the women and children were killed.⁷⁹ At a Listening Process session in Tawi-Tawi, participants shared their memory of what they called the ‘Tong Umapuy massacre.’⁸⁰ In 1983, a Philippine Navy ship allegedly opened fire on a passenger boat and killed 57 persons on board. The passengers were reportedly on their way to an athletic event in Bongao.

2.3.2.2 Violations Committed by State-affiliated Armed Groups

In the case of violations committed by State-affiliated armed groups prior to Martial Law, the TJRC is in possession of testimonies related to widespread atrocities allegedly perpetrated by the Ilagâ against the Moro and indigenous civilian population with their specific signature—the mutilation and desecration of bodies, including acts of cannibalism.

The campaign of the Ilagâ in Mindanao in 1970-1971 involved indiscriminate killings and burning of houses with the intention of terrorizing and expelling the Moro and indigenous population from their homes and ancestral territories. Violent incidents took place chronologically in a progressive fashion over a widespread area, occurring among other places in Upi, Maguindanao (March and September 1970); Polomok, South Cotabato (August 1970); Alamada, Midsayap, and Datu Piang, Cotabato (December 1970); Bagumbayan and Alamada, Cotabato (January 1971); Wao, Lanao del Sur (July and August 1971); Ampatuan, Cotabato (August 1971); Kisolán, Bukidnon (October 1971); Siay, Zamboanga del Sur⁸¹ (November 1971); Ipil, Zamboanga del Sur (December 1971); and Palembang, South Cotabato (January 1972).⁸²

The armed bands of Christian paramilitaries, primarily Ilonggo settlers, that comprised the Ilagâ, maintained ties with state authorities, including local and national politicians, the Philippine Constabulary, and the military.⁸³ In most cases, the paramilitaries acted on their own initiative; on other occasions, however, it is believed that their attacks were conducted in close coordination with government authorities. This was allegedly the circumstance in the case of the mass killings of Moro villagers that took place in a mosque and outlying houses in a rural barangay of Carmen, (North) Cotabato on June 19, 1971.⁸⁴ Known as the ‘Manili massacre,’ this event spurred the Moro armed resistance and was one of the few incidents that received attention in international media.⁸⁵

During the TJRC Listening Process sessions, allegations of other brutal killings perpetrated against Moro civilians were shared. Participants in a Listening Process session in Basilan related that massacres had taken place in Lamitan City and in Tuburan.⁸⁶ Similarly, it was reported that eighteen Moro women and men were massacred and their bodies mutilated in Bagumbayan, a municipality in Sultan Kudarat.⁸⁷ Incidents such as these have been largely unreported in the media and are difficult to verify from other independent sources. Indeed, the pattern of Ilagâ violence seems to point to a systematic effort to drive the Moro and indigenous away from their lands and, in this way, to secure these areas for resettlement.

Throughout the TJRC Consultation Process, the presence of state-sponsored paramilitaries and private armed groups was judged to be one of the most disturbing human rights legacies of the 40 year-old conflict.

During the early period of Martial Law, paramilitary groups affiliated with the state were established to meet the threat of the National People’s Army (NPA) and the growing Moro insurgency in Mindanao. In 1976, Marcos transformed the existing Barangay Self-Defense Unit (BSDU) into the Integrated Civilian Home Defense Forces (ICHDF), which in turn were replaced by the Civilian Home Defense Forces (CHDF) two years later in 1978. By the end of Martial Law, the CHDF had become a 70,000-strong army with a record of human rights violations which was so abhorrent that the 1987 Constitution banned private paramilitary forces, specifically mentioning the CHDF.⁸⁸ Shortly thereafter, however, the Civilian Armed Force Geographical Units (CAFGU) were created as a means of placing all auxiliary forces under the command of the Armed Forces of the Philippines (AFP). In addition, the Civilian Volunteer Forces (CVO) were created and placed under the command of the Philippine National Police (PNP) to assist the CAFGU in policing areas cleared of insurgents.⁸⁹ Moreover, the volatile situation of the insurgency gave rise to anti-Moro vigilante groups,⁹⁰ including a reemergence of the Ilagâ.⁹¹

During this same period, numerous private armies emerged linked with local clans and politicians for the promotion of their own political and business interests. The most dramatic example of politically inspired paramilitary violence in recent years was the so-called ‘Maguindanao/ Ampatuan massacre.’ In November 2009, a convoy of supporters and family members of a political rival of the Ampatuan clan was forced off the highway near the town of Ampatuan by some two hundred armed men and brought to an isolated spot, where they were killed and buried in mass graves. The massacre drew public attention because of its sensational nature and its scale, resulting in the murder of 58 people, including some thirty journalists.⁹² Yet, the use of paramilitary violence by political families and wealthy landowners in the region to further their personal ends is not unusual.

Corporate controlled real estate covers vast, sprawling tracts of land and yet is among the most heavily secured property in Mindanao. In recent years, there has been a significant increase in the number of armed groups that provide security services to private companies, which hold logging and mining concessions, and to publicly owned utilities, e.g., geothermal power plants. In Maguindanao alone, some twenty-five private armies are known to exist, while in the ARMM as a whole the number is estimated at forty-five with an additional number of at least 105 paramilitary groups in rest of Mindanao.⁹³ The use of private corporate armies, known as Special CAFGU Armed Auxiliary (SCAA) is well known.⁹⁴ Like members of the AFP and PNP, they enjoy extensive impunity for their actions.

Testimony provided during the Listening Process bears witness to the devastating effect that paramilitary operations have had on the lives of the Moro and indigenous population and, indeed, on all communities in Mindanao. Government-sponsored armed groups allegedly burned houses, stole people's farm animals and other sources of livelihood.⁹⁵ The role of the CAFGU in spreading terror among Moro communities was cited in particular.⁹⁶ Private corporate armies, including the SCAA, are also responsible for violence committed against the Moros and indigenous peoples.⁹⁷ According to testimony received during the TJRC Listening Process, SCCA employed by the David M. Consunji, Inc. (DMCI), a logging and mining company in based in Sultan Kudarat, allegedly killed forty-four Moros and indigenous civilians over a period of four years from 1986 to 1990. Moreover, the 'Tunda Force' was said to have committed the 'Tingin-Tingin massacre' in July 1992.⁹⁸

2.3.2.3 Violations Committed by Non-State Armed Groups

Due to the limitations of time and resources, the TJRC Consultation Process could not focus on the category of vertically-sourced, bottom-up direct violence committed by non-state armed groups. However, this issue does exist as a human rights concern and it *did* arise in connection with the



TJRC Listening Process and other research conducted by the TJRC. In the following, brief mention will be made of alleged IHRL and IHL violations committed by Moro-affiliated vigilante groups and by Moro rebel forces, both by the Moro National Liberation Front (MNLF) and by the Bangsamoro Islamic Armed Forces (BIAF) of the MILF. A broader, more thorough investigation is warranted.

As the conflict escalated in the period before Martial Law, the Moro communities established their own defense forces, and atrocities were committed on all sides. During the Listening Process sessions, participants cited the role of Moro paramilitaries, known as the ‘Blackshirts’ and the ‘Barracudas,’ who were responsible for violent acts committed against Christian settlers. In Maigo, Lanao del Norte, the confrontation between the Ilagâ and the Barracudas was apparently triggered by the assault and murder of a Christian woman, whose reproductive organs and extremities were mutilated.⁹⁹

There are two well-known cases which involve the violation of IHL norms by Moro rebels, in this case by MNLF fighters, during the Martial Law period. In both cases, namely the so-called ‘Patikul massacre’ on October 10, 1977 and the ‘Pata massacre’ on February 9, 1981, MNLF fighters fired on unarmed AFP officers and soldiers. These massacres are well documented and were also mentioned during the TJRC Listening Process.¹⁰⁰

Concerning the role of the MILF, the following incidents deserve mention. During the AFP ‘Buliok offensive’ in 2003, MILF-BIAF counter-attacks, particularly in the towns of Maigo and Kolambugan in Lanao del Norte and in the town of Siocon in Zamboanga del Norte, resulted in significant casualties among the resident civilian population in the two regions.¹⁰¹ The MILF rebels allegedly used civilians as human shields and engaged in looting and cattle rustling. Notably, MILF Chairman Hashim Salamat assumed responsibility for the abuses and apologized. In August 2008, during the fighting that broke out after the Supreme Court decision rejecting Memorandum of Agreement on Ancestral Domain (MOA-AD), MILF-BIAF forces operating in North Cotabato and Lanao del Norte were allegedly responsible for serious IHL violations, including targeting the civilian population for attack, torturing civilians and using them as hostages, as well as looting and burning houses, schools, and businesses.¹⁰² In May 2009, MILF forces attacked the village of Basak in Lebak, Sultan Kudarat. This attack caused approximately two hundred families to flee their homes; additionally, it is alleged that the MILF fighters looted stores, set houses on fire, stole farm animals, and took some twenty civilians hostage.¹⁰³ Moreover, the TJRC received (unverified) allegations concerning the murder of indigenous people in the towns of Kabacan and Carmen, Cotabato by Moros/MILF fighters.¹⁰⁴

More recently, in September 2013, in an attempt to seize strategic locations in the center of Zamboanga City, the MNLF took up positions in coastal neighborhoods and allegedly took civilians hostage and used them human shields.¹⁰⁵ The so-called ‘siege of Zamboanga’ led to the destruction of the homes and livelihood of many thousands of residents, a large number of whom remain displaced to this day.

2.3.2.4 Patterns of Violence against Women

Incidents relating to violence against women ranked second to massacres in terms of the frequency of their being mentioned during the TJRC Listening Process.¹⁰⁶ In most Listening Process accounts,



Study Groups-Listening Process Convergence Workshop in Davao, August 2015

there is a gendered pattern of direct violence. On the one hand, the men and boys are killed; women and girls, on the other hand, are raped before being killed. This pattern reflects the gender roles of men and women—men are killed because they pose a threat of being able to fight back and defend their communities, whereas women, being regarded as the bearer/nurturer of family and community honor, are raped in order to dehumanize the collective to which they belong.¹⁰⁷ As the TJRC Listening Process report observed:

During Martial Law, women's bodies became the last frontier in subduing a small but formidable group of Bangsamoro mujahideen ('freedom fighters'). Women were made targets of soldiers' and paramilitary groups' impunity—through rape and other forms of sexual abuse—as a way of weakening the resolve of the Moro mujahideen.¹⁰⁸

Sexual and other acts of violence against women have a specific gender and cultural connotation. During the height of Ilagâ atrocities, women's bodies were mutilated by cutting off their nipples and breasts,¹⁰⁹ ripping babies out of pregnant women's wombs,¹¹⁰ and disfiguring their reproductive organs.¹¹¹ Each of these acts in itself represents a symbolic form of denigrating womanhood.

The widespread commission of rape and other acts of violence by government armed forces and auxiliaries against Moro and indigenous women was a wanton display of power meant to demoralize 'enemy' men for their failure to protect their women. In this context, rape, in particular, was more than an act of sexual violence—it signified power over the 'other' as Moro. Women were victimized, not just because they were women, but because they were Moro women. A

stark, but not unique illustration of this principle is provided by the ‘Malisbong massacre,’ mentioned above. An unknown number of women and girls—aged 7 to 60 years old—were taken as hostages on board naval vessels, where they were raped and then killed, after which their bodies thrown overboard into the sea.¹¹² Those who survived the ordeal and were able to return to their communities never managed to live a normal life again. They were haunted by the brutality of their experience and the shame that they carried.¹¹³

“We women were not respected. There were instances when women were taken from their homes and raped. There was an incident when a wife was taken by a soldier, was impregnated and returned to her family when she gave birth.”

**Listening Process participant,
Basilan, 19 April 2015**

In the same vein, sexual violence against women and girls in many instances was meant to destroy the moral fabric of the Moro society where women are seen as bearers of honor and culture. For example, during the TJRC Listening Process, there were accounts of women being raped by Ilagâ and soldiers in front of their families¹¹⁴ or of women forced to have sex with their husbands in front of and for the amusement of soldiers.¹¹⁵ Many Moro women and young girls who were abducted and raped were never seen again; others were allowed to return home.¹¹⁶ According to the TJRC Listening Process report, incidents of sexual violence took place during the period of Martial Law that amount to military sexual slavery:

...between 1972 and 1974, Ilagâ and soldiers alike made Bangsamoro women in Labangan and Ipil, Sibugay become ‘sex slaves’ of navy men, whose boat was docked at Labangan and Ipil ports. For more than a week, soldiers rounded up a group of at least ten women from Labangan and forced them to the naval boats to serve the ‘sexual needs’ of the navy men. The following day, they were released; only to be replaced with another group of women, and so on.... More than 200 women were [believed to be] enslaved in this way.¹¹⁷

Those who were allowed to return to their families and communities were shunned and stigmatized. What is worse, in some cases, to save their honor they were forcefully married to their perpetrators.¹¹⁸ Some of the women, who had been abducted and sexually abused, became pregnant and were forced to marry their captors, only to be abandoned later.¹¹⁹ In other instances, in order for families and communities to ‘protect’ their young Moro and indigenous women and girls, many of them were just simply married off (early/forced marriages), often to older men.¹²⁰

Among the Bangsamoro and indigenous peoples, as in other societies, rape and other forms of sexual violence are treated as a taboo subject—an unspeakable crime. Victims rarely speak out and instead suffer in silence, usually, on their own, for years on end. In the meantime, gender-based sexual abuse is assuming new forms. During a TJRC Listening Process session, allegations were made that some women were being trafficked after having been abused by the military in connivance with men working at the local mayor’s office.¹²¹ According to a Key Policy Interview respondent, “as a human rights violation, we can raise the issue of rape—we should raise it.... However, in Moro culture, rape is shameful and agitating for the [victims], especially when it comes out.”¹²²



Listening Process in Sultan Kudarat

The testimonies and research in connection with the TJRC Consultation Process suggest that violence against women was used systematically against the Moro and indigenous population both before and during the Martial Law period. Incidences of gender-based and sexual violence associated with armed conflict have also been recorded in the post-Martial Law period. In the view of the TJRC, a formal investigation of this matter is warranted to ensure accountability for past abuse and to prevent the recurrence of such violations in the future.¹²³

2.3.2.5 Continuing Patterns of Direct Violence by the State

From the 1990s onwards, developments in the nature of the armed conflict affected the pattern of human rights violations in the Bangsamoro region. The most significant development in this regard was the US-led ‘war against terror’ that became the dominant narrative internationally. Simultaneous with the emergence of Abu Sayyaf Group (ASG)-led terrorism, this new narrative led to a paradigm shift in the way in which the Philippine government viewed and addressed the rebellion in Mindanao and the Sulu archipelago.¹²⁴ The ‘global fight against terrorism’ linked the ASG with foreign jihadis, thereby adding an international dimension to the direct vertical violence in Mindanao, which in turn expanded beyond the region to include terrorist attacks in Manila as well.¹²⁵

Within this evolving national security framework, the Philippine government implemented new policies in Mindanao, such as President Joseph Estrada’s ‘all-out-war’ against the MILF in 2000 and President Gloria Macapagal-Arroyo’s declaration of a ‘state of lawlessness’ in Basilan in 2001,¹²⁶ a ‘state of emergency’ in Maguindanao, Sultan Kudarat, and Cotabato in 2009,¹²⁷ and the ‘suspension of the writ of habeas corpus’ in Maguindanao the same year.¹²⁸

As the shift in paradigm developed, the pattern of human rights abuse shifted as well. Listening Process participants narrated that, in this new context of the ‘war against terrorism,’ the human rights violations allegedly committed consisted of abductions, arson, summary executions, killing, torture, arbitrary arrest and detention, ‘Moro’ profiling, artillery shelling and bombardment of communities, as well as massive enforced internal displacements of civilian Moro populations.¹²⁹ In Listening Process sessions in Zamboanga City, people told stories about a range of IHRL and IHL violations allegedly committed by State forces between 2012 and 2014, including bombardment of Moro communities and raids on Moro properties, arbitrary arrests of Muslims and killings inside mosques,¹³⁰ as well as illegal detention and targeted killing of suspected members of ASG, including cases of mistaken identity.¹³¹

2.3.2.6 Direct Violence in the Context of Horizontal and Intersectional Vertical-Horizontal Conflicts

Decades of direct violence have had a dramatic impact on the life of the Moro and indigenous populations in their communities. The spread of horizontal violence is one of the most serious consequences of that violence. In a land systematically divided along ethnic and religious lines, where traditional forms of conflict resolution are disappearing, ‘pocket wars’ tend to erupt between different communities. Moreover, violent conflict also occurs within communities. In many cases, the families or communities affected call upon armed groups for help and when violence erupts, State forces may intercede, transforming what began as a horizontal (people-to-people) conflict into a vertical (State-to-people) one.¹³² According to the preliminary report of the TJRC Study on Land Dispossession, “[m]any clan feuds become intertwined with vertical conflict when warring parties are linked either to the government or to major insurgent groups.”¹³³

Clan warfare or *rido* is a complex phenomenon that is occasioned by a feud between Moro families. In the context of decades of armed conflict in Mindanao, it reflects the interplay of various factors associated with prevailing power structures and alliances. For example, clans that are affiliated with the authority of the State can call upon paramilitaries working within the ambit of State mechanisms to defend their interests. Those clans, however, which do not have affiliation or access to such resources, normally seek the support from non-state armed groups. On the surface, *rido* may seem to be a horizontal conflict. Yet, in the context of armed conflict in Mindanao, purely horizontal violence is rare. The multi-textured layers (vertical and horizontal) of the conflict reproduce a combination between horizontal and vertical violence.

“When the victims comprised Christians, the automatic suspects were the Muslims. Subsequently, when the victims were Muslims, the Christians were automatically blamed. We were uncertain as to who were behind these attacks and counter-attacks. What is certain is that it really created a gap between Muslims and Christians.”

**Listening Process participant,
Lanao del Norte, 21 May 2015**

It is not surprising, therefore, that *rido* is capable of provoking internal displacement on a large scale in the region and is regarded as the greater source of violence and insecurity especially by Moro communities in the conflict areas of Mindanao. *Rido* events, however, are not driven

by the propensity of local communities to resort to violence. On the contrary, the phenomenon of clan violence can be understood as the result of the failure of the rule of law to address long-standing—sometimes even intergenerational—problems deriving from conflicting land and resource claims. Incidents of *rido* are also triggered by electoral-related tensions, by the breakdown of government-administered as well as traditional and religious justice systems, and by the lack of or the collapse of trust in the security sector in the eyes of the people.¹³⁴

2.3.2.7. Internal Displacement

Both IHRL and IHL contain provisions that address the prevention of internal displacement, the protection of internally displaced persons (IDPs), as well as their right to return voluntarily to their place of origin. As citizens of the country in which they are displaced, IDPs are legally under the protection of the State and their rights are guaranteed under IHRL and IHL.¹³⁵

Internal displacement in the Philippines is pervasive in regions characterized by militarization and armed conflict.¹³⁶ As such, the contested areas in Mindanao and the Sulu archipelago have been the focus of decades of internal displacement. When fighting erupted in Upi and in Cotabato in 1970-71, the conflict led to widespread displacement. Many of the displaced persons at that time died of starvation and disease while living in makeshift shelters in isolated areas.¹³⁷ The number of the internally displaced increased dramatically, as the conflict spread and intensified after the Ilagâ, supported by the Philippine Constabulary, launched its campaign of terror against the Moro and indigenous civilian population and again when the Moro National Liberation Front (MNLF) clashed with the Armed Forces of the Philippines (AFP). By 1977, four years after the imposition of Martial Law, the government estimated that there were as many as one million IDPs in Mindanao and at least 200,000 refugees who had fled to Sabah.¹³⁸ As the conflict subsided in the years following the ceasefire brokered by the Organization of Islamic Cooperation (“Tripoli Agreement”) in 1976, the total number of IDPs decreased, but displacement continued in the wake of ceasefire violations and clan violence. A dramatic increase in the number of IDPs took place after the peace agreement with the MNLF in 1996 when clashes between government forces and the MILF escalated over a three-year period, culminating in the declaration of “all-out war” by the government in March 2000.¹³⁹ Subsequent fighting between the military and rebel forces in February 2003,¹⁴⁰ in August 2008,¹⁴¹ in September 2013,¹⁴² and most recently in February 2015¹⁴³ were marked by mass displacement of the affected civilian populations. In total, it is estimated that as many as 3.5 million people have been displaced by armed conflict in the last fifteen years.¹⁴⁴

The sheer number of persons displaced as well as the frequency and length of displacement are indicative of the vulnerability of the population residing in the areas affected by armed conflict in Mindanao. Research has shown that some 41 percent of the Moro adult population in contested areas of Mindanao, especially in Maguindanao and Lanao del Norte, has experienced forced displacement at some time during the last decade. Of these, nearly 30 percent of the affected communities report having been displaced multiple times and for an average length of six months to a year or more.¹⁴⁵

The living conditions in situations of protracted or cyclical displacement are of particular concern. Displaced persons in Mindanao are provided with emergency relief in the form



Refugees clamp up in an old school complex at Maguindanao (© Leonard Reyes)

of food and health care and are housed in evacuation centers, which are often located in school buildings, in bunkhouses, or in temporary outdoor encampments. Overcrowding in the centers is common and the hygienic conditions are often substandard with adverse effects on the health and wellbeing of those who reside in the centers for extended periods of time. Children and the elderly are especially prone to illness and disease under such conditions. Prolonged displacement can also have grave effects on the mental health of IDPs. Faced with the loss of their homes and personal possessions as well as their means of livelihood, depression is a common reaction among the displaced. Moreover, women and children are vulnerable to sexual abuse while living in the open space of the shelters and numerous cases of human trafficking have been reported. In some cases, it is the family members themselves who provide young women to traffickers in the expectation that their employment as domestic servants or as sex workers would compensate for the loss of livelihood due to displacement.¹⁴⁶

Decades of conflict-related displacement in the Bangsamoro has had a profoundly negative impact on the welfare of the affected population and on the development of the region as a whole. Numerous studies have posited a relationship between the armed conflict and poverty in Mindanao. It is estimated that the conflict may have caused in an overall economic shortfall of more than \$10,000,000 due to the loss in agricultural activity and investments over a 27-year period from 1975 to 2002.¹⁴⁷ Not surprisingly, the Autonomous Region of Muslim Mindanao (ARMM) has consistently demonstrated the highest level of poverty incidence of all the regions in the Philippines.¹⁴⁸ Nearly half of the population vulnerable to displacement in the conflict-affected areas of the ARMM has no reliable source of food and significant levels of malnutrition have been measured for displaced children under five years of age. Access to clean water and sanitation facilities and to social services such as education and health care is generally very

limited and particularly so in remote areas. The most vulnerable 10 to 20 percent of households are headed by single parents including widows.¹⁴⁹

In fact, the relationship between displacement, poverty, and migration is mutually reinforcing: Just as displacement has reduced large sectors of the rural population to subsistence level, the resulting impoverishment has led to large-scale voluntary migration to urban areas. Poverty and displacement are conditions that sustain the emergence and continuation of armed conflicts in Mindanao.¹⁵⁰

2.3.2.8. Recruitment of Children for Use as Soldiers

The TJRC Study Group on Human Rights Violations drew attention to the recruitment of children and their use as combatants by the MILF.¹⁵¹ Although there are no current estimates available for the number of child soldiers, it appears that children as young as 13 years old have been recruited as conscripts in the past.¹⁵²

Historically, the MILF has recruited its combatants from its social base in Moro communities in Mindanao and in the Sulu archipelago. Many of its military base camps are, in fact, staffed by militia who live in the surrounding agricultural communities. The distinction between combatant and noncombatant status is often fluid. Moreover, according to Islamic tradition, youths older than thirteen years old are permitted to protect their home, if it comes under attack. In this context, the campaign against child soldiers faces particular challenges. The MILF has acknowledged the recruitment of children in the past and is working with UNICEF to end the practice. As a consequence, although MILF children continue to live in combat zones, it seems that they are no longer being trained and serving as active fighters.¹⁵³

2.3.3 Summary and Conclusions

In summary, it can be said that, in the context of armed conflict, mass atrocity crimes did take place before and during the period of Martial Law. The main patterns of human rights violations point to targeted and systematic direct violence against the Moros and indigenous civilian population. Direct violence and deployment of terror campaigns against the Bangsamoro were meant to 'cleanse' lands of their original inhabitants and, in this way, to produce conditions for the private and corporate acquisition of forcefully abandoned territory, while creating homogenous settler communities in the affected regions. Most of the human rights violations committed at that time have yet to be fully documented, formally investigated, and addressed.

This is true for IHRL and IHL violations since the era of Martial Law as well. As observed by the Study Group on Human Rights Violations, human rights violations, including extrajudicial killings, enforced disappearances, torture, arbitrary arrests, rape, mistaken identities, etc., continue to unfold within the context of the 'war against terrorism' to this day.¹⁵⁴ Horizontally, clan violence remains a source of serious human rights abuse, including internal displacement. As of yet, however, with some notable exceptions, the State either has failed to investigate the pattern and gravity of these violations or its efforts in this regard have been insufficient.¹⁵⁵ As a result, the State is remiss in its obligation to elicit the facts behind allegations of abuse, to ensure the accountability of perpetrators, and to provide reparation for the victim and survivors.

The major exception to the above, is, of course, RA 10368 or “An Act Providing for the Reparations and Recognition of Victims of Human Rights Violations During the Marcos Regime” with the mandate of providing financial compensation to the victims of Martial Law and satisfaction through the creation of a museum and library that will honor their memory. Yet, even this important effort faces serious limitations.¹⁵⁶ Normally, some form of truth seeking would precede the establishment of a reparation program.¹⁵⁷ The Human Rights Victims’ Claims Board (HRVCB), however, has been set up without such preparation. As such, the two-year time frame initially foreseen for it to complete its task has proven to be unrealistic.¹⁵⁸ Another major concern pertains to the compensation of those victims who do not fall under the Martial Law period. This is of great significance in relation to the Bangsamoro struggle. Not only does the issue of victim compensation predate the Martial Law period, but it remains an issue with respect to the ongoing conflict to the present date. Moreover, the question of victim compensation in Mindanao is also associated with other reparation issues such as restitution or compensation for loss of land and livelihood.

It is crucial, therefore, that any future transitional justice mechanism on the Bangsamoro act in complementarity and in coordination with the HRVCB. In so far as the period of Martial Law is concerned, it would be important to crosscheck existing data from other sources with data gathered by the HRVCB, in order to establish the scope and nature of the violations that occurred.¹⁵⁹

In conclusion, the TJRC is adamant that a formal investigation must be undertaken to gain a fuller understanding of the extent and range of the human rights violations that have occurred during the four decades of armed conflict in the Bangsamoro. Allegations of serious human rights violations on the part of all parties to the conflict must be the focus of this investigation. In this regard, attention shall be given to those events and their consequences mentioned in this report that represent the findings of the TJRC Consultation Process and of the Listening Process sessions, in particular. Moreover, those individuals and institutions which are responsible for abuse in the past must be held accountable. This is essential in addressing the legacy of impunity that has fueled the conflict for so many years and in providing the conditions for reconciliation among the affected communities.

The TJRC takes note of the fact that the combination of ongoing human rights violations and the specific violations occurring within the context of armed conflict has mutually reinforcing consequences. In the view of the TJRC, a formal investigation of the combined effects is warranted to ensure accountability, to provide redress, and to prevent recurrence of such violations in the future.

2.4 Marginalization through Land Dispossession

Now that we have no lands, who are we?"

Listening Process participant, Lanao del Sur, 26 May 2015

2.4.1 Defining Marginalization through Land Dispossession

The Study Group on Marginalization through Land Dispossession¹⁶⁰ regards land dispossession as a complex phenomenon characterized by policies such as enforced privatization and titling as well as government-led settlement and enforced colonization through land laws. Marginalization as a result of land dispossession is understood as the impact of such policies on cultural identities and ways of living, on political, social and economic conditions, on ancestral domains, and on migration. The policies resulting in marginalization through land dispossession have largely been State-led and have been employed since the late colonial period until the present time.

The research conducted by the Study Group confirmed the land dispossession of the Moro and indigenous peoples and their ensuing political, social, economic, and cultural marginalization as a 'historical fact.' The land dispossession itself has been systematic and is embedded in laws and institutions. The marginalization of the Bangsamoro has resulted in a cycle of poverty that reproduces insurgency, internally displaced peoples, environmental degradation, and severe distress among women and children."¹⁶¹

2.4.2 Waves of Land Dispossession

According to the TJRC Study on Land Dispossession Preliminary Report, land dispossession occurred in four waves:

1. "The first wave, occurring in 1898 up to the Commonwealth period, laid the foundation for the systematic land dispossession of the Moro, IPs and other original inhabitants of the country through the affirmation of the Regalian doctrine, imposition of the Torrens land titling system, the passage of a number of laws that were patently discriminatory against Moro and IP ownership of land, and the active promotion of settlement of Mindanao by American-owned plantations and Christian settlers from the northern islands to increase agricultural productivity and to promote the socio-cultural integration of various ethnic groups in the country.
2. The second wave from 1946 up to the late 1960s saw the massive influx of northern migrants to Mindanao, particularly areas occupied by the Moro and IPs, as a result of a series of government-sponsored resettlement programs.

3. The third wave—early 1970s up to mid-1980s—witnessed the systematic land dispossession of Moros and IPs, intensifying with the imposition of the Marcos Martial Law regime in 1972 along with the shift in the demographic composition of Mindanao led to the gradual conversion of settlers' communities into barangays and municipalities, and the creation of new provinces.
4. The fourth wave, mid-1980s up to the present, further complicated the land ownership and land dispossession situation in Mindanao through the passage of a number of land-related laws (i.e., CARL in 1988, Mining Act of 1995, and IPRA in 1997). This resulted in overlapping claims to the same piece of land, titling of most lands in Mindanao, even in the Bangsamoro area (though subject to validation) as part of the process of modernizing land ownership, establishment of the ARMM and the creation of a new set of Moro elite who also accumulated large tracts of land while in office, major outbreaks of armed conflict and horizontal conflicts (i.e., *rido*), which continually caused displacement and occupation by another set of dwellers, and growing land scarcity and the cultivation of high-value crops (e.g., oil palm, coffee, cacao, rubber, etc.), which has triggered a spate of land claims.¹⁶²

2.4.3 Roots of Dispossession: Corporate and Resettlement Land Laws

A legal concept dating from the Spanish colonial period underpins the existing legal framework for land relations in the Philippines. Known as the 'Regalian Doctrine' or '*jura regalia*,' it refers to the "feudal principle that private title to land must emanate, directly or indirectly, from the Spanish crown with the latter retaining the underlying title."¹⁶³ The US colonial successors to Spain continued to operate on the basis of this principle, as demonstrated by two early land laws. The US Philippine Commission Act No. 496 of November 1902 required the registration of all occupied private and corporate lands across the Philippines. It was followed by the US Philippine Commission Act No. 926 of 7 October 1903, which declared all lands that were not yet registered, implicitly referring to the interior and frontier regions occupied by Muslim and IPs, as unexpropriated public lands. The two laws were issued a mere eleven months apart, a short but critical time period that essentially excluded the Moro and indigenous peoples, who were living in inaccessible and yet unintegrated interior regions,¹⁶⁴ from engaging in the land registration process in Manila.¹⁶⁵ In the period between the passage of the two laws, the US Philippine Commission passed Act No. 718 on April 4, 1903, deeming void all land grants extended by Moro sultans, *datus*, and other leaders to 'non-Christian tribes' without the explicit consent of the colonial authority.¹⁶⁶

"Moros became tenants of their own lands."

**Listening Process participant,
Sultan Kudarat, 20 April 2015.**

On the back of this legislation, the US Philippine Commission, in tandem with a Philippine Legislature dominated by landed politicians, enacted two distinctive sets of land and resource expropriation laws that progressively undermined traditional land ownership and disposition in the Moro and indigenous communities.¹⁶⁷ One set of laws (Table 2 below) governed corporate ventures needing vast land holdings for plantation-scale cultivation and natural resource extraction operations. The other set (Table 3 below) constituted the creation of some dozen agricultural resettlement programs, specifically designed to spur massive movements of landless peasantry from the Visayas and Luzon to Mindanao.¹⁶⁸

The most significant factor driving the development of the resettlement legislation was the agrarian unrest that emerged in Central Luzon in the decade after WWII, known as the ‘*Hukbalahap*’ or ‘*Huk*’ rebellion.¹⁶⁹ The Philippine government introduced resettlement programs in Mindanao in an effort not only to address the demand for land reform, but also as a counter-insurgency measure. The goal was to undermine the ‘*Huk*’ rebel forces and induce them to surrender by engaging their social base of landless peasants in ‘rehabilitation’ programs and resettling them in Mindanao. This twofold approach was the focus of the Economic Development Corps (EDCOR) program:

Designed to answer peasant grievances about inequality in land distribution, EDCOR usurped the ‘*Huk*’s’ slogan, ‘land for the landless,’ in direct competition with the ‘*Huk*’ political agenda. The EDCOR plan, formally instituted by [President] Magsaysay on 15 December 1950, offered ‘*Huk*’ guerrillas an incentive to surrender: Fifteen to twenty-five acres of free land on the major island of Mindanao (well away from the war), a house, a carabao (water buffalo), seed, farm implements, police protection, education, medical aid, electricity, and free transportation to the site.”¹⁷⁰

Ironically, the solution to the unrest and rebellion of the ‘*Huk*’ in Luzon led to the unrest and rebellion of the Bangsamoro in Mindanao years later.

Postcolonial Philippine administrations, from the declaration of the Philippine Republic in 1946 onwards and into the early years of the Marcos government, expanded and modified both sets of land laws, intensifying corporate activity and the growth of agricultural resettlement enclaves in Mindanao.¹⁷¹

The combined impact of colonial and postcolonial land laws on the social order of Mindanao is staggering. Government policy has spurred a dramatic transformation of the demographic and natural landscapes of Mindanao, which in turn has fueled the development of the corporate and resettlement sites into economic enclaves that make up today’s densely populated provinces of Maguindanao, Lanao del Sur, Lanao del Norte, South Cotabato, North Cotabato, Sultan Kudarat, Basilan, and Tawi-Tawi.

Tables 2 and 3 provide a chronological overview of the legislation on land and resettlement that pertains to Mindanao.

*Table 2. Land Laws that pertain to Mindanao*¹⁷²

YEAR	LAWS/POLICIES	FEATURES AND IMPACT
1903	Public Land Act No. 926 (Oct 1903)	Ceiling set for corporate landholdings at 1,024 hectares
1904	Forest Act No. 1148	A colonial Bureau of Forest Land grants power to timber concessions for woodlands covering about 20 million hectares.
	Philippine Commission Act No. 1544	Exempts all timber and other forest products intended for railway construction and equipment in the Philippine islands.
1905	Mining Law of 1905	Opens all public lands for exploration, occupation and purchase by US and Philippine citizens
1919	Act No. 2874 of 1919	Retains 1,024-hectare ceiling for corporations, but sets lower ceilings for Christian Filipinos and even lower for Moros and IPs.
		Insular government established the National Development Corporation to acquire lands for plantation ventures and promote corporate investments
1925	Act No. 3129 of 1925	Raises ceiling for public lands purchased to 144 hectares but retains 1,024-hectare cap for private individuals and corporate land leases
1935	Commonwealth Constitution	Set corporate leasehold ceiling at 1024 hectares; and 2000 hectares for grazing areas.
1995	Philippine Mining Act (RA 7942)	Amends 1905 mining law and provides a new legal framework for mining industry development in the Philippines.

Table 3. Resettlement Laws that pertain to Mindanao¹⁷³

YEAR	LAWS/POLICIES	FEATURES AND IMPACT
1913	Philippine Commission Act No. 2254 Philippine Commission Act No. 2280	Creates "agricultural colonies" by awarding settlers 16 hectare land tracts in Pikit, Silik, Peidu-Pulangui (North Cotabato); Dulawan and Talitay (Maguindanao); Buayan (Gen. Santos); Glan, Kiamba and Malungon (Sarangani); Momungan or Nonungan (Balo)
1920	Philippine Commission Act No. 2206	Authorizes provincial boards to manage colonies. Provincial colonies open in Lamitan (Basilan), Sulu, Tawi-Tawi; Bukidnon, Marilog (Davao), and Salunayan and Maganoy (Maguindanao).
1935	Philippine Commission Act No. 4197	Finances road construction and public land surveys in areas targeted for resettlement
	Legislative Act No. 4177	Provides full government support to the land resettlement program including road and other infrastructure development for the resettlement sites
1936	Commonwealth Act No. 141	Reduces homestead land ceiling to 16 hectares for Christians and 4 hectares for Moros and IPs
1939	Commonwealth Act No. 441	Creates a National Land Settlement Administration (NLSA) that opens resettlement sites in in Koronadal (Lagao, Tupi, Marbel and Polomok), and Allah Valleys (Banga, Norallah and Surallah) in South Cotabato
1949		Establishes the Rice and Corn Production Administration (RCPA), which in turn sets up new agricultural settlements in Buluan (Maguindanao), and areas straddling Maramag (Bukidnon) and Wao (Lanao del Sur).
1950	Executive Order No. 355	The Land Settlement Development Corporation (Lasedeco) takes over the NLSA and RCPA functions, spurring the opening of resettlement sites in Tacurong and Isulan, Bagumbayan (Sultan Kudarat); Buluan, Sultan sa Barongis, and Ampatuan (Maguindanao)
1951		Establishment of the Economic Development Corporation (EDCOR) replacing Lasedeco. EDCOR manages the resettlement of landless farmers including a contingent of Central Luzon peasant rebels who moved to sites in Sapad (Lanao del Norte); Alamada (North Cotabato), and Buldon (Maguindanao)
1954	Republic Act No. 1160	National Resettlement and Rehabilitation Administration (NARRA) replaces EDCOR and pursues resettlement operations for almost a decade (1954-1963), opening new sites in Ala and Koronadal Valleys (South Cotabato); Bongao-Balimbing (Tawi-Tawi); Carmen, Columbio, and Tulunan (North Cotabato); Cotabato (Maguindanao), Daguman (Sultan Kudarat); Maramag-Pangantukan, Bukidnon; Sto. Tomas (Davao); and Wao (Lanao del Sur)
1963	Agricultural Reform Code	Land Establishes the Land Authority (LA) and, through the Bureau of Resettlement, accelerates the implementation of the resettlement program. The code awards about 500,000 hectares of lands in the then undivided Cotabato and Lanao provinces from 1963 to 1975
1971	RA 6389	The Department of Agrarian Reform (DAR) replaces the Bureau of Resettlement and assumes all resettlement tasks. The agency administers 18 resettlement sites in 10 Mindanao provinces, namely Balimbing-Bongao (Tawi-Tawi), Lilo, Salug and Sindangan (Zamboanga del Norte), Maramag, Pangantukan and Kalilangan (Bukidnon), Prosperidad and Talacogon (Agusan del Sur), Sto Tomas, Panabo, and Asuncion (Davao del Norte), Sapad, Nunungan and Karomatan (Lanao del Norte), Wao, Lumba-A-Bayabao, Bubong, Butig, Lumbatan, Bayang, Binidayan, Pagawayan And Tubaran (Lanao del Sur); Carmen and Alamada (North Cotabato), Buldon and Upi-Dinaig (Maguindanao), and Columbio, Tulunan, Isulan, Bagumbayan and Surallah (Sultan Kudarat)



Local farmers at Ampatuan prepare wood to sell (© Leonard Reyes)

2.4.3.1. Dispossession from Corporate Lands

The case below, narrated during the TJRC Listening Process, serves as an example of the way in which the legal framework has been used to dispossess native inhabitants from their ancestral homes after the lands they lived on became registered as corporate lands.¹⁷⁴

In Malabang, Lanao del Sur, residents explained how they were expelled from the old sultanate lands that came under the control of the Matling Corporation, Mindanao's oldest corporation founded in 1928. The Matling Corporation stands partly on lands that belonged to the ancient domain of the Maranao Sultan of Tubok, occupied for generations by the sultanate's subjects. Through one of the corporate land programs, a person from Cebu was able to secure titles for 533 hectares in the old sultanate. Subsequently, the Matling Corporation bought the land from the titleholder and took possession, expelling the people living there and destroying their homes, the *madrakah* (Koran school), and the *masjid* (mosque) in the process. The descendants of the Tubok sultanate sought legal redress by filing a petition for land redistribution under a succession of land reform programs during the 1970s and 1980s. But they failed on all counts. Notwithstanding the claims of the Tubok sultanate's descendants, parts of the property were converted into industrial zones and land for commercial crops, shielding them from redistribution, whereas those pieces of land that were redistributed went mostly to non-Moro corporate employees as agrarian reform beneficiaries.

2.4.3.2 Dispossession from Resettlement Lands

“I think the war was purposely done to grab our lands.”

**Listening Process participant,
Tupi, South Cotabato, 19 May 2015**

A case of dispossession related to resettlement policies was related by indigenous peoples during the TJRC Listening Process in Tupi and in Tampakan, South Cotabato.¹⁷⁵

Settlers from the North began arriving in Tampakan, the ancestral domain of the B’laan, in increasing numbers in the period

between the late 1920s and the 1970s as a result of government resettlement programs.¹⁷⁶ Initially, they lived peacefully alongside the B’laan.¹⁷⁷ As the settler population grew and eventually surpassed the B’laan in numbers, reports spread that the ‘dreaded’ Ilagâ were rampaging across Cotabato, targeting Muslims and indigenous peoples. The B’laan, heeding advice from the settlers, fled the town and took refuge elsewhere.¹⁷⁸ Upon their return a few years later, they discovered that new groups of settlers had occupied their lands.¹⁷⁹ As revealed in testimonies during the Listening Process, it was the older group of settlers, the ones who had advised the B’laan to leave in the first place, who had in fact titled the lands through the resettlement programs and then sold them off once Ilagâ violence had driven the indigenous population away. Some B’laan tried to recuperate their land by lodging agrarian reform applications. The government, however, awarded these lands to another group of settlers from another town.¹⁸⁰ Some of the B’laan subsequently moved deep into the forests, where they had to face another form of dispossession, namely forced displacement due to mining concessions that began occupying the area in the 1990s.¹⁸¹

A family of refugees settle in discarded shanties in Maguindanao (© Leonard Reyes)



The Tampakan example is a case in point, but only one example of a larger phenomenon. The dispossession of the Moros and the indigenous peoples was the result of a massive influx of corporate laborers and landless farmers who were drawn to Mindanao through government resettlement programs and who then resorted to violence, subterfuge, and—in many cases—legal means, in order to secure and expand their holdings. The impact of dispossession has been profound. It has altered fundamentally the Moro and indigenous ways of life and provoked a far-reaching social and political upheaval in Mindanao that has not only led to the marginalization of Moro and indigenous communities from the mainstream, but—within the marginalized communities themselves—has also given rise to a serious increase in violent events associated with clan feuding and to the growth of shadow economies.¹⁸²

Accounts of these dramatic events permeate the testimonies on marginalization through land dispossession heard during the TJRC Listening Process. For the dispossessed Moro and indigenous peoples, the government-initiated corporate and resettlement programs are perceived as acts of illegitimate occupation of their lands.¹⁸³ Although initially welcomed in many places, settlers and corporations used the favorable circumstances of resettlement and government regulations on land titling to their advantage and are now perceived by the Moro and indigenous peoples as ‘land grabbers.’¹⁸⁴

2.4.4. Reconfiguration of Traditional Political Order and Gerrymandering

The TJRC Study Group on Marginalization through Land Dispossession took note of the fact that large-scale, government-sponsored resettlement programs precipitated changes in the demographic landscape and political culture in Mindanao and, as a consequence, led to the dissolution of traditional forms of leadership and governance structures in Moro and indigenous communities. In particular, its attention was drawn to the phenomenon of ‘gerrymandering’ by political elites and their use of patronage and clientele-based politics to ensure electoral victory.¹⁸⁵ In the course of the redivision and reconfiguration of what were originally areas of Moro suzerainty, the Moro people were politically and economically marginalized.

2.4.4.1. The Colonial Legacy of Political Reconfiguration

The origins of political reconfiguration and the attendant loss of political autonomy on the part of the Moros and indigenous peoples can be traced back to the brutal, decade-long campaign to impose US sovereignty in Mindanao and the Sulu archipelago waged by American colonial authorities from 1903 to 1913. Soon after they had quelled Moro and indigenous armed resistance, the American authorities dismantled or reduced what was remaining of the suzerains of the sultanates in Sulu, Maguindanao, Kabuntalan, and Buayan, and the principalities of Lanao (*Pat a Pangampong ko Ranao*).¹⁸⁶ In addition, they replaced what had been designated in 1903 as the Moro Province with the new Department of Mindanao and Sulu, consisting of five administrative districts, Cotabato, Davao, Lanao, Sulu, and Zamboanga that supplanted the existing political entities, undermining older political power structures.¹⁸⁷ The Americans subsequently opened up the districts for resettlement and agricultural development by foreign corporations, sparking extensive settler migration and the eventual reconfiguration of the administrative districts into political districts.¹⁸⁸ During the first twenty years of the Philippine Republic, the provinces were divided and redivided, as new towns were built. Later they were redivided in accordance with the electoral opportunities that the fast growing settler populations brought.

A more contemporary manifestation of what can be understood as political gerrymandering took place when Moro-majority provinces, the Province of Lanao and the Empire Province of Cotabato, were divided and reconfigured in order to create provinces inhabited by a majority of settlers. The reconfiguration left the Moro population politically in control of lands that are geographically and economically marginal, i.e., the mountainous parts of Lanao and the swampy parts of Cotabato. During the period of Martial Law, this practice continued without the consent of the respective populations through a proper plebiscite.

Table 4 contains examples of political gerrymandering that took place in Mindanao from the late 1950s through the early 1970s.

*Table 4. Political Gerrymandering in Lanao and Cotabato*¹⁸⁹

<p>22 May 1959</p>	<p>Republic Act No. 2228 divided the province of Lanao into two distinct geographical and political units, known as Lanao del Sur and Lanao del Norte, with Marawi City as the designated capital of Lanao del Sur and Iligan of Lanao del Norte. The majority of the southern province was Muslim, while Lanao del Norte had a Christian majority with Cebuano-speaking residents constituting 80% of the population and outnumbering the Muslim population by 4 to 1.</p>
<p>18 July 1966</p>	<p>The municipality of Maganoy, Cotabato was created through Executive Order No. 47. It was carved out from the municipality of Ampatuan, which itself had been separated from Datu Piang in 1959. The municipality of Datu Piang, known originally as Dulawan, had been renamed in 1954. Dulawan was the old core of the Buayan datus' domain sa raya. Maganoy, today's Sharif Aguak, was a central Buayan settlement, which originally encompassed Mamasapano, the homeland of Datu Ampatuan Mamasapano, nephew of Datu Piang, aka. Amai Mingka (ca. 1850 - 1933).</p>
<p>18 July 1966</p>	<p>Republic Act No. 4849 created the Province of South Cotabato from territory carved out of Cotabato, which had been established by the American colonial authorities in 1914 as the largest province in Mindanao. The Province of South Cotabato has a majority population of settlers. It encompasses the municipalities of Norala, Surala, Banga, Tantangan, Koronadal, Tupi, Polomolok, Kiamba, Maitum, Maasim, Tampacan and Glan and the City of Rajah Buayan (General Santos)—all the traditional homelands of the B'laan and T'boli peoples, with the Buayan Maguindanao traditionally exerting power over the river systems and coasts. Koronadal, the epicenter of migration into Mindanao for half a century, became the capital of South Cotabato.</p>
<p>22 November 1973</p>	<p>Presidential Decree No. 341 divided the remaining territory of Cotabato into three provinces: North Cotabato, Sultan Kudarat, and Maguindanao. This presidential initiative was understood by Mindanao-based politicians at the time as yet another example of political gerrymandering, the intention of which was to create additional political units in Mindanao with a Christian majority that would guarantee a succession of Christian leaders in both elective and appointive positions.</p> <p>In March 1984, Batas Pambansa No. 660 changed the name of the Province of North Cotabato to Cotabato.</p>

2.4.4.2. The Marginalizing Politics of Demographic Shift

Census records show a dramatic shift in the population ratio between Moros and indigenous peoples, on the one hand, and settler communities and other groups, on the other hand, over a period of 70 years in the 20th century. Whereas the ratio of Moros and indigenous to settlers stood at 52 to 48 percent in 1903, when the first census figures in Mindanao were taken by American colonial authorities, it had swung sharply to reach 18 to 82 percent by the early 1970s, when the current period of armed conflict broke out.¹⁹⁰ In 1903, the Moros and indigenous peoples inhabited a broad swath of territory that included vast areas of what became known as the districts of Cotabato,¹⁹¹ Davao,¹⁹² Lanao,¹⁹³ Zamboanga,¹⁹⁴ and Sulu.¹⁹⁵ At that time, the Moro population accounted for 69 percent of the total population in these areas, whereas the indigenous peoples stood at 10 percent.¹⁹⁶

Amid the rising population numbers and shifting demographics in Mindanao favoring the Christian settlers, the original five districts were reconfigured first by the American colonial authorities and later by successive Philippine administrations into large provincial administrative and legislative enclaves that elect their own provincial leaders and congressional representatives. In the 1960s and 1970s, marking the rapid increase of the Christian population and declining demographic share of the Moros and indigenous peoples, the provinces were subdivided in a way that reflects their diminished status. Moro communities were confined to Lanao del Sur, a province carved out of Lanao, to Maguindanao, a province taken from Cotabato, and to Basilan, Sulu, and Tawi-Tawi from what was once the undivided province of Sulu. Indigenous communities, meanwhile, were pushed deep into the remaining frontiers in the hinterland areas or the interstices of the provinces.

2.4.5. Land and Identity

Traditionally, the concept of land ownership as a private commodity and factor of production does not exist for the Moro and indigenous peoples of Mindanao, as it does in the Western world. For centuries, the indigenous peoples in the southern Philippines had other ways to assert the ownership of lands they tilled for generations. In their understanding, they consider themselves to be ‘stewards’ of the creation order, i.e., as God’s ‘vicegerents’ or *khalifah* (‘stewards’) on earth.

According to this conception, land is not a commodity that can be titled and then bought and sold; it is regarded as that which nourishes a community and provides it with its distinctive identity. In indigenous communities, people are closely tied up with their surroundings: the land, seas, and skies make up the environment from which they believe that they have originated. The Maguindanao are called such because they are the ‘people of the flooded plains.’ The plains refer to the alluvial low-lying areas in the former undivided Cotabato Province that are submerged by the overflowing of the Rio Grande or Pulangi during the monsoon and rainy seasons. The Maranao are ‘people of the lake,’ since they live in the fertile banks along Lake Lanao. The Tausug, (*tau* – ‘people’; and *sug* – ‘current’) are called this, because they are from the island that is surrounded by the sea that periodically swells as a reaction to climatic changes, producing high waves and strong currents. A common thread thus unites the experiences of land dispossession for the Moro and indigenous peoples. Dispossession is perceived as an utter disrespect for the deep relationship that bind the Bangsamoro and indigenous peoples to their lands (or to the sea, in the case of the Sama Dilaut), which at the same time is the source of their identity as a people. This underlines another important, distinctive element of this conception, namely that “relationships of people to their land are largely dictated by a communal perspective; that everyone in the community who shares a common ancestry with each other ‘collectively own’ their lands.”¹⁹⁷

2.4.6 Gender Dimensions of Marginalization through Land Dispossession

Gender roles and access to resources emerged as an important aspect in the dynamics of land dispossession during the TJRC Listening Process. Property relations, in general, largely privilege men over women. In the context of armed conflict, this has become problematic for Moro and indigenous women ‘who are left behind’ as widows or as household heads by their husbands. These women have no legal basis to assume ownership of land that is held in their husband’s name.”¹⁹⁸ Some cases were reported, in which indigenous women became victims of predatory strategies of entrepreneurs and Christian settlers who persuaded local communities to exchange vast tracks of land for a paltry sum. In other cases, participants explained that those who want to take their lands resort to “courting the daughters of families of indigenous leaders and later convince them to become their wives.”¹⁹⁹

2.4.7 Summary and Conclusions

From the perspective of the Bangsamoro and indigenous peoples, land dispossession and the resulting marginalization of their communities is a form of historical injustice of such gravity that it would justify secession from the Philippines, according modern legal norms. The resettlement programs involving migrants from Luzon and the Visayas have taken on such dimensions as to be qualified as ‘ethnic flooding’²⁰¹ and have resulted in the ‘minoritization’ of the native population.²⁰² In so many instances, land dispossession has become the contemporary flashpoint of conflict in Mindanao. Moreover, land dispossession has not only resulted in political and economic marginalization, but also in loss of social and cultural identity, land being the source of life of the community and the basis for collective identity.



CHAPTER 3

Violence, Impunity, and Neglect: The Imposition of a Monolithic Filipino Identity and Philippine State



As the review of the TJRC Consultation Process findings has shown, the four elements that are the focus of the TJRC mandate are intertwined: the Bangsamoro narrative of historical injustice frames their collective experience of legitimate grievances, in particular as they relate to the far-ranging effects of marginalization through land dispossession and widespread human rights violations.

In the view of the TJRC, legitimate grievances, historical injustice, human rights violations, and marginalization through land dispossession are the consequences of three mutually reinforcing phenomena:

- Systemic **violence** by the State expressed in terms of political, socioeconomic, and cultural exclusion and in the disproportionate use of direct violence;
- A pervasive culture of **impunity** that undermines the practice of the rule of law;
- Deep **neglect** by the State combined with the lack of vision for the common good.

These phenomena have their **root cause in the imposition of a monolithic Filipino identity and Philippine state by force on multiple ethnic groups in Mindanao and Sulu that saw themselves as already preexisting nations and nation-states**. The attempt to integrate these diverse groups into a unitary Philippine nation-state has been met with different forms of resistance that continue to this day.

The convergence of these three phenomena has not only had a profoundly negative impact on the people of the Bangsamoro, both historically and currently; it has also affected the ability of the Philippines to address other pressing political and socio-economic issues.

In the following, the TJRC will share its analysis of these three phenomena in some detail, as they form the basis for the main recommendations of this report.

The analysis follows the flow of history. It begins with violence: the forced incorporation of the Bangsamoro into the Philippine nation-state with a single Filipino identity, initiated by the colonial powers and pursued by and under the Republic. This process of forced assimilation continues, accompanied by different forms of impunity endemic to Philippine society, as injustices persist and remain uncorrected. The process as a whole is marked by exclusion, failed development schemes, and malgovernance: long-standing realities that constitute what is perceived as systematic neglect by the Bangsamoro people.

Finally, the TJRC report suggests that violence, impunity, and neglect are expressed through structural-institutional as well as through cultural-ideological means.

3.1 On Violence

“We saw many scattered [corpses] of animals and humans with bullet wounds; some were charred. Everywhere I looked, [there] were blazing houses, rice and animals. During the chaos, families lost each other. The army hauled people like animals, beating them with guns from time to time. Everyone was gone—what was left were charred houses, ashes of rice and animals. It really hurts to remember what happened to my village and family. I am still very hurt and angry, but I don’t show it—I have to live with it.”

Listening Process participant,
Sarangani, 23 March 2015

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The experience of multiple forms of violence is one of the most pervasive narratives emerging from the TJRC Consultation Process. The manifestations of violence associated with legitimate grievances and historical injustice expressed in the violation of political and civil, as well as of economic, social, and cultural rights—notably through land dispossession—are manifold. Nevertheless, it is possible to discern three distinctive, yet intimately connected forms of violence that affected the Bangsamoro: structural, cultural, and direct violence.

3.1.1 Forms of Violence in the Bangsamoro

For many of the TJRC interlocutors, structural violence is implicit and emanates from the laws and systems of political and economic governance in the Philippines that resulted in immense gaps and inequalities among the Moro and indigenous peoples.

Violence has also assumed a cultural nature with the construction of the Bangsamoro as the strange, unfamiliar, to-be-feared ‘other’ in both colonial and modern Philippine settings. Cultural violence has had very deep impacts, fostering discrimination and hostile attitudes and beliefs toward the Bangsamoro and downgrading self-esteem and trust among the Moro people themselves.

Finally, individuals and communities among the Bangsamoro have experienced violence, in its most direct or explicit form through violation of the rights to life, to physical integrity, and to mental health.

In the experience of the Bangsamoro, these three forms of violence have shown themselves to be complementary and mutually reinforcing. The structural violence manifest in land dispossession and in the erosion of indigenous governance systems has been rationalized and reinforced by the ‘civilizing’ claim of development on the part of the State. Brute force has been directed at those who have resisted structural and cultural forms of violence.

3.1.1.1 Structural Violence

The involuntary absorption of the Bangsamoro and indigenous peoples into the Philippine mainstream has involved systematic, structural forms of violence initiated by colonial regimes and continued under the Philippine Republic.

In the sixteenth century, the Spanish forces colonized what would later be called the Philippines. Many of the peoples and much of the territory in Mindanao and in the Sulu archipelago remained unconquered by the Spaniards, but were assimilated in the American colonial period following the Treaty of Paris in 1898. At the onset of the Spanish colonial era, the existing proto-states, such as the Sultanates of Sulu, Maguindanao, and Buayan, had functioning governance systems, economic relations, and socio-cultural practices. These were dismantled or eroded by subsequent political decisions, economic programming, and social reconfigurations. The traditional governance systems and power structures of the Bangsamoro and indigenous peoples became marginalized and irrelevant, as other institutions were foisted on them. This resulted in their social, economic, and political disenfranchisement and marginalization.

Colonialism imposed the private property model over traditional usufruct stewardship-based land use and management. This had a devastating effect on the economic life, social forms of organization, and the cultural identity of the inhabitants of Mindanao. The resettlement laws of the Philippine Government in the 1960s and 1970s and the gerrymandering that continues to this day actively promoted dispossession of Moro and indigenous peoples’ lands and territories, resulting in the eventual disintegration of their communities and ways of life.

The structural violence that provoked massive disenfranchisement, marginalization, and dispossession has been regarded over time as ‘normal,’ instead of being recognized as a historic injustice, deserving of condemnation and redress.

3.1.1.2 Cultural Violence

The dominant public discourse in the Philippines alternately disparages, ignores, and denies the historical and sociocultural claims for a distinct Bangsamoro identity and does not recognize the right of the Bangsamoro to self-determination.²⁰³ Culturally, this is expressed as prejudice against Muslims and indigenous peoples, denigrating them to the status of second-class citizens, and by the exclusionist ways, in which they have been treated in historical writings and in other narratives about Philippines society by the media and in the formal educational system.

The State, by action or omission, failed to curb and sometimes even encouraged deeply ingrained prejudices among the majority population towards the Bangsamoro and indigenous peoples. As a result, the distinct expression of identity that is the basis for acknowledgment



AFP Clearing Operations
(© Mark Navales)

and respect of minorities was devalued and denied. This lack of acknowledgment and respect contributed to legitimize the Bangsamoro claim for the right to self-determination in their own eyes.

The right to self-determination itself, which has been central to both the Filipino nationalist struggle and to Bangsamoro separatist rebellion, reveals another dimension of cultural violence that underlies the clash between the competing nationalist ideologies of the Philippine State and the Bangsamoro. Nationalist discourse per se has a progressive/positive aspect as well as a conservative/negative one. As a progressive force, nationalism encouraged the development of anticolonial, anti-imperialist, self-reliant, and protectionist manifestations of independence. Its conservative aspects, however, can foment colonial/imperialist, chauvinist, racist, and exclusionary forms of governance. A *non-separatist* or *non-independence* approach to the quest for self-determination, as presented in the Comprehensive Agreement on the Bangsamoro (CAB) and in the proposed Bangsamoro Basic Law (BBL), cannot be based on giving full play to either Bangsamoro nationalism or Filipino nationalism. It will require a sensitive and constructive engagement of all stakeholders and the capacity to analyze the multifaceted understanding of 'nationalism' in such a way that mutually acceptable common ground between the Bangsamoro and Filipino discourses can be found and their negative impulses towards one another are contained and transformed. An example of such common ground could be based on a comparative analysis of anticolonial struggles of the Filipino and the Bangsamoro, both of which are and have been based on an understanding of the right to self-determination as fundamental to all peoples.

Other challenges to management of diversity and the redress of cultural violence include a similar claim by the indigenous peoples to self-determination and ancestral domain in areas that are regarded as Moro territories.



Listening process in Tawi-Tawi

3.1.1.3 Direct Violence

The forms of direct violence formulated in connection with the TJRC Consultation Process involve violations of international human rights and humanitarian law related to the Bangsamoro conflict. In this regard, the TJRC notes with regret that there is no consolidated database or generally accepted record of human losses that documents those who were killed or went missing during the decades of conflict.²⁰⁴ This is especially troubling, as the absence of systematic documentation of human rights and IHL violations is conducive to revisionist arguments and denial and makes redress more difficult.

However, historical evidence does exist that documents the commission of serious human rights violations of a systematic nature against the Bangsamoro that date back to the colonial period. The Spanish, the American, and the Japanese colonial governments used military force in an attempt to pacify and assimilate the inhabitants of Mindanao and the Sulu archipelago. In the case of the Americans and the Japanese, military force was also combined with the set-up of an institutional colonial administration. Furthermore, the “resistance to this kind of incorporation on the part of the Moros was always overwhelmed by the coercive power of the State, at first through the instrumentality of the United States Army and later on part of the Philippine Scouts and Philippine Constabulary.”²⁰⁵

Disproportionate use of force and commission of mass atrocity crimes against the Bangsamoro during the time of the Philippine Republic have been documented mostly in media accounts and by nongovernmental organizations (NGOs) engaged in human rights monitoring. Acts of gender-based violence and, in particular, sexual violence against Bangsamoro women and girls, committed by State security forces and their affiliates have also been documented.

Although no party to the Bangsamoro conflict is innocent of accusations of human rights abuse and of IHL violations, there is reason to believe that State security forces or paramilitary forces under their control are responsible for the most heinous crimes and atrocities in the past.

3.1.2 Context of Vertical and Horizontal Violence

A further distinction that is relevant to the conflict in the Bangsamoro can be drawn between vertical and horizontal forms of violence. Vertical violence is typically either a top-down or a bottom-up form of direct violence between the State security forces or affiliated paramilitaries and non-state armed groups, such as those involved in separatist and rebel movements. Horizontal violence pertains to acts perpetrated by civilian or non-state armed actors against each other within the same community or between communities. In the context of the Bangsamoro, non-separatist, inter- or intra-ethnic clan or group conflicts, commonly known as *rido*, are the most common forms of horizontal violence. *Rido*, for example, is the most common cause of displacement in the ARMM aside from vertical types of armed conflict and is regarded as the greater source of violence and insecurity especially among Moro communities.

Over the span of decades of conflict, a ‘culture of violence’ has developed, in which the horizontal use of violence to solve problems has become the ‘norm.’ The spread of horizontal violence is also tied to the absence of effective State services. During the TJRC Listening Process, participants shared information about horizontal violence allegedly committed by the Moros against the indigenous peoples and by Moro against Moro. Moreover, there were narratives of violations of IHRL and IHL committed by Moro armed groups notably in connection with land disputes and unsatisfactory court decisions.

The Bangsamoro authorities and the Bangsamoro people themselves are challenged to reflect more intently on intra- and inter-Bangsamoro grievances. Grievances related to allegations of corruption, impunity, and incompetence among leaders, as well as crimes like kidnapping for ransom, illegal drugs, and human trafficking that are perpetrated by Moro against Moro are nascent causes of deep social resentment among and within Bangsamoro communities.

3.2 On Impunity



“Are soldiers really authorized to kill people just like that? Where is justice for us poor people?”

We feel [that] the government doesn’t care for us. They send killers to our peaceful barangay.”

Listening Process participant,
Sarangani, 23 March 2015

(© Leonard Reyes)

Impunity, as the “impossibility, *de jure* or *de facto*, of bringing the perpetrators of violations to account”²⁰⁸ is a problem—it has even been described as a ‘culture’—that plagues Philippine society as a whole. However, it has assumed particularly intense manifestations and has had profound consequences on society in the war-affected areas in Mindanao. The historic roots of violence and injustice in the Bangsamoro, many of which date back to the colonial period, are among the factors that highlight impunity as a lived reality of the Moro.

Several factors enable and produce impunity in the context of armed conflict: policies of ‘all-out-war,’ abusive security and rebel forces, a dysfunctional justice system, the absence of systematic documentation of IHRL and IHL violations, as well as the absence of efficient and independent monitoring bodies. In more general terms, the practice of patronage, clientelism, and corruption are intimately linked with impunity, as is organized crime and the proliferation of an illicit economy. Thus, impunity in a context like the Bangsamoro is a complex phenomenon. Impunity is not only an expression of the lack of rule of law; it is constantly produced through the mutual reinforcement of these different factors.

The TJRC Dealing with the Past Assessment documented how impunity in the Bangsamoro is directly associated with the failure to deliver timely and independent justice, security, and the rule of law. In 2008, Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, reported receiving information about abductions, arrests, and extrajudicial killings in Jolo and about “military operations involv[ing] inherently indiscriminate tactics, such as aerial bombardment, artillery shelling, and helicopter strafing.”²⁰⁹ The Alston report also mentioned “allegations of extrajudicial executions in Maguindanao and other areas of western Mindanao.”²¹⁰ Most of these

cases were rarely reported; the perpetrators were difficult to identify and few or none of the cases were prosecuted. The TJRC Dealing with the Past Assessment notes that “many cases concern abuse by security forces, but few complaints have resulted in court trials and even fewer have led to a conviction.”²¹¹ These examples document one aspect of impunity, namely the failure—by action and by omission—to protect and to provide redress to populations in conflict-affected areas.

In the context of the Bangsamoro, patronage, clientelism, and corruption have also fueled impunity. Hand in hand with the marginalization of the Moro and indigenous peoples, the Philippine State nurtured a complex system of patronage down to the most basic level of governance, including Muslim politicians and local elites who benefited from land dispossession²¹² and the illegal use of public resources for self-aggrandizement. These vertical structures of patronage are sometimes combined with horizontal alliances that drastically affect community relations, namely when Moro clans contract State actors and their affiliated non-state armed groups to take sides in horizontal clan-related violence.²¹³

The massacre of 58 persons in the 2009 Maguindanao Massacre by elements of the security sector and the private armed group of the powerful Ampatuan clan is an illustration of the complex nature of impunity in Mindanao. The Ampatuan clan has been able to dominate local and regional politics thanks to a complex web of political and military connections and large-scale corruption. Efforts to obtain justice for the victims, mostly members of local media and the family of a rival political opponent, remain inconclusive to date and are a source of continuing frustration for the media sector and the families of the victims, some of whom have fled the country due to threats to their safety.²¹⁴

Another example of the ‘production of impunity’ in the Bangsamoro are situations when state actors and non-state actors cooperate and misuse their power for criminal purposes. In such cases, the lines between war-associated violence and crime-related violence become blurred. In Basilan and Sulu, for instance, local government and military officials have allegedly profited personally from persistent criminal activities like kidnapping.²¹⁵

It is important to note that the Philippines has all the working elements to protect human rights and ensure the attainment of justice. The Philippines is a State party to the most important international conventions on human rights²¹⁶ and humanitarian law.²¹⁷ Moreover, international standards have been nationally codified through domestic legislation.²¹⁸ Yet a legal framework, consistent with international standards, is not sufficient by itself to protect the rights of the people, punish the wrongs committed, and ensure the full deployment of the rule of law.²¹⁹ Sound policy decisions together with the capability and capacity to implement them effectively are needed to address impunity. This is admittedly not an easy task in a society emerging from decades of armed conflict.

Nevertheless, impunity for wrongful acts of the past, unless addressed, will reproduce itself and trigger further abuse. The combination of violence and impunity is, in the view of the TJRC, an incubator for widespread, large-scale corruption and the capture of certain key public and private sectors by criminal interests or ‘parallel powers.’ Entrenched impunity is a major threat not only to the sustainability of the Bangsamoro peace process, but also to the future of Philippine society at large.

3.3 On Neglect

Neglect emerged as a major issue during the TJRC Consultation Process. As a phenomenon of malgovernance in Mindanao, neglect of the Bangsamoro and indigenous peoples has assumed many forms, ranging from the failure of the State to provide basic public services, such as access to clean water and reliable sources of electricity, to its collusion in removing the means of sustainable livelihood through land dispossession. The problem of neglect is particularly



evident in the exploitation and marginalization of indigenous communities and the dereliction of the State of its duty to defend the integrity of ancestral domains. Neglect is also perceived to be the reason for the lack of acknowledgment of Bangsamoro history and culture in public spaces and in the public education system. Other forms of neglect are associated with the non-resolution of electoral-related tensions and the inadequate reaction by the State to the prejudices of the dominant Christian majority and their intolerance toward different religious and cultural practices. The result is a widespread feeling among the Bangsamoro of abandonment and discrimination.

Ironically, State neglect has gone hand in hand with intensive development efforts based on its economic policy of promoting large-scale resettlement and agricultural production in Mindanao in the 1950s and 1960s. Those programs, while benefiting landless poor from other parts of the Philippines (including former *Huk* rebels), resulted in the dispossession of the local population of their ancestral lands. The various waves of displacement not only impoverished many Moro and indigenous peoples, but also increased their vulnerability. As competition for available resources grew, resentment and mistrust increasingly divided Christian, Muslim, and indigenous communities.

State neglect is perceived by the disaffected communities of the Bangsamoro to be the result of intentional policy decisions that have, in turn, fueled their own struggle for self-determination.²²⁰ The sentiment of being neglected by the State has been conflated in the narrative of the Bangsamoro with their experience of the failure by the State to protect them from the violent encroachments of the settlers and their paramilitary forces. In fact, the State is seen as having actively colluded in their marginalization through years of military occupation characterized by abusive force and by their involuntary inclusion within a highly centralized, unitary political system grounded in the ‘ideology of Filipino nationalism’ and sustained by aggressive corporate development.

Paradoxically, what were originally attempts to suppress diversity on the part of the State served to heighten resistance on the part of the Bangsamoro to assert their own identity and diversity.

3.4 Addressing Violence, Impunity, and Neglect as a Basis for Sustainable Peace

Cumulatively speaking, the peace agreement between the GPH and MILF is the result of more than 40 years of negotiations.²²¹ Lessons learned from the previous attempts at political settlement provided the foundation for the negotiations that led to signing of the CAB and its mechanisms of Normalization in March 2014. Unfortunately, the earlier efforts did not produce the desired results and this fact poses its own particular challenge. For example, the future Bangsamoro authorities will inherit an administration of the ARMM that, for most of its quarter of a century of existence, has been regarded as a ‘failed experiment.’²²² Additionally, both parties to the agreement recognize that there are disaffected armed groups in Mindanao and political interest groups in Manila that do not accept the peace agreement, as it now stands.

For all its real and perceived shortcomings, the CAB does address the need to respond to the structural-institutional dimension of the conflict and, in the process, also acknowledges the legitimate grievances of the Bangsamoro people in both their contemporary and historical manifestations as injustice committed against them.

Nevertheless, much still needs to be done to deal with the cultural-ideological legacy of the conflict, notably by acknowledging diversity as one of the most precious human resources of the Philippines, while searching for mutually acceptable common ground between the Bangsamoro and Filipino nationalist discourses. The constructive management of these diverse cultural identities and traditions is the key to democracy, security, and development in the future. The future Bangsamoro authorities and the national government at the local, regional, and national levels are encouraged to consider these efforts as priorities in their agendas.

On the part of the Government of the Philippines, there is need for a clear, strong, consistent and well-coordinated message about the legitimate grievances of the Bangsamoro, historical injustice, human rights violations, and marginalization through land dispossession. There is a need to hear from the highest voices in government that the Philippines recognizes and acknowledges the history and culture of the Bangsamoro and indigenous peoples, that it apologizes for its wrongdoings in the past, and that it commits itself to take responsibility for its future actions by engaging in a collaborative partnership with the Bangsamoro people to ensure their future as citizens and rights bearers.

This message is in the interest of the development, peace, and security not only of the Bangsamoro, but for Philippine society at large.

In this regard, the TJRC believes that the Mindanao peace process, its peace agreements and their proper implementation represent a unique opportunity for the entire nation:

- To address the enforced monolithic model through active respect, practice and promotion of the diversity of the peoples, including other indigenous peoples in the Philippines. This includes tackling the need for proper legal frameworks to promote the recognition of minority rights, their implementation, institutional practices and education. For the Bangsamoro, through the passage of the BBL and in the case of indigenous peoples, through further strengthening the Indigenous Peoples Rights Act (IPRA). The right to self-determination can enrich the whole nation in its practice of democracy; acknowledging and protecting this right is a gain for the Philippines.
- To respond to neglect through the full deployment of public services to regions that have been excluded and marginalized, in particular in the war-affected regions of Mindanao. This entails the preferential allocation of public resources to those regions, the pursuit of reforms of structures and policies to ensure that they are compatible with peace, and that they serve the common good by promoting fairness and equity for citizens, particularly for that part of the population that lives below the line of extreme poverty not only in conflict-fraught zones in Mindanao, but also elsewhere in the Philippines.
- To take effective action against direct forms of violence committed against the Moro and indigenous peoples by investigating and prosecuting cases of human rights violations and ensuring that justice is granted to the victims, their families and communities. These demonstrations of commitment to human rights will contribute to the strengthening of the culture of rights promotion and rule of law in the country and facilitate healing and reconciliation on a societal scale.
- To stand firmly against impunity by reaffirming that no one is above the law and that the rule of law and by law is central to justice and good governance. This strong commitment to justice, security, and development will benefit not only the Bangsamoro, but also those citizens all over the nation who do not belong to the elite.
- To support the peace process and the implementation of peace agreements, informed by a genuine understanding of the legitimate grievances of the Bangsamoro, and to address historical injustice, marginalization through land dispossession, as well as the legacy of human rights violations.



A young Moro rebel standing in front of the sign board at MILF out post, (A special program from USAID-GEM) inside the MILF Camp Darapanan in Sultan Kudarat, Southern Philippines
(© Mark Navales)

The TJRC Dealing with the Past approach offers the potentially transformative means to engage in a future-oriented policy debate within Filipino and Bangsamoro society, while addressing the painful legacy of the past. The TJRC Consultation Process has led to the identification of ninety recommendations that will have to be studied further to address historical injustice, legitimate grievances, human rights violation, and marginalization through land dispossession.

Fundamentally, the TJRC's framework for dealing with violence, impunity, and neglect in the Bangsamoro hinges on the promotion and fulfillment of the rights of citizens and victims and of the duties of the State in the fields of truth, justice, reparation, and the establishment of guarantees of non-recurrence, which will be elaborated on in the chapter on recommendations.





CHAPTER 4

Recommendations

4.1 Introduction

As mentioned above, the TJRC has been mandated **to undertake a study and to make recommendations** with a view to promoting healing and reconciliation of the different communities affected by the conflict.

For the TJRC, “legitimate grievances of the Bangsamoro people, historical injustice, human rights violations, and marginalization through land dispossession” are the consequences of three mutually reinforcing phenomena: deep neglect by the State (and lack of a vision for the common good), violence (including systematic socioeconomic, political and cultural exclusion, and disproportionate use of direct violence), supported by a deeply embedded (nationwide culture and practice of) impunity. The root cause lies in the **imposition of a monolithic Filipino identity and Philippine State by force on multiple ethnic groups in Mindanao and Sulu that saw themselves as already preexisting nations and nation-states.**

4.2. The Bangsamoro Opportunity

Armed conflict in Mindanao has had many tragic consequences in the Bangsamoro and for Filipino society at large. Over the past four decades, an untold number of people in Mindanao and the Sulu archipelago have experienced immense sufferings. They have lost family members; they have been driven from their homes; they have lost their lands and livelihoods. They are poor and they are tired and they want peace. These incidents of violence and of systematic discrimination and exclusion have become a transgenerational, collective experience and memory for the Bangsamoro and indigenous peoples.

At the same time, the Philippines as a nation has not remained unscathed. The prolongation of the armed conflict has generated pockets of malgovernance, violence, and corruption. It has eroded the values of the nation and undermined trust between citizens and the State. On another level, the conflict has cost the Philippines precious time and opportunities. It has effectively hindered decades of potential social and economic development and weakened the quality of democracy and of human security. As new armed groups and new forms of violence continue to appear, an environment of multidimensional conflict begins to emerge in the Philippines.

Hence, solving the Bangsamoro situation in a durable manner offers a unique opportunity for the Philippines, namely the opportunity for a modern polyethnic State to emerge—a State that manages the diversity inherent in any modern democracy in a constructive manner based on equality of opportunity and on the rule of law. Similarly, the Bangsamoro aspire to a political framework, which will enable them to practice good governance, to develop their region and their people, to proudly assert their identity, and to ensure a constructive engagement with their own multi-ethnic constituency.

The TJRC perceives a ‘Bangsamoro opportunity’ rather than a ‘Bangsamoro problem.’ Indeed, the TJRC is convinced that the implementation of the CAB is a unique and extraordinary opportunity not only for Bangsamoro, but also for the whole Filipino nation:

- It offers an opportunity for the historical and cultural resilience of the Bangsamoro and indigenous peoples to be recognized as a vibrant and constructive part of the Philippines, based on the acknowledgment of plural identities.
- It offers an opportunity for the Philippine State to assume the political and moral responsibility for all of its peoples by opening and strengthening spaces for political debate and for the nonviolent management of conflicting views and interests.
- It offers an opportunity for the Philippines to join hands with the Bangsamoro and indigenous peoples to promote the rule of law, security, and development in the Bangsamoro as a potential model for the rest of the country.
- It offers an opportunity for the Philippines to embrace diversity as one of the key human resources of its society.
- It offers an opportunity for the Philippines to become a champion of the protection of diversity and of territorial integrity at the regional and international levels.

4.3 Dealing with the Past towards Healing and Reconciliation

The recommendations of the TJRC are elaborated with the intention of opening the path for a Bangsamoro and Filipino process that can address both root causes and their consequences and that can build on the extraordinary Bangsamoro and Filipino capacity for resilience.

The TJRC is convinced that the ‘dealing with the past’ framework, combined with a conflict transformation perspective, is key to addressing the grievances of the Bangsamoro people, historical injustices, human rights violations, and marginalization through land dispossession, and to setting a solid basis for healing and reconciliation in the Bangsamoro, as well as between the Bangsamoro and the Filipino society at large.

Inspired by the principles against impunity, the TJRC adapted a conceptual and analytical framework to the Bangsamoro and Filipino context, which takes into account the dynamic relationship between victims and perpetrators with a view to ensuring redress and satisfaction for victims and accountability for perpetrators.²²³ In this regard, the TJRC highlights the need to acknowledge the rights of victims and the obligations of the State as a means of transforming conflict by addressing root causes, and to build trust between citizens and the State.

Furthermore, the TJRC is convinced that initiatives related to truth, justice, reparation, and guarantee of non-recurrence will provide a process-oriented and mutually reinforcing framework that promotes healing and reconciliation.



As a methodology to address past abuse and the root causes of violent conflict, ‘dealing with the past’ is decidedly future-oriented. In practical terms, it aims to prevent the recurrence of serious human rights violations and, in this way, to create a conducive environment for societal reconciliation. In order to do so, it requires short-, medium-, and long-term interventions.

The goal of these interventions is to strengthen the rule of law and, thereby, to create conditions in which it becomes possible to address the underlying causes of violent conflict. Even when the root causes of conflict continue to persist, the institutions and mechanisms promoted by a process of ‘dealing with the past’ contribute to establishing democratic norms of tolerance and power sharing that not only reflect the social, economic, and cultural diversity of a country, but also create the trust necessary to address root causes through nonviolent means.

The restorative dimension of ‘dealing with the past’ also finds its expression in the transformation of social and political identities. If the sense of victimization among certain groups and sectors of society was predominant at the beginning of a process of transitional justice, it should change gradually as the process proceeds. The identity of being a victim may belong to one’s personal biography or collective experience, but it should no longer remain the only or even the predominant social or political identity. Instead, it should be replaced by a new sense of ‘belonging,’ by which individuals enjoy rights and duties of citizenship as part of a new social contract. In this way, the acknowledgment of past wrongdoing paired with a new sense of civic purpose and responsibility can eventually eliminate historical patterns of discrimination and exclusion.

4.4 Complementing Past and Existing Efforts and Ensuring a Strategic Approach

A number of initiatives have been undertaken in the Philippines at the regional and national

level to address the legacy of the past. There are several good examples, among them the important endeavor by the HRVCB in the area of compensation for Martial Law victims and the ongoing efforts of the Commission on Human Rights (CHR) and others to honor their memory in a museum. Important initiatives have been also launched to mainstream knowledge about IHRL and IHL in the armed forces and national police. Examples include the creation of the Human Rights Office and the institutionalization of its Human Rights Manual in the AFP, as well as the identification and protection of relevant archives related to human rights violations during the Martial Law period.

Though important in and by themselves, these initiatives have not had a significant impact on the present conflict in the Bangsamoro. In particular, they have failed to provide satisfaction to victims and to prevent of the recurrence of human rights violations. Past initiatives in the Philippines related to transitional justice have been regarded as problematic and ineffective for several reasons:

- They did not adequately address root causes.
- They were not implemented on the basis of a broad and transparent consultation.
- They promoted isolated measures, instead of a holistic strategy.
- They were not able to draw a line before and after the period of wrongdoings and injustices.
- They did not contribute to the prevention of revisionist discourse and denial about injustices committed.

The TJRC has captured many recommendations about ‘dealing with the past’ through its Consultation Process. The TJRC is aware that it will take time to address these issues and to bring durable peace to the Bangsamoro. Therefore, it proposes that the recommendations resulting from the TJRC Consultation Process be regarded as individual signposts and milestones in a broader, more comprehensive approach to address the legacy of violence, impunity, and neglect outlined above. To this end, the TJRC sees the need to combine efforts in the fields of truth seeking, criminal accountability, reparations, and institutional reform on a national ‘whole of government’ level with multiple initiatives in the field of reconciliation at regional and local levels, involving various sectors of civil society.

4.5 Taking a Political Decision

In conclusion, the TJRC believes that a sound political decision needs to be taken to set the stage for a strategic approach to ‘dealing with the past’ in the Bangsamoro. Indeed, a firm decision is required, based on mutual consensus and taken at the highest level by both parties, to ensure that the recommendations concerning ‘dealing with the past’ outlined below shall be fully integrated into the peace process as part of its short-, medium-, and long-term agenda for equitable power sharing, social justice, and reconciliation. The TJRC calls upon the Philippine people, Philippine civil society and the business sector, as well as the international community to support the national government and the Bangsamoro authorities in achieving these goals.

The TJRC, therefore, submits the following recommendations to the GPH and MILF Peace Panels for their joint consideration and action.

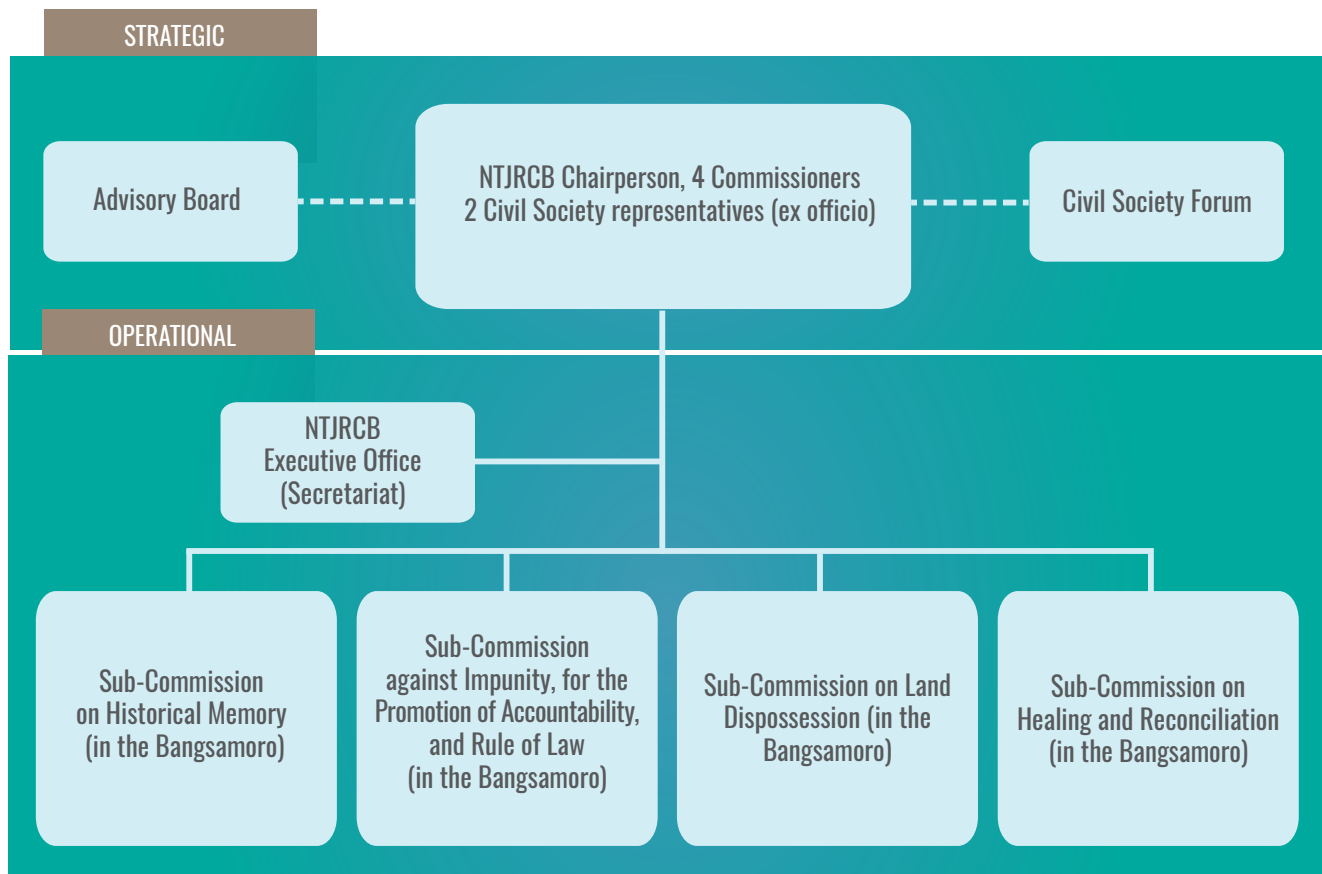
The TJRC Recommendations

All recommendations shall take gender and cultural sensitivities into consideration and be informed by a perspective that promotes healing and reconciliation.

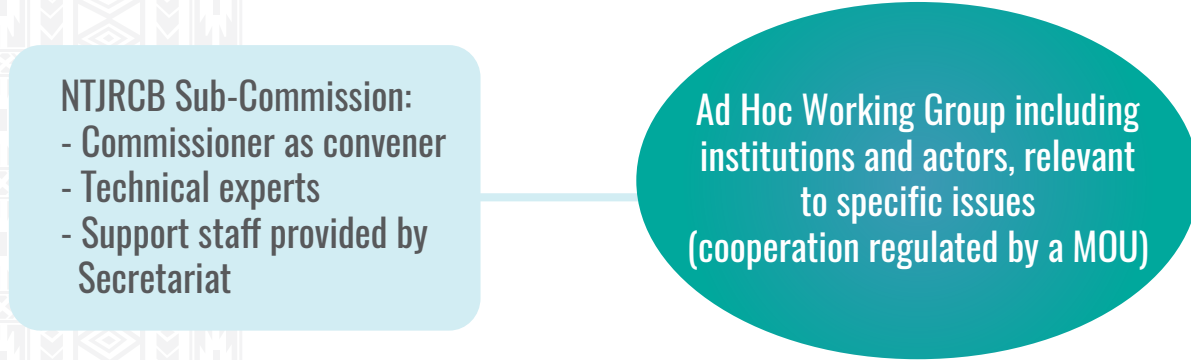
Part I Establishing a National Transitional Justice and Reconciliation Commission on the Bangsamoro

A. Recommend to the President the creation of a National Transitional Justice and Reconciliation Commission on the Bangsamoro (NTJRCB) that shall oversee and support the operations of four Sub-Commissions named below, ensure the implementation of the ‘dealing with the past’ framework, and promote healing and reconciliation (see Figure 3 for the recommended structure of the NTJRCB).

Figure 3. Structure of the NTJRCB and its Sub-Commissions



1. The overall mandate of the NTJRCB will be to ensure that the following tasks are implemented by the four Sub-Commissions named below in cooperation with relevant institutions and actors:
 - a. To listen to the victims of the conflict, to investigate serious violations of international human rights and international humanitarian law, and to inquire into specific events of the war;
 - b. To contribute to the resolution of outstanding land disputes in conflict-affected areas in the Bangsamoro and to address the legacy of land dispossession with concrete measures to provide redress;
 - c. To engage in the struggle against impunity, by promoting accountability and strengthening the rule of law in relation to past and present wrongdoings, including crimes identified under the Rome Statute and under international conventions to which the Philippines is a signatory;
 - d. To promote healing and reconciliation among the different communities affected by the conflict.
2. The composition of the NTJRCB shall be based on the following criteria:
 - a. The NTJRCB shall be composed of Philippine nationals of the highest moral integrity and known independence with a high degree of professional competence and expertise in the area of their respective mandates.
 - b. The NTJRCB shall consist of a Chairperson and four Commissioners. The Chairperson and at least two voting members shall be of Bangsamoro ancestry.
 - c. Two representatives of Bangsamoro civil society shall be members of the NTJRCB with the status of ex officio, nonvoting members.
 - d. The Executive Director of the NTJRCB Secretariat shall also sit as a nonvoting, ex officio member of the NTJRCB.
3. The NTJRCB shall operate for six years with the possibility of extending its mandate for another three years.
4. The NTJRCB shall ensure the implementation of the ‘dealing with the past’ framework and promote healing and reconciliation. Among other things, it shall approve the working plans and reports of its four Sub-Commissions and shall ensure that each of the Sub-Commissions and all the initiatives taken within this framework build on existing local and national best practices in conformity with international standards.

Figure 4. NTJRCB Sub-Commission Structure

5. The NTJRCB and its Sub-Commissions shall operate by cooperating with existing institutions. The NTJRCB shall establish memoranda of understanding (MOUs) to regulate the cooperation between its Sub-Commissions with relevant existing institutions and organizations in their respective fields (see Figure 4 for the NTJRCB Sub-Commission Structure).
6. The NTJRCB has subpoena powers to summon persons to appear before the Commission and to secure documents. It shall respect procedural fairness and ensure the confidentiality of witness testimony and information received. It is authorized to disseminate its reports and studies to a wider public.
7. The NTJRCB shall provide technical support, advice, or any other services on matters concerning transitional justice and reconciliation within its competence and availability to other bodies upon request.
8. The NTJRCB shall report to the President on a regular basis about achievements and progress in the implementation of its mandate.
9. The NTJRCB and its Sub-Commissions shall have a budget at their disposal and will be supported by a secretariat. The budget shall also cover the costs of at least one meeting of the Civil Society Forum and of the Advisory Board per year.
10. The NTJRCB shall hire an Executive Director who shall establish an Executive Office (hereafter the NTJRCB Secretariat) that will provide administrative, financial, and technical support to the NTJRCB and to the four Sub-Commissions to implement their respective mandates. The NTJRCB Secretariat shall include a gender adviser.

B. Recommend to the President the creation of four Sub-Commissions of the NTJRCB as part of the institutional vehicle to realize all aspects of the ‘dealing with the past’ strategy:

- Sub-Commission on **Bangsamoro Historical Memory;**
- Sub-Commission **against Impunity and on the Promotion of Accountability and Rule of Law in the Bangsamoro;**
- Sub-Commission on **Land Dispossession in the Bangsamoro;**
- Sub-Commission on **Bangsamoro Healing and Reconciliation.**

1. The Sub-Commission on Bangsamoro Historical Memory has the following mandate:

- 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 victims in closed or public hearings, in order to collect witness statements and evidence related to specific violent events;
- b. To investigate serious violations of international human rights and international humanitarian law, focusing, inter alia, on specific emblematic cases of mass atrocity crimes, of land dispossession, and of conflict-related sexual and gender-based violence. In particular, the Sub-Commission shall investigate to determine whether such forms of violence were practiced as a deliberate strategy of war in the Bangsamoro conflict;
- c. To publish a series of reports about the above mentioned events and cases of IHRL and IHL violations, which include an analysis of the findings and recommendations related to individual, collective, and symbolic forms of reparations, accountability for crimes committed, institutional reforms, and reconciliation;
- d. To establish archives and a database on violations of international human rights and international humanitarian law in the Bangsamoro from 1948 until the present. In particular, the Sub-Commission shall create a database on conflict-related human casualties.

2. The Sub-Commission against Impunity and on the Promotion of Accountability and Rule of Law in the Bangsamoro has the following mandate:

- a. To identify, investigate, and recommend policies, operational means, and concrete measures to address and overcome practices of impunity at all levels, whether of a technical, political, or financial nature and whether related to past or present wrongdoings;
- b. To request disciplinary procedures against public officials who fail to cooperate or who obstruct justice and the rule of law.

3. The Sub-Commission on Land Dispossession in the Bangsamoro has the following mandate:
 - a. To address issues related to land dispossession, use, and tenure in the conflict-affected areas in the Bangsamoro by developing and/or implementing a dispute resolution mechanism for land conflicts, including indigenous peoples' (IPs) claims on ancestral domains, and for identifying lands where there are competing claimants;
 - b. To create a database on actual land ownership in the Bangsamoro and on land dispossession that can be used to support legal proceedings and restitution/reparation programs, including cadastral, geo-tagged, and community-based participatory mapping sets;
 - c. To support the overall redesign of land services in the Bangsamoro, including changes in the legal framework and all procedures related to land titling, registration, taxation, and management, including IP claims on ancestral domains.

4. The Sub-Commission on Bangsamoro Healing and Reconciliation has the following mandate:
 - a. To identify and support traditional practices of reconciliation at the community level;
 - b. To develop and promote a meaningful process for national reconciliation with a view to encouraging cultural and attitudinal change;
 - c. To support the above mentioned Sub-Commissions in the implementation of their mandate by shaping and promoting a reconciliatory vision for each of them.

Each Sub-Commission shall cooperate with relevant national, regional, and local institutions, both governmental and nongovernmental, to implement its mandate (see Figure 3 for a model of the Sub-Commission structure and operations).

C. Recommend to civil society organizations performing in fields related to 'dealing with the past' the creation of a Civil Society Forum for Transitional Justice and Reconciliation in the Bangsamoro that shall be culturally and socially representative of the Bangsamoro and gender-balanced in its composition.

1. The task of the Civil Society Forum shall be to monitor the work of the NTJRCB and to support it in the implementation of its mandate. In particular, it shall enhance the voices of victims to ensure that their needs in the area of rehabilitation are articulated and addressed.

2. The Civil Society Forum shall meet at least once a year to review the work of the NTJRCB based on reports by its representatives and to formulate any proposals or recommendations in this regard.
 3. The Civil Society Forum shall propose a list of five names on the basis of a transparent nomination and selection process, from among which the President shall choose two persons to represent civil society as ex officio, nonvoting members of the NTJRCB.
- D. *Recommend to the President* the creation of an Advisory Board to the NTJRCB, composed of eminent national and, if deemed useful, international personages with proven expertise in the field of ‘dealing with the past.’ The objective of the Advisory Board is to provide advice and support to the overall process of transitional justice, healing, and reconciliation.

Part II Specific recommendations for further discussion and implementation on ‘dealing with the past,’ healing, and reconciliation

The recommendations listed below arose in connection with the TJRC Consultation Process, in particular during TJRC Listening Process sessions, as part of TJRC Study Group reflections, and as results of the Key Policy Interviews.

They have been edited with the ‘dealing with the past’ framework in mind and are complementary to the proposed mandate of the National Transitional Justice and Reconciliation Commission on the Bangsamoro (NTJRCB) and its Sub-Commissions. Existing institutions and organizations can implement these recommendations within their existing mandates and, as foreseen in the mandate of NTJRCB, they can cooperate with the NTJRCB to achieve this global endeavor. The spirit of these additional recommendations reflects the profound awareness that a process of ‘dealing with the past,’ healing, and reconciliation is an endeavor that must engage the whole society.

Reference is made in these recommendations to the “future Bangsamoro authorities,” as foreseen in the proposed Bangsamoro Basic Law (BBL). At the time when the recommendations were formulated, the BBL was still under debate in the Sixteenth Congress of the Philippines. The TJRC is of the opinion that the current impasse in the peace process should not be seen as an obstacle, but rather as an opportunity to create a framework for normalization. Many, if not all, of the proposals formulated below can be considered for implementation in the circumstances prevailing under the ARMM administration.

The right of victims and of society at large to know the truth and the duty of the State to preserve memory

1. To the Commission on Human Rights (CHR), the Department of Justice (DOJ), and the Autonomous Region in Muslim Mindanao (ARMM) in cooperation with the Sub-Commission on Bangsamoro Historical Memory:
 - a. Contribute to the investigations to be undertaken by the Sub-Commission.
 - b. Support the establishment of a national and Bangsamoro system of archives and a database on IHRV and IHL violations (with disaggregation of data according to gender, age, ethnic, religious, and other appropriate categories).
 - c. Promote community-based human rights education for all people.
 - d. Expand and strengthen the capacity of the ARMM Regional Human Rights Commission (RHRC) in the inventory of past and present human rights violations in the Bangsamoro.

2. To the future Bangsamoro authorities in cooperation with relevant institutions at the national and regional levels, in particular the National Historical Commission of the Philippines (NHCP), the CHR, the Department of Education (DepEd) and the Commission on Higher Education (CHED), the Philippine Commission on Women (PCW), the National Commission for Culture and the Arts (NCCA), the Cultural Center of the Philippines (CCP), the National Film Development Council (NFDC), the National Commission on Indigenous Peoples (NCIP), and the National Commission on Muslim Filipinos (NCMF) with the support of NTJRCB:
 - a. Establish a Bangsamoro Center for History, Culture, and the Arts with the following mandate:
 - i. To collect and preserve oral history accounts, material and nonmaterial artifacts, art and cultural objects of significance for the culture and historical memory of the Bangsamoro and indigenous peoples;
 - ii. To cooperate with national, regional, and local entities in the elaboration of new schoolbooks on history and culture of the Bangsamoro and indigenous peoples and to realize public education campaigns;
 - iii. To promote cultural and historical markers within the territory of Bangsamoro and, as appropriate, elsewhere in the Philippines.

- b. Launch a national and international research program on the cultural and ethno-linguistic diversity of the Bangsamoro and indigenous peoples in Mindanao and the Sulu archipelago.
 - c. Produce and disseminate information material and engage in public education campaigns (including training for local and national media) about the history and culture of the Bangsamoro and indigenous peoples at the national and regional levels through school history books, museum exhibits, films, and the arts.
 - d. Realize new public programs to share the experience of the Bangsamoro conflict from different perspectives, including debates on the topic of coexistence and reconciliation, with a view to creating a vision for the common good in the Bangsamoro and in the Philippines.
3. To the future Bangsamoro authorities in charge of education, the DepEd and CHED, the NCCA, PCW, and CCP:
- a. Develop culturally and gender-sensitive educational material related to the Bangsamoro and indigenous people for the national curricula in all regions and at all levels.
 - b. Create an educational program, targeting schools at all a grade level that explains the history of the Bangsamoro and indigenous peoples, their culture and their contribution to the Philippine history and identity.
 - c. Strengthen Islamic education and the *madaris* system as an integral part of the Philippine educational system.
 - d. Create joint, mixed, and gender-balanced technical working groups (Bangsamoro, indigenous peoples, Philippine) in the field of education with a view to addressing curricula and education issues and to promote mutual knowledge, diversity, and exchange among schools.
 - e. Ensure continuing improvements in the quality of education, in particular through teacher training in the use of 'state of the art' educational resources.

**Right to Justice:
The right of victims to a fair remedy
and the duty of the State to investigate and prosecute**

1. To the President, the Department of Justice (DOJ), and the CHR:
 - a. Address impunity through the prosecution of perpetrators of grave, nonprescriptive IHRL and IHL violations.
 - b. Conduct a mapping and an inventory of criminal cases related to the Bangsamoro conflict; expedite the resolution and decision making on these cases, including for purposes of amnesty.
2. To the GPH and MILF Peace Panels and the DOJ with the support of the Sub-Commission against Impunity and on the Promotion of Accountability and Rule of Law in the Bangsamoro:
 - a. Complete the fact-finding research related to the cases of amnesty mentioned in the Normalization Annex of the Comprehensive Agreement on the Bangsamoro (CAB) as a confidence-building measure. The DOJ shall take appropriate and timely decisions related to these cases in conformity with Protocol II of the Geneva Convention.
3. To the Armed Forces of the Philippines (AFP), including its Judge-Advocate General's Office (JAGO) and Provost-Marshal; the Witness Protection Program within the DOJ; the Office of the Ombudsman; the Public Attorney's Office (PAO); the Philippine National Police (PNP); the CHR; the Civil Service Commission (CSC), and the Commission on Audit (COA) in cooperation with the Sub-Commission against Impunity and on the Promotion of Accountability and Rule of Law:
 - a. Identify, investigate, and recommend ways, policies and initiatives to overcome practices of impunity at all levels whether related to past and present wrongdoings or to war crimes. Particular attention shall be paid to those involving civilian police or military personnel with records of pending unresolved cases.
 - b. Request disciplinary procedures against public officials who fail to cooperate or obstruct justice and the rule of law.
 - c. Identify potential areas for corruption and ways to prevent and redress corruption.
 - d. Propose and monitor the implementation of stringent measures against abuse of power.

- e. Propose capacity training to support officials and institutions to address impunity and corruption.
 - f. Develop programs to identify and vet corrupt, elected public officials and civil servants and monitor their implementation.
 - g. Review the policy of bounty/reward that leads to miscarriages of justice, including prosecution's reliance on lone witnesses, and make recommendations for action.
4. To the DOJ, and the CHR and the Regional Human Rights Commission (RHRC) of the ARMM with the support of Sub Commission against Impunity and on the Promotion of Accountability and Rule of Law:
- a. Address the proliferation of paramilitary groups and private armies and their commission of human rights violations by thorough investigations and by prosecuting them to the full extent of the law.
5. To the DOJ, the future Bangsamoro authorities, the PNP, Department of Social Welfare and Development (DSWD) and local government units (LGUs) in the ARMM, the PCW, the NCMF, and NCIP in strong cooperation with the Sub-Commission against impunity and on the Promotion of Accountability and Rule of Law:
- a. Identify the challenges and failures in the Philippines justice system and formulate proposals as to how these can be overcome.
 - b. Make recommendations to ensure the efficient delivery of culturally and gender-sensitive public services at community level.

The right of individual victims or their beneficiaries to reparation and the duty of the state to provide satisfaction

1. To the GPH and MILF Peace Panels, the future Bangsamoro authorities, the Office of the Presidential Adviser on the Peace Process (OPAPP), the DOJ, the CHR, the NCIP, the Integrated Bar of the Philippines (IBP), representatives of nongovernmental organizations (NGOs) and civil society organizations (CSOs), justices of the Supreme Court, the Department of Environment and Natural Resources (DENR), Land Management Bureau (LMB), Department of Agrarian Reform (DAR), Department of Agriculture (DA), Department of National Defense (DND), the AFP, the Department of Budget and Management (DBM), and the National Economic and Development Authority (NEDA) in cooperation with the Sub-Commission on Land Dispossession in the Bangsamoro:
 - a. Address issues related to land dispossession, use, and tenure in the conflict-affected areas in Mindanao by developing and/or implementing a dispute-resolution mechanism for land conflicts, including indigenous peoples' claims on ancestral domains.
 - b. Identify lands where there are competing claimants.
 - c. Retrieve and store data and build a database on actual land ownership in the Bangsamoro.
 - d. Support the overall redesign of land services, including a unified cadastral framework, changes in the legal framework and in procedures related to land titling, land registration, land taxation, and land management within the administrative territory, including indigenous peoples' claims on ancestral domains.
2. To the NHCP, DepEd and CHED, NCCA, NCIP, NCMF, and PCW and to the future Bangsamoro authorities:
 - a. Integrate in the curricula at all educational levels:
 - i. Subjects on Bangsamoro history, indigenous peoples' history, and corresponding lessons in art, literature, and language by promoting intercultural exchange and cultural diversity;
 - ii. Peace education, gender studies, and nonviolent conflict management.
3. To the Bangsamoro Center on History, Culture and Arts with the NHCP, the DepEd and CHED, the NCCA, the PCW, the NCIP, the NCMF, and the future Bangsamoro authorities:

- a. Conduct an inventory of places that have been named or renamed to honor colonial personages and others who are perceived to have violated the rights of the Bangsamoro and indigenous peoples, and suggest ways to redress the situation through a consultative and participatory process.
 - b. Identify and memorialize the principal historical sites related to the Bangsamoro and indigenous peoples.
 - c. Propose a global plan of memorialization in consultation with civil society with a view to:
 - i. memorializing specific tragic events and events and honoring victims (including women);
 - i. identifying and (re)habilitating specific sites as ‘sites of conscience’;
 - ii. identifying lost cultural assets and ensuring the recovery of cultural items taken during the conflict.
4. The CHR and the ARMM Regional Human Rights Commission (RHRC) with the Bangsamoro Centre on History, Culture and Arts, the NCCA, PCW, NCIP, NCMF, HRVCB, the Memorialization Commission, and the Board of Trustees of the *Bantayog ng mga Bayani*:
- a. Include Bangsamoro and indigenous peoples who were victims of Martial Law, while paying attention to the specificity (i.e. ethnoreligious, gender) of their victimhood and to the root causes of their struggle in the memorialization initiatives honoring Martial Law victims.
5. To the national and the future Bangsamoro authorities, the DSWD, the Department of Health (DOH), PCW, NCIP, and NCMF:
- a. Accelerate the provision of basic services as well as specialized health care services in the ARMM/the Bangsamoro entity, including specialized care for individuals who may have suffered physical and mental disabilities linked to conflict-, gender-, and identity-based violence.
 - b. Develop cultural and gender-sensitive, psychosocial healing services for the Bangsamoro and indigenous peoples who have suffered traumatic experiences, in particular trauma associated with sexual violence.
 - c. Encourage the hiring of Moro and IP health care workers, especially women, and provide support for traditional health care practices.

- d. Issue an internal directive for the provision of preferential free access to health and social services, as well as educational opportunities for widows and orphans of war.
 - e. Elaborate a victim/survivor-oriented, conflict- and gender-sensitive development plan with preferential measures for war-affected communities.
6. To the future Bangsamoro authorities and appropriate civil society, cultural, and religious leaders, with the support of the Bangsamoro Center on History, Culture and Arts, NCMF, and NCIP:
- a. Hold regular interethnic forums and dialogues especially among the various Muslim ethnolinguistic groups, between Bangsamoro and indigenous groups, and between Muslims and Christian settler communities in the Bangsamoro.
 - b. Develop dialogue spaces for Bangsamoro and indigenous peoples to share common stories and cultural practices/traditions that promote healing.
7. To the DepEd and CHed, NCCA, CCP, PCW, and NFDC with the support of NTJRCB:
- a. Encourage and disseminate specific film documentaries, feature films, and artistic productions with a view to generating an understanding of and positive awareness about cultural and religious diversity.
 - b. Generate film documentaries on the history of the Bangsamoro, their historical grievances and human rights violations to be shown in schools to students and in movie theaters to a general audience.
 - c. Promote Bangsamoro and indigenous culture through festivals of the arts that are respectful of traditional world views and ways of living.
8. To the CHR and the ARMM RHRC, NEDA, the future Bangsamoro authorities, the Mindanao Development Authority (MinDA), and the Bangsamoro Development Authority (BDA) with the support of the Sub-Commission on Land Dispossession in the Bangsamoro and the Sub-Commission on Bangsamoro Historical Memory:
- a. Based on the findings of the Sub-Commission on Bangsamoro Historical Memory, ensure the creation and implementation of a culture and gender-sensitive reparation program guided by the UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law with particular attention given to restitution, compensation, and rehabilitation.

9. To the Human Rights Victims Claims Board (HRVCB), CHR, and ARMM RHRC
 - a. Authorize the NTJRCB to access the database of the HRVCB and CHR with respect to claims submitted by Martial Law victims or to cases of IHRL and IHL violations in Mindanao and the Sulu archipelago, both prior to, during, and after the Martial Law period.
10. To the AFP and PNP
 - a. Contribute to symbolic reparations by offering formal apologies for their respective role in the commission of or failure to prevent human rights and humanitarian law violations, as well as for specific incidents known to Bangsamoro communities and to the AFP or PNP alike. In such a case, the AFP or PNP shall contribute to material reparations, e.g., by rebuilding homes, mosques, madrasahs, and other community infrastructure in affected Bangsamoro communities.
 - b. Authorize the NTJRCB to access archival material and database information that is relevant to its mandate. The AFP or PNP shall protect institutional archives of all kinds related to IHRL and IHL violations.
11. To the future Bangsamoro authorities and DENR in cooperation with the Sub-Commission on Land Dispossession in the Bangsamoro:
 - a. Conduct an inventory of corporate firm leaseholds or grants for reforestation projects that cut across ancestral domain and land claims.
 - b. Rationalize forest reservation at the regional level.
 - c. Authorize the NTJRCB to access data from the Presidential Commission on Good Government (PCGG) on:
 - i. Cases involving concessions granted by the Marcos dictatorship over State-controlled land in Mindanao for timber, mining, or other natural resource exploitation to individuals or business entities owned or controlled by those considered as business associates of the Marcos family under Executive Order Nos. 1, 2, and 13.
 - ii. Cases involving the purchase, lease, or takeover of coconut farms or coconut oil production facilities in provinces within the ARMM, using the Coconut Industry Investment Fund (CIIF) and related coconut levy money.

Guarantees of Non-Recurrence: The right of victims and society at large to protection from further violations and the duty of the State to ensure good governance and the rule of law

1. To the President and the future Bangsamoro authorities and relevant institutions such as the CHR, ARMM RHRC, DSWD, DOH, and LGUs:
 - a. Adopt policies to break the cycle of internal displacement by providing means for return with accompaniment and durable solutions especially for internally displaced peoples in protracted displacement situations.
2. To the future Bangsamoro authorities in cooperation with the Office of the President, DSWD, and BDA with the support of the private sector:
 - a. Develop and ensure the availability of the full range of social services to support inclusive economic growth and stable livelihoods for the population in the Bangsamoro.
 - b. Engage in a sustained dialogue with the private sector and future Bangsamoro authorities to search for ways to promote ecologically and socially responsible development in the Bangsamoro region. Particular attention shall be paid to the formulation of guidelines on ecologically and socially responsible investments in war-affected areas.
3. To the ARMM Regional Reconciliation and Unification Commission (RRUC), ARMM RHRC, and the future Bangsamoro authorities with the support of religious leaders and civil society organizations:
 - a. Enhance the capacity of the ARMM RRUC in resolving conflicts through partnerships with Moro and indigenous leaders.
4. To the national DepEd and CHED and educational authorities at the Bangsamoro level:
 - a. Develop curricula for higher degrees in law at universities, including training in *Shari'ah* law as well as traditional mediation mechanisms and justice procedures.
5. To the relevant institutions concerned with land issues in the national government, the future Bangsamoro authorities or the ARMM Regional Government, and the Sub-Commission on Land Dispossession in the Bangsamoro:

- a. Address claims related to ancestral domains, implement IPRA, and devolve NCIP in ARMM.
6. To the future Bangsamoro authorities, and the agency members of the National Steering Committee on Women, Peace and Security (NSCWPS), namely, OPAPP, PCW, the Department of Foreign Affairs (DFA), the Department of the Interior and Local Governments (DILG), DND, DSWD, DOJ, NCMF, and NCIP:
- a. Institutionalize capacity building for women in the Bangsamoro towards their empowerment and the recognition of the integrity of their rights, including property rights.
 - b. Support the future Bangsamoro authorities in continuing, strengthening, or expanding existing structures and mechanisms for women at different levels (e.g., the Regional Commission on Bangsamoro Women or RCBW and provincial women's councils).
 - c. Ensure the meaningful political participation of Moro and indigenous women in national, regional, and local bodies.
 - d. Enhance the National Action Plan on Women, Peace and Security to include a Regional and/or Local Action Plan on UN Resolution 1325 and 1820 in the ARMM.
7. To the Senate of the Philippines and House of Representatives:
- a. Pass a Bangsamoro Basic Law to provide the political and institutional infra structure to pursue the peace agreements.
 - b. Support the national 'dealing with the past' and reconciliation process, through the enactment of laws and amendments to ensure the implementation of the TJRC recommendations and provide the NTJRCB with the needed funding and resources to carry out its mandate.
 - c. Invite the NTJRCB, or the specific Sub-Commission in charge, to report regularly on progress realized in the national 'dealing with the past' and reconciliation process.
 - d. Request the Sub-Commission on Historical Memory to realize specific hearings with victims in both the House and the Senate related to specific cases of international human rights and international humanitarian law violations.
 - e. Adopt laws that contribute to reconciliation.
 - f. Support a Presidential apology with an official ceremony, including a minute of silence each month for all the victims of the Bangsamoro conflict.

- g. Encourage and create conditions for political parties to have informed positions on Bangsamoro.
- h. Create a 'Commission on the Promotion of Diversity' in both the House and the Senate, mandated to develop a legal framework that promotes intercultural understanding based on the principles of exchange of knowledge, practice of tolerance, and acceptance of diversity.

8. To the AFP:

- a. In cooperation with Sub-Commission on Land Dispossession in Bangsamoro, assess the process of appropriation and legal ownership of property occupied by military camps and seek ways to restore that property to its rightful owners or to provide adequate compensation, when warranted.
- b. Review the recruitment procedure of former MNLF combatants into the AFP in terms of its quantitative and qualitative impact.

9. To the AFP and the PNP:

- a. Strengthen cooperation with RRUC, the future Bangsamoro authorities or ARMM, and justice institutions in addressing local conflicts.
- b. Encourage recruitment of Moro women into the AFP or PNP.

10. To the AFP, the PNP, and related offices such as the Philippine Military Academy (PMA), the National Defense College of the Philippines (NDCP), Philippine National Police Academy (PNPA), and the Philippines Public Safety College (PPSC):

- a. Address the practice of military 'hamleting,' including the destruction and/or defilement of religious structures during military operations with a view to rectifying or compensating for damages.
- b. Review the system of assignment of security sector personnel (AFP and PNP) to Mindanao (e.g., deployment as punishment; fresh recruits; deployment without education on Mindanao).
- c. Set limits in terms of duration and number of AFP personnel that can be deployed for military operations in Mindanao, so that the problems arising from the assignment of military units unfamiliar with Bangsamoro contexts and not trained in law enforcement operations are minimized.
- d. Review the results of previous recommendations related to security sector reform put forward by earlier commissions, such as the Davide, Feliciano,

- and Melo Commissions, and continue to pursue full-fledged security sector reform, including capacity training and the deployment of a recruitment program based on integrative values, reflecting diversity, inclusion, and sensitivity to culture and gender (e.g., ‘women, peace and security’).
- e. Include lessons about Bangsamoro history and culture in the curricula of the military academy.
11. To the LGUs in cooperation with the future Bangsamoro authorities, NEDA, MinDA, and BDA with the support of the Sub-Commission on Land Dispossession in the Bangsamoro:
- a. Set up a ‘one-stop shop’ assistance center for Bangsamoro and indigenous peoples to focus on the problem of landlessness and access to public services.
 - b. Create a moratorium on the distribution of public lands and prevent the declaration of public lands as alienable and disposable.
12. To relevant civil society organizations in the Bangsamoro and in the Philippines:
- a. Constitute and participate in the Civil Society Forum for Transitional Justice and Reconciliation in the Bangsamoro with a view to monitoring the implementation of the NTJRCB mandate.
 - b. Submit a list of five names of civil society representatives with the appropriate moral standing and professional qualifications to the President for selection to participate in the NTJRCB as ex officio, nonvoting members. Ensure that the two persons selected are acting in representation of civil society and in the interest of the victims of the conflict.
 - c. Support and cooperate with the NTJRCB in the implementation of recommendations with a view to enhancing the satisfaction of victims and strengthening the guarantee of non-recurrence.
13. To the International Community:
- a. Create a Group of Friends of the NTJRCB based on the Paris and Busan principles with a view to supporting the overall process towards reconciliation.
 - b. Support the work of the NTJRCB and its Sub-Commissions politically and financially.
 - c. Integrate a victim-, gender- and conflict-sensitive approach into any project of financial support to the NTJRCB and its Sub-Commissions as well as to the Civil Society Forum.

- d. Request information based on regular monitoring and reporting on the work of the NTJRCB and its Sub-Commissions as well as on implementation of the recommendations and efforts realized by the government and the future Bangsamoro authorities towards reconciliation.
- e. Request the Government of the Philippines to present regular progress reports related to the work of the NTJRCB and its Sub-Commissions on the occasion of the Universal Periodic Review (UPR) at the UN Human Rights Council.

END NOTES

¹ See below under TJRC Recommendations Part I for the proposed mandate of the National Transitional Justice and Reconciliation Commission on the Bangsamoro (NTJRCB).

² The Terms of Reference (ToRs) of the TJRC are included in this report as Annex One.

³ The list of organizations visited are found in Annex Two.

⁴ It is important to underscore that the TJRC bases its analysis and recommendations on the presumption that facts cited in published research have been properly investigated and duly cross-checked, in particular when referring to violations of international human rights (IHR) and international humanitarian law (IHL). The TJRC decided that references to IHR and IHL violations should stem from multiple sources to be regarded as credible for this report. These sources were considered to be sufficient for the TJRC to form its general opinion and to propose recommendations.

⁵ The principles against impunity were developed by UN Special Rapporteur Louis Joinet at the behest of the UN Sub-Commission on the Protection and Promotion of Human Rights and submitted as his part of his final report in 1997. See: E/CN.4/Sub.2/1997/20/Rev.1. Available at: <http://193.194.138.190/Huridocda/Huridoca.nsf/0/a0a22578a28aacfc8025666a00372708?Opendocument> (accessed on 20 October 2015).

The UN Sub-Commission mandated Special Rapporteur Diane Orentlicher to undertake a revision of the principles some few years later. The revision (E/CN.4/2005/102/Add.1) focused on identifying best practices in combating impunity and did not significantly re-formulate the principles themselves. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement> (accessed on 20 October 2015).

⁶ The UN Sub-Commission also mandated a report on impunity in relation to the violation of economic, social, and cultural rights. Known as the 'Guissé report,' it was submitted by Special Rapporteur El Hadji Guissé in June 1997. Available at: <http://www.derechos.org/nizkor/impu/guissee.html> (accessed on 20 October 2015).

Other relevant UN reports are the proposed guidelines on reparation submitted by Theo van Boven included in the *“Report of the Independent Expert on the Right to Restitution, Compensation and Rehabilitation of Victims of Grave Violations of Human Rights,”* E/CN.4/1999/65. Available at: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/c14e536f497cc6ee8025674c004fd5de?Opendocument> (accessed on 28 November 2015); UN Secretary General's Report on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies", S/2004/616. Available at: <http://www.unrol.org/files/2004%20report.pdf> (accessed on 28 November 2015); and the report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, A/68/345. Available at: <http://www.kpsrl.org/browse/browse-item/t/report-of-the-un-special-rapporteur-on-truth-justice-reparation-and-guarantees-of-non-recurrence> (accessed on 28 November 2015).

⁷ See Annex Three on the TJRC conceptual framework for 'dealing with the past' (DwP).

⁸ ‘Dealing with the past’ (DwP) is used as a technical term throughout this report to connote a wide range of activities to address past human rights abuses of a serious nature and, in some cases, also the root causes of conflict. The TJRC chose to use ‘dealing with the past’ in preference to the term ‘transitional justice,’ because transitional justice is often too narrowly identified with juridical mechanisms and because DwP is a long-term process and not only limited to a transitional period.

⁹ See Carranza, Ruben. 2014. “Transitional Justice in Mindanao and the Philippines.” In: *Moving Beyond: Towards Transitional Justice in the Bangsamoro Peace Process*, ed. Venus Betita, Manuel Domes, Daniel Jaeger, Lotte Kirch, and Jeremy Simons. Davao City: Forum ZfD Philippines. Available at: http://www.forumzfd.de/sites/default/files/downloads/forumZFD-Moving_Beyond_Towards_Transitional_Justice_Bangsamoro_Peace_Process.pdf (accessed on 29 November 2015).

¹⁰ Sisson, Jonathan. September 2015. Dealing with the Past Assessment. A Draft Report, realized on behalf of the TJRC. P. 1. (Hereinafter referred to as TJRC Dealing with the Past Draft Report). President Ferdinand Marcos actually created two commissions: The first was a fact-finding commission called the Fernando Commission which was short-lived; and the second, was an independent board known as the Agrava Commission, established through Presidential Decree (PD) 1886. Text of the PD is available at: <http://www.chanrobles.com/presidentialdecrees/presidentialdecreeno1886.html#.VmLS93YrLrc> (accessed on 12 April 2015).

¹¹ Executive Order No. 1, s. 1986 “Creating the Presidential Commission on Good Government.” Available at: <http://www.gov.ph/1986/02/28/executive-order-no-1-s-1986/> (accessed on 29 November 2015).

¹² Executive Order No. 8, s. 1986 “Creating the Presidential Committee on Human Rights.” Available at: <http://www.gov.ph/1986/03/18/executive-order-no-8-s-1986/> (accessed on 29 November 2015).

¹³ Executive Order No.1, s. 2010 “Creating the Philippine Truth Commission of 2010.” Available at: <http://www.gov.ph/2010/07/30/executive-order-no-1-s-2010/> (accessed on 29 November 2015).

¹⁴ Dedace, Sohia. 7 December 2010. “High Court Declares Truth Commission Unconstitutional.” GMA News Online. Available at: <http://www.gmanetwork.com/news/story/207710/news/nation/high-court-declares-truth-commission-unconstitutional> (accessed on 29 November 2015).

¹⁵ Text of RA 10683 is available at: <http://www.gov.ph/2013/02/25/republic-act-no-10368/> (accessed on 4 December 2015).

¹⁶ See: TJRC Dealing with the Past Assessment Draft Report. P. 12.

¹⁷ The BBL version submitted by the Office of the President to the Sixteenth Philippine Congress on September 10, 2014 came to be known as HB 4994 and SB 2408. These bills were viewed as the version “agreed” on by the GPH and the MILF. The House of Representatives later introduced HB 5811, while Senate submitted SB 2894. These were referred to as BLBAR (Basic Law on the Bangsamoro Autonomous Region) bills and have been criticized by peace advocates for not being compliant with the CAB.

¹⁸ TJRC Study Group on Legitimate Grievances Draft Report. October 2015. P. 11. (Hereinafter referred to as TJRC Study Group on Legitimate Grievances Draft Report).

¹⁹ Guiam, Rufa. 17 October 2015. “Transitional Justice from Below: Views and Voices from Conflict-Affected Communities in Mindanao captured in the Listening Process” P. 16. (Hereinafter referred to as TJRC Listening Process Draft Report).

²⁰ Ibid. Pp. 16-17.

²¹ The strong state-weak state dichotomy can also serve as a paradigm to understand the roots of political grievance, whereby the 'strong state' deploys an armada of laws and policies that disenfranchise certain members of the polity, while the 'weak state' fails to bring basic services and assistance to its constituency. Marginalization of the Moros resulted from both—institutional performance in terms of instrumentalizing and corrupting State mechanisms to support elite/dominant Christian interests and institutional nonperformance in the context of neglecting the minoritized peoples.

²² Santos, Soliman, Jr. 2005. "Evolution of the Armed Conflict on the Moro Front." A Background Paper Submitted to the Human Development Network Foundation, Inc. for the Philippine Human Development Report 2005.

Available at: http://hdn.org.ph/wp-content/uploads/2005_PHDR/2005%20Evolution_Moro_Conflict.pdf (accessed on 28 October 2015).

²³ See Mastura, Ishak V. 3 January 2003. "Philippines: Bangsamoro, A Triumph of Western Diplomacy?" *Small Wars Journal*. Available at: <http://smallwarsjournal.com/jrnl/art/philippines-bangsamoro-a-triumph-of-western-diplomacy> (accessed on 22 October 2015).

See also: MILF Peace Panel and the Asia Foundation. 2010. *GRP-MILF Peace Process, Compilation of Signed Agreements and Other Related Documents (1997-2010)*.

To quote part of the letter of MILF Chairman Hashim Salamat to President George W. Bush, dated 20 January 2003:

(...) Your ambassador to the Philippines, His Excellency Francis J. Ricciardone, who recently addressed the Foreign Correspondents Association of the Philippines, raised the question of the US Government's desire to know 'what they (MILF) want or how it's (the Problem) going to be resolved.' We take this opportunity to inform Your Excellency that the MILF is a national liberation organization, with leadership supported by the Bangsamoro People, and with legitimate political goal to pursue the right of the Moro Nation to determine their future and political status. As part of this process, we have an on-going negotiation with the Government of the Republic of the Philippines to arrive at a negotiated political settlement of the Mindanao conflict and the Bangsamoro problem, through the mediation and tender of good offices of the Government of Malaysia. Your desire to be informed of the MILF goals reminds us of the historic, legal and political relationship between the Moro Nation and the US Federal Government as borne out by documents, treaty relations and instruments. Your official policy, under William McKinley's Instruction to the First Philippine Commission of 1900, treated the Moro Nation initially as a Dependent Nation similar to North American Indian Nations under treaty relations with the US Federal Government. Subsequently, the Moro Nation was accorded the political status of a US protectorate under the Kiram-Bates Treaty of 1899, confirming the Treaty of 1878 between Sultan of Sulu and Spain. Your policy to consider the Philippine archipelago as an unincorporated territory of the United States paved the way for the US Government to administer affairs in the Moro territories under a separate political form of governance under the Moro Province from the rest of the Philippine Islands. Your project to grant Philippine independence obliged the leaders of the Moro Nation to petition the US Congress to give us an option through a referendum either by remaining as a territory to be administered by the US Government or granted separate independence 50 years from the grant of Philippine independence. Were it not for the outbreak of the Pacific War, the Moro Nation would have been granted trust territory status like any of the Pacific islands states who are now independent or in free association with the United States of America. On account of such circumstances, the Moro Nation was deprived of their inalienable right to self-determination, without waiving their plebiscitary consent. (...) We are therefore appealing to the basic principle of American fairness and sense of justice to use your good offices in rectifying the error that continues to negate and derogate the Bangsamoro People's fundamental right to seek decolonization under the United Nations General Assembly Resolution 1514 (XV) of 1960.

²⁴ The Study Group on Legitimate Grievances took note that the term 'legitimate,' when related to claims, is often synonymous with what is considered 'legal' and 'lawful' and thus would have to be anchored on legal instruments such as those codified in national and international law. However, in view of the complexity of the collective grievances of the Bangsamoro, the LG Study Group defined as 'legitimate' those grievances "which strongly relate to verifiable and identifiable causes, conditions, or circumstances

from which strong feelings of wrongs, hurts, protests, and resentments arise.” TJRC Study Group on Legitimate Grievances Draft Report. P. 11.

²⁵ As quoted from the TJRC Study Group on Legitimate Grievances, Professor Abhoud Syed Lingga, echoing the provision in Article 1, Section 1 of the International Convention on Civil and Political Rights (ICCPR), concluded that the secessionist movement in Mindanao was “the right of peoples to determine their political status and freely pursue their social, cultural, and economic development.” However, this right clashes with the principle of ‘territorial integrity’ as embedded in the norm of state sovereignty. The Philippines signed the ICCPR on 19 December 1966 and ratified it on 23 October 1986.

²⁶ Santos. 2005. *Obcit.* P. 1.

²⁷ An Interview with Hashim Salamat. “Perhaps the Moro struggle for freedom and self-determination is the longest and bloodiest in the entire history of mankind.” Originally published in *Nida’ul Islam Magazine*, April-May 1998, Issue 23.

²⁸ Quevedo, Orlando. 2003. “Injustice: The Root of Conflict in Mindanao.” A paper delivered by Cardinal Quevedo, OMI, during the 27th General Assembly of the Bishops’ Businessmen’s Conference in Taguig, 8 July 2003. Originally published by Mindanews on 11 July 2003 and republished on 23 February 2014. Available at: <http://www.mindanews.com/mindaviews/2014/02/23/archives-quevedo-on-injustice-the-root-of-conflict-in-mindanao/> (accessed on 28 November 2015).

²⁹ TJRC Listening Process. 13 May 2015. Lanao del Norte.

³⁰ TJRC Listening Process. 13. May 2015. Lanao del Norte.

³¹ TJRC Listening Process. 20 April 2015, Sultan Kudarat; *ibid.* 19 March 2015, Jolo.

³² See: *Philippine Daily Inquirer*, 8 and 9 July 2000. P. 1. The TJRC also uncovered evidence that other mosques have been desecrated. One example is the mosque in Manili, where the massacre took place in June 1971. A photo taken during the Dealing with the Past Assessment field research also showed another abandoned mosque with shell holes in Manili, which may have been desecrated during the 2000 ‘all-out-war.’ For the TJRC, the evidence warrants further investigation.

According to a TJRC Key Policy Interview respondent, although there have been reforms in the security sector, there still remains a ‘mindset’ of ignorance and intolerance towards the Moros. TJRC Key Policy Interview. 24 September 2015. Quezon City.

³³ A Maranao elderly who attended the Listening Process in Iligan told a story of disrespect of not only the living, but also the dead. For years, this Maranao family has been fighting to keep their ancestral gravesite from being leveled and cut through by a road project by cement factories. The disputed burial ground used to be part, centuries ago, of a larger enclave originally established by Sarip Makaalang and his descendants. The bigger part of the enclave was granted to settlers who arrived in the 1950s. The settlers then traded them off to real estate agents, who in turn sold them to cement corporations. The burial sites are the last ground on which the community is standing firm. After a long standoff, the companies relented, but built roads and quarry sites around and through the edge of the gravesite. Finally, the hallowed ground was eroded by wind and rain, exposing the remains of their ancestors. “This is a total disrespect of our culture and tradition. Our ancestors will be angry at us, because we were not able protect their remains,” said an elderly descendant of Sarip Makaalang. TJRC Listening Process. 17 April 2015. Iligan City.

³⁴ TJRC Key Policy Interview. 17 September 2015. Makati City.

³⁵ TJRC Listening Process. 17 May 2015. South Cotabato.

³⁶ Tan, Samuel. 2003. *The Internationalization of the Bangsamoro Struggle*. University of the Philippines, Center for Integrative and Development Studies.

³⁷ TJRC Listening Process. 20 April 2015. Sultan Kudarat; *ibid.* 18 May 2015. Nuro Upi, Maguindanao.

³⁸ The TJRC Study Group on Historical Injustice, for example, cites the following studies that reflect the negative perception toward Muslims: (1) a 1973 Filipina Foundation Study that showed strong bias and prejudice of the Christian majority toward Muslims, indicating that they are the 'least likable' ethnic group in the Philippines; (2) a 1985 unpublished graduate thesis by Fredelino Café that showed the negative portrayal of Muslims in a national daily newspaper linked to terms such as 'rebel,' 'terrorist,' 'killer,' and 'outlaw'; (3) a 2011 unpublished thesis by Vladymir Licudine on 'islamophobia' in the Philippines; (4) the results of an interfaith session with a prominent elementary private school in Metro Manila conducted by the Institute of Islamic Studies, whereby sixth graders were found to associate Islam with known global terrorist networks such as Al-Qaeda and the Islamic State of Iraq and Syria (ISIS); and (5) the results of a study conducted on fourth year students at a State university depicting negative traits to describe Islam and Muslims in the Philippines as "violent," "war freak," "terrorists."

Earlier, in the context of the Philippines transitioning from colonial rule to self-governance, McKenna (1998) observed that "...only Christian Filipinos were deemed entirely trustworthy...non-Christian Filipinos [were] deemed culturally suspect...and regarded as socially and morally substandard...Muslim-Filipinos, comprising the largest single category of non-Christians, were judged to be dangerously disloyal because of their long history of armed enmity toward Philippine Christians" (Pp. 105-106). See: McKenna, Thomas. 1998. *Muslim rulers and rebels: Everyday politics and armed separatism in the Southern Philippines*. Berkeley/California: University of California Press.

³⁹ TJRC Listening Process. 9 April 2015. Alamada, North Cotabato.

⁴⁰ TJRC Dealing with the Past Assessment Draft Report. P. 21.

⁴¹ TJRC Listening Process. 29 April 2015. Lanao del Sur.

⁴² TJRC Listening Process. 08 April 2015. Kabacan, North Cotabato.

⁴³ TJRC Listening Process. 19 April 2015. Upi, Maguindanao.

⁴⁴ TJRC Key Policy Interview. 22 September 2015. Makati City.

⁴⁵ TJRC Listening Process. 08 April 2015. Sulu.

⁴⁶ TJRC Listening Process. 20 April 2015. Darapanan, Sultan Kudarat, Maguindanao.

⁴⁷ TJRC Listening Process. 07 April 2015. Simunul Municipality, Tawi-Tawi Island Cluster.

⁴⁸ According to the findings of both Listening Processes and Study Group on Legitimate Grievances, **political grievances** are those that pertain to disproportionate political representation and the marginalization of the interests of their Muslim constituency as well as the Philippine State's failure to uphold and protect their rights, deliver critically needed services and assistance and guarantee the rule of law. Legitimate grievances tied to **economic disenfranchisement** have been articulated to include the loss/destruction of property and forced displacement due to armed conflict, development aggression, and poverty, whereas **social grievances** are those relating to psycho-social impact of armed conflict and transgenerational trauma, the phenomenon of 'othering,' and widespread prejudice and discrimination. Lastly, religious/cultural ignorance and disrespect, non-recognition of Moro contributions to the 'national'/mainstream narrative, and disregard for their own history and identity were identified as **cultural grievances**.

⁴⁹ Under the Benigno Aquino administration, the Philippine Government crafted the Philippine Development Plan (PDP) for 2011 to 2016 that included peace and security in the development agenda. Under PDP's intermediate outcome number 2—"cause of armed conflict and other issues that affect peace process effectively addressed"—the following items were listed as contributory to the realization of this objective: (1) land disputes; (2) human rights violations; (3) good governance; (4) internal displacement; (5) PAMANA Pillar 2 on establishing resilient communities; (6) PAMANA Pillar 3 on addressing regional development; (7) peace and social cohesion; (8) security sector reform; (9) women; (10) children in armed conflict; and (11) ancestral domain. See the full text of PDP at: <http://www.neda.gov.ph/wp-content/uploads/2013/10/pdprm2011-2016.pdf> (accessed on 23 November 2015).

⁵⁰ Speech of President Benigno S. Aquino III during the ceremonial turnover and decommissioning of the MILF Combatants. 16 June 2015. Available at: <http://www.gov.ph/2015/06/16/english-speech-of-president-aquino-during-the-ceremonial-turnover-of-weapons-and-decommissioning-of-the-milf-combatants> (accessed on 24 November 2015).

⁵¹ Sajahatra Bangsamoro. Available at: <http://www.opapp.gov.ph/sajahatra-bangsamoro> (accessed on 26 November 2015)

⁵² TJRC Historical Injustice Study Group. Final Report. 5 October 2015. Pp. 6-7. (Hereinafter referred to as TJRC Historical Injustice Study Group Report).

⁵³ TJRC Listening Process Draft Report, p. 26; TJRC Historical Injustice Study Group Report, p. 9.

⁵⁴ According to the TJRC Historical Injustice Study Group Report, experienced identities are identity claims based on "lived experiences of who they are and how they are treated by others." Perceived identities, on the other hand, are based on a group's claim "to have a common understanding of who they are," while imagined identities refer to conjured "images of who they are based on narratives (fictive or real) from forefathers." Pp. 9-10.

⁵⁵ Several State institutions, in the course of the history of the Bangsamoro, have been instrumental in the perpetuation of injustice over time. Foremost of which are the **colonial governments** of Spain and the US that reconfigured Mindanao to serve resource-based interests through a variety of land policies and military-forms of governance. On the one hand, existing governance structures in Mindanao (i.e., Sultanates) were dispossessed of political power, while the Moros and IPs were dispossessed of their lands. In the case of the latter, communal/Moro lands were transformed into private property (by settlers) and corporate landholdings, fueling the rise of the resettlement and corporate sites into economic enclaves that make up today's densely populated provinces of Maguindanao, Lanao del Sur, Lanao del Norte, South Cotabato, North Cotabato, Sultan Kudarat, Basilan, and Tawi-Tawi. This practice was carried on by the **post-colonial Philippine government** through the instrumentalization and corruption of State mechanisms (i.e., laws) and organizations (i.e., military) as well as the institutionalization of a Christian, elite-led self-image of a monolithic Philippine nation through a process of cultural assimilation and of state-engineered demographic shifts. The institutionalization of (direct) violence against the Bangsamoro, particularly, in light of the strategic use of paramilitaries to cleanse Moro and IP communities, has been solidified during the Martial Law regime.

⁵⁶ Educational institutions and historians may have been unwitting supporters of historical injustice in a way that narratives of the Bangsamoro and IPs have not been part of the mainstream study and teaching of Philippine History. Where they are included, they are depicted in negatives—as bandits or criminals. In the case of media, they help reproduce and refuel myths against the Moros by adopting and repeating ethno-religious labels.

⁵⁷ For example, in 1992, President Fidel V. Ramos launched a nationwide consultation aimed at developing a strategy for talks with various armed groups in the country. A National Unification Commission (NUC) was established to conduct the consultation process. The NUC produced a

government policy frame known as the 'Six Paths to Peace' that guided subsequent government administrations on peace processes. The creation of the Office of the Presidential Adviser on the Peace Process (OPAPP) was one of the NUC's institutional recommendations.

⁵⁸ TJRC Listening Process Draft Report. P. 34.

⁵⁹ Ibid.

⁶⁰ TJRC Key Policy Interview. 17 September 2015. Cotabato City.

⁶¹ Stories of Moro resistance to American colonization were gathered during the Listening Process sessions with participants from the Lanao areas.

⁶² Jubair, Salah. 2000. *Bangsamoro: A Nation Under Endless Tyranny*. Kuala Lumpur: IQ Marin.

⁶³ TJRC Listening Process. 22 March 2015. Lanao del Sur.

⁶⁴ TJRC Listening Process. 15 April 2015. Lanao del Sur.

⁶⁵ TJRC Listening Process. 19 May 2015. Tupi, South Cotabato.

⁶⁶ The heightening of the Islamic system in Sulu/Tawi-Tawi also contributed to this development.

⁶⁷ For example, according to one Listening Process participant, who was forced to seek work abroad: "Women like me need to go abroad, when there are no opportunities for employment in Basilan.... It is very difficult to work abroad, because our employer has a different culture from that which we have here." TJRC Listening Process. 14 June 2015. Basilan.

⁶⁸ Historically, this has been the case as well. It is well known that the campaign undertaken by the US Army against Moro insurgents in Sulu involved the massacre of women and children. Reporting on the battle of Bud Dajo in March 1906, the *New York Times* highlighted the killing of the non-combatants. See: *The New York Times*. 11 March 1906. "Women and Children Killed in Moro Battle." Available at: <http://query.nytimes.com/mem/archive-free/pdf?res=9A0DEED7103EE733A25752C1A9659C946797D6CF> (accessed on 17 March 2015).

In June 1913, troops under US command committed a similar massacre of a Moro community, including an unknown number of women and children, in Bud Bagsak, Sulu. The account recorded in the 1913 Report of the Philippine Commission to the Secretary of War, however, suggests that "practically all the non-combatants" had left the Moro stronghold before a surprise attack was staged. See: *Report of the Philippine Commission to the Secretary of War – 1913. 1914*. Washington. Available at: <https://ia700709.us.archive.org/6/items/reportofphil00unit/reportofphil00unit.pdf> (accessed on 17 March 2015).

⁶⁹ TJRC Listening Process. 19 April 2015. Kalamansig, Sultan Kudarat.

⁷⁰ The following analysis is based on the section on 'history education' in the Dealing with the Past Assessment Draft Report. Pp. 10-11.

⁷¹ Universal Declaration on Human Rights. Available at: <http://www.un.org/en/documents/udhr/> (accessed on 20 October 2015).

⁷² Under IHL, mass atrocity crimes comprise **war crimes** or grave breach of the 'laws of war' as provided for in the Geneva Conventions and its Additional Protocols such as murder, mutilation, cruel and inhumane treatment, torture, outrages on personal dignity, hostage taking, executions, intentionally directing attacks against civilians and religious artifacts, pillage, rape and other forms of sexual violence

(including sexual slavery, enforced prostitution, enforced pregnancy), child soldiers, and enforced displacement committed as part of a plan or policy and conducted on a large scale basis. Furthermore, mass atrocity crimes are also considered **crimes against humanity**, which are acts that constitute widespread and systematic attack directed against civilian population. A useful reference is: Human Rights Watch. 2010. *Genocide, Crimes against Humanity, and War Crimes*. New York, NY. Available at: <http://www.usip.org/sites/default/files/MC1/MC1-Part2Section1.pdf> (accessed 20 October 2015).

⁷³ Given the convergence of IHRL and IHL in contexts of armed conflict, it is worthy to note the obligations of various actors. In the case of States, they are the primary duty bearers that have both positive obligations (i.e., an obligation to do something) and negative obligations (i.e., an obligation not to do something). State obligations with respect to human rights in times of armed conflict include rights that have been violated directly (as in the case of torture) or rights that have been impacted on indirectly (such as the right to education); State obligations regarding IHL imposes the imperative to protect civilians and property. Furthermore, States are obligated to investigate and prosecute alleged violations of IHRL and IHL in times of armed conflict. More importantly, when non-state actors—such as paramilitaries—are linked to the State, “under certain circumstances, States are also responsible for acts carried out by non-State actors. See, for example: UN Office of the High Commissioner on Human Rights. 2011. *International Legal Protection of Human Rights in Armed Conflict*. New York/Geneva. Available at: http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf (accessed on 20 October 2015).

⁷⁴ Common Article 3 of the Geneva Convention and Protocol II applies to all Parties to the conflict, including non-state armed actors. More recently, developments in international criminal law now cover non-state actors as individuals (whether as members or leaders of the group), who can be held liable for the commission of grave and/or mass atrocity crimes, such as war crimes, crimes against humanity, and genocide.

⁷⁵ From the perspective of conduct of hostilities paradigm, certain principles govern the ‘use of force’. For example, under the principle of distinction, it is prohibited to launch ‘indiscriminate and disproportionate attacks,’ while under the principle of precaution, there should be an intent to minimize harm to civilian populations and objects. See: Gaggioli, Gloria. November 2013. *The Use of Force in Armed Conflict: Interplay between the Conduct of Hostilities and Law Enforcement Paradigms*. Geneva, Switzerland. Available at: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4171.pdf> (accessed on 20 October 2015).

⁷⁶ For an account of the controversy surrounding the ‘Jabidah massacre,’ see: Vitug, Marites Dañguilan and Glenda M. Gloria. 18 March 2013. “Jabidah and Merdeka: The inside story.” Available at: <http://www.rappler.com/newsbreak/24025-jabidah-massacre-merdeka-sabah> (accessed on 30 March 2015). The National Historical Commission (NHC) established a commemorative marker on Corregidor Island to denote the place of the ‘reported killings’ in March 2015, some forty-seven years after the event.

⁷⁷ A survivor recalled the details of the ‘Malisbong Massacre’ during a TJRC Listening Process session in Sultan Kudarat on 17 May 2015:

When the 15th IB, 16th IB, 25th IB and 27th IB arrived, it was four days after the start of the Ramadan. We were fasting then. One morning, the army went around the area. They first got the barangay officials and one Municipal Councilor, named Hadji Tatu. They were gathered together and were about 1,000 individuals, including the barangay officials and municipal official. They were the first ones who were captured and never came back. There were also more than 1,000 persons who were left inside the mosque. Every day in the mosque, the army would get 1 to 10 persons. Those who were inside the mosque would hear shots of fire hours after these people were taken outside. And those who were taken outside never came back. After one month, Hadji Drews Ali, the Mayor of Palembang, arrived together with Capt. Tayumo to get 200 people, who were inside the mosque. But they were only able to take 150 people—there were 4 people from the 150 that were rescued. We never knew what happened to those who were left inside the mosque. My grandfather (father of my mother) was buried alive and another relative was nailed to a cross like Christ. Everyday inside the mosque. I had relatives taken—7 to 9 relatives were taken outside, but only the brother

of my father survived. All of them were stripped of their clothes; they were brought to the beach; they were made to dig for their own graves; and when they were done, they were shot and killed.

⁷⁸ Mindanews. 26 September 2014. "Malisbong massacre: 1,500 Moro massacre victims during Martial Law honored." Available at: <http://www.mindanews.com/top-stories/2014/09/26/1500-moro-massacre-victims-during-martial-law-honored/> (accessed on 30 September 2015).

⁷⁹ Concerning the 'Tran Incident,' a participant in a Listening Process session in Maguindanao on 19 April 2015 narrated:

Military pressured Moro barangay officials to call their constituents for a meeting in Poblacion Kalamansig, Sultan Kudarat. When the Moro people were already gathered, the military surrounded them. They separated women from the men. They brought [the men] to their barracks, locked them down for one week. While they are being locked, the military were pulling out one or more Moro men every day, killing them in front of the rest. On the seventh day of being locked down on that barrack, there were only 30 men remaining in that barracks. They board[ed] these remaining 30 men on a naval boat to release them, according to these military personnel, but instead the boat brought the men to barangay Tran then killed them all. They were massacred.

On the other hand, while the military locked down Moro men in that barracks, they took women and children on naval boat. While boarding the naval [boat], children were falling down to the sea water and the military personnel looking at them like dying animals. On board the naval boat, they raped the women and then brutally killed these Moro women.

It should be noted that the military has a very different account of events. According to military sources, the so-called 'Tran Operation' was one of the hardest fought battles of the campaign in Central Maguindanao. As the main logistical base of the MNLF central command, Tran was heavily fortified with bunkers, trenches, air raid shelters, and land mines and was guarded by some 600 MNLF combatants. According to military historians, when AFP learned of the presence of women and children in the area, they suspended offensive operations. "On 3 August 1973, a thousand rebels and their families surrendered to the government forces. After gathering them at the mouth of the Tran River, Navy boats transported them to Cotabato City for processing... [by] the Red Cross, Social Welfare and Health agencies of the government together with civic organizations." See: Domingo, Ruben G. June 1995. "The Muslim Secessionist Movement in The Philippines: Issues and Prospects." A thesis presented to the Faculty of the Naval Postgraduate School, Monterey, California. P. 51. Available at: <https://www.hsdl.org/?view&did=714098> (accessed on 30 August 2015).

⁸⁰ TJRC Listening Process Report. P. 45. Tong Umapuy is a small island that is now part of Sitangkay, a second class municipality in the province of Tawi-Tawi.

⁸¹ Siay is now part of Zamboanga Sibugay.

⁸² In recent times referred to as Palimbang, and now part of Sultan Kudarat Province.

⁸³ Roces, Marian. "Events Pertinent to the Violent Politics of Identity in 20th Century Mindanao: Annotated Timeline." (Hereinafter referred to as Annotated Timeline). Unpublished. Copy personally shared by the author to the TJRC.

⁸⁴ As narrated during a TJRC Listening Process session in North Cotabato on 23 March 2015:

In the early morning of June 1971, in Barangay Manili, Carmen, the Muslim residents including women and children were called to gather in a mosque for a meeting on orders supposedly of a known Moro leader. It turned out that the gathering was called by the Philippine Constabulary (PC) and Ilagâ members, which was actually intended to take the village hostage in exchange for the surrender of Moro rebels in the area. The local Moro commander was given 30 minutes to surrender, although the villagers knew that the time will not be enough for the information to reach, as the location of the Moro commander was very far from the mosque. True enough, after 30 minutes, the people inside the mosque were summarily executed, with

women and children killed and their bodies mutilated. Outside the mosque some houses were also burned. The Philippine Constabulary and the Ilagâ indiscriminately fired their guns at the people inside the mosque and the shooting only stopped when they heard gunshots from outside believed to have been fired by Moro rebels to rescue the villagers. That was the time (when) the PC and Ilagâ withdrew from the area.... Manili became a ghost town (no man's land) after the incident as Moro residents evacuated and some reached as far as Lanao.

⁸⁵ It is said that a BBC broadcast about the Manili massacre drew the attention of Muammar Kaddafi to the plight of the Moros in Mindanao and that his support for the Moro armed struggle began at this time. See: Vitug, Marites Dañguilan and Glenda M. Gloria. 2001. *Under the Crescent Moon: Rebellion in Mindanao*. Quezon City: Ateneo Center for Social Policy & Public Affairs Institute for Popular Democracy.

⁸⁶ TJRC Listening Process. 05 June 2015. Basilan.

⁸⁷ TJRC Listening Process. 06 May 2015. Sultan Kudarat.

⁸⁸ See: Article XVIII 'Transitory Provisions', Section 24 of the 1987 Constitution of the Republic of the Philippines. Available at: <http://www.gov.ph/constitutions/1987-constitution/#article-ii> (accessed on 28 October 2015).

⁸⁹ See the review of the emergence of the CAFGUs and CVOs in: The Institute of Bangsamoro Studies and the Centre for Humanitarian Dialogue. 2011. *Armed Violence in Mindanao: Militia and Private Armies*. Geneva, Switzerland. Available at: http://www.hdcentre.org/uploads/tx_news/17MilitiaMindanaoreportfromIBSandHDCentreJuly2011.pdf (accessed on 13 June 2015).

⁹⁰ In 1987, *Moro Kurier*, a local publication by the Moro People's Resource Center (MPRC), identified several paramilitary groups as responsible for committing human rights violations against Moro communities: Alsa Moro, Kontra Moro Brigade, Poor People's Liberation Movement, Sulu United Movement against Communism, Tinig ng Kristyano/Christian Liberation Army, Christian Liberation Organization, Tornado Command, among others.

⁹¹ According to reports in the media, the Ilagâ began reemerging in 2008, backed by incumbent national government officials. They allegedly targeted members of the MILF. See: "MILF hits DILG Chief over 'Innocence' on Ilagâ." 10 September 2008. GMA News Online. Available at: <http://www.gmanetwork.com/news/story/119303/news/nation/milf-hits-dilg-chief-over-innocence-on-ilaga> (accessed on: 22 October 2015).

More recently, a group of Ilagâ announced its presence in North Cotabato. See: Unson, John. 28 September 2013. "Anti-Moro Group Resurfaces in North Cotabato." *Philippine Star*. <http://www.philstar.com/nation/2013/09/28/1239187/anti-moro-group-resurfaces-ncotabato> (accessed on 22 October 2015).

⁹² For a full analysis of the Maguindanao massacre, see: Human Rights Watch. November 2010. *"They Own the People": The Ampatuans, State-Backed Militias, and Killings in the Southern Philippines*. New York, NY. Available at: https://www.hrw.org/sites/default/files/reports/philippines1110W_1.pdf (accessed on 20 June 2015).

⁹³ Institute for Bangsamoro Studies and Centre for Humanitarian Dialogue. 2011. *Armed Violence in Mindanao: Militia and Private Armies*. Geneva, Switzerland. P. 24. Available at: http://www.hdcentre.org/uploads/tx_news/17MilitiaMindanaoreportfromIBSandHDCentreJuly2011.pdf (accessed on 26 June 2015).

⁹⁴ The SCAA was established in 1989 by the AFP Chief of Staff to supplement the armed forces following a cut in the military budget. Whereas the military provides weapons, ammunition, and training, the operational costs of the SCAA are covered by Local Government Units (LGUs) and the companies

concerned. According to the AFP directive, the members must be qualified reservists drawn from regular CAFGUs and employed by the companies, but often enough they include members recruited from the CVOs and vigilante groups. See: Memo, Renato S. DeVilla, "Guidelines on the Special CAFGU Active Auxiliary," 4 April 1989; cited in: Asia Watch Report. August 1990. *The Philippines: Violations of the Laws of War by Both Sides*. USA. P. 56. Available at: <https://www.hrw.org/reports/pdfs/p/philippn/philippi908.pdf> (accessed on 26 June 2015).

⁹⁵ TJRC Listening Process. 07 May 2015. Lambayong.

⁹⁶ As a TJRC Listening Process participant recounted, Christian CAFGUs burned their houses in Lambayong:

Noon 1980s sinunog ng mga Christians ang mga bahay ng mga Muslim sa kasagsagan ng gulo, sa Islamic center sa Tacurong kami tumutuloy dahil natatakot kami na balikan kami ng CAFGU" (In the 1980s, the Christians burned houses owned by Muslims during the height of the armed conflict, we stayed at the Islamic Center in Tacurong because we were scared of the CAFGU who might return).

⁹⁷ See, for example, accounts from Mining Watch Canada, on the increase of human rights violations committed by SCAA employed by the Canadian company, TVI Pacific Inc, in various places in Mindanao <http://www.miningwatch.ca/increased-human-rights-abuses-around-tvi-pacifics-philippines-operation> and <http://www.miningwatch.ca/tvi-faces-social-political-and-environmental-risk-philippines-indigenous-subanon-muslims-and-other-r> (both sources accessed on 22 October 2015). Additionally, information provided during the TJRC Listening Process uncovered violent incidents in the IP areas of Maguindanao, Sultan Kudarat, and North Cotabato, such the Tingin-Tingin Massacre allegedly committed by the Tunda Force on 20 July 1992.

⁹⁸ TJRC Listening Process. 21 March 2015. Lanao del Norte. Tingin-Tingin is a barangay in the town of Kauswagan, Lanao del Norte

⁹⁹ In Maigo, Lanao del Norte, the Ilagâ-Baracuda squabble was supposed to have been triggered with the assault and killing of a female teacher whose reproductive organs and extremities were mutilated. In the vernacular, he said "*nagsugod ang kagubot diri tungod sa pagpatay nila sa usa ka teacher nga gitusok ang iyang pagkatawo ug gihiwa iyang batiis.*" TJRC Listening Process. 22 May 2015. Lanao del Norte. The atrocity was allegedly committed by members of the Baracuda.

¹⁰⁰ Regarding the 'Patikul massacre', which involved the murder of 35 AFP officers and soldiers, together with Brig. Gen. Teodulfo Bautista, who had gathered for a "peace dialogue" with the MNLF, see: Cal, Ben. 10 October 2014. "Elderly General Recalls 1977 Patikul Massacre." *The Standard*. Available at: <http://manilastandardtoday.com/news/-main-stories/top-stories/159856/elderly-general-recalls-1977-patikul-massacre.html> (accessed on 23 June 2015).

Concerning the 'Pata massacre', which resulted in the death of 119 AFP officers and soldiers, see: Castro, Delfin. Undated. "A Mindanao Story—Troubled Decades in the Eye of the Storm." Available at: <http://www.army.mil.ph/Pata/default.htm> (accessed on 23 June 2015).

¹⁰¹ Santos, Soliman Jr. and Paz Verdades M. Santos. April 2010. In *Primed and Purposeful: Armed Groups and Human Security Efforts in the Philippines*, ed. Diana Rodriguez. P. 356.

¹⁰² For an account of the 2008 MILF offensive, see: Amnesty International. 2008. *Shattered Peace in Mindanao: The Human Cost of Conflict in the Philippines*. London, United Kingdom. Available at: <https://www.amnesty.org/en/documents/asa35/008/2008/en/> (accessed on 28 July 2015). During Listening Process sessions in Lanao del Norte, participants spoke about the attack of the MILF on Kolambugan in 2008. The Maranao participants explained that they also fled when the MILF attacked, saying "*namakwit mi ug apil kay walay pili ang bala, pati among mga balay naigo kay bisan asa mupusil ang mga MILF*" ("We also left our residences for fear of being hit by stray bullets, as the MILF were shooting indiscriminately").

¹⁰³ Amnesty International. 2009. *Shattered Lives: Beyond the 2008-2009 Mindanao Armed Conflict*. London, United Kingdom. Available at: <https://www.amnesty.de/files/Philippines-Shattered-Lives.pdf> (accessed on 1 October 2015). P. 29.

¹⁰⁴ The document was submitted to the TJRC during a Listening Process session in North Cotabato in March 2015. Allegations (unverified from other sources) were made that killings of IPs had taken place in various sitios in Kabacan and Macabentan in Carmen, Cotabato.

¹⁰⁵ Human Rights Watch. 19 September 2013. "Philippines: Mistreatment, Hostage-Taking in Zamboanga." Available at: <https://www.hrw.org/news/2013/09/19/philippines-mistreatment-hostage-taking-zamboanga> (accessed on 13 August 2015).

¹⁰⁶ TJRC Listening Process Draft Report. P. 42.

¹⁰⁷ Some sample literature on the gender dimensions of conflict are: Ormhaug, Christin. 23 November 2009. "Armed Conflict Deaths Dis-aggregated by Gender." *PRIO Paper*; Skjelbaek, Inger. 2001. "Sexual Violence and War: Mapping out a Complex Relationship." *European Journal of International Relations* 7:2; Thompson, Martha. 2006. "Women, Gender and Conflict: Making the Connection." *Development in Practice*; and Zuckerman, Elaine and Martha Greenberg. 2004. "Gender Dimensions of Post-Conflict Reconstruction: An Analytical Framework for Policy Makers." *Gender and Development* 12:3.

¹⁰⁸ TJRC Listening Process Draft Report. Pp. 42-43.

¹⁰⁹ TJRC Listening Process. 03 June 2015. Lanao del Norte.

¹¹⁰ TJRC Listening Process Draft Report. P. 42. Also mentioned in TJRC Listening Process. 20 March 2015. SocSarGen.

¹¹¹ TJRC Listening Process. 22 May 2015. Lanao del Sur.

¹¹² TJRC Listening Process Draft Report. P. 40. The same details were mentioned in the Listening Process sessions conducted in Central Mindanao.

¹¹³ TJRC Study Group on Human Rights Violations. Draft Report. September 2015. P. 15. (Hereinafter referred to as the TJRC Study Group on Human Rights Violations Draft Report).

¹¹⁴ TJRC Listening Process. 15 April 2015. Zamboanga Peninsula and Ipil, Zamboanga Sibugay.

¹¹⁵ TJRC Listening Process. 15 April 2015. Tangawan, Zamboanga Sibugay. According to the TJRC Listening Process Report, "In 1976, a couple, Gulam Kanggah and Apoh Urah Kanggah, were forced to have sex in front of soldiers from the 41st Infantry Battalion."

¹¹⁶ TJRC Listening Process. April-May 2015. Consolidated data from Lanao del Sur and Sulu.

¹¹⁷ TJRC Listening Process Report. P. 43.

¹¹⁸ TJRC Listening Process. 15-16 April 2015. Consolidated data from Lanao del Sur and Zamboanga Peninsula.

¹¹⁹ TJRC Listening Process April-May 2015. Consolidated data from Zamboanga Sibugay, Tawi-Tawi, Sulu, Basilan, and several indigenous communities. Victimized women were usually married off to Christian soldiers without a dowry.

¹²⁰ TJRC Listening Process April-May 2015. Consolidated data from Zamboanga Sibugay, Basilan, SocSarGen, and several indigenous communities. In the case of IP women victims, there were stories of women being used as 'comfort women' during the American and Japanese occupations - these women were impregnated and abandoned.

¹²¹ TJRC Listening Process Report. P. 43. This information came out during the Listening Process session in Tawi-Tawi. 28 March 2015.

¹²² TJRC Key Policy Interview. 21 September 2015. Makati City.

¹²³ Such an investigation would focus, inter alia, on conflict-related sexual violence as constitutive of grave mass atrocity crimes, as defined by the Rome Statute of the International Criminal Court (ICC). The texts of the Rome Statute and its Elements of Crime are available, respectively, at: https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf and at: <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> (accessed on 1 December 2015).

In 2013, 113 countries - including the Philippines - endorsed the "Declaration of Commitment to End Sexual Violence in Conflict." Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274724/A_DECLARATION_OF_COMMITMENT_TO_END_SEXUAL_VIOLENCE_IN_CONFLICT.pdf (accessed on 2 December 2015).

¹²⁴ Santos, Soliman, Jr. 2010. "War and Peace on the Moro Front: Three Standard Bearers, Three Struggles, Three Tracks (Overview)." In *Primed and Purposeful: Armed Groups and Human Security Efforts in the Philippines*, ed. Diana Rodriguez. South-South Network for Non-State Armed Group Engagement and the Small Arms Survey.

¹²⁵ For a discussion on the international terrorist links of the Abu Sayyaf Group (ASG), see: Abuza, Zachary. 2005. "Balik-Terrorism: The Return of the Abu Sayyaf." And Niksch, Larry. 2007. "Abu Sayyaf: Target of Philippine-US Anti-Terrorism Cooperation." CRS Report for Congress. Numerous kidnappings for ransom of local and foreign individuals have been committed by the ASG since 2001. In 2004, it firebombed a ferry off Manila Bay.

¹²⁶ The declaration was made in response to crimes committed by the ASG that resulted in the conduct of military operations in Basilan.

¹²⁷ Proclamation 1946. <http://www.gov.ph/2009/11/24/proclamation-no-1946-s-2009/> (accessed on 30 October 2015).

¹²⁸ Proclamation 1959. Exempted areas were those that were identified in the operational guidelines of the 1987 GRP-MILF General Cessation of Hostilities and proclamation no. 1959 proclaiming a state of martial law and suspending the privilege of the writ of habeas corpus in the province of Maguindanao, except for certain areas (accessed on 30 October 2015).

¹²⁹ TJRC Listening Process. 26 March 2015. Dimaporo; 31 March 2015. Tagoloan. 1 April 2015. Piagapo; 21 May 2015. Salvador; 27 May 2015. Maigo. Lanao del Norte.

¹³⁰ TJRC Listening Process. 14-16 April 2015. Zamboanga Sibugay.

¹³¹ TJRC Listening Process. 15 April 2015. Zamboanga City.

¹³² Montlake, Simon. 14 March 2007. "Pocket Wars and Peace in the Philippines." *Christian Science Monitor*. Available at <http://cbcsci.blogspot.com/2009/07/military-says-idps-are-enemy-reserve.html> (accessed on 15 November 2015).

¹³³ International Organization for Migration (IOM) and World Bank (WB). October 2015. "Land: Territory, Domain, Identity." A preliminary report realized on behalf of TJRC and submitted by the IOM-WB Technical Team to the TJRC Study Group on Marginalization through Land Dispossession (hereinafter referred to as TJRC Study on Land Dispossession Preliminary Report). P xxxvi.

¹³⁴ For a full discussion on the complexity and dynamics of *rido*, see: Torres, Wilfredo Magno III. 2007. *Rido: Clan Feuding and Conflict Management in Mindanao*. USAID and The Asia Foundation.

¹³⁵ International human rights law, which is applicable in times of peace and armed conflict, addresses both the prevention of displacement (e.g., the prohibition of cruel and inhuman treatment and the right to peaceful enjoyment of property) and the protection of civilians during displacement (e.g., the right to personal safety and to a home, as well as the rights to food, shelter, education, and access to work). International humanitarian law, specifically the Fourth Geneva Convention and the Additional Protocols I and II, provides for the protection of civilians, including internally displaced persons, in situations of armed conflict.

¹³⁶ The following overview of internal displacement due to the armed conflict in Mindanao and the Sulu archipelago is based on the analysis of the TJRC Dealing with the Past Assessment Draft Report. Pp. 17-20.

¹³⁷ News media reported that some 5,000 persons, both Moros and Tedurays, fled sectarian violence in the Cotabato valley in January 1971 and were living in appalling conditions. Another 37,000 persons were displaced following violent incidents in North Cotabato in April 1971. See: Mindanao Cross. 23 January 1971. "Hunger Plaguing Cotabato Minorities"; and *ibid.* 21 April 1971. "Refugee Relief." See: TJRC Dealing with the Past Assessment Draft Report. P. 18, fn. 61.

¹³⁸ Thomas McKenna. 1998. *Muslim Rulers and Rebels: Everyday Politics and Armed Separatism in the Southern Philippines*. University of California. P. 156.

¹³⁹ The Ecumenical Commission on Displaced Families and Communities (ECDFC) reported the following figures to the Global IDP Project of the Norwegian Refugee Council: Year 1997 - 189,000 IDPs; Year 1998 - 122,820 IDPs; Year 1999 - 200,000 IDPs; Year 2000 - 800,000 IDPs. The number of IDPs are known to fluctuate and the displacement figures for the year 2000 are, in fact, contested. Whereas the DSWD declared some 600,000 persons as displaced in June 2000, the ICRC estimated the number to be around 150,000 and Philippine National Red Cross around 175,000. See: Global IDP Database of the Norwegian Refugee Council. Profile of Internal Displacement: Philippines (as of 17 December 2001). Available at: <http://www.internal-displacement.org/assets/library/Asia/Philippines/pdf/Philippines-December+2001.pdf> (accessed on 12 August 2015).

¹⁴⁰ More than 400,000 people were displaced in connection with the so-called 'Buliok offensive' launched by the AFP against MILF positions in Central Mindanao in February 2003. A "cessation of hostilities" agreement was signed in July 2003 that enabled most of the displaced to return, although conditions were often not conducive to sustainable reintegration.

¹⁴¹ Armed conflict broke out in Central Mindanao and in Sulu and in Basilan following the Supreme Court decision disavowing the Memorandum of Agreement on Ancestral Domain (MOA-AD) as unconstitutional. The fighting displaced some 745,000 people between August 2008 and May 2009.

¹⁴² The MNLF siege of Zamboanga in September 2013 resulted in the displacement of more than 120,000 civilians and in the destruction of 10,000 houses. Many IDPs returned home after the siege ended, but some 63,000 persons were unable to do so because their homes had either been destroyed or were in parts of city subsequently declared to be 'no build zones' (protected areas). City authorities encouraged those who had settled in the city after migrating from other areas of Mindanao to move to new sites nearby or to return to their original provinces. Many of the displaced Badjaos opposed resettlement

elsewhere and expressed their preference to return their former homes along the waterfront. See: Internal Displacement Monitoring Centre. "Philippines: Internal Displacement in Brief" (as of December 2013). Available at: <http://www.internal-displacement.org/south-and-south-east-asia/philippines/summary> (accessed on 22 March 2015).

¹⁴³ Following the Mamasapano incident in January 2015, the AFP launched an offensive against the Bangsamoro Islamic Freedom Fighters (BIFF) that caused the displacement of some 123,537 persons in Central Mindanao by mid-March. See: ARMM-HEART: Displacement Situation Map (as of March 16, 2015).

Available at: http://www.armm-info.com/wp-content/uploads/2015/03/11015145_1041460662534154_1633395461_n.jpg (accessed on 20.03.15).

¹⁴⁴ See: Internal Displacement Monitoring Centre. Philippines: Internal Displacement in Brief (as of December 2013). Available at: <http://www.internal-displacement.org/south-and-south-east-asia/philippine/summary> (accessed on 22 March 2015).

¹⁴⁵ World Food Program and World Bank Group. December 2011. *Violent Conflicts and Displacement in Central Mindanao: Challenges for Recovery and Development*.

Available at: <https://www.wfp.org/sites/default/files/WB-WFP%20Entire%20Report%20FA%201of7.pdf> (accessed on 14 August 2015).

¹⁴⁶ Cagoco-Guiam, Rufa. July 2013. *Gender and Livelihoods among Internally Displaced Persons in Mindanao, Philippines*. The Brookings-London School of Economics Project on Internal Displacement. Washington, DC. Pp. 7-8.

Available at: <http://www.brookings.edu/~media/research/files/reports/2013/07/gender-livelihoods-idps-philippines/gender-and-livelihoods-among-idps-in-mindanao-philippines-july-2013.pdf> (accessed on 12 August 2015).

¹⁴⁷ Salvatore Schiavo-Campo and Mary Judd. February 2005. "The Mindanao Conflict in the Philippines: Roots, Costs, and Potential Peace Dividend." *Social Development Papers. Conflict Prevention and Reconstruction*. No. 24. P. 6.

¹⁴⁸ According to the latest data collected by the Philippine Statistical Authority in 2012, some 48.7 percent of the families in the ARMM live at or below the poverty level. Within the ARMM, the provinces of Lanao del Sur (67.3%) and Maguindanao (54.5%) have the highest incidences of poverty.

Available at: http://www.nscb.gov.ph/poverty/2012/highlights_fullyear.asp (accessed on 12 February 2015).

¹⁴⁹ Internal Displacement Monitoring Center. 5 November 2009. "Cycle of conflict and neglect: Mindanao's displacement and protection crisis."

Available at: <http://www.internal-displacement.org/assets/publications/2009/200910-ap-philippines-cycle-of-conflict-and-neglect-country-en.pdf> (accessed on 14 August 2015).

¹⁵⁰ The cyclical relationship between poverty and conflict-related displacement and migration has been a constant in Philippine history since the advent of migrant Christian settlers in Mindanao in the 1950s, many of whom were themselves landless peasants who benefited from a government program designed to pacify the Huk rebellion that originated in Central Luzon.

¹⁵¹ The 'use of children as soldiers,' 'children associated with fighting forces (CAFF), or 'children involved in armed conflict' (CIAC) has been a major issue in relation to the protection of the rights of the child. Related international conventions are the Convention on the Rights of the Child (CRC) and Optional Protocol to the Convention on the Rights of the Child, while several reports on children and armed conflict by the UN Secretary-General have been released. In the case of the Philippines, a useful reference is: De Castro, Elizabeth. 2001. "Children in Armed Conflict Situations: Focus on Child Soldiers in the Philippines." *Kasarinlan* 16:2.

¹⁵² Philippine Coalition to Stop the Use of Children as Soldiers. 2004. "Armed or Not, They Are Children: A Primer on the Use of Children as Soldiers in the Philippines." Available at http://www.pstccrc.org/docs/Armed_or_Not_They_Are_Children.pdf (accessed on 28 November 2015).

¹⁵³ Gutierrez, Jason. 20 May 2015. "Philippines Strives to End Recruitment of Child Soldiers." Available at <http://www.irinnews.org/report/101517/philippines-strives-to-end-recruitment-of-child-soldiers> (accessed on 28 November 2015).

¹⁵⁴ In the 2014 report of the Regional Human Rights Commission (RHRC) of the ARMM, a total of 116 cases of human rights violations have been recorded. Of these, the most common violations are torture (19), illegal arrest (15) and killings (10). Of the five ARMM provinces, Sulu and Basilan registered the highest number of cases (25), whereas Lanao del Sur has 21, Tawi-tawi 15, and Maguindanao 10.

¹⁵⁵ The investigation undertaken by the 'Independent Commission to Address Media and Activist Killings,' known as the 'Melo Commission,' is a case in point. The Commission, headed by former Supreme Court Justice Jose Melo, was established in August 2006 to investigate the large number of extrajudicial killings of militants and journalists, in order to determine the root cause of the killings, and if possible, to identify the individuals or interest groups responsible. The Commission concluded that there was substantial evidence linking elements of the military to the killings, but that there was no state policy sanctioning such crimes. In the intervening years, the prevalence of extrajudicial killings continues to be a serious human rights concern. Moreover, the justice system has been unable to prosecute the majority of the outstanding cases successfully. In November 2012, the Aquino administration created a special Inter-Agency Committee (IAC) to investigate human rights abuses both by state and non-state forces and to ensure the resolution of all unsolved and new cases. For a fuller analysis of the issue of extra-judicial killings, see: TJRC Dealing with the Past Assessment. Draft Report. P. 7-10.

¹⁵⁶ The following remarks are based on the research and analysis of the TJRC Dealing with the Past Assessment Draft Report. Pp. 12-14.

¹⁵⁷ A truth commission, for example, might be mandated to examine the scope and nature of the human rights violations that had occurred during a certain time period and to determine the identity of the victims.

¹⁵⁸ In November 2014, the Senate approved a joint Congressional resolution to extend the deadline for filing claims with the HRVCB. During the first filing period, which lasted from May to November 2014, the HRVCB received some 46,985 submissions. The second filing period lasted from 18 April to 30 May 2014, during which time the Board received an additional 26,000 claims. Of these, some 10,000 claims were submitted from persons residing in Mindanao and ascribing to a Bangsamoro identity. The HRVCB has until 12 May 2016 to complete the validation of the applications and to award compensation to the legitimate claimants.

¹⁵⁹ According to the findings of the TJRC Archives Project, several nongovernmental organizations (NGOs), namely Task Force Detainees of the Philippines (TFDP), Medical Action Group (MAG), Families of Victims of Enforced Disappearances (FIND), and Balay Rehabilitation Center, have been documenting human rights violations since the Martial Law period. A few universities also maintain archives documenting human rights violations from this period. Post-Martial Law documentation may be found with the CHR and RHRC. Additional efforts at documentation of human rights violations are being undertaken by the various ceasefire mechanisms created within the ambit of the peace accords. In addition, local peace and human rights groups, religious institutions, print media, and concerned individuals have their own archives that can be explored.

¹⁶⁰ Two TJRC studies were conducted on the issue of land dispossession. The first one was mainly a literature review on land dispossession that was conducted by the TJRC Study Group on Marginalization through Land Dispossession while the second one was a research on "Land: Territory, Domain, Identity"

that was conducted by the International Organization for Migration (IOM) and the World Bank (WB) for the TJRC.

¹⁶¹ TJRC Study Group on Marginalization through Land Dispossession Draft Report. October 2015. P. 1.

¹⁶² TJRC Study on Land Dispossession Preliminary Report. P. xv.

¹⁶³ See the definition of the 'Regalian doctrine' formulated in: Marquez, Jaydee. 4 August 2015. "The Regalian Doctrine." Available at: <http://phjuris.blogspot.ch/2015/08/the-regalian-doctrine.html> (accessed on 24 October 2015)

¹⁶⁴ TJRC Historical Injustice Study Group Report. P 13.

¹⁶⁵ Ferocious battles waged by Moro communities against American forces were widely reported in communities around Lake Lanao, the highlands of Jolo islands of Sulu, and the wetlands of Cotabato. See: Gowing, Peter. 1977. *Mandate in Moroland: The American Government of Muslim Filipinos, 1899-1920*. Quezon City: New Day Publishers; McKenna, Thomas. 1999. *Muslim Rulers and Rebels: Everyday Politics and Separatism in the Southern Philippines*. Berkeley: University of California Press.

¹⁶⁶ Culled from Annotated Timeline.

¹⁶⁷ TJRC Study Group on Marginalization through Land Dispossession, Pp. 11 and 42; Study Group on Historical Injustice Report, p. 58. TJRC Study on Land Dispossession Preliminary Report; and Annotated Timeline, P. 20.

¹⁶⁸ Also see TJRC Study on Land Dispossession Preliminary Report, P. 26.

¹⁶⁹ Bacho, Peter. 1987. "The Muslim Secessionist Movement." *Journal of International Affairs* 41:1. P. 153.

¹⁷⁰ Sepp, Kalev. 1992. "Resettlement, Regroupment and Reconcentration: Deliberate Government-Directed Population Relocation in Support of Counter-Insurgency Operations." A thesis presented to the Faculty of the US Army Command and General Staff College. Available at <http://www.dtic.mil/dtic/tr/fulltext/u2/a255055.pdf> (accessed on 4 December 2015). P. 46.

¹⁷¹ The development of these sectors intensified following American withdrawal from the country in 1945 as the postcolonial government initiated policies supporting their expansion and continuation, in ways that would increase corporate land coverage, especially those engage in logging operations, to 60,000 hectares. See Marginalization Through Land Dispossession Study Group, p. 11; Annotated Timeline, P. 14; TJRC Study on Land Dispossession Preliminary Report.

¹⁷² Silva, Rad D. 1978. *Truth Behind the Mindanao Problem: Two Hills of the Same Land*. Mindanao-Sulu Critical Studies Research; Gowing, Peter. 1988. *Understanding Islam and Muslims in the Philippines*. Quezon City: New Day Publishers; Local Governance Support Program - ARMM. 2009. *Land Tenure Stories in Central Mindanao*; Muslim, Macapado Abdon. 1994. *The Moro Armed Struggle in the Philippines: The Non-Violent Autonomy Alternative*. Mindanao State University; University Press and Information Office; Majul, Cesar. 1973. *Muslims in the Philippines*. Quezon City: University of the Philippines Press; Majul, Cesar. 1985. *The Contemporary Muslim Movement in the Philippines*. Berkeley: Mizan Press; Tan, Samuel. 1977. *The Filipino Muslim Struggle 1900-1972*. Manila: Filipinas Foundation; World Bank. 2011. "Land Tenure in the Philippines, Parts I and II;" TJRC Study on Land Dispossession Preliminary Report; TJRC Study Group Report on Marginalization through Land Dispossession; and Annotated Timeline.

¹⁷³ Silva, 1978; Gowing, 1988; Local Governance Support Program – ARMM, 2009; Muslim, 1994; Majul, 1973; Tan, 1977; World Bank, 2011; TJRC Study on Land Dispossession Preliminary Report; TJRC Study Group Report on Marginalization through Land Dispossession; and Annotated Timeline.

¹⁷⁴ TJRC Listening Process. 27 April 2015. Malabang, Lanao del Sur.

¹⁷⁵ TJRC Listening Process. May 19, 2015; Tupi, South Cotabato; 21 May 2015, Tampakan.

¹⁷⁶ By the end of the 1940s and at the outset of the 1950s, the government created new agencies by law or executive orders to accelerate the implementation of the resettlement programs while addressing the problems they had incurred in the course of their implementation. These new agencies include the Rice and Corn Production Administration (RCPA) in 1949; a Land Settlement Development Corporation (LASEDECO) that replaced the debt-burdened National Land Settlement Administration (NLSA) through President Elpidio Quirino's Executive Order No. 335 on October 23, 1950; an Economic Development Corporation on December 15 also in 1950; and the National Resettlement and Rehabilitation Administration (NARRA) that was created by Republic Act No. 1160 on June 18, 1954.

¹⁷⁷ TJRC Listening Process. May 19, 2015. Tupi, South Cotabato.

¹⁷⁸ The B'laans, particularly those from the Barangays Datal Blao and Bato, left and lived scattered in Davao and other parts of Cotabato for a few years before returning to Tampakan. See the TJRC Listening Process, 21 May 2015, Tampakan.

¹⁷⁹ TJRC Listening Process. 21 May 2015. Tampakan.

¹⁸⁰ TJRC Listening Process. May 19, 2015. Tupi, South Cotabato.

¹⁸¹ TJRC Listening Process. 21 May 2015. Tampakan.

¹⁸² Data generated by the Bangsamoro Conflict Monitoring System from 2011 to 2014. Available at: <http://bcms-philippines.info/vers1/dataanalysis-bcms> (accessed on 26 August 2015).

¹⁸³ TJRC Listening Process, May 19, 2015, Tupi, South Cotabato.

¹⁸⁴ Ibid.

¹⁸⁵ 'Gerrymandering' refers to the manipulation of boundaries of particular electoral constituencies for political purposes.

¹⁸⁶ TJRC Study on Land Dispossession Preliminary Report. P. 71.

¹⁸⁷ McKenna, 1999; Gowing, 1977.

¹⁸⁸ On July 23, 1914, around the time when resettlement of farmers from the north to the agricultural colonies had commenced, the Philippine Commission Act 2309 dismantled the military-governed Moro Province and replaced it with a civilian administrated Department of Mindanao and Sulu. An Organic Act No. 2408 reconfigured then military districts of Cotabato, Davao, Lanao, Sulu and Zamboanga into provinces, and declared Bukidnon as a 'sub-province.' In 1916, the civilian legislative districts of Agusan, Bukidnon, Cotabato, Davao, Lanao, Zamboanga and Sulu were established. See: Annotated Timeline, p. 32.

¹⁸⁹ TJRC Study Group on Marginalization through Land Dispossession Final Report. P. 10. Citing Annotated Timeline pp. 74-75, 88-89, 90, and 135.

¹⁹⁰ TJRC Study Group on Marginalization through Land Dispossession Draft Report. P. 21

¹⁹¹ Cotabato district covers today's provinces of South Cotabato, North Cotabato, Sarangani, Sultan Kudarat and Maguindanao.

¹⁹² The broad areas of the then Davao district includes current day provinces of Davao del Norte, Davao Oriental, Compostela Valley, Davao del Sur, and Davao Occidental.

¹⁹³ Lanao district comprises areas currently known as Lanao del Norte and Lanao del Sur provinces.

¹⁹⁴ Zamboanga district extends to the present day Zamboanga Peninsula provinces of Zamboanga del Sur, Zamboanga del Norte, and Zamboanga Sibugay.

¹⁹⁵ Sulu would later be divided into the provinces of Basilan, Sulu, and Tawi-tawi.

¹⁹⁶ TJRC Study Group on Marginalization through Land Dispossession Draft Report. P. 19.

¹⁹⁷ Ibid. Pp. 2-3.

¹⁹⁸ TJRC Listening Process Draft Report. P. 59.

¹⁹⁹ Ibid.

²⁰⁰ The TJRC Study Group on Marginalization through Land Dispossession Draft Report cites the following Asia Indigenous Peoples Pact (AIPP) as main references to this claim: *Recognition of Indigenous Peoples' Customary Land Rights in Asia*. March 2015; *Victims of Development Aggression. Indigenous Peoples in ASEAN*. 2010; and *Briefing Paper on the Rights of Indigenous Women to their Lands Territories and Resources in Asia*. 2015.

²⁰¹ Mastura, Ishak. Iting Ganguly, Sumit and Kanti Bajpai. 15 September 2008. "Dreams of Independence." *Newsweek* (Atlantic Edition) 152:11.

²⁰² Tuminez, Astrid. May 2008. "The Past is Always Present: The Moros of Mindanao and the Quest for Peace." Working Paper Series No. 99. The Southeast Asia Research Center (SEARC); Gutierrez, Eric and Saturnino Borrás, Jr. 2004. *The Moro Conflict: Landlessness and Misdirected State Policies*. East-West Center, Washington Policy Studies Series 8.

²⁰³ See: International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) and the International Covenant on Civil and Political Rights (ICCPR) (1966). The identically worded Arts 1 (3) ICCPR and ICESCR call upon the "States Parties..., including those having responsibility for the administration of Non-Self-Governing and Trust Territories," to promote and respect this right. In the same article, they also state that all peoples may "for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law" and that in "no case may a people be deprived of its own means of subsistence" (Articles 1 (2) of the ICCPR and ICESCR). By being included in Articles 1 (2) of the ICCPR and ICESCR, the concept of self-determination as a whole was given the characteristic of a fundamental human right or, more accurately, that of a source or essential prerequisite for the existence of individual human rights, since these rights could not genuinely be exercised without the realization of the—collective—right of self-determination. In their general formulation the ICCPR and ICESCR provide essential evidence of the meaning and content of the principle of self-determination even for States which are not parties to them. Source : <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873#> (accessed 7 December 2015).

²⁰⁴ TJRC Dealing with the Past Assessment Draft Report. September 2015. P. 5-6.

²⁰⁵ TJRC Study Group on Historical Injustice Report. P. 58. Citing: Tan, Samuel. 1973. "The Muslim Armed Struggle in the Philippines, 1900-1941". A doctoral dissertation presented to the Faculty of Syracuse University.

²⁰⁶ TJRC Listening Process. 18 May 2015, Lanao del Norte and 12 March 2015, Sultan Kudarat.

²⁰⁷ According to a TJRC Key Policy Interview resource person, direct violence in the form of killing usually takes place after a court resolution of any dispute (land or any other) that does not meet the needs of the aggrieved party or does not generate satisfaction or is perceived as unfair or unjust. While seeking remedies, persons and groups develop further violence against or between clans. TJRC Key Policy Interview. 14 September 2015. Cotabato City.

²⁰⁸ Orentlicher, Diane. 2005. "Report of the Independent Expert to Update the Set of Principles to Combat Impunity." E/CN.4/2005/102/Add.1. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>. (accessed on 1 November 2015)

²⁰⁹ Philip Alston. 2008. "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: Mission to the Philippines." A/HRC/8/3/Add.2 16 April 2008. Available at: <http://www.refworld.org/docid/484d2b2f2.html> (accessed on 28 June 2015)

²¹⁰ Ibid.

²¹¹ TJRC Dealing with the Past Assessment Draft Report. P. 2.

²¹² TJRC Study Group on Legitimate Grievances resource person interview.

²¹³ TJRC Key Policy Interview. 17 September 2015. Makati City.

²¹⁴ TJRC Dealing with the Past Assessment Draft Report. P. 10.

²¹⁵ Ed Quitariano notes that "the economic benefits that state actors generate from a shadow economy that is masked or hidden underneath a general policy to decentralize or subcontract the means of coercion to local elites in conflict-affected areas such as Muslim Mindanao." See: Quitariano, Ed. 2013. "Shadow Economy or Shadow State? The Illicit Gun Trade in Conflict-Affected Mindanao." In *Out of the Shadows Violent Conflict and the Real Economy of Mindanao*. International Alert.

²¹⁶ Among the international human rights conventions are the following: (1) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); (2) International Covenant on Economic, Social and Cultural Rights (ICESCR); (3) the International Covenant on Civil and Political Rights (ICCPR); (4) Optional Protocol to the International Covenant on Civil and Political Rights; (5) Slavery Convention as Amended; (6) Convention on the Prevention and Punishment of the Crime of Genocide; (7) Convention Relating to the Status of Refugees; (8) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); (9) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women; (10) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); (11) Convention on the Rights of the Child (CRC); and (12) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

²¹⁷ The IHL conventions are: (1) 1949 Geneva Conventions; (2) Additional Protocol II to the 1949 Geneva Conventions; (3) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity; (4) Rome Statute of the International Criminal Court (ICC).

²¹⁸ Relevant laws, in this regard, are: Republic Acts (RA) 7309, An Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for other Purposes; RA 9851, Philippine Act on Crimes against International Humanitarian Law,

Genocide and Other Crimes against Humanity; RA 10353, Anti-Enforced or Involuntary Disappearance Act of 2012; and RA 10368, Human Rights Victims Reparation and Recognition Act of 2013.

²¹⁹ International Council on Human Rights Policy. 2006. *Negotiating Justice? Human Rights and Peace Agreements*. Versoix: Switzerland. Pp. 7-68.

²²⁰ Santos, Soliman. Jr. 2005. *Obcit.*

²²¹ Beginning with the peace negotiations, involving the Moro National Liberation Front (MNLF) in 1976.

²²² IAG Policy Brief. June 2011. "What Ails ARMM?" quoting Presidential Spokesperson Edwin Lacierda who said "[The] ARMM is a failed experiment in terms of the aspirations of the Filipino people to give justice to our Muslim brothers." Konrad Adenaur Stiftung. Available at: http://www.kas.de/wf/doc/kas_23597-1522-1-30.pdf?110822074813 (accessed on 7 December 2015).

²²³ As defined in the Basic Principles and Guidelines on Reparation, victims are persons who individually or collectively suffered harm through acts or omissions that constitute gross violations of human rights. While categories exist to define war crimes, crimes against humanity and genocide, there is no single normative definition of a perpetrator, as this qualification will often vary according to domestic legislation.

²²⁴ This kind of mechanism is not new in the Philippines, see for example, the National Commission for Culture and the Arts (NCCA) and the EO No. 80, 1999.

ANNEX 1

TERMS OF REFERENCE FOR THE TRANSITIONAL JUSTICE AND RECONCILIATION COMMISSION

I. REFERENCES

1. The Framework Agreement on the Bangsamoro signed by the Parties on October 15, 2012.
2. The Annex on Normalization signed by the Parties on January 25, 2014.

II. MANDATE

1. The Transitional Justice and Reconciliation Commission (TJRC) shall undertake a study and recommend to the Panels the appropriate mechanisms to address legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations and marginalization through land dispossession, towards healing and reconciliation.
2. The TJRC shall also recommend programs and measures that will bring about the reconciliation of the different communities that have been affected by the conflict.

III. COMPOSITION

The TJRC shall be headed by a chairperson, who is an international expert of recognized independence, competence, probity, and integrity, jointly selected by the Parties. In addition, the GPH and the MILF shall nominate a representative each to the TJRC.

IV. ORGANIZATION

The TJRC shall organize a secretariat and support staff commensurate to its technical, operational and administrative requirements. The TJRC may promulgate its own internal rules of operation consistent with this Terms of Reference (TOR).

V. FUNCTIONS

The main function of the TJRC is to undertake a study and produce a set of recommendations on the appropriate mechanisms to address legitimate grievances of the Bangsamoro people, correct historical injustices, and address human rights violations and marginalization through land dispossession, towards healing and reconciliation.

For this purpose, it shall:

1. Conduct consultations, assessments, or surveys to determine the legitimate grievances of the Bangsamoro people, including those arising from unjust dispossession of land and human rights violations;
2. Survey remedies that may be availed of to address the legitimate grievances of other communities;
3. Consult local and international experts;
4. Study local and international best practices on transitional justice;
5. Recommend immediate intervention towards reconciliation and healing of the physical, mental and spiritual wounds, and provide measures to address the causes of conflict and prevent their recurrence;
6. Propose comprehensive programs to the government to address all findings of the study; and
7. Identify other aspects of transitional justice and reconciliation relevant to its work.

VI. REPORTS AND RECOMMENDATIONS

1. The TJRC shall report directly to the Panels. It shall submit its initial recommendation within six (6) months from its creation.
2. The Panels may require the TJRC to submit periodic updates/reports.
3. The TJRC shall submit its final report to the Panels. The Panels will determine when the final report will be made public.

VII. FUNDING

1. Funding for the operations of the TJRC shall be independently sourced as jointly determined by the Parties.
2. To address the problem of a possible gap between the formal establishment of the TJRC and its long-term funding support, the Panels undertake to find modalities for short-term bridge funding for the initial activities of the TJRC.

VIII. DURATION

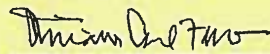
1. The TJRC shall submit its final report to the Panels within one (1) year from its first meeting and shall be consulted on the issue of transitional justice until the signing of the Exit Agreement.
2. The TJRC shall be deemed abolished upon the signing of the Exit Agreement.

IX. CONFIDENTIALITY

All information, data, or opinions gathered, generated or exchanged in connection with the work of the TJRC shall be treated with utmost consideration for the safety and security of the source and the integrity of the peace process. Critical and/or confidential information as defined by the TJRC may not be divulged to their respective organizations and other entities.

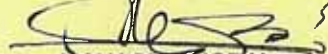
Done this 22nd day of March 2014 in Kuala Lumpur, Malaysia.

FOR THE GPH:



MIRIAM CORONEL FERRER
GPH Panel Chair

FOR THE MILF:



MOHAGHER IQBAL
MILF Panel Chair

SIGNED IN THE PRESENCE OF:



TENGGU DATO' AB GHAFAR TENGGU MOHAMED
Malaysian Facilitator

ANNEX 2

LIST OF VISITED ORGANIZATIONS

ACADEME

1. Ateneo de Davao University
2. Ateneo de Manila Law School
3. Ateneo de Zamboanga University
4. De La Salle University Library
5. Mindanao State University
6. Notre Dame University Library
7. Rizal Library, Ateneo de Manila University
8. Sultan Kudarat Islamic Academy
9. University of the Philippines
10. Institute of Islamic Studies (IIS) Library, University of the Philippines-Diliman
11. Zamboanga City Library

GOVERNMENT

1. Armed Forces of the Philippines (AFP)
2. Bangsamoro Transition Commission (BTC)
3. Bangsamoro Development Authority (BDA)
4. Commission on Higher Education (CHED)
5. Commission on Human Rights (CHR)
6. Coordinating Committee on Cessation of Hostilities (CCCH), GPH-MILF
7. Department of Education (DepEd)
8. Department of Health (DOH)
9. Department of Justice (DOJ)
10. Department of National Defense (DND)
11. Department of Social Welfare and Development (DSWD)
12. Disaster Response Operations Monitoring and Information Center (DROMIC) – DSWD
13. Human Rights Violations Claims Board (HRVCB)
14. House of Representatives
15. Joint Normalization Committee (JNC), GPH-MILF
16. Manila Liaison Office, ARMM
17. Moro Islamic Liberation Front (MILF) - Peace Panel
18. National Archives of the Philippines (NAP)
19. National Commission on Indigenous People (NCIP)
20. National Historical Commission of the Philippines (NHCP)
21. National Library of the Philippines
22. National Prosecution Service
23. Office of the Presidential Adviser on the Peace Process (OPAPP)

27. Office of Southern Cultural Communities (OSCC), ARMM
28. Philippine National Police (PNP)
29. Provincial Prosecution Office of Maguindanao
30. Prosecution Service, Region IX
31. Regional Human Rights Commission (RHRC)
32. Regional Investigation and Detective Management Division, Police Regional Office, ARMM
33. Regional Reconciliation and Unification Commission (RRUC)
34. Senate of the Republic of the Philippines
35. Zamboanga City Library
36. Zamboanga City Police
37. Zamboanga City Prosecution Service

NON-STATE ACTORS

1. Moro Islamic Liberation Front (MILF)

INTERNATIONAL ORGANIZATIONS

1. International Contact Group (ICG)
2. Independent Decommissioning Body (IDB)
3. International Organisation on Migration (IOM)
4. World Bank (WB)
5. United Nations Development Programme (UNDP)
6. UN Women
7. Third Party Monitoring Team (TPMT)
8. United Nations High Commissioner for Refugees (UNHCR)

CIVIL SOCIETY ORGANIZATIONS

1. Alternative Forum for Research in Mindanao (AFIRM)
2. Anak Mindanao Party List
3. Asian Federation Against Involuntary Disappearances (AFAD)
4. Balay Rehabilitation Center
5. Mindanao People's Caucus, Bantay Ceasefire
6. Bantayog ng mga Bayani Foundation
7. Claimants 1081
8. Consortium of Bangsamoro Civil Society (CBCS)
9. Families of Victims of Involuntary Disappearances
10. Free Legal Assistance Group (FLAG)
11. Forum ZFD Civil Peace Service
12. Health Organization for Mindanao (HOM)
13. International Monitoring Team (IMT) Humanitarian Rehabilitation and Development Component
14. Initiatives for International Dialogue (IID)
15. Institute of Bangsamoro Studies (IBS)
16. Institute for Autonomy and Governance (IAG)
17. International Alert
18. Lopez Museum and Library
19. KARAPATAN- Alliance for the Advancement of People's Rights

ANNEX 3

The TJRC Dealing with the Past conceptual approach

I. The Transitional Justice and Reconciliation Commission (TJRC)

What is the status of the TJRC?

The Normalization Annex of the Comprehensive Agreement on the Bangsamoro, signed on January 25, 2014, provides for the creation of the **Transitional Justice and Reconciliation Commission (TJRC)** in order to protect and to enhance the right of the Bangsamoro people and other communities in the Bangsamoro to live in dignity.

What is the mandate of the TJRC?

The TJRC is mandated **to undertake a study and to make recommendations** with a view to promote healing and reconciliation of the different communities that have been affected by the conflict.

The TJRC will propose appropriate mechanisms:

- to address **legitimate grievances** of the Bangsamoro people;
- to correct **historical injustices**;
- to address **human rights violations, including marginalization through land dispossession**

In addition, the TJRC can recommend **immediate interventions** to be made in support of reconciliation and the healing of the physical, mental, and spiritual wounds of the conflict. To this end, the TJRC may recommend measures to address the causes of the conflict and to prevent their recurrence.

II. The Terminology of Transitional Justice

What is transitional justice?

As formulated in his 2004 report on the rule of law and transitional justice, **the UN Secretary General defines transitional justice** as the “full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of

large-scale abuses committed in the past, in order to achieve accountability, serve justice, and achieve reconciliation.”¹

In the same report, the UN Secretary General describes the mechanisms of transitional justice in more specific terms; **transitional justice employs “both judicial and non-judicial mechanisms, including individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”**²

What is the conceptual framework for dealing with the past/transitional justice?

The TJRC uses the Swiss Dealing with the Past (DwP) framework that is both practice and process-oriented and includes conflict transformation as an important element. The four key areas of activity complement one another thematically and practically: The Right to Know, the Right to Justice, the Right to Reparation, and Guarantees of Non-Recurrence. As such, it offers a constructive manner to deal with past wrongdoings, while supporting and strengthening the peace and conflict transformation process. Significantly, the framework suggests that some form of ‘dealing with the past’ on a societal level is a prerequisite for reconciliation.

The principles against impunity acknowledge and define the rights of victims and the obligation of the State to provide remedies for serious violations of IHRL and IHL. Moreover, the TJRC sees a potential framework for dialogue and trust building between State institutions and disaffected sectors of society in the acknowledgement of the rights of victims and of the obligation of the State to provide remedies.

Taken together, the principles against impunity form the components of a **holistic strategy for dealing with grievances and past abuses**.

Although there is no standard model for transitional justice, in recent years a number of precedents have been established through the work of special rapporteurs and

¹ Report of the UN Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (S/2004/616), p. 4. Available at: <http://www.unrol.org/files/2004%20report.pdf>

² Ibid. p. 4. Available at: <http://www.unrol.org/files/2004%20report.pdf>

experts of the United Nations on the issues of reparations, impunity, and best practices in transitional justice.³

One of the most significant developments in this regard has been the progress made toward establishing standards in the struggle against impunity. The principles against impunity were formulated by Louis Joinet in a report to the UN Sub-Commission in 1997⁴ and were later revised by Diane Orentlicher in 2005 at the behest of the Commission on Human Rights.⁵ Known as the ‘Joinet/Orentlicher’ principles, **the principles against impunity describe a conceptual framework for transitional justice by defining the rights of victims and the obligations of the State** to provide redress for serious violations of international human rights law and international humanitarian law.

What are the principles against impunity?

The ‘Joinet/Orentlicher’ principles identify four key areas of activity that complement one another thematically and practically in the struggle against impunity: The Right to Know, the Right to Justice, the Right to Reparation, and Guarantees of Non-Recurrence. Taken together, the principles against impunity form the components of a holistic strategy for transitional justice.

What is the Right to Know?

- The right of victims and of society at large to know the truth.
- The duty of the State to preserve memory.

The Right to Know is based on the **right of individual and collective victims and on the part of society at large** to know the truth about past events and the circumstances that led to the perpetration of massive or systematic human rights violations, in order to prevent their recurrence in the future. It involves an **obligation on the part of the State** to undertake measures, such as securing archives and

³See the reports submitted by Theo Van Boven (E/CN.4/Sub.2/1993/8; E/CN.4/Sub.2/1996/17; E/CN.4/1997/104) and Cherif Bassiouni (E/CN.4/2000/62) on reparations. Concerning best practices in transitional justice, see the analytical study on human rights and transitional justice (A/HRC/12/18 and A/HRC/12/18/Add.1), prepared by the OHCHR in 2009. With regard to the reports on impunity, see footnotes 3 and 4 below.

⁴E/CN.4/Sub.2/1997/20/Rev 1. Available at: <http://193.194.138.190/Huridocda/Huridocda.nsf/0/a0a22578a28aacfc8025666a00372708?Opendocument>

⁵The revision (E/CN.4/2005/102/Add.1) focused on identifying best practices in combating impunity and did not significantly re-formulate the principles themselves.

other evidence, to preserve collective memory from extinction and so to guard against the development of revisionist arguments.

To ensure this right, the ‘Joinet/Orentlicher’ principles propose the creation of **extra-judicial commissions of inquiry** (in practice, often called ‘truth’ or ‘truth and reconciliation’ commissions). The commissions themselves serve a twofold purpose: 1) to dismantle the administrative machinery that led to abuses in the past, in order to ensure that they do not recur; and 2) to preserve evidence for the judiciary. The second measure often entails gathering, preserving, and ensuring the access to archives and information relating to serious human rights violations.

What is the Right to Justice?

- The right of victims to a fair remedy.
- The duty of the State to investigate, prosecute, and duly punish.

The Right to Justice implies that **any victim can assert his or her rights** and receive a fair and effective remedy, including the expectation that the person or persons responsible will be held accountable by judicial means and that reparations will be forthcoming. The Right to Justice also entails **obligations on the part of the State** to investigate violations, to arrest and prosecute the perpetrators and, if their guilt is established, to punish them. Domestic courts have the primary responsibility to exercise jurisdiction in this regard, but international or internationalized criminal tribunals may exercise concurrent jurisdiction, when necessary, in accordance with the terms of their statutes.

The Right to Justice imposes restrictions upon certain rules of law pertaining to prescription, amnesty, right to asylum, extradition, *non bis in idem*, due obedience, official immunity, and other measures, in so far as they may be abused to obstruct justice and benefit impunity.

What is the Right to Reparation?

- The right of individual victims or their beneficiaries to reparation.
- The duty of the State to provide satisfaction.

The Right to Reparation entails **measures for individual victims**, including relatives or dependents, in the following areas:

- Restitution, i.e. seeking to restore the victim to his or her previous situation;
- Compensation, i.e. for physical or mental injury, for lost opportunities with respect to employment, education, and social benefits, for moral damage due to defamation, and for expenses related to legal aid and other expert assistance;
- Rehabilitation, i.e. medical care, including physiotherapy and psychological treatment.

The duty of the State to provide satisfaction pertains to **collective measures of reparation**. These may involve symbolic acts, such as an annual homage to the victims, the establishment of monuments and museums, or the recognition by the State of its responsibility in the form of a public apology that discharge the duty of remembrance and help to restore victims' dignity. Additional measures in this regard foresee the inclusion of an accurate account of the violations that occurred in public educational materials at all levels.

What is the Guarantee of Non-Recurrence?

- The right of victims and society at large to protection from further violations.
- The duty of the State to ensure good governance and the rule of law.

The Guarantee of Non-Recurrence focuses on the need to disband para-military armed groups, to repeal emergency laws, and to remove senior officials from office who are implicated in serious human rights violations. It also foresees the reform of laws and State institutions in accordance with the norms of good governance and the rule of law. In particular, it regards the **reform of the security sector and of the judiciary** as priorities. With regard to para-military groups, it makes reference to the process of **disarmament, demobilization, and reintegration of former combatants** with special attention to be paid to the demobilization and social integration of former child soldiers. The **vetting of public officials and employees** should comply with the requirements of due process of law and the principle of non-discrimination. In addition, civil complaint procedures should be introduced.

The DWP Framework

REFERENCES

Federal Department of Foreign Affairs | swisspeace
Based on the principles against impunity by Louis Joinet & Diane Orentlicher





Report of the
Transitional Justice and Reconciliation Commission