

The Philippines

The Transitional Justice and Reconciliation Commission (TJRC) Report

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A BACKGROUNDER



PEACE
IN
MINDANAO
-AMIN- (ANAK MINDANAO)

PREPARED BY

Hunter Korman
400262010
Department of History,
McMaster University

SUBMITTED TO

Dr. Bonny Ibhawoh
HISTORY 4RR3: Truth
and Reconciliation
After Atrocity



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"Understand that reconciliation is not about "feeling guilty". It is about knowledge, action, and justice." [1]

Introduction

Described as one of the lengthiest armed conflicts throughout Asian history[2], the Bangsamoro region is notable in peace talks and reconciliation commissions for its interesting duality – on the one hand, it showed the aftermath of territorial conflict and the long-lasting effects on the national community; on the other hand, Mindanao's issues with the Philippine state demonstrated the need for peaceful reconciliations and reparation narratives.[3] Using the Philippines TJCR Report as well as various supplementary materials of multiple mediums, I am to present a thorough and thoughtful analysis of the Transitional Justice and Reconciliation Commission (TJCR) of the Philippines and will detail the mandates, processes, and outcomes of the commission. Additionally, this backgrounder will present the public sentiments, scholarly assessments, and legacy of the Bangsamoro conflict, as described in the TJCR report.



Figure 1 depicts a map of the Philippines. The regions discussed in this backgrounder are colour coded in red.



Image 2 depicts Christian Filipinos under Spanish rule

Historical Context

The TJRC report focuses extensively on the armed conflict in Bangsamoro around the time of the implementation of Martial Law (1972), despite the conflict stretching back to the 1500s. Supported by surrounding areas such as Mindanao and Sulu, the Moro conflict is discussed through both a political and civil lens, with lasting consequences from the Spanish conquest and the Philippine-American War. The TJRC was a work in progress in October 2012, but with the signing of the Comprehensive Agreement on the Bangsamoro (CAB) on 27 March 2014, followed by the Normalization Annex on 25 January 2014, the foundation of the TJRC was created.[4] Described as being guided by the four key principles of “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”[5], the TJRC was not the first truth commission that had attempted at promoting transitional justice within the Philippines; nor was the TJRC limited to one discipline – the initiative was built on the promise of investigating grievances concerning social, political, or economic marginalization[6], all of which have a legitimate claim as human rights violations.

Social Context

Central to this backgrounder is an understanding of human rights and violations. The Philippine TJCR notes the following definition of human rights: “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, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status” as well as non-distinction ‘of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.’ Human rights are inherent, indivisible, and inalienable. Every human being has civil, political, economic, social, and cultural rights that must be observed, guaranteed, and upheld at all times – whether in times of peace or, even more so, during periods of war and armed conflict.”[7] While various factors can be attributed to topics described as human rights violations, the TJRC Report from the Philippines lists three intertwining concepts consistently at the root of committed atrocities – violence, impunity, and neglect.[8] These three phenomena themselves are part of a bigger picture surrounding “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 pre-existing nations and nation-states”[9].

Despite the signing of the two acts, Philippine Congress had not yet finished deliberating on the future of the Bangsamoro Basic Law (BBL) that would provide the basic foundation for political and institutional change, leaving the ground situation capricious.[10] Therefore, reconciliation within affected communities in the Bangsamoro narrative is not enough – transitional justice must be emphasized in the greater Philippine society, which will then provide a framework for the government to conceptualize a sustainable peace process.



Image 3 depicts MILF leader Macaraya Ampuan meeting with affected villagers.

Political Context

The Philippines has had a rocky relationship with democracy and is perhaps best described as a parliamentary republic. Governed by an elected President and a Cabinet of Ministers [11], the country supposedly functions similarly to the United States of America. However, the Bangsamoro conflict cites the government as one of the main perpetrators and obstacles to peaceful recognition [12], due to the aftermath of power transitions from first the Spanish, and then the Americans.

The Truth Commission's Mandate

Officially launched on 27 September 2014, the Philippine Transitional Justice and Reconciliation Commission (with input from the Framework Agreement on the Bangsamoro/FAB) was to study and provide appropriate reparations on the following issues: address the legitimate grievances of the Bangsamoro people, correcting historical injustices and atrocities, address human rights violations, address marginalization through land dispossession.[13] Furthermore, the TJRC was to provide recommendations for different communities' reparations, affected by varying degrees of conflict.[14] Reparations were also to be made for physical, mental, or spiritual trauma.[15]

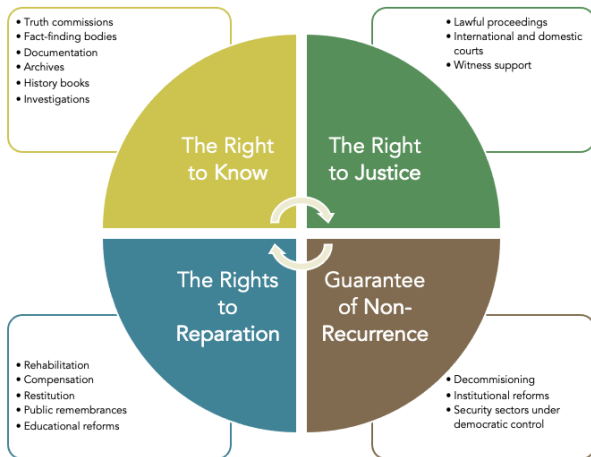


Figure 2 depicts the cyclical goals of how the TJRC approaches past atrocities. Note that the central role of victim/perpetrator applies to all categories. The methodology towards reconciliation, as described in the Philippine TJRC, is unique for its complex consultation processes. Spanning across academic investigations and community interviews, many of the research steps complement each other, and the different consultations are cycled through various sources to provide parallels.[16]

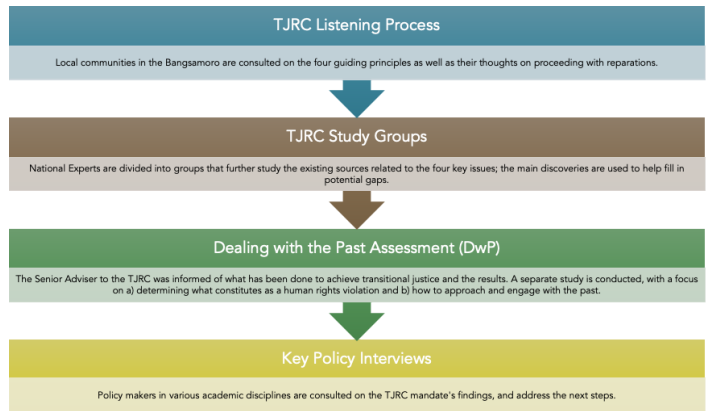


Figure 3 depicts a simplified version of the TJRC Consultation Process, as described in the Philippine TJRC Report.

Those interviewed come from a variety of fields and backgrounds, including various men and women from agricultural and fishing villages and spanning to professionals operating in spiritual, business, and government offices. Law enforcement, healthcare workers, and teachers were also consulted. Additionally, various primary sources were utilized in attempts to understand the 'Moro issue'. [17]

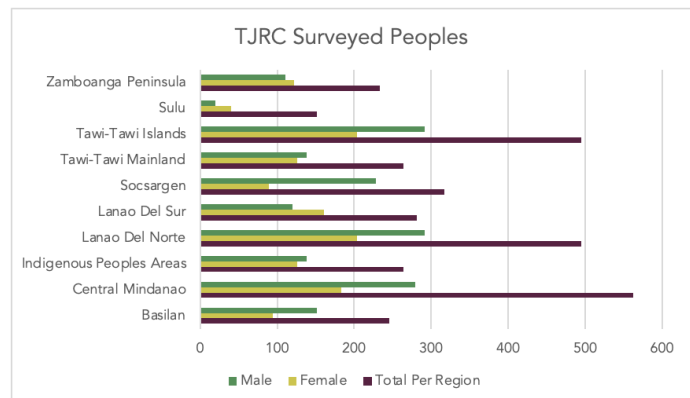


Figure 4 signifies the locations in which TJRC surveys were conducted, as well as the number of people interviewed. The red bar represents the male participants, and the blue represents the females. In total, of the 3307 people surveyed, 1867 were male and 1349 were female.

Results and Main Findings

Understandably, the main goal of the TJRC was to use its mandate as a way of “understanding what the issues of legitimate grievances, historical injustice, human rights, and marginalization through land dispossession might mean to affected communities”.^[18] Broadening the mandate allowed the commission to handle a variety of atrocities, as well as provide a wealth of insightful information to dismantle harmful grievances.

It might be helpful to note the following definitions before proceeding with this background:

Grievance, defined thoroughly by the Philippine TJRC, is “an act creating an injustice, an unjust act that can cause resentment”. A grievance can be perceived in various manners – from different emotions to physical reactions.^[19]

Additionally, the term **legitimate grievances** tend to deal with a wider range of issues, including but not limited to social exclusion, violent responses to government policies, exclusion of different ethnicities, identities, and histories, and marginalization. This concept is especially useful in describing government neglect and originally arose in peace talks between former MILF Chairman Salamat Hashim and United States President George W. Bush.^[20]

A grievance is therefore considered legitimate when a large group, regardless of societal constraints, has been affected by an atrocity.

The biggest legitimate grievance was described as “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”^[21], especially regarding assimilation, discrimination, marginalization, and injustice. These concepts would eventually form the need for self-determination by the Moro people, which became the catalyst for rebellion on the part of both the community and the state. The grievances would be carried out by the victims in the aftermath of the experience. TJRC members noted that, in interviews, affected victims would physically act out their trauma to the interviewer^[22]; additionally, the more common experiences recollected an intolerance towards religious and cultural practices.^[23] Addressing the atrocities of a stained nation's past had a profound impact on the goals of the TJRC, which concluded that there needed to be “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”.^[24] This theme of double marginalization would continue to plague the Philippines, despite the best efforts of the truth commission.

Results and Main Findings Continued

No subcategory exemplifies this theme of double marginalization better than the gender dimension. Occasionally reduced to a harmful stereotype based solely on physical appearance [25] and left to take on both gender roles when their husbands left to fight [26], the report found that women became the main breadwinners out of necessity. When conflict forced them to abandon their livelihood, women and children became more vulnerable to violations, including sexual assault and human trafficking.[27] Despite these atrocities and consistently being excluded from small victories, women were reluctant to ask the government for aid. According to the following testimony:

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.[28]

This analysis of legitimate grievances can be extended to the gender issue, as women perceived their trauma as matching the descriptions of violations. Therefore, a more proper definition of legitimate grievances might be “a wide range of disparate issues which have fed and continue to feed the discontent and dissatisfaction of the Bangsamoro people...[it] may be understood as a collective designation for harms suffered whether they be political, economic, social, or cultural in nature”.[29]

Key Personalities: Victims

The victims were the religious, and ethnic minorities spread throughout the Bangsamoro region. [30] Primarily of the Muslim religion, the Moro peoples (both males and females) sought to protect their livelihood and cultural identities from assimilation into other religious or ethnic identities. The main opposers to the Moro rights were the Christian Filipinos, under the lasting effects of Spanish colonialism and the American authorities during the Philippine-American War. [31]

After the signing of the Bangsamoro Organic Law (BOL), the Bangsamoro Transition Authority was implemented, with the MILF holding 41 of 80 seats; positions include the chief minister, two deputy chief ministers, members of parliament, ceremonial position of the wali, the chief minister's cabinet, and the council of leaders. [32]



Image 5 depicts young schoolgirls in the Bangsamoro region, many of whom had parents associated with the armed conflicts.

Important Figures of the Bangsamoro Conflict include:

The Moro Islamic Liberation Front (MILF) group, whom fought in many of the armed conflicts.

The MILF later went on to be part of multiple peace conflicts in the aftermath of the Bangsamoro conflicts.



Image 6 depicts some of the MILF fighters in the southern Philippines.

Key Personalities: Perpetrators

While the TJRC does list some of the perpetrators in the Bangsamoro conflict, the report also notes that it was challenging to accurately name each individual [33].

The legitimate grievance of land dispossession was perpetrated by the Christian settlers during the Spanish conquest of the Philippines; the Moro peoples came to resent them due to the forced re-settlement off of their ancestral land. [34]

In an interesting bystander manner, the Philippine Government also stands to have cause as a perpetrator. Despite countless social reforms and attempts at reconciliation, the Moro people persisted in their fight against religious and cultural assimilation, and at times the government was unable to quell the rebellion. [35]

It is also important to note that naming a perpetrator is a controversial topic that many truth commissions have grappled with. Notably, Hayner states that "few issues around truth commissions have attracted as much controversy as the question of whether a commission should publicly name those individuals it finds to be responsible for human rights crimes".[36] Naturally, there is the 'innocent until proven guilty' perspective, as well as a viewpoint that requires a clear and substantial amount of evidence linking the guilty party to the crime. Additionally, the crime must be placed in the context of the country's perspectives surrounding the atrocity. Prosecuting a crime in the Philippines should be dictated according to Filipino customs and terms, not by assimilating the TJCR to a Western hegemonic discourse surrounding human rights claims.



Image 7 depicts all Presidents of the Philippines since 1899. The TJCR Report focuses on the time period of the 8 most recent Presidents.

Outcomes and Legacies

It is natural to assume that societal mistrust after an atrocity has historical roots in the region, and that statement, unfortunately, prevails in the TJRC Report. There are multiple layers at the heart of Mindanao's conflict, including but not limited to racism, sexism, colonialism, and postcolonialism. Recognizing these issues is key to building a multifaceted, strategic approach that will ensure a foundation for trust between the State and the citizens. The following preceding initiatives helped establish initial trust:

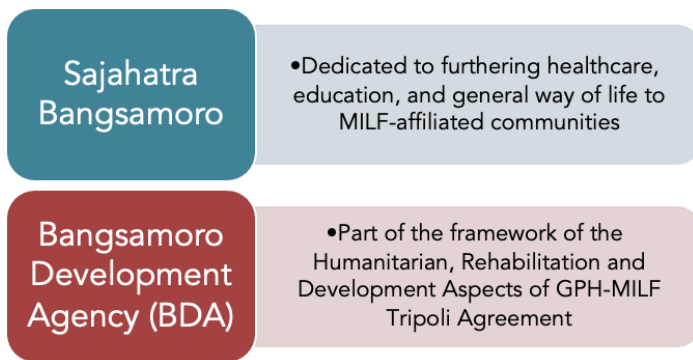


Figure 5 depicts prior initiatives in attempts to build trust between the State and the citizen.

Defining 'legitimate grievances' is only possible by defining 'historical injustices'. According to the TJRC Historical Injustice Study Group, the concept is described as "[pertaining to] wrongdoings...committed or sanctioned by governments (Spanish, American, and Japanese colonial governments and the Philippine Government) that hurt or harmed people...affected relationships...repeatedly over time and were not (properly) addressed".[37] Furthering the definition is the notion that reparations should help a person restore confidence in their identity.[38]

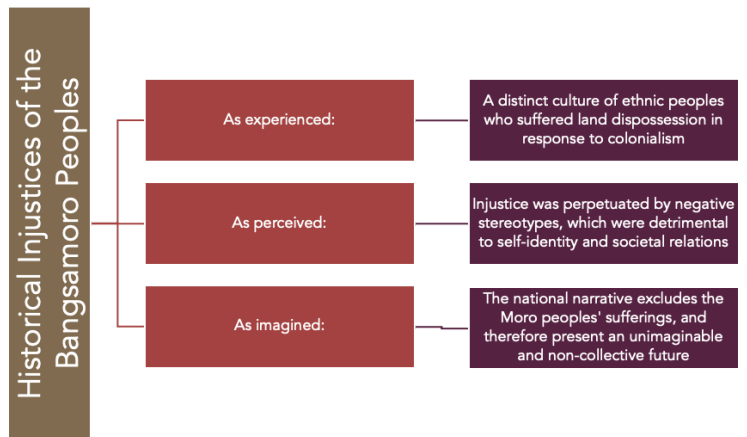


Figure 6 details the manifestations of the injustices affecting the Bangsamoro people.

Patterns of perpetuating historical injustices were attributed to state institutions (education and the media) influencing the historical narrative, threats to the Muslim religion by Christian settlers, and armed militant groups.[39] The TJRC emphasizes that the unique characteristics of the Bangsamoro and Mindanao indigenous peoples were not recognized, nor were they constricted – they simply were excluded from the national identity.[40] This assimilation is the single biggest root cause of land dispossession, with the report noting the following:

"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."
[41]

Public Response

There were various reactions and perspectives shared to media platforms regarding the peace processes after the Bangsamoro conflict. Carolyn Arguillas' news article discussed the attempts to create a government with appointed Moro figures; this government would be "inclusive of the non-Moro settlers and Indigenous peoples as provided by the law". [42] Also noted are the public sentiments about transitioning from the Autonomous Region in Muslim Mindanao (ARMM) to the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). [43] She notes that, of the regions depicted in the graph above (Figure 4), Basilan and Sulu refused inclusion in BARMM. [44] Daphne Galvez shared a similarly positive response to the peace-building processes, writing that "we are finally seeing Mindanao shed its history of conflict and enter an age of peace and progress" [45].

Simone Orendain, however, had a different perspective in her news article. In discussing the terrorist attacks that continued to unfold in late 2014 over the peace processes, she noted that "the Bangsamoro Islamic Freedom Fighters do not agree with the peace deal and broke away from the MILF in 2011. They have been fighting the government ever since and officials believe they are harbouring nine suspected terrorists, including foreign nationals". [46] Ted Regencia noted that "President Aquino is very committed to use his political capital for the effective implementation of everything that has been signed" [47], again highlighting the government as a bystander perpetrator. The changing of the victim to perpetrator showed the devolving nature of the Philippine peace talks, as well as illustrating how fickle the concept of peace can be in countries afflicted with violent struggles.



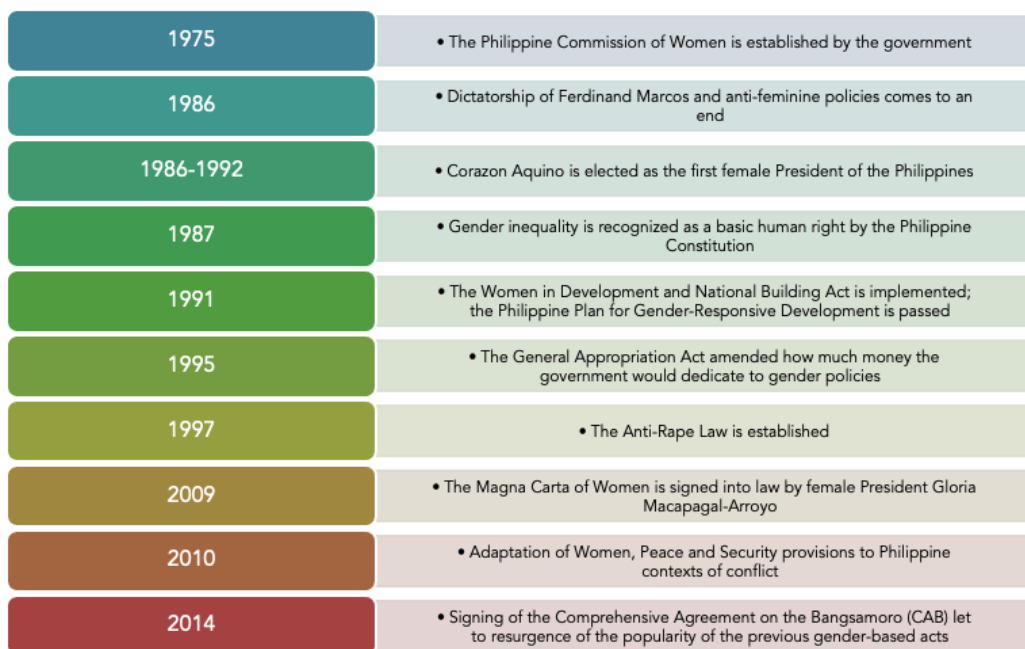
Image 8 depicts Philippines President Benigno Aquino (centre), MILF negotiator Mohagher Iqbal (in black), and Senate President Franklin Drilon after a peace talk.

Scholarly & Personal Assessments

Overall, the Transitional Justice and Reconciliation Commission Report of the Philippines was interesting, insightful, and cohesive. The discussion of multiple Indigenous peoples in relation to a singular historical event furthered the commission’s findings and allowed for a variety of reparations. As previously mentioned, one loophole in the TJRC report was the lack of discussion surrounding Filipino women during the Bangsamoro conflict; the report explicitly notes that, while it has the potential to be an elaborate research project, they did not further their analysis to include women. Despite the underrepresentation of women and female perspectives in the Philippine TJCR report, scholarly assessment has debated the role of gender provision in cases detailing human rights violations and atrocities. For instance, gender provision is defined as “[promotion of] women’s inclusion in post-war institutions, or integrate reforms to improve women’s rights, such as ensuring women’s access to land through rural reform, or improvements in women’s physical security through legal reforms”.[48]

This concept is applicable to the Bangsamoro conflict due to the reversal of traditional gender roles in the case of peace talks in the aftermath of armed conflict. Unfortunately, the political context mentioned earlier is among the most significant inhibitors of women’s rights and recognition. The general disposition to women’s rights was negative, given the reliance on political will and societal ideology.[49] This theme is one that has recurred in seminar discussions, as peace agreement talks are a broad concept that heavily affects other implementations; moreover, cultural contexts including state capacity [50], mobilization of feminist-themed organizations [51], and international advertisement [52] could prioritize other provisions. While Duque-Salazar acknowledges the work of the TJCR in quickening gender provisions by implementing various female-oriented provisions, he also notes that gender equality is not a primary theme in human rights discourse. [53]

Figure 7 below outlines a timeline of women's rights in the Philippines.



Scholarly & Personal Assessments

Similarly to Duque-Salazar et. al., Sifris and Tanyag detail the role and rights of the Moro women in Mindanao, Philippines, examining how the TJRC hardly considers the marginalization of women in the Bangsamoro conflict and general Filipino society. [54]

While there are some similarities of suffering due to armed conflict, women suffer atrocities that are typically not affiliated with men; nonetheless, feminists have seen some success in the aftermath of transitional justice, particularly in the political or social context. One reason transitional justice varies with respect to women's displacements is that "transitional justice discourse largely buys into the public/private divide, rendering invisible many of the harms disproportionately suffered by women, domestic violence being the obvious example". [55] Therefore, limitations to proceeding with cases regarding abuse against women exist, as many atrocities are not pursued if they pose no threat to a larger state conflict.

Another weak point of the TJRC's discussion can be found in their exclusion of youth groups, when in fact the Moro youths played a major role in the Bangsamoro conflict and the following post-conflict society. Political exclusion is noted by Cabanes and Podder, who notes that "some young people resort to informal forms of power for survival and self-representation, applying a form of subaltern agency to navigate their everyday life...these experiences tend to push youth to engage in new forms of violence and criminality... [many] are disappointed with the peace dividends that are unforthcoming due to a lack of trickle-down economic effects".[56]

To recognize these feelings of injustice, scholarly assessments have discussed youth inclusion in peace processes, in efforts to promote inclusion into the idea of national identity.[57]

The main governing body dealing with these issues was the Bangsamoro Transition Authority (BTA), which found that Moro youths were often involved in armed conflict due to a strong desire to protect their families and communities.[58] Furthermore, youths often provided a prominent force for civil society inclusion, on both the local and national front.[59] BARMM, while recognizing representation from various subaltern groups, does not officially have a youth representative – Moro youths often worked jobs under the secretariat, informally shaping outcomes with mere presence.[60]

There is also the case of the truth commission having the primary issue of mandates followed by truth commissioners following a pre-determined and ambiguous list of abuses that are almost always enforced by a powerful political figure. [61] This concept, as illustrated by Priscilla B. Hayner, certainly applies to the Philippines TJCR Report.

Scholarly & Personal Assessments

On the topic of transitional justice and minority groups, Chris Chapman dictates the supposed impact of transitional justice on ethnic and racial minorities as well as Indigenous peoples, noting a basic framework transitional justice seeks to promote – the rights to existence, non-discrimination, a protected identity, and influence in public provisions [62], as set out by the United Nations. Crimes such as genocide, assimilation, and sexual assault against ethnic minorities are therefore based on Western laws and judicial proceedings rather than developed in the context of the country’s cultural practices. Other violations include “wholesale attacks on minority communities, not just through physical attacks but also by seizure of land and property, economic marginalization, prohibition of community organization, the dismantling of political structures, forms of assimilation by stealth... the right to protection of traditional ways of livelihood, the right to form minority associations, and access to citizenship” [63] are typically reviewed over individually rather than under the guidelines and proceedings of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Additionally, Indigenous peoples suffer from racism, geographical isolation, and lack of proficiency in a national language [64], further marginalizing them from the dominating political group.

Marshaley J. Baquiano notes that the Bangsamoro conflict is perfect for describing a precursor to the TJCR’s reparation frameworks, as he centres his analysis of the Bangsamoro conflict on positioning theory and peace psychology. The concept of positioning theory can be broken down into three sub-concepts:

Position dictates “a set of beliefs about how rights and duties are attributed to social actors in the course of social interaction” [65]

Storyline details “the narrative convention where social episodes take place, giving meaning to actions”. [66] Moreover, the storyline “determines familiar positions, with associated rights and duties”. [67]

Speech act “is referred to as intended action...status of a communication...or what is socially accomplished through an action”. [68]

The three concepts, however, are ever-evolving and a party may occasionally be able to occupy multiple positions – therefore, positioning theory is dependent on social interactions. [69] A legitimate concept for this background, due in part to the fluid motion of victim vs. bystander vs. perpetrator, in which assigning labels is a complex matter.

Concluding Remarks

In conclusion, the Bangsamoro conflict, at the centre of the TJCR Report of the Philippines, has a long history of violence between the Philippine Government and the religious Moro people. Various armed conflicts occurred due to insurgency groups seeking recognition and reparations for the multiple human rights violations they received, with various atrocities across a political, economic, and social spectrum. The contemporary acknowledgements of the Moro people, for the most part, have allowed for a cohesive and peaceful transition, with only occasional counterattacks. Ultimately, the most important takeaway from both this backgrounder and the TJCR Report is that human rights violations exist in a variety of forms, and therefore reconciliation can take on many different implementations. Another important takeaway is the ambitious and ambiguous nature surrounding truth commissions – there are issues that fall under the human rights outline that is overshadowed or underscored by a more prevalent issue, depending on the country's context. The final important note to understand is that there is more than one way to provide reparations – in the case of Bangsamoro, the return of land and acknowledgment of different religions under one country were forms of reconciliation in the peace-building process, as opposed to simply paying off the affected victims. Therefore, one might say that truth commissions, regardless of the reasons for implementation, promote a notable cause – they start the peace-building process that gets the country on the path to healing, truth and reconciliation after atrocity.

Bevernage introduces the theme of the relationship between history and justice or ethics and the two primary sides; Friedrich Nietzsche, who believes that moving on is essential for a fulfilling life, and that it does humanity no good to dwell on the past. On the other side of the spectrum, we encounter Walter Benjamin, whose perspective centers around the idea that humanity has no hope in fixing the issue by looking towards the future; rather, we should look at the events preceding the atrocity and attempt to recognize what led to the event. [70] These two varying viewpoints present an unstable middle ground to consider the past from – what is the past? How should we approach events that have happened in an irreversible moment, and is there a point to working towards a better future? Perhaps we might never know – at best, we can certainly try and work towards a peaceful, sustainable future.

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