

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SIXTEENTH CONGRESS
Second Regular Session

House Bill No. **5404**



Introduced by Honorable Sherwin T. Gatchalian

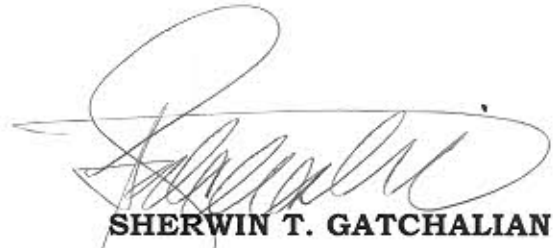
Explanatory Note

On January 25, 2015, elements of the Philippine National Police – Special Action Force (SAF) and the Moro Islamic Liberation Front (MILF) clashed in Brgy. Tuḡanalipao, Mamasapano, Maguindanao. The SAF troops were purportedly engaged in a covert special operation to serve a warrant of arrest and capture the notorious international terrorist Zulkifli bin Hir, also known as Marwan, and Filipino terrorist Abdul Basit Usman. The bloody incident resulted in the death of forty-four SAF commandos and seventeen MILF fighters, as well as several civilian casualties. The incident has also thrown the ongoing peace process into growing controversy, putting adherence to the 2012 Comprehensive Framework Agreement and the formulation and promulgation of the Bangsamoro Basic Law into danger. Public indignation about the incident has only been heightened by the secrecy and confusion of facts and accountabilities that continue to shroud the truth of the events of that fateful day.

Lasting peace and equitable development has eluded embattled parts of Mindanao for decades. The long struggle between the GRP and Islamic separatist movements has been detrimental to the interests of Filipinos and our Moro brothers alike. Hence, the uproar of public indignation, which has resulted in threats of stalling the peace process, is decidedly against the public interest. However, the struggle for peace cannot be separated from the struggle for truth. In order for us to move forward from this incident with constructive lessons learned instead of divisive battle lines drawn, it is imperative that all erring parties involved in this incident are held accountable under the solemn objectivity and fairness of the Law. In order to craft better policies that will ensure peace in Mindanao, we must arm our legislators, government officials, and the public at-large with the truth of what really happened in Mamasapano.

With the twin ideals of justice and peace in mind, this legislation seeks to create a truly independent fact-finding commission tasked to unveil the truth of the Mamasapano Incident. The Mamasapano Commission will be responsible for investigating the preparation and implementation of the SAF operation, the real sequence of events on the ground during the incident itself, and any other occurrences material to the identification of the accountabilities and liabilities of all parties either directly or indirectly involved in the incident. In pursuit of this responsibility, the Commission shall be vested with broad investigatory powers. The provisions of this Act are largely based on, or borrowed from, Republic Act. No. 6832, the law which institutionalized the Davide Commission, the investigative body responsible for looking into the coup d'etat attempts during the administration of President Corazon Aquino.

Support for the immediate passage and approval of this pivotal legislation is earnestly sought in the name of justice for the Fallen and lasting peace in Mindanao.



SHERWIN T. GATCHALIAN
Representative
First District, Valenzuela City

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AN ACT

CREATING AN INDEPENDENT TRUTH COMMISSION TO CONDUCT A THOROUGH FACT-FINDING INVESTIGATION OF THE MAMASAPANO INCIDENT OF JANUARY 2015, IDENTIFY THE ACCOUNTABILITIES AND RESPONSIBILITIES OF INVOLVED PARTIES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

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

SECTION 1. **Short Title.** – This Act shall be known as the “*Mamasapano Truth Commission Act.*”

SEC. 2. **Creation of the Commission.** – There is hereby created an independent Truth Commission which shall investigate the facts and circumstances of the Mamasapano Incident on January 25, 2015 which resulted in the death of forty-four (44) members of the Philippine National Police – Special Action Force during a clash with Moro separatist forces in Brgy. Tukanalipao, Mamasapano, Maguindanao.

SEC. 3. **Mandate and Functions.** The Commission shall be primarily responsible for identifying the accountabilities and responsibilities of parties involved in the incident. Pursuant to this mandate, the Commission shall:

a) Conduct a thorough fact-finding investigation of the incident and the involvement therein of military personnel and civilian personalities, including public officials and employees of the Government of the Republic of the Philippines, officials and members of the Moro Islamic Liberation Front and other insurgent groups, and citizens or agents of foreign governments;

b) Administer oaths, take testimony or receive evidence relevant to the investigation, and to issue subpoena *ad testificandum* or subpoena *duces tecum* to produce documents, books, records and other papers;

c) Evaluate all the facts and circumstances, receive, review, and evaluate testimonial and documentary evidence relevant to the investigation;

d) Recommend the filing of appropriate criminal or administrative charges, as the case may be, against any person, when in the course of its investigation, the Commission finds that there is reasonable ground to believe that he appears to be liable for any criminal or administrative offense in connection with said Incident;

e) Hold any person in direct or indirect contempt for justifiable cause, and impose appropriate penalties therefor;

f) Endorse to the Office of the Solicitor General the filing of complaints in the competent international courts against any person when the Commission finds that there is reasonable ground to believe that the person appears to be liable for human rights violations, war crimes, crimes against humanity, or any other similar offense contrary to the provisions of the Geneva Convention or any other treaties, conventions, and statutes of international law;

g) Ensure objectivity and fairness in the conduct of its investigation and in the issuances of reports, keeping in mind its solemn duty to uphold the democratic virtues and sovereign power of the Filipino people;

h) Submit a comprehensive terminal report detailing its findings, recommendations, and conclusions based on the outcome of its investigation;

i) Engage the services of such persons or personnel as may be required for the effective performance of its functions and responsibilities, fix their duties and compensation, and organize the structure and staffing pattern of the Commission. The persons appointed, designated, deputized or contracted by the Commission shall be subject to the Civil Service Law, rules and regulations;

j) Promulgate its rules and regulations, enter into contracts, and perform any and all other acts necessary or incidental to the attainment of the objectives of this Act;

k) Call upon the various instrumentalities of the government to extend such assistance and cooperation as the Commission may need in fulfilling its mandate; and,

l) Exercise such other acts incident to or are appropriate and necessary in connection with the objectives of this Act.

SEC. 4. Composition of the Commission. – The Commission shall be headed by a Chairperson, who shall be a retired Justice of the Supreme Court, and four (4) members who shall come from the academe, the clergy, or any reputable profession duly licensed and regulated by the Professional Regulation Commission. The Chairman and members shall be natural-born citizens of the Philippines, at least thirty-five (35) years of age, and have an established reputation for integrity, honesty, probity and professional competence, without

any pending administrative or criminal cases against them in any Court of law: *Provided*, That they shall not have been a public officer in any capacity for at least one year immediately prior to their appointment to the Commission, except for those persons who are considered public officers solely by reason of their tenure as a member of the faculty of any state university or college;

They shall receive the same salary as the Chairperson and members, respectively, of the Commission on Audit.

The President shall appoint the Chairperson and members of the Commission within fifteen (15) days from the effectivity of this Act.

SEC. 5. Rules of Proceedings and Conduct of Hearings. – The Commission shall adopt rules and procedures for orderly conduct of its investigation, proceedings and hearings, including the presentation of evidence. The rules of evidence under the Revised Rules of Court shall have suppletory application.

Proceedings and hearings of the Commission shall be open to the public. The Commission may, *motu proprio* or upon request of the person testifying, hold an executive or closed-door hearing where matters of national security or public safety are involved or the personal safety of the witness warrants the holding of such executive or closed-door hearing. The Commission shall prescribe the rules to govern such executive or closed-door hearings.

SEC. 6. Rights and Protection of Witnesses. – No person shall be excused from attending and testifying or from producing documents, books, records, correspondence, or other evidence in obedience to a subpoena issued by the Commission on the ground that the person's testimony or other evidence required of him may tend to incriminate him or subject him to penalty or forfeiture. After having invoked the right against self-incrimination, the person's testimony or any evidence produced by him shall not be used against him in any proceedings, except for perjury committed in so testifying.

The Commission shall protect any person called to testify by providing the necessary and reasonable security arrangements with the assistance and cooperation of the Armed Forces of the Philippines and other appropriate government agencies.

The Commission is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by it where, upon its evaluation, such information or testimony is necessary and vital to the investigation. The immunity thereby granted shall continue to protect the witness who repeats such testimony before the appropriate court when required to do so by the latter. Should the person refuse to repeat such testimony, the immunity granted him shall cease.

SEC. 7. **Publication and Promulgation of Rules, Regulations, and Reports.** – Commission rules and regulations shall be published in at least two (2) national newspapers of general circulation and shall take effect two (2) days after its publication. The Commission shall promulgate its initial rules and regulations within seven (7) days from its organization.

The terminal report mentioned in Sec. 2(h) of this Act shall be published in the Official Gazette upon its transmission to the President and the Congress and shall be made available for download online for the benefit of the general public.

SEC 8. **Bar Against Court Injunction; Exception, Supreme Court.** – No court, except the Supreme Court, shall issue any restraining order or preliminary injunction on any matter involving the official acts of the Commission pursuant to this Act.

SEC. 9. **Sunset Provision.** – The Commission is hereby given one (1) year from the effectivity of this Act to accomplish the mandate set forth herein. Two (2) months after the lapse of said period, the Commission shall be *functus officio*, and shall turn over all its records, assets and properties to the Department of Justice.

SEC. 10. **Appropriations.** – The sum of One hundred million pesos (P100,000,000.00) is hereby appropriated to implement the provisions of this Act. The said amount shall automatically be released to the Commission for disbursement by it in accordance with existing auditing rules and regulations.

SEC. 11. **Separability Clause.** – If any provision of this Act is declared invalid or unconstitutional, the rest of the provisions of this Act shall continue to be in effect and subsisting.

SEC. 12. **Repealing Clause.** – The provisions of other laws, decrees, executive orders, rules and regulations inconsistent with this Act are hereby repealed, amended, or modified accordingly.

SEC. 13. **Effectivity.** – This Act shall take effect immediately upon its publication in the *Official Gazette* or in a national newspaper of general circulation.

Approved,