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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

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OFFICE OF THE SOLICITOR GENERAL

EN BANC

MAYOR DATU TUCAO O. MASTURA, for himself and as representative of the **MUNICIPALITY OF SULTAN KUDARAT, MAGUINDANAO DEL NORTE**, and the **LIGA NG MGA BARANGAY OF THE MUNICIPALITY OF SULTAN KUDARAT, MAGUINDANAO DEL NORTE**, represented by **Bai Aliyyah Nadrah M. Macasindil**,

Petitioners,

- versus -

G.R. No. 271972

BANGSAMORO TRANSITION AUTHORITY, HON. AHOD BALAWAG EBRAHIM, in his capacity as Interim Chief Minister of the **Bangsamoro Autonomous Region in Muslim Mindanao**, and **COMMISSION ON ELECTIONS**,

Respondents.

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COMMENT

The **OFFICE OF THE SOLICITOR GENERAL (OSG)** respectfully enters its appearance for respondent **COMMISSION ON ELECTIONS (COMELEC)** and states:

STATEMENT OF THE CASE

1. This case is a Petition for Certiorari and Prohibition assailing the Bangsamoro Autonomy Act (BAA) No. 53 for allegedly violating Article X, Sections 3¹ and 10,² and Article VI, Section 26³ of the Constitution.⁴

2. The Petition likewise prays for the issuance of a writ of preliminary injunction (WPI), temporary restraining order (TRO), and status quo ante order (SQAQO) enjoining the implementation of BAA No. 53. In particular, petitioners pray that the COMELEC be restrained from scheduling a plebiscite and the campaign period for the ratification of BAA No. 53.⁵

3. On 15 March 2024, the OSG received via electronic mail this Honorable Court's Resolution of even date requiring respondents to comment on the Petition and its prayer for a WPI, TRO, and SQAQO within a non-extendible period of ten days from notice.

4. Hence, this Comment, which is being timely filed.

ANTECEDENT FACTS

5. On 20 December 2023, BAA No. 53, entitled "*An Act Creating the Municipality of Nuling in the Province of*

¹ "SECTION 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units."

² "SECTION 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected."

³ "SECTION 26. (1) Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

(2) No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal."

⁴ Petition, p. 1.

⁵ *Id.*, at 74.

Maguindanao Del Norte, Providing Funds therefor, and for other purposes,” was passed by the Bangsamoro Transition Authority Parliament.⁶

6. Under Section 2 of BAA No. 53, various barangays⁷ are separated from the Municipality of Sultan Kudarat, Maguindanao Del Norte and constituted into a distinct and independent municipality to be known as the Municipality of Nuling, which is created in the province of Maguindanao Del Norte.

7. Section 5 of BAA No. 53 requires the COMELEC to conduct and supervise the plebiscite to ratify the creation of the Municipality, to wit:

SEC. 5. Plebiscite Requirement. - The Municipality of Nuling shall acquire corporate existence upon ratification of its creation by a majority of the votes cast by qualified voters in a plebiscite to be conducted in the barangays comprising the municipality pursuant to Section 2 hereof within sixty (60) days after the approval of the Act.

The Commission on Elections (COMELEC) shall conduct and supervise the plebiscite. The expenditure in holding the plebiscite shall be taken from the Contingent Fund of the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) under the appropriations of fiscal year 2024.

8. On 14 February 2024, the Ministry of the Interior and Local Government of the Bangsamoro Autonomous Region in Muslim Mindanao sent a letter to the COMELEC requesting it to facilitate the conduct of the plebiscite.

9. The COMELEC is currently in the process of evaluating the request and to date, no plebiscite has yet been scheduled.

⁶ Bangsamoro Autonomy Act No. 53, Passed on 20 December 2023 (Jumada Al-Akhirah 07, 1445 AH), An Act Creating the Municipality of Nuling in the Province of Maguindanao Del Norte, Providing Funds therefor, and for Other Purposes, available at <https://officialgazette.bangsamoro.gov.ph/2024/03/19/bangsamoro-autonomy-act-no-53/> (last accessed 20 March 2024).

⁷ The Barangays of Matengen, Ladia, Pigcalagan, Alamada, Raguisi, Pinaring, Damaniog, Ibotegen, Banatin, Nara, Kakar, Katiduan, Maidapa, Kapimpilan, Bulibod, Kabuntalan, Nalanan, Panatan, and Katamlangan.

ARGUMENTS

I

THE COMELEC'S MANDATE IS TO ENFORCE LAWS AND REGULATIONS RELATIVE TO THE CONDUCT OF A PLEBISCITE. A DETERMINATION OF THE CONSTITUTIONALITY AND LEGALITY OF BAA NO. 53 FALLS OUTSIDE OF THIS MANDATE.

II

THE PETITION VIOLATES THE DOCTRINE OF HIERARCHY OF COURTS BY RAISING QUESTIONS OF FACT BEFORE THIS HONORABLE COURT AT THE FIRST INSTANCE.

DISCUSSION

I. THE COMELEC'S MANDATE IS TO ENFORCE LAWS AND REGULATIONS RELATIVE TO THE CONDUCT OF A PLEBISCITE. A DETERMINATION OF THE CONSTITUTIONALITY AND LEGALITY OF BAA NO. 53 FALLS OUTSIDE OF THIS MANDATE.

10. Section 2(1), Article IX-C of the Constitution provides that the COMELEC shall exercise the power and function to "[e]nforce and administer all laws and regulations relative to the conduct of an election, **plebiscite**, initiative, referendum, and recall."⁸

⁸ Emphasis supplied.

11. As held in *Buac v. Commission on Elections*,⁹ “[f]rom our earliest Constitution and election laws, the conduct of plebiscite and determination of its result have always been the business of the COMELEC. . . . As an independent constitutional body exclusively charged with the power of enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall, the COMELEC has the indisputable expertise in the field of election and related laws.”

12. The nature and extent of the COMELEC’s power to enforce and administer election laws has recently been expounded in the case of *Macalintal v. COMELEC*,¹⁰ to wit:

In contrast with the Congress’ broad and plenary powers with respect to aspects affecting the elections and the exercise of the right of suffrage, the COMELEC is specifically charged by the Constitution with the **administration, enforcement, and regulation of all laws and regulations** relative not only to the conduct of elections, but also to the conduct of plebiscite, initiative, referendum, and recall. The power includes, among others, adjudicating all contests relating to “*the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction,*” deciding “*all questions affecting elections,*” as well as registering “*political parties, organizations, or coalitions.*”¹¹

13. Indeed, the function of the COMELEC under the Constitution is “essentially executive and administrative in nature.”¹² As such, the COMELEC is mandated to enforce and administer election laws on the conduct of a plebiscite unless restrained by proper order or there exists a contrary ruling. For instance, in *Lambino v. COMELEC*,¹³ this Honorable Court held that the COMELEC correctly refrained from enforcing

⁹ G.R. No. 155855, 26 January 2004.

¹⁰ G.R. No. 263590, 27 June 2023.

¹¹ Emphasis in the original.

¹² *Sambarani v. Commission on Elections*, G.R. No. 160427, 15 September 2004.

¹³ G.R. No. 174153, 25 October 2006.

Republic Act (R.A.) No. 6735 to give due course to a petition to hold a plebiscite considering the ruling in *Santiago v. Commission on Elections*,¹⁴ which declared R.A. No. 6735 inadequate to implement the initiative clause on proposals to amend the Constitution.

14. Absent such a contrary order or ruling, the COMELEC is not empowered to pass upon the constitutionality of the laws that it is mandated to enforce. Therefore, unless the proper circumstances warrant, it must proceed with its duty under Section 5 of BAA No. 53 to conduct and supervise the plebiscite to ratify the creation of the Municipality of Nuling.

15. All told, the COMELEC, given its role as the implementing agency in this case, respectfully submits that it is not the proper party to comment on the merits and constitutionality of BAA No. 53.

II. THE PETITION VIOLATES THE DOCTRINE OF HIERARCHY OF COURTS BY RAISING QUESTIONS OF FACT BEFORE THIS HONORABLE COURT AT THE FIRST INSTANCE.

16. At any rate, the COMELEC respectfully submits that the direct filing of the Petition before this Honorable Court violates the doctrine of hierarchy of courts.

17. In *Montemayor v. Inter-Agency Task Force for the Management of Emerging Infectious Diseases*,¹⁵ citing *GIOS-SAMAR, Inc. v. Dept. of Transportation and Communications, Inc.*,¹⁶ this Honorable Court held:

This shared original jurisdiction notwithstanding, the Court has consistently reminded parties that they do not

¹⁴ G.R. No. 127325, 19 March 1997.

¹⁵ G.R. No. 258619, 11 July 2023 (Minute Resolution).

¹⁶ G.R. No. 217158, 12 March 2019.

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have unfettered discretion in selecting the forum to which their application will be directed. Verily, the litigant must first seek relief from lower courts sharing concurrent jurisdiction with a higher court. The failure to do so will be sufficient for the dismissal of the case. This is what is known as the doctrine of hierarchy of courts. Simply put, the doctrine "serves as the general determinant of the appropriate forum for [petitions for the issuance of extraordinary writs]." Applying this rule, such petitions against first level courts should thus be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. The direct invocation of the Supreme Court's original jurisdiction to issue these writs, meanwhile, is allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.

In the landmark case of *GIOS-SAMAR, Inc. v. Dept. of Transportation and Communications, Inc. (GIOS-SAMAR)*, the Court declared that the implementation of this doctrine is not just "mere policy" but rather a "constitutional imperative". . . . Indeed, basic is the postulate that unlike this Court, trial courts and the Court of Appeals are better equipped to resolve questions of fact, given that they are in the best position to deal with causes in the first instance. Moreover, strict adherence to the aforesaid doctrine also proceeds from due process considerations, given that an immediate filing with this Court deprives litigants of the opportunity to completely pursue or defend their causes of actions in the context of a full-blown trial.

. . . .

In *The Diocese of Bacolod v. Commission on Elections (Diocese of Bacolod)*, the Court retains full discretionary power to assume jurisdiction over special civil actions for *certiorari* filed directly with it when there are compelling reasons. However, exceptions thereto were enumerated-

. . . .

The proper appreciation of these exceptions was further explained in *GIOS-SAMAR*. After an extensive survey and analysis of their jurisprudential bases, the Court ascertained that **a "common denominator" of the foregoing enumeration is that the issues resolved by the Court were purely legal in nature.** Consequently, in determining whether the direct recourse to this Court shall be allowed, it was decreed that the decisive factor is not the presence of one or more of these so-called "special and important reasons," **but rather the nature of the**

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question raised by the parties. The said case concluded with the reminder that **only controversies involving legal questions may be entertained at the first instance,** to wit:

Accordingly, for the guidance of the bench and the bar, we reiterate that when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.

Given such considerations, it becomes all too apparent that the consolidated Petitions violate the doctrine of hierarchy of courts. A sedulous examination of each of them reveals that they implore the Court to resolve questions of fact. Perforce, they must be dismissed.¹⁷

18. The instant Petition raises questions of fact, to wit:

[D.1]

THE INCOME OF THE NEW MUNICIPALITY OF NULING WAS NOT PROPERLY DETERMINED SINCE THE CERTIFICATIONS SUBMITTED WERE NOT THE CERTIFICATIONS REQUIRED UNDER THE LOCAL GOVERNMENT CODE OF 1991 AND ITS IMPLEMENTING RULES AND REGULATIONS, AND THE DEPARTMENT OF FINANCE'S DEPARTMENT ORDER NO. 031.2018 AND OTHER ISSUANCES. THUS, THERE IS NO PROPER DETERMINATION THAT THE INCOME IS SUFFICIENT TO PROVIDE FOR ALL ESSENTIAL GOVERNMENT FACILITIES AND SERVICES AND SPECIAL FUNCTIONS COMMENSURATE WITH THE SIZE OF ITS POPULATION.

[D.2]

THE PROPONENTS OF BAA NO. 53 FAILED TO DETERMINE THE NEW INCOME CLASSIFICATION OF THE PARENT MUNICIPALITY OF SULTAN KUDARAT AFTER THE SEPARATION OF THE MUNICIPALITY OF NULING, WHICH IS NECESSARY TO FIND OUT IF THE CURRENT INCOME

¹⁷ Emphasis and underscoring supplied, citations omitted.

CLASSIFICATION OF THE PARENT MUNICIPALITY HAS BEEN MAINTAINED. MOREOVER, THE INCOME CLASSIFICATION OF THE MUNICIPALITY OF NULING WAS NOT DETERMINED BECAUSE THE PROPONENTS FAILED TO ASK THE SECRETARY OF THE DEPARTMENT OF FINANCE FOR THE INCOME CLASSIFICATION OF THE NEW MUNICIPALITY AS REQUIRED BY LAW.

. . . .

[E.1]

THERE IS NO PRIOR CONSULTATION WITH THE LOCAL GOVERNMENT UNITS DIRECTLY AFFECTED BY THE CREATION OF THE NEW MUNICIPALITY OF NULING.

[E.2]

THERE IS NO PETITION FROM THE SAID NINETEEN (19) BARANGAYS FROM THE MUNICIPALITY OF SULTAN KUDARAT REQUESTING FOR THE CREATION OR FORMATION OF THE NEW MUNICIPALITY OF NULING.¹⁸

19. Given the factual issues raised in the present Petition, the same is improperly raised before the Honorable Court at the first instance. The resolution of these issues requires a reception of evidence and a full-blown trial, for which the trial courts are better equipped. The Petition, therefore, merits an outright dismissal for violation of the doctrine of the hierarchy of courts.

PRAYER

WHEREFORE, respondent COMELEC respectfully prays that this Honorable Court **NOTE** the present Comment and **DENY** the instant Petition for *Certiorari* for being procedurally infirm and for utter lack of merit.

Respondent COMELEC prays for other forms of relief that are just and equitable under the circumstances.

Makati City for the City of Manila, . . .
. . . 20 March 2024.

¹⁸ Petition, pp. 19-21.

OFFICE OF THE SOLICITOR GENERAL

134 Amorsolo Street, Legaspi Village,
Makati City

Tel. No. 88130086; Telefax No. 88137554

URL: www.osg.gov.ph

Email: efile@osg.gov.ph



MENARDO I. GUEVARRA

Solicitor General

Roll No. 33957

IBP No. 417383; 01/11/24

MCLE Exemption No. VIII-OSG003064; 07/27/23



MA. ANTONIA EDITA C. DIZON

Assistant Solicitor General

Roll No. 33774

IBP Lifetime No. 010284; 12/12/11

MCLE Exemption No. VIII-OSG000006; 04/18/22



EMMALLAINE LEONILLE V. LORETO

State Solicitor

Roll No. 64748

IBP Lifetime No. 018496; 01/10/18

MCLE Compliance No. VII-0018177; 05/18/22

elvloreto@osg.gov.ph



PATRICIA ANNE D. STA. MARIA

State Solicitor

Roll No. 65454

IBP Lifetime No. 014797; 05/16/16

MCLE Compliance No. VII-0014886; 04/06/22

pdstamaria@osg.gov.ph

COMMENT

Mastura, et al. v. Bangsamoro Transition Authority, et al.
G.R. No. 271972

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Copy furnished:

**BRILLANTES ARCILLA MARTINEZ
DIOKNO and DELA CRUZ LAW OFFICES**

(through Attys. Juanito G. Arcilla,
Roberto G. Diokno, Jr.,
Lyle LSP Surtida,
Ma. Katrina Daniella B. Chavez,
Patricia Mikaela T. Barredo, and
John Rangal D. Nadua)
Counsel for Petitioners
Suite 105-B ECJ Condominium Building
Real cor. Arzobispo Streets, Intramuros
Manila
bamdd.law@gmail.com

BANGSAMORO TRANSITION AUTHORITY

Bangsamoro Government Center
Governor Gutierrez Avenue, Rosary Heights VII
Cotabato City
records@bta.gov.ph
speaker@bangsamoro.gov.ph

**HON. AHOD BALAWAG EBRAHIM, in his capacity as
Interim Chief Minister of the Bangsamoro Autonomous
Region in Muslim Mindanao**

Bangsamoro Government Center, Governor Gutierrez Ave.
Rosary Heights VII, Cotabato City
records@bangsamoro.gov.ph
cos@bangsamoro.gov.ph
barmmm.btaicm19@gmail.com

ATTORNEY GENERAL ANA TARHATA S. BASMAN

Bangsamoro Attorney General's Office
OCM-BARMM Bldg., Bangsamoro Government Center
Gov. Gutierrez Ave., Rosary Heights VII
Cotabato City 9600
bago@bangsamoro.gov.ph
anna.basman@bta.gov.ph
asbasman@gmail.com

VERIFIED DECLARATION

I, **EMMALLAINE LEONILLE V. LORETO**, hereby declare that the document (and annexes thereof) hereto submitted electronically in accordance with the Efficient Use of Paper Rule is a complete and true copy of the document (and annexes) filed with the Supreme Court.


EMMALLAINE LEONILLE V. LORETO
State Solicitor

Date: MAR 20 2024

SUBSCRIBED AND SWORN TO before me on MAR 20 2024, in Makati City, Philippines, affiant exhibiting her competent evidence of identity, to wit Office ID No. 2016-01004.


JESSIE VILLAMOR VILORIA II
State Solicitor

REPUBLIC OF THE PHILIPPINES

AFFIDAVIT OF SERVICE

MARIA LUCILLE M. VALDEZ, AU (Revised as of April 1992)
GSIS UMID #006-0116-4758-2

I, MAR 25 2024, _____ OFFICE OF THE SOLICITOR GENERAL ,
with Office address at 134 Amorsolo St., Legaspi Village Makati City, after being sworn to depose and say:

That on 03/25/2024 , I caused to be served a copy of the following pleading/paper:

NATURE OF THE PLEADING

Comment

In case No. GR NO. 271972 , entitled MAYOR DATU TUCAO O. MASTURA, FOR HIMSELF AND
VS. BANGSAMORO TRANSITION AUTHORITY (BTA) AND HON. AHOD BALAWAG EBRAHIN IN HIS

pursuant to Section 3,4,5 and 10, Rule 13 of the Rules of Court, as follows:

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ATTORNEY GENERAL ANA TARHATA S.
Bangsamoro Attorney General's Office
OCM-BARMM Bldg., Bangsamoro Government
Center

Gov. Gutierrez Ave., Rosary Heights VII
Cotabato City 9600

bago@bangsamoro.gov.ph

anna.basman@bta.gov.ph

asbasman@gmail.com, , Philippines

HON. AHOD BALAWAG EBRAHIM, in his
Bangsamoro Government Center, Governor
Gutierrez Ave.

Rosary Heights VII, Cotabato City

records@bangsamoro.gov.ph

cos@bangsamoro.gov.ph

barmmm.btaicm19@gmail.com, , Philippines

BANGSAMORO TRANSITION AUTHORITY

Bangsamoro Government Center

Governor Gutierrez Avenue, Rosary Heights VII

Cotabato City

records@bta.gov.ph

speaker@bangsamoro.gov.ph, , Philippines

BRILLANTES ARCILLA MARTINEZ DIOKNO

Suite 105-B ECJ Condominium Building

Real cor. Arzobispo Streets, Intramuros

Manila, , Philippines

By Registered Mail To:

ATTORNEY GENERAL ANA TARHATA S.
Bangsamoro Attorney General's Office
OCM-BARMM Bldg., Bangsamoro Government
Center

Gov. Gutierrez Ave., Rosary Heights VII
Cotabato City 9600

bago@bangsamoro.gov.ph
anna.basman@bta.gov.ph
asbasman@gmail.com, , Philippines

HON. AHOD BALAWAG EBRAHIM, in his
Bangsamoro Government Center, Governor
Gutierrez Ave.

Rosary Heights VII, Cotabato City
records@bangsamoro.gov.ph
cos@bangsamoro.gov.ph
barmmm.btaicm19@gmail.com, , Philippines

BANGSAMORO TRANSITION AUTHORITY
Bangsamoro Government Center
Governor Gutierrez Avenue, Rosary Heights VII
Cotabato City

records@bta.gov.ph
speaker@bangsamoro.gov.ph, , Philippines

BRILLANTES ARCILLA MARTINEZ DIOKNO
Suite 105-B ECJ Condominium Building
Real cor. Arzobispo Streets, Intramuros
Manila, , Philippines

MARIA LUCILLE M. VALDEZ, AC
GSIS UMID #006-0116-4758-2

MAR 25 2024

Makati, Metro Manila, Philippines

(Affiant)

SUBSCRIBED AND SWORN to before me this _____ of _____ at Makati
City, Philippines. Affiant exhibiting to me his _____ issued at Pasay City.



24-005470-0007

MARIA LUCILLE M. VALDEZ, AC
GSIS UMID #006-0116-4758-2
MAR 25 2024
JESSIE VILLAMOR JAVIERA II

Solicitor, Officer Administering the Oath
Office of the Solicitor General