

Mindanao Forum on PEACE IN MINDANAO  
Interreligious Council of the Philippines  
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by Christian S. Monsod

Because of the complexity of multiple issues and the presence of two other more knowledgeable resource persons here today, I hope you will understand that to a great extent my presentation is selective through the lens of one of the 18 surviving members of the Framers (we were originally 48).

The question of the day is - what are the chances of a law being passed timely by the Congress that fulfills the vision of the Constitution of an Autonomous Region for Muslim Mindanao?

May I say that there is some good news. The two substitute bills represent some hope that a meaningful bill may be passed. The constitutionality of such concepts as exclusive, concurrent or shared, and reserved powers, of a homeland, distinct identity, asymmetrical relationship and a parliamentary system appear to be accepted, albeit with many reservations. The principle of solidarity as complementary to subsidiarity is also included in the SB as recommended by the Peace Council. It is an important addition because it is really a safety net for government intervention, if the common good so requires.

However, the constitutionality of words like “territory” and “Bangsamoro” still pre-occupy

legislators.. And there are many powers already given to ARMM that are denied or watered down in both bills. Moreover, social and economic rights with a long history of being violated and account for much of the social injustice inflicted on the Moros are not fully upheld, even as there appears to be no disagreement on the constitutionality of devolving them.

Repetitious references to the Constitution also betray a lack of appreciation of the fundamental rule of interpretation of Constitutional Law – that **the Constitution is deemed written in every contract or statute in the country.**

There is also the matter of decommissioning. Our legislators do not seem to realize that **if the MILF is to succeed it must be given the capability and legal firepower to deal with spoilers to the peace process.** And to dismantle the informal or shadow economy and the power structure that supports it. This takes a delicate but strong hand to accomplish. Experience in other countries shows that the decommissioning process takes years to complete and putting conditions that would unduly hasten it would be foolhardy. If we want the peace process to succeed, we must learn to trust the people we are negotiating with.

Thus, the more important part of the lead question is not about passing a law, which the leadership of the Senate and the House assure us will be done despite the delays. **It is whether the law they will pass provides the autonomy, powers and resources**

**that are necessary to make a success of this unprecedented and untried political experiment.** Consequently, we also need to know the challenges in this regard.

### **Why a special political entity in Muslim Mindanao? What is the context of the constitutional provisions?**

When we, as a people and not just the Framers who were only their instruments, wrote a new Constitution in 1987, it was the first time in over a hundred years that we spoke to the world as a truly independent and democratic Filipino nation. It is a document that had not been imposed on us by any colonial power or by a dictatorship.

That Constitution reflects the views of the people in the consultations before any writing was done and in the hearings, studies and suggestions during the deliberations. More important, it reflects the values and aspirations of the people as expressed at important junctures in our history and particularly in the events that led to what is now referred to as the People Power EDSA Revolt, which happened not just on a highway in Manila but in the whole of the country.

We restored democracy and proved ourselves capable of radical political change, in a peaceful manner. In the glow of that moment, we also believed that we could do more than that – that we are also

capable of radical social change, through democratic means.

One of the Commissioners described our Constitution as **“the imprisonment of the past and the unfolding of the future.”**

The people were clear on what to “imprison” and should never happen again in our country – **firstly**, the oppression and neglect of the poor by a feudalistic society that has been impervious to change for generations; **secondly**, another dictatorship, and **thirdly**, allowing foreign interests to violate our sovereignty and territorial integrity.

### **The first innovation of the Constitution - Social Justice as a central theme**

To address the first, we had to cut the umbilical cord that patterned our constitutions after that of the United States which is based on the primacy of civil and political rights because it was a country of immigrants who all started from the same position and only wanted to be free from autocracy. Hence, the emphasis on protection of individual rights and the free play of a market system based on equal opportunity to compete.

But we are a country of inequalities.<sup>1</sup> There is no equal opportunity when the starting positions are not equal – because of differences in the quality of

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<sup>1</sup> The data on poverty and inequalities are available in Philippine Human Development Reports, i.e. 2005, 2013 and others

education and of health care, and of nutrition that have a cumulative effect on the development of human capital. The same with the trauma of stressful childhoods from the struggle for subsistence or in the case of Muslim Mindanao from being in the middle of wars which affect brain development that stays with children to adulthood. And then there is the inequality in assets, mainly land and access to natural resources that provide safety nets, source of livelihood and human dignity.<sup>2</sup>

Hence, our Constitution gave social and economic rights equal primacy with civil and political rights based on the primacy of human dignity that precedes and supercedes even constitutions. The starting positions had to be adjusted first before a market system like the United States can operate. Adjusting starting positions is what social justice is about, which is the central theme of the 1987 Constitution, and which has no comparable provisions in the U.S. Constitution and, for that matter, even our 1973 and 1935 Constitutions. **Bangsamoro is about social justice.**

To address the return of another dictatorship, the Constitution prescribes very limited scope for the declaration of martial law. A dictatorship set back our development 20 years with a debt crisis in 1983, the only one in Asia, from which our per capita income did not recover until 2001/2002. The crisis was rooted in world class corruption, wrong policies,

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<sup>2</sup> based on readings in *The Age of Sustainable Development* by Jeffrey Sachs, 2015, Columbia University Press.

political instability marked by extra-judicial and legalized killings in the name of national security and an all-out war against the Moros of Mindanao that resulted in the deaths of over 120,000 people, mostly civilians, many of them children, and the displacement of over 3 million of them over the years.

To prevent the compromises to our sovereignty and territorial integrity, the Constitution enacted economic and political provisions that protect certain activities and our territory from foreign control.

Never again an amendment similar to the 1935 Constitution that gave Americans equal rights to our patrimony, foreign policies that were not those of an independent nation but one aligned with those of the United States, foreign military bases which violated our territorial integrity, and by deferential economic policies where even our exchange rate could not be changed without the approval of the U.S. President.

These assaults on our freedoms, our patrimony, foreign relations, territorial integrity and economic development that wrought havoc on our national psyche, and stunted our development that has made us the basket case in our part of the world on human development were the work of the ruling elite of the Christian majority of this country. The peasants, urban poor, non-moro indigenous peoples, municipal fishermen and our Moro brothers and sisters, who constitute the poorest of the poor in our country had no hand in these betrayals of national interest but suffer the most from them.

Yet the opposition to the BBL comes mainly from the ranks of the Christian majority which has been responsible for all these wrongs to the country and the failure of human development of our peoples. They would deny powers and rights to Filipino Muslims that they granted and continue to be willing to grant to foreign interests, powers that would also empower the poor and thus endanger their control of economic and social policies.

### **A second innovation - the autonomous regions**

In the 1987 Constitution, there was another innovation in addition to the central theme of social justice which is directly related to it - we acknowledged for the first time in our constitutional history what our colonizers did not - that there is an indigenous population in Mindanao that resisted subjugation but after our independence became a part of the Philippines based on the promise of equality and development.

The Constitutional Commission realized that this resistance was something to be proud of and not disparaged as history books written under foreign influence did. For this and other reasons our brothers and sisters of Muslim Mindanao deserved the freedom to govern themselves differently from the rest of the country.

Oppression, neglect, deprivation is the story of Filipino Muslims in their struggle for self-determination and it is to them that the Constitution

made the promise of real autonomy - to correct the injustices of the past and to enable them to fulfill the human development of their peoples that we have failed to do to this day. We have heard this time and again but it seems that many legislators just don't get it.

Today, many peace negotiations around the world are going through the process of determining how to amend their constitutions to accommodate the creation of self-governing territories. When the MNLF and later the MILF gave up their call for secession, our Constitution was ready with a process for establishing a territory of self-government. This is why our Constitution is ahead of its time, even if perhaps our government and certain legislators are not.

Furthermore, our Constitution written in the 1980s describes an autonomy sought by peoples in many countries around the world today – seeking ways to provide greater representation and greater indigenous control over natural resources and funding sources.. This increasing grant of powers is born from lessons learned over the post Cold-War era about how to maintain peace through stronger forms of self-determination for the indigenous peoples of their lands.

As a new way of governance, Markkus Suksi,<sup>3</sup> who wrote about autonomy, and who is cited as an expert

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<sup>3</sup> “Sub-State Governance Through Territorial Autonomy”, Springer 2011



in the Report of the Senate Committee on Constitutional Reforms, talks about how new governments created from the ground-up, with flexible modes of self-determination unique to each society, is a topic difficult for traditional constitutionalists to understand.

Suksi explains: “Territorial autonomy is an important constitutional phenomenon, but because the sub-state entities that can be identified as territorial autonomies are relatively small, the phenomenon is often overlooked in systematic presentations of constitutional law. .... (these are) by and large constructed along common elements, those of the distribution of powers, participation, the executive power, and foreign relations. .... these elements seem to hold the answer to what it means to be autonomous, that is, **what it means not to be an independent state and not a symmetrical part of the governmental structure of the state, but autonomous.**” (Ibid, Foreword, page vii.)

Moreover, Suksi says: “Territorial autonomy is a legal construction that appears in a unitary state in a fashion which often is akin to the position of states in federations.” (page 125). And while the sample may be limited, they “appear to confirm the conclusion that autonomy does not promote secession, but may instead work towards preventing secession, although in several sub-state entities, secession and

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independence is to some extent a part of the political debate.” (Ibid, page 659)

The Senate Committee on Constitutional Reform appears to have missed these findings on peace-making and constitutional law.

It is also strange to hear how some legislators and legal scholars consider territorial autonomy as unconstitutional because it looks too much like secession. It’s like saying that the Constitution that grants full autonomy is unconstitutional.

### **The issue of sovereignty and devolution**

In the Philippines, unlike in the United Kingdom or the United States where sovereignty resides respectively in the Parliament and in the Federated States, sovereignty is defined under Article II, Section 1: “The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.”

Thus, all the sovereign powers being exercised by the central government institutions are powers delegated to them by the people through the Constitution that they overwhelmingly approved in a national plebiscite. And there is no basis in law or in reason to say that the powers and attributes of sovereignty can only reside in, and be exercised by, the central government institutions. **Nor that any devolution or sharing of these powers constitute a diminution of national sovereignty.**

Sovereignty may be indivisible, a concept increasingly being questioned in international law. But, even if it were, there is no disagreement among the discussants that the powers of sovereignty may be apportioned, as it is apportioned, in the Constitution among the various institutions of the National Government, such as the three great departments, the constitutional commissions, the local government units and the two special LGUs called autonomous regions.

Thus, the mandate of the Constitution to devolve powers to, or share those powers with, the local government units through a local government code and, to a greater extent, the two autonomous regions through organic laws, is a call by the people to devolve those powers as close to them as possible.

If, despite the foregoing, objections to the devolution and special autonomy are being raised on other grounds than “constitutionality”, such as “why are we negotiating with the MILF?”, the following might help to clarify issues in that regard:

- 1. At no time have either the MILF or the MNLF been categorized as a terrorist organization.** They were never on the United States list of terrorist organizations, despite what Senator Cayetano implied by the transcripts of the investigation of Mamasapano. Not even after 9/11. The list can be accessed at: <http://www.state.gov/j/ct/rls/other/des/123085.htm>. More importantly, neither have the MILF

nor the MNLF been categorized as terrorists under Philippine Law, where there are specific due process protections, passed during the term of many incumbent law makers. To deprive the MILF or MNLF their place as peace negotiators on the assumption that they are terrorists is to deprive them and the Bangsamoro people of a chance at peace based on misinformation and prejudice, coupled with the trivialization of our laws by the lawmakers themselves.

**2. The conflict between the Philippine government and the MILF is a non-international war,** and a peace agreement always involves compromise. This is why a ceasefire is important – because neither party wants to agree to anything under threat of force. In a ceasefire, both parties lay down arms to properly negotiate. This is also why the use of arms, especially for law enforcement purposes, is highly regulated in ceasefire agreements.

Mamasapano is not one incident – . it is part of a 40-year war that has been interrupted by attempts at peace. It is not a simple rebellion that would render combatants liable under the Revised Penal Code. The use of arms in wartime are governed by the laws of war, violations of which are deemed war crimes, found in R.A. 9851. Our Revised Penal Code of 1932 notwithstanding, the Philippines has also signed the Geneva Convention Protocol II in 1986 – after the Marcos regime and as part of the peace initiatives of the Government, which recognizes a specific kind of

internal conflict that is more than a rebellion, but less than an international war. But the internal conflict is still governed by the rules and regulations of international warfare.

**The framework for the creation of the autonomous region and the powers provided by the Constitution. Aren't we giving them too much power?**

The framework of the Constitution for the creation of an autonomous region for Muslim Mindanao is Article X, Section 15:

“There shall be created an autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.”

In other words, the autonomous regions shall **include geographical areas, is based on common and distinctive historical, and cultural heritage, economic and social structures,** and, of course, it cannot violate the **national sovereignty and territorial integrity** of the Republic.

That is why the Bangsamoro is unique and special in our constitutional history

However, this framework raises valid questions about the rights of non-moro indigenous peoples, christian settlers and other religious denominations who do not have similar common and distinctive characteristics with the Muslim population.

The Constitution even makes sure we get it right by enumerating the legislative powers that can be devolved to the autonomous regions, subject to the provisions of the Constitution and national laws. (Article X, Section 20)

- administrative organization;
- creation of sources of revenue;
- ancestral domain and natural resources;
- personal, family and property relations;
- regional urban and rural planning development;
- economic, social and tourism development;
- educational policies;
- preservation and development of cultural heritage;
- such other matters as may be authorized by law for the promotion of the general welfare of the people.

**These are very broad powers and the list is even longer when these are “unbundled” in the organic law. Enacting that organic law for Bangsamoro is not an option but a duty of the Congress. And any**

**diminution or watering down of the powers under Section 20 whether by the Congress or by the Supreme Court that would stand in the way of a full implementation of the letter and intent of these provisions would be the violation of the Constitution.**

**How do we address the condition that the exercise of the powers are subject to not just the provisions of the Constitution but of national laws.?**

If we interpret an Organic Act as subject to national laws in the sense that it is inferior to all laws, it would result in the ability of any national law present and future, that conflicts with any part of the Organic Act, to amend the Organic Act. This interpretation would render the concept of autonomy unstable and ineffective. Indeed, what is the point of granting autonomy and requiring a plebiscite for the Organic Act if in the next year, a national law could be passed amending any of the Organic Law's provisions?

A more effective and correct interpretation of Art. X, Sec. 20 is to say that the legislative acts of the regional government as provided in the Organic Act are subject to territorial jurisdiction, the Constitution, and national laws, such that:

- a) Legislation of the regional government (as opposed to the Organic Act itself) will always be inferior to national laws and the

Constitution, and like other local governments, limited to its territorial boundaries.

**b)** Legislation of regional governments enacted according to the Organic Law would not create a conflict between a regional law and national law but would instead create a conflict between two national laws (the organic law and the other national law). That can only be resolved ultimately by the Supreme Court. That is why the organic law must “unbundle” the broad powers under Section 20 and specify the powers of the autonomous region legislature as the BBL does. But if the Congress waters down the unbundled powers as the Senate and House substitute bills appear to do, the autonomy would be vulnerable to any national law without need of any plebiscite. **The position of the MILF is understandable in this regard. A watered down organic act substantially different from the Comprehensive Agreement on Bangsamoro is no act at all.**

**What is the check and balance system if the autonomous region abuses of the broad powers granted by the Constitution?**

All the checks and balances of government that currently apply to all political subdivisions would apply to the Bangsamoro.



First is the primacy of the Constitution. All freedoms and guarantees of individuals and indigenous peoples are intact, as is the territory and sovereignty of the Philippines State. However, **specifically providing in the organic law that certain laws like the IPRA and Labor Law must be incorporated in it might open the doors to every special interest wanting the same privilege** which would ultimately result in nullifying or watering down the powers under Section 20 to nothingness. That would also pre-empt the solutions available in conflict or laws situations.

Second, is the power of Judicial Review to interpret the law and determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any government branch, agency, or instrumentality;

Third, the President's general supervision over the autonomous regions (as with all local governments) to ensure that the Constitution and all laws are faithfully executed;

Fourth is the power of Congress to amend the Organic Law (as it has done twice now);

Fifth, is the direct power of the Bangsamoro people through initiative and referendum;

Sixth, are the powers of the independent constitutional bodies (i.e., the Constitutional Commissions, the Ombudsman and the Commission

on Human Rights, as well as those independent bodies that are created by the Organic Act itself), and

Finally, (Seventh), underlying all of these is the fundamental principle of Solidarity, that affirms the “duty of the State to promote distributive justice and to intervene when the common good so requires.”

**If Regional Governments are allowed to enact laws that are different from the rest of the country, does this not create unnecessary legal controversies?**

Not necessarily. Deciding a conflict between a regional law enacted according to the broad powers of an Organic Law, and another national law addressed to all other local governments would call for jurisprudence closer to a conflict of laws situation where the laws, rules, and regulations of one area are widely different from another, but both valid and effective. Controversies of this type although difficult at first are necessary if we are to truly carve out an autonomy within one state.

This kind of conflict of laws is not new. Today, the customary laws of indigenous peoples are still in force. As it is further operationalized, national laws must also learn to accommodate them as far as possible. We are familiar with the study of conflict of laws in the context of inter-country domestic laws. Applying these principles to cases within Philippine territories might be a problem only because it is something new, where national policies are tested

under circumstances where justice must envelop the diversity of our customs, our environment and our economic and social classes.

In any case, the Philippines would only be joining any number of other countries around the world with the same challenges.

### **Aren't we giving them too much funding?**

There is also the issue of fiscal autonomy and development funding. SB 2894 removes the Special Development Fund. **Below are excerpts of an article on: “Funds to the Bangsamoro: what is the real score?”**<sup>4</sup> that should settle the argument on whether the Bangsamoro will be an unnecessary burden for the rest of the country.

*“The size of the funds to be imminently transferred to the Bangsamoro has thrown kerosene into the flames of the controversy over the draft Bangsamoro Basic Law. Estimates have ranged from ₱37B to ₱70B in the first year alone.*

*“These have been described as an “additional cost” to be borne not by the Bangsamoro but by the rest of the country, whose taxes will support these allocations....*

*...“The money has been compared to ‘pork barrel’ funds and the track record of the ARMM, which*

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<sup>4</sup> Toby. C. Monsod Associate Professor, UPSE Member, Human Development Network, published in Philippine Daily Inquirer’s Talk of the Town, July 19, 2015

*was formed in 1989 and further enhanced in 2001 (through RA 9054), has been invoked to demonstrate how inefficiently these funds are likely to be used.*

*“.....“The debate really revolves around a handful of enhancements to the taxing powers and revenue sources of the Bangsamoro that the draft BBL proposes relative to what is granted to the ARMM by current laws (i.e., the original and the expanded Organic Act for ARMM (RA 6357 and RA 9054)). .....*

*“.....The bottom line: the NG will “forego” about ₱129 million annually in favor of the Bangsamoro - maybe a bit more if any metallic mining revenues kick in - but this will only be for 4 years. By comparison, the Napoles scam freely gave away ₱1 billion of public money annually for 10 years to embezzlers and their lawmaker-accomplices. The special fund of ₱17 billion over six years is meant for rehabilitation and reconstruction. But even this is only 12% of what the Bangsamoro really needs”.*

## **Historical Biases and Prejudices**

Another factor that will affect the final outcome of an organic act are historic biases and prejudices. We provide a Letter to Christians of Orlando Cardinal Quevedo, O.M.I. copy of which was distributed to you earlier.

## **The Need for Legislative Restraint on Constitutional Issues**

In a news article in the Manila Daily Bulletin entitled “No to original BBL”, Sen. Marcos is reported as saying that “if Congress passes the draft BBL without changes, the Supreme Court will eventually shoot it down as unconstitutional and put to waste all the work the legislature exerted to pass the bill.”

This is a dangerous pre-emption of the power of judicial review by the Supreme Court.

A Statement by the Friends of Peace on the issue states:

“If, after the Congress has exercised its legislative powers to improve the BBL, there are still provisions on which sufficient consensus cannot be reached, it is suggested that those provisions be left to the Supreme Court in the exercise of its power of judicial review. In the delicate system of checks and balances and separation of powers, it is the Supreme Court that is the final arbiter on the interpretation of the Constitution. But, while the Supreme Court can delete provisions it deems unconstitutional, it cannot add what the Congress has deleted from the proposed organic act, which is substantially based on the agreement signed by the Executive after years of negotiations and legal reviews that, we believe, may be accorded the presumption of regularity.”

### **Recapitulation**

As the Framers said: “Bangsamoro is about the development of people, not about the constitutionality of words.”

“The core principle of the 1987 Constitution in mandating a special the autonomous regions is the human development of the people of Muslim Mindanao and the Cordilleras. Hence, the public conversation should not be about semantics but about people – their needs, their aspirations, their choices - and about empowering them with the environment and institutional framework for social justice.”

“...An interpretation of any relevant provision of the Constitution that results in war and abject poverty would be contrary to its intention.”<sup>5</sup>

Bangsamoro is also about the exercise of political imagination and judicial statesmanship.

Bangsamoro is not about a legacy of this administration or of any person. It is about a legacy of justice by a people to their Moro brothers and sisters in their aspiration for self-determination, political autonomy and cultural identity. It is about an end to 40 years of armed conflict – of Filipino killing Filipino -- and of countless attempts at peace agreements that have failed to achieve lasting peace and human development because the framework for achieving it

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<sup>5</sup> Statement of the Framers of the 1987 Constitution, January 19, 2015

was flawed and mired in historical, legal, social and cultural mind-sets that brought about the armed conflict in the first place.

As Albert Einstein warned, “the problems that we face cannot be solved by the same level of thinking that created them.”

Hence, the need and validity of implementing the constitutional provisions that we have never tried before.

### **Peace Must Be Waged and Won**

But there is always a high price to pay for peace. Mahatma Gandhi, Anwar Sadat Yitzhak Rabin, Martin Luther King, Abraham Lincoln who all paid with their lives by assassination. Others experienced sufferings like Muhammad Ali Jinnah in his dream of a united Pakistan. Nelson Mandela endured 27 years of imprisonment.

What peace processes teach us is that peace agreements require a marathon mentality and are not the end of one journey but the beginning of another. To move on, mistrust must be overcome and prejudices borne of past wrongs set aside. This is admittedly very difficult to ask, especially from those whose personal loss is irreplaceable, as in the case not only of those who died in Mamasapano but of other killings and brutalities committed by both sides as cited by the CHR in 2000, the military in the aftermath of Mamasapano and the MILF.

Our Muslim brothers and sisters are giving up their dream of an independent state. The MILF is staking its political future on the creation and success of the Bangsamoro Autonomous Region. We, the Christian majority, have to share powers we have monopolized for centuries. We have to shed prejudices that have stood in the way of our humanity. But there are still people among us who are convinced that the price of peace is more war, at the heart of which is a total distrust of the MILF.

And so we hope that if the BBL is allowed to reach the plebiscite stage and wins a convincing majority of the sovereign vote, those with the deepest reservations will give it a chance, as “all life is an experiment”, and those, if any, with a jihadist mentality within the MILF ranks also experience a change of heart because of the way we respect the fullness of their being, and also give it a chance to succeed.

Hopefully, Pope Francis points the way. In his recent visit, in response to the question of a 12-year old girl from the streets of Manila: “*Why did God let this happen to us?*” Pope Francis reminded us that we see best with “new eyes cleansed by tears”.

We have been blessed as a people in countless ways. This is our moment of grace – Kairos - as we give thanks for all those blessings with eyes filled with tears and pray to our God of history to please grant us peace. ---- END



