

Recycled Autonomy? Enacting the New Organic Act for a Regional Autonomous Government in Southern Philippines

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According to the 1996 Peace Agreement between the Government of the Republic of the Philippines and the Moro National Liberation Front a new autonomous government for Muslim Philippines should have been in place as early as October 1999. But due to delays in the legislative process, legal and administrative anomalies have followed suit, extending the transition phase. There appears to be some light at the end of the waiting tunnel. Senators managed to hammer out Senate Bill 2129 which, compared to the House version, could provide for a meaningful autonomy for the discontented Muslims. But while strong in strengthening fiscal autonomy, it was stingy in enhancing Moro representation and participation in the national body politique. The MNLF and Moro civil society must continue to engage the legislative arena to arrive at a mutually acceptable and workable Organic Act reflective of the spirit of the 1996 Agreement, which remains to date the best antidote to renewed fighting with the MNLF.

Background

Formed by its longtime chair Nur Misuari, the Moro National Liberation Front (MNLF) has posed one of the most persistent challenges to the Philippine state. The Mindanao War in the early 1970s brought about large-scale destruction of towns and villages in Western and Central Mindanao. From separatism, the MNLF had compromised to work within the framework of autonomy following peace negotiations with the Marcos regime in the mid-1970s. However, the terms of the settlement, known as the Tripoli Agreement, were never fully implemented. The MNLF continued with its underground resistance until peace negotiations with the Aquino administration led to the passage of an Organic Act creating the Autonomous Region for Muslim Mindanao (ARMM) in 1989, a solution which the MNLF rejected. Thus, it took another round of talks under the Ramos administration to finally convince the MNLF to temporarily lay down their arms and endeavor to achieve a peaceful settlement through a package of reforms and mechanisms such as the Southern Philippines Council for Peace and Development (SPCPD).

The 1996 Government of the Republic of the Philippines-Moro National Liberation Front (GRP-MNLF) Peace Agreement stipulates that a new Organic Act that will define the terms for instituting a new Regional

a new Organic Act that will define the terms for instituting a new Regional Autonomous Government will be passed by Congress within the three-year period comprising Phase 1.

I. 2.a. While peace and development programs are being implemented in the SZOPAD, a bill to amend or repeal the RA 6734 shall be initiated within Phase 1 (1996-1997). The bill shall include the pertinent provisions of the Final Peace Agreement and the expansion of the ARMM area of autonomy. After a law shall have been passed by Congress and approved by the President, it shall be submitted to the people for approval in a plebiscite in the affected areas, within two (2) years from the establishment of the SPCPD (1998). (GRP-MNLF Peace Agreement)

According to the schedule provided in the Peace Agreement, a new Act should have been passed by 1997, a plebiscite determining the coverage of the Autonomy area should have been held by 1998, and by October 2, 1999, the official termination date of the SPCPD based on Executive Order No. 371, a new Autonomous Government should have been in place. As year 2000 draws to a close, no new Organic Act is set to be passed.

This paper will examine the progress of implementation of the legislative component of the latest peace agreement with the MNLF and assess the extent the proposed laws could provide meaningful autonomy as envisioned in the 1996 Peace Agreement. The legislative aspect is significant because it will lay down the new framework for autonomous governance for the Muslims in Mindanao. Failure to come up with a suitable and acceptable framework will put to waste the investments made in the other aspects of the GRP-MNLF peace process, namely, in socio-economic development and the integration of MNLF combatants into the Philippine army and police forces. Worse, failure could also trigger a return to armed hostilities and aggravate the political and economic uncertainties in war-torn Muslim Mindanao.

Convolutd Process

The implementation of Phase 2 of the Agreement has been much delayed. House Bill 7883 was passed only on third and final reading at

the House of Representatives during a special session held from July 12-16, 1999.

The delay at the first level, the Lower House, opened a series of legal and administrative anomalies, requiring a lot of time, resources, extraneous debates and taxpayers' money to be expended. In the run-up to the signing of the September 1996 Agreement, RA No. 8176 was passed to postpone the ARMM election from March 20, 1996 to September 1996 for a term of two and a half years. The September election put MNLF Chair Nur Misuari in the governor's post.¹ Under this Act, Gov. Misuari's term should have ended on the second Monday of March 1999. Anticipating the impossibility of passing a new Organic Act before a vacuum arises, or the complication of electing a new set of officials for another three-year term (the term mandated in the Constitution) running up to 2002, Muslim members of the House of Representatives successfully lobbied to pass a bill postponing the ARMM election to September 1999.

Although the first initiative, House Bill No. 2577,² was filed in 1998, it was only in 1999 when two other bills, House Bill Nos. 6689 and 6774,³ were filed. All three bills claimed to represent the spirit of the Peace Agreement, but with differences in some key items such as the name of the region, and provisions for sharing of income.⁴ Public hearings were finally held only beginning February/March of 1999. As late as mid-1999, the Executive branch had to impress on the legislators through the Joint Legislative-Executive Development Advisory Council (LEDAC) meeting on May 3, 1999 the urgency of passing the amendatory law. The need to fast track the passage of the amendatory bill was indeed a belated realization on the part of the present Congress.

In the meantime, it became apparent that with the scheduled ARMM election for September 1999 coming soon, the delay in amending the Organic Act has once more led to the same situation that required the first postponement of the elections in March 1999. Again, another round of lobbying on the part of the MNLF, supported by the Organization of Islamic Conference (OIC)⁵ and not without the usual threat of return to war, to postpone the September 1999 ARMM election was set off. The election was eventually postponed by another act of Congress, Republic Act No. 8753 passed on July 16, 1999, which effectively put to waste the registration of voters held by the COMELEC in ARMM areas in May.

In January 2000, the Senate began conducting its public hearings in Mindanao, setting off the process whereby the Senate may or may not introduce further amendments to the Bill, following legislative procedure. Also, in the second half of 1999, the government had opened up talks with the MILF but without a clear program how this process underway with the MNLF will connect with what they can offer the MILF. By February 2000, the relationship between the government and the MILF deteriorated and fighting escalated up to June. Government forces took over MILF camps, including its main camp, Camp Abubakar. The distraction and destruction brought by the Estrada administration's war with the MILF obviously did not support the process with the MNLF.

Based on the Senate's adjusted schedule, a new Act should have been finished by the middle of year 2000, followed by a plebiscite. Before September 2000, when the one-year extension granted to the present ARMM officials by Republic Act No. 8753 expires, the election for the officers of the new Regional Autonomous Government in Southern Philippines should have been held, paving the way for Phase 2. All these were postponed again since the Senate by September 2000 had not concluded the task. In November 2000, all legislative agenda was put on the backseat, as the Upper House occupied itself with the investigations of the scandals and impeachment proceedings lodged against President Joseph Ejercito Estrada.

Reasons for the Delay

The delay in the passage of the amendatory act and the series of complications the delay created were partly due to the slow grind of the legislative mill and various demands imposed on the process — in effect, the nature of the Philippine political structure itself. By the second half of 1997, the momentum in the Ramos-led House of Representatives was broken by the administration's initiatives for charter change and preparations for the national elections in May 1998, concerns that were obviously more important to the Ramos political bloc than its commitment to the MNLF. The overall effect was to put aside the process of tight consultation between the MNLF and the government in the drafting of the amendatory law.

As in the past, reconfiguring the power alignment in the 11th Congress became the first order of business and as such practically used

up the rest of 1998. It must be remembered that majority of the present House originally did not belong to the ruling Lapiang ng Masang Pilipino (LAMP) party until the series of defection to the President's party took place. Pending a settling down of power-sharing arrangements, including the appointment of a defector to the ruling party as Speaker of the House and the distribution of Committee chairships to party mates, no attention was given to drafting an amendatory bill, despite the push from the Office of the Presidential Adviser for the Peace Process and the GRP panel.

More significantly, the Estrada administration has been on the whole non-committal to the role the Peace Agreement and political negotiations with other rebel groups will play in the overall policy of government. It merely inherited this Agreement with the MNLF, the negotiations with the Communist Party of the Philippines-National Democratic Front (CPP-NDF) and the Moro Islamic Liberation Front (MILF), and the government mechanisms for the peace process from the previous administrations. It was not a conscious advocate of these policies and steps. President Estrada as vice-president to former President Ramos was not at all involved in these undertakings nor were any of his current close aides. Worse, his crime-busting role as former head of the Presidential Anti-Crime Commission (PACC) during the Ramos administration, may have predisposed him to treat insurgent groups as criminal syndicates. There are of course important differences in solving the two types of armed threats.

To date, political negotiation is not a key plank in the Estrada administration's program of government even though it declared its commitment to the Agreement with the MILF in the July 2000 State-of-the-Nation Address of the President.⁹ Consequently, it has not provided a willful and coordinated support to its peace negotiators, and push to the Congress. The same lack of appreciation may be said of the Congress leadership under Rep. Manuel Villar.

The Muslim representatives on whom the burden lay particularly, especially those with close ties with the MNLF, were also late in introducing their bills. They submitted their versions as House Bill 2577 was being deliberated on at the Committee level.

But there were clearly opposing forces in Congress, generally between Muslim Representatives, on the one hand, and non-Muslim

Representatives from Mindanao, which made consolidation of provisions difficult. While the Muslim members of Congress were not necessarily in total agreement among themselves (note that all proposed bills were introduced by or included Muslim representatives) and some non-Muslim Representatives were sympathetic to the MNLF cause, certain non-Muslim Mindanaoans in Congress were blamed by the MNLF for their dissatisfaction with the House Bill passed in July 1999 by the House. The debates and dramatics displayed in the process of producing a Bill from the House reflected these conflicting interests and orientations.⁷

MNLF Chair and ARMM Governor Misuarirailed against the "smuggled impurities" in HB 7833, accusing Reps. Celso Lobregat (Zamboanga City), Daisy Avance-Fuentes, and Lualhati Antonino (South Cotabato) of inserting these provisions.⁸ The three Representatives in these legislative districts (or their predecessors) had also fiercely opposed the Peace Agreement in 1996.

House Bill 7883: Strengthening Self-Rule & Representation

On the whole, the House Bill 7883 incorporated major elements of the Agreement. It also integrated the powers that have been subsequently devolved by virtue of the 1991 Local Government Code (RA 7160) and special laws like the Special Economic Zone Act of 1995. Consequently, it improved on the existing Organic Act for the Autonomous Region in Muslim Mindanao (RA 6734) operative since 1989. Compared to RA 6734, therefore, the House Bill provided for greater representation, introduced new provisions that can enhance the autonomous government's fiscal autonomy, and broadened the functions and powers vested on the regional government.

Greater Representation. The 1996 Peace Agreement promised greater representation of Muslim Filipinos in the national body *politique* and HB 7833 tried to live up to this promise. For instance, the Regional Governor shall participate as ex-officio member of the National Security Council on all matters concerning the region (Art. VI, Sec. 7). At least one Justice in the Supreme Court and at least two in the Court of Appeals shall come from the Autonomous Region (Art. IX, Sec. 2), and a qualified person recommended by the Regional Governor may be appointed to the Judicial and Bar Council (Art. IX, Sec. 3).

An Islamic banking unit established by the Central Bank shall be staffed by Islamic banking experts nominated by the regional governor. In government-owned or controlled corporations (GOCCs) operating mainly or within the autonomous region, the Autonomous Region shall be represented in the Board of Directors or in the GOCC's or its subsidiary's policy-making body, consistent with their charter (Art. VI, Sec. 8).

To enable more entrants to the civil service, the Civil Service shall hold special civil service examinations in the region if necessary. For a maximum of five years from the formation of the autonomous government, such efforts to provide appropriate civil service eligibility will be made by the National Government (Art. XVII, Sec. 4). *Madaris* teachers may also qualify for permanent appointment in the autonomous region and receive compensation out of the regional government's funds if they are employed in public schools, and the existing *Madaris* shall be included in the Regional Autonomous Government's educational system (Art. XIII, Sec. 13 & 14).

As stipulated in the Peace Agreement but not found in RA 6734, the Bill affirms the integration of former MNLF guerillas into the Philippine National Police Regional Command for the Autonomous Region that will be instituted (Art XIV, Sec. 3 & 4). The functions and organization of the new PNP Regional Command are further elaborated in Sec. 5 to 13, and basically adhere to the national law creating the PNP.

The potential for enhanced representation of the regional autonomous government in the national polity can also be seen in Art. V (Powers of Government), Section 2 (9). While exempting the Regional Assembly's exercise of legislative power in foreign affairs, national defense and security, postal service, foreign trade, general auditing, civil service and election and others, a clause was added providing that as far as practicable, the region shall be represented in the national departments, enforcing the policies, programs and projects of these concerns.

Other provisions stipulate, as far as practicable, the appointment of at least one inhabitant of the Autonomous Region to the Cabinet with a rank of a Department Secretary (Art. VI, Sec. 2); and of at least one official in each department and constitutional bodies of the National

Government who would occupy executive, confidential, highly technical or policy-determining position, coming from the region (Art. VI, Sec.6).

The terms provided in the Peace Agreement guaranteed such representation, but as can be seen, the final Bill diluted some of these guarantees with the phrase, "as far as practicable." In addition, Paragraph 68 of the Peace Agreement allotting one Autonomous Government representative in Congress as a sectoral representative in addition to the representatives of the congressional districts in the Autonomous Region, was not adopted in the House Bill.

Meanwhile, to enhance representation of all other groups in the regional government, the new Art. VII, Sec. 5 incorporated the Local Government Code provision for sectoral representation, in this case, in the Regional Assembly, to make up 15% of the total number of elected members in the Assembly. These sectoral representatives shall come from the agricultural, labor, urban poor, disabled, youth and women sectors, among others that may be further stipulated by the Assembly. The bill also mandates the Regional Governor to appoint three deputies representing the Christians, indigenous cultural communities and the Muslims in the region. The three deputies, the governor and vice-governor will then comprise the region's executive council. (Art. VIII, Sec. 5)

Islamic values and norms will also be more visible in the educational system to be developed in the region although "Filipino" values were implicitly given higher status. In any case, the educational system in the Regional Autonomous Government will "perpetuate Islamic ideals and aspirations, Islamic values and orientations of the Bangsamoro people." (Art. XV, Sec. 2.1) Islamic values or orientation will also be incorporated in good manners and right conduct classes, in the textbooks, and curriculum (Art. XV, Sec. 11b,c,d). Arabic replaced the major languages in the region in their status as auxiliary medium of instruction (Filipino and English being the main media of instruction). Major regional languages, however, may also be used as auxiliary official languages and media of instruction and Arabic language courses are optional subjects to non-Muslims. (Art. XV, Sec. 8)

Funding Support and Fiscal Autonomy. To help start off the Autonomous Government, additional funding support and other schemes

were stipulated in the Bill. For the first five years, all current year collections of internal revenue taxes within the area of autonomy shall be allotted to the Regional Autonomous Government in the Annual Appropriations Act (Art. X, Sec. 15). In the area of tourism, a new paragraph obligates the Department of Tourism to extend financial and technical support to the tourism program of the Regional Autonomous Government (Art. XIII, Sec. 36).

New sources of revenue are the income taxes for income realized from the business operation in the area of autonomy of business entities' whose head offices are located outside the autonomy area (Art. X, Sec.6) and regulatory fees imposed in the exploration, utilization, development and protection of the natural resources in the region inclusive of mines and minerals, except strategic materials (Art. XIII, Sec. 7).

While the Bill specifically listed the areas where the Autonomous Government cannot exercise taxing powers (Art. X, Sec. 7), in three new sections it more explicitly affirmed the fiscal autonomy of the regional government in raising and budgeting its own sources of revenue and block subsidies granted by the national government and foreign donors (Art. X, Sec. 2), gave it power to enact a Regional Tax Code and Regional Local Tax Code (Art. X, Sec. 3), and assured its right to formulate economic and financial programs (Art. X, Sec. 4). Funds for education constituting the share of the region shall be given directly to the autonomous government (Art. XV, Sec. 22). Basically, the Bill adheres to the provisions for greater fiscal autonomy stipulated in the Local Government Code of 1991, which RA 6734 preceded.

Enhanced Powers and Functions. The granting to the Autonomous Government the authority to enact its own Public Works Act (Art. VII, Sec. 3) and Investment Act (Art. XIII, Sec. 2) reflected a wider range of devolution of power in the Bill relative to the current ARMM law. The Autonomous Government will manage, control and supervise the entire educational system in the region (Art. XV., Sec.4), including the selection, recruitment, appointment and promotion of teachers (Art. XV, Sec. 11f). State universities and colleges (SUCs) may possibly be included in the educational component of the regional government which shall operate as a sub-system of the national educational system, with emphasis on the autonomy of the sub-system (Art. XV, Sec. 1). The Autonomous Government shall be represented in the SUCs as Co-Chair or Co-Vice-

Chair (Art. XV, Sec. 8). It shall also handle the institutionalization of non-formal education and scholarship programs (Art. XV, Sec. 18 & 20). It will also have the primary disciplinary authority over erring civil servants (Art. XVII, Sec. 2)

New offices that would be created to enhance its governance are the Office of the Deputy Court Administrator (Art. IX, Sec. 4), the Shari'ah Public Assistance Office (Art. IX, Sec. 6), and a regional body with the same powers as the Philippine Economic Zone Authority (Art. XIII, Sec. 3).

Contentious Provisions in House Bill 7883

Acceptability of the House Bill to the MNLF and other sectors was hindered by several contentious provisions.

Plebiscite Coverage. Art. XIX, Sec. 12 of House Bill 7883 proposed two simultaneous plebiscites: one, in the current four ARMM provinces to determine whether the constituents wish to remain in the Autonomous Region; the other in the other provinces and cities covered in the Peace Agreement, to determine whether their people want their respective provinces to be part of the Autonomous Region. In both cases, only provinces that vote favorably on the basis of majority vote will be included in the new ARSP.

Reps. Macarambon and Amin argued that including the four current member-provinces of the ARMM in the plebiscite would be contrary to the intent of the Agreement to provide for an expanded Autonomous Region. On the other hand, Reps. Nur Jaafar, Eduardo Ermita and Luwalhati Antonio argued that present ARMM provinces should be given the option to retain membership or not. In earlier deliberations, Rep. Lobregat had similarly argued that the four provinces not be deprived of their rights, and had even wanted Zamboanga City excluded "for the same reasons that Davao is excluded."⁹

"No-clustering" Provision. Sec. 1. (1), 2nd paragraph of HB 7883, states that "The Autonomous Region shall be composed of provinces and cities voting favorably in the plebiscite called for the purpose, in accordance with Section 18, Article X of the Constitution."

This stipulation effectively disallowed the clustering of towns that will vote for the ARSP as part of ARSP, if they fall in provinces or cities which voted against the autonomous regions. It denied a provision in the GRP-MNLF Peace Agreement allowing the merger of contiguous Muslim-dominated municipalities voting in favor of autonomy into a new province(s).¹⁰ On the other hand, since the Agreement used the word "may" instead of "shall," it cannot be argued that the Bill violated the Agreement.

Clustering can raise the possibility of incorporating municipalities in Zamboanga del Sur, Lanao Norte and Cotabato where there are significant Muslim populations, into the autonomous region even though the rest of the province does not. Redefining the provincial boundaries would of course require further legislative action, but this has been done in the past and can likewise be done in the future.

Given the demographics in terms of Christian-Muslim population per province, the absence of a clustering provision would severely limit the possibility of expanding the coverage of the present ARMM. Based on current population distribution and the fact that the majority vote will prevail, only Marawi City and Basilan province stand a chance to be incorporated into the ARSP.

A limited area incorporating only the poorest provinces of Mindanao, and Muslim-dominated localities unable to enjoy self-rule, constrict the short- and long-term sustainability of an autonomous region. A Phase 2 of the GRP-MNLF Agreement that ends in this manner would be a poor recycled version of the current state of autonomy and presents no real progress from the status quo.

Moreover, since there is also the possibility that a vote for retention in the Autonomous Government will not be won in all of the present four ARMM provinces (Lanao del Sur, Sulu, Tawi-tawi and Maguindanao), the end result could even be a poorer version of the ARMM, possibly a new Regional Government with the disadvantage of having to forego its seat of government and other properties in Cotabato and Zamboanga cities, if the latter do not vote for inclusion; or even with a smaller number of provinces if for one reason or another (e.g., if the MNLF and/or the MILF decide to boycott the plebiscite because of their dissatisfaction with the Act, as they did in the November 1989 plebiscite for the ARMM), one

or more of the current four members decide against. Such an outcome would be a mockery of the autonomy envisioned and, would create at a high cost an ineffective and divisive set of institutions.

Property Issue. Art. XIX, Sec. 1 of House Bill 7883 provided for the turnover for value or as determined by the Oversight Committee, of all properties and permanent buildings or structures owned, controlled, administered or in the possession of the ARMM, including the defunct Regional Autonomous Governments IX and XII, located in cities or provinces which did not vote favorably for their inclusion or retention in the Autonomous Region in Southern Philippines.

The Bill, in effect, made mandatory what was optional in RA 6734 or the existing Organic Act which states that such properties may be acquired by the province/city for value (Art. XIX, Sec. 1[3]).¹¹ The ARMM has refused to convey these properties, particularly those in Zamboanga City. ARMM owns 97 hectares in Zamboanga city and 32 hectares of land in Cotabato City used for ARMM offices. The city government of Zamboanga had earlier proposed to buy ARMM's Cabatangan property.¹²

In the deliberations, Rep. Celso Lobregat argued it was irregular for a government to maintain a seat in an area outside of its jurisdiction. Muslim Representatives in ARMM districts,¹³ on the other hand, argued that outright turnover of property, even for value, violates due process. Any contract of sale must also have the consent of both vendor and vendee. Gov. Misuari condemned the provision as "confiscatory."

Strategic Minerals. One thorny contention was on the control over the exploration, development, utilization and protection of strategic minerals in the region. The ARMM law specifies what strategic minerals would not be subject to the control of the Autonomous Government. These are uranium, coal, petroleum and other fossil fuels, mineral oils, all sources of potential energy, as well as national reserves and aquatic parks, forest and watershed reservations as may be delimited by national law (RA 6734, Art. XIII, Sec. 2). The compromise in the Substitute Bill was to delete these specifications in the ARMM law and leave the identification of exemptions to a future special law which shall be enacted within one year from the effectivity of the new Act (Art. XIII, Sec.4, 1st par.). At the same time, the preferential rights of the residents of the Autonomous

Region over the exploration, development and utilization of natural resources in the region were upheld in a new section (Art. XIII, Sec. 6).

According to Atty. Lorena, ARMM Secretary of Labor, it was agreed in the deliberations that an international convention shall be held with experts from the Organization of Islamic Conference participating for the purpose of assisting the enactment of the special law but so far, no step has been taken in this direction.

Senate Bill 2129: More Checks and Additional Concessions

From January to March 2000, the Senate conducted a series of public hearings on Senate Bill 1678¹⁴ and HB 7883, in Zamboanga, Cotabato, Kidapawan, Marawi, Iligan, Puerto Princesa, General Santos, Dipolog, and Pagadian cities, as well as in Jolo, Isulan (Sulatan Kudarat), and the Senate building in Quezon City. The result was Senate Bill 2129, which consolidated the feedback during the consultations, the two bills, and an earlier Proposed Senate Resolution No. 368.¹⁵

Senate Bill 2129¹⁶ sought to find compromises to the contentious provisions. It also introduced a significant number of checks on the autonomous government. The latter apparently was a response to the charges of inefficiency, and lackluster performance and poor fiscal accountability of the ARMM under MNLF Chair Nur Misuari. The process also gave birth to calls for a shift from a unitary state to a federal set-up, with Senator Aquilino Pimentel among the major proponents. However, the move for federalism did not prosper during this time as the nation's attention shifted to the war in Mindanao against the MILF from April to June 2000, the hostage-taking saga involving the Abu Sayyaf, and by the last quarter of 2000, the campaign for the resignation/impeachment of President Estrada following revelations of massive payoffs of gambling money to the President by Ilocos Sur governor Luis "Chavit" Singson.

SB 2129 was filed on August 21, 2000. This will then have to be passed on third reading by the Senate, after which a joint Senate-House committee will be convened to finalize the Bill that will then go to the President for signing into law.¹⁷ The delay and the time needed to finalize the process — not to mention the other critical issues facing the nation — made it obvious that the scheduled ARMM election in September 2000 again could not be held. Thus, with hardly any fuss, the election

was postponed and so far, President Estrada has not taken any move to remove Gov. Misuari from his post.

How did SB 2129 address the contentious provisions and what checks on governance practices did it institute? At the same time, how did it attempt to quell possible dissent from other groups who may be disadvantaged by the affirmative steps taken in favor of the Muslim communities in Mindanao? These elements are discussed below.¹⁸

Plebiscite Coverage. SB 2129 offered a novel way of responding to the demands of Muslim representatives not to subject the current four provinces of ARMM to the required plebiscite so as to guarantee their automatic inclusion in the autonomous region.¹⁹ Instead of voting for or against inclusion since their inclusion is already mandated, the four provinces will chose to accept or reject the amendments provided in the new Act. If they reject, then the present Organic Act (RA 6734) will be retained. The other provinces, cities and municipalities meanwhile will be asked if they are in favor of inclusion in the autonomous region (Art. II, Sec.1 & 2). This means that if the four provinces reject the new Act, the old Act will prevail and at the same time, include the other areas that vote in favor of inclusion. If the four provinces vote in favor of the new Act, the new Act will prevail and include the other areas that vote in favor of inclusion as well.

This approach guarantees that there would at least be four provinces covered in the autonomous region. It will prevent the cumulative decline in the area of coverage that has also aggravated Muslim discontent: from 13 provinces and nine cities under the 1976 Tripoli Agreement; to ten provinces and seven cities under former president Ferdinand Marcos' autonomy scheme; to the present four provinces and zero cities under the 1989 Organic Act.

"No-clustering Provision." In a complete turnaround, and in keeping with the provision suggested in the Peace Agreement, SB 2129 also allowed for the clustering of contiguous municipalities which vote for inclusion and in which Muslims constitute the majority of the population based on the last census²⁰ immediately preceding the plebiscite (Art. II, Sec. 1). These municipalities may be organized as a new province if they meet the requirements of the 1991 Local Government Code;²¹ or they can be merged with the nearest province currently under the ARMM or

those which vote for inclusion. Such a merger or consolidation will take effect within six months after the plebiscite.

With this amendment, the four ARMM provinces, Muslim-dominated Basilan province and Marawi City, and other municipalities in Zamboanga del Sur, Lanao del Norte and Cotabato would stand the chance of inclusion, assuming all Muslims vote in favor of inclusion and register the required simple majority vote.

Property Issue. Like the House bill, SB 2129 did not decide in favor of the future autonomous region on this matter. Art. II, Sec. 3 requires that the seat of government should be in any province or city in the autonomous region. This means that if Cotabato City where the current ARMM seat of government is located votes against inclusion, then the regional assembly must identify a new site within its term with the central government appropriating funds for the transfer. Under the Transitory Provisions (Art. XIX), other land and permanent structures of the regional government in areas that did not vote for inclusion shall consequently be purchased by the central government at a mutually agreed price within six months from the plebiscite date.

Strategic Minerals & Other Revenue Sources. SB 2129 settled this matter through a compromise that benefits both the national and regional governments. It readopted the list of strategic minerals that are exempted from the control, supervision and utilization of the regional government in the present Organic Act. At the same time, it provided for a 50-50 sharing of the revenues, taxes and fees derived from these strategic minerals, between the central and autonomous governments (Art. XIII, 5b), with the latter's share apportioned among the regional government (30%), province (20%), and cities, municipalities and barangays (15% each) (Art XIII. 5c).

In addition, SB 2129 increased the share of the autonomous region in the national internal revenue taxes, fees and charges, and taxes imposed on natural resources. HB 7883's 30-30-40 share for the province/city, regional government, and central government, respectively, was amended to a 35-35-30 share (SB 2129, Art. X, Sec.9). Thus, the previous total 60% retention in the region of revenue collections has been raised to 70%. The region has also been allowed to retain all revenues for the first six years — up from HB 7883's five year provision

(Art. X, Sec. 15). Other provisions on Fiscal Autonomy sought to provide a more even distribution of shares from all revenue collections within local government units in the region; and allowed the regional government taxing powers on motor vehicles and other driving licenses and export products. The latter items were exempted from the region's taxing powers in HB 7883.

Moro Representation. SB 2129 retained the "as far as practicable" clause on all representation of the autonomous region in departments, offices, commissions, agencies and bureaus of the central government (Art. V, Sec.5). It affirmed the appointment of at least one qualified inhabitant of the region as member of the Cabinet but removed the House Bill proviso that this person shall have the rank of a Department Secretary (Art. VI, Sec. 2). The Senate version also limited the participation in policy and decision-making activities of the education-related bodies of the regional government in their national counterparts to matters that affect the regional educational subsystem (Art. XV, Sec. 4). The Senators apparently did not give any more, and even less, importance to this type of affirmative measure than their colleagues in the Lower House.

SB 2129 slightly improved on HB 7883 by making mandatory instead of merely suggestive, the appointment of a qualified person recommended by the regional government to the judicial and bar council, but the person gets to sit in the council only on matters relating to appointments to judicial positions in the autonomous region (Art. IX, Sec. 3).

The Senate Bill gets plus points, however, by putting on the same footing "Filipino and Islamic" values that shall be perpetuated as part of education policies of the regional government (Art. III, Sec. 6; Art. XV, Sec. 2a). The same stress is reiterated in the provisions on the teaching of social science subjects (Art XV, Sec. 2p[2]) and the production of textbooks (Art. XV, Sec. 2p[3]). The House Bill has been criticized for placing Islamic values after the "among others" clause, with "Filipino values" implicitly enjoying a higher status.

Checks on Autonomous Government and Officials. To ensure the accountability and transparency of the regional government, the Senate Bill introduced several new mechanisms through provisions that:

- Empowered the president to suspend, reduce or cancel the financial aid, funds for infrastructure and other assistance to the regional government for failure to account for these funds or when measures to protect the rights of the *lumad*,²² Christians and other minorities in the region are not respected or violated (Art. VI, Sec. 1). The same sanction applies for failure to satisfy semi-annual and annual audits of the utilization of the region of its share of internal revenue taxes and block grants and other subsidies (Art. X, Sec. 2). For failure to submit documents required for auditing purposes within a certain period; and to remit the shares of the central government and other government units in the taxes, fees and charges on the use, development and operation of natural resources within the autonomous region (Art. X, Sec. 2 and Sec. 9, respectively), regional government officials may be suspended. Sanctions are likewise provided for failure to remit shares from internal revenue collections at the different levels of government.²³

- Empowered the Regional Assembly to initiate moves for the removal of the governor or vice-governor (Art. VIII, Sec. 9). This is akin to the recall provisions found in the Local Government Code.

- Empowered the President to cancel or forfeit internal revenue shares of the regional government for failing to protect forest reserves and requiring that 10% of the shares of the internal revenue taxes of the regional government and lower units be devoted to reforestation projects and other environmental activities (Art. XI, Sec. 5).

- While the regional governor may proclaim a state of emergency over the region or parts thereof due to natural calamities, this shall only be for the purpose of maximizing the efforts to rescue imperiled persons and property, and to expedite rehabilitation. The state of emergency shall in no way suspend any provision of the constitution or of the organic act. The regional government may also take over operations of any privately owned public utility or business affected with public interest but the latter may contest this act in court (Art. XIII, Sec. 12).

- Empowered the president on his own accord to send the Armed Forces into the autonomous region to prevent or suppress lawless violence, invasion or rebellion, or danger to or breach of peace, or to avert any imminent danger if the regional governor does not act within 15 days after the occurrence of the events (Art. XIV, Sec. 12).

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- Allowed the sale of goods bartered or counter-traded with Indonesia, Malaysia and Brunei elsewhere in the country provided that appropriate customs or import duties are paid. New rules shall be promulgated to govern such trade (Art. XIII, Sec. 31).

- While a Regional Education Subsystem shall be created to exercise management, control and supervision of the education system in the region, including recruitment of personnel, the teaching and non-teaching personnel of the regional school system who have appropriate civil service eligibility may not be replaced, removed or dismissed without just cause (Art. XV, Sec. 2[7]). This protection is of course already guaranteed under civil service rules but is reiterated apparently in view of the tendency of politicians to replace government personnel with favored people every change in administration.

- Financial and technical assistance to the region's tourism program became subject to feasibility and only *primary* jurisdiction in the promotion of tourism given to the region instead of *the power to promote* as provided in HB 7883 (Art. XII, Sec. 35 & 36).

- Required that 15% of the regional government's regular budget for education be allocated to scholarships to qualified but deserving students at all levels (Art. XV, Sec. 20).

Assuasive Provisions. SB 2129 also sought to strengthen its assurance to the other non-Islamic groups and affected government units that they will be protected under the proposed regional government. I have called assurances meant to guarantee the rights and welfare of other sectors as the "assuasive" provisions in contrast to the "corrective" measures that were meant to respond to the grievances of the Muslim groups.²⁴ The former include:

- The guarantee that rights already enjoyed by local government under the Local Government Code will not be taken away (Art. III, Sec. 3).
- The provision that City Charter rights may not be diminished (Art. III, Sec. 4).
- Recognition, due respect and protection of beliefs, customs and traditions of Christians, Buddhists, Jews and people of other religions in the autonomous region; and non-discrimination on the basis of creed, ethnic origin, parentage or sex; and the enactment of priority legislation for those tribes in danger of extinction (Art. III, Sec. 5 & 6).
- Requirement that at least six of at most 10 members of the Regional Cabinet come from indigenous cultural communities which include the Muslims and the lumad (Art. VIII, Sec. 2).
- Requirement to hold consultations with the cultural community concerned before any permit, license, franchise or concession over the natural resources located within the boundaries of an ancestral domain shall be issued (Art. XI., Sec. 5e)

The Senate Bill retained such assuasive provisions already found in the House Bill including the option to create a tribal university system, tribal courts and the codification of tribal laws that will apply to members of non-Islamicized indigenous cultural communities.

Analysis

Compared to the House Bill, the Senate Bill is an improved attempt to provide for a meaningful autonomy for the Muslims in southern Philippines, especially on matters of fiscal governance and public administration. Aside from the improvements cited above, SB 2129 also allowed the exercise of legislative power on civil service and foreign trade matters, and the authority to grant franchises, licenses and permits for transport services in the region (Art. V, Sec. 3). Both items were previously excluded in the powers given the regional assembly in HB 7883. The Senate Bill, moreover, allowed for the enactment of a Regional Civil Service Law by the regional assembly (Art. XVIII, Sec. 2).

Law (RAL) in Indonesia which tries to quell separatist sentiments in Aceh, the terms provided by the Philippine Congress to Muslim Mindanao are very generous. Under the Indonesian RAL, Aceh gets to retain only 20% of revenues from its natural resources, notably natural gas, as against the 50-50 sharing set in the Senate Bill for strategic minerals. But this benevolence on the part of the Philippine Congress is rooted in the fact that the Muslim provinces are not at all major contributors to the national economy and are among the country's poorest provinces.²⁶ Aceh, in contrast, contributes significantly to the national income. Although profits in the last 30 years from gas extracted in Aceh amounted to approximately US\$2.1 billion annually, it got back only 1.6%²⁷ But like the southern Philippine communities, the Acehnese suffer from a poorer quality of life because of skewed national policies.

The Senate, in any case, did not promise the moon to the Moros and, in fact, imposed additional limitations and restrictions. Basically, Moro representation in national bodies continued to be circumscribed by the clause "as far as practicable." Moro participation in national governance has also largely been confined to matters that specifically concern them. Both Houses of Congress apparently did not show enthusiasm in enhancing Moro representation and participation on national matters and in the national body politique. In contrast, the Peace Agreement envisioned not only greater autonomy but also the enhanced visibility and participation of the Moros in national governance. In another study,²⁸ I have termed these components the upward and downward streams of autonomy; the first referring to devolution of powers, the second, to mainstreaming of the marginalized cultural community by enhancing their representation and participation at the national level. Both components represent the two dimensions of autonomy — that of being distinct, and therefore the special treatment, while at the same time being part of the whole. Certainly, mechanisms in the upward stream can still be broadened in order to fully give life to the spirit of the Peace Agreement and the ideals of national unity.

The Senate Bill also imposed checks, probably as a reaction to the negative reports of poor governance under past and present ARMM governors. Through the provisions discussed in the preceding section, it protected the lower local government units from the monopolization of financial resources by the regional government; and the people in the region from possible abuse of power or lack of accountability of the

The Senate Bill also imposed checks, probably as a reaction to the negative reports of poor governance under past and present ARMM governors. Through the provisions discussed in the preceding section, it protected the lower local government units from the monopolization of financial resources by the regional government; and the people in the region from possible abuse of power or lack of accountability of the regional government through the checks instituted. It also required in a new proviso that members of the regional assembly must at least be a Bachelor's degree holder,²⁹ effectively disqualifying majority of former rebels. It affirmed a well-established constitutional tenet in the Philippines — the separation of church and state — when it prohibited the appropriation of any public money or property for the use, benefit or support of any religious worker or dignitary. In the long run, these checks will serve the regional government well. But the legislators should take care that these checks are not perceived as stemming from a negative perception of Moro capability for good governance. While there are distinct politico-cultural proclivities between Filipino Christian and Muslim communities, the fact is bad governance and patronage politics are endemic in the whole Philippine political system.

The Senate also resolved the property and strategic minerals issues against the favor of the future regional government. The former would not be a problem if Cotabato and Zamboanga cities where the properties are located elect to be part of the autonomous region. However, given the demographics of these Christian-dominated cities, the more likely outcome is that majority will not choose to be part of the autonomous government. It would not be to their interest if these properties are retained in the hands of another local government and their legislators thus fought hard to get this benefit.

In all, these compromises reflect the pressure from various interests and concerns of the legislators themselves or the constituencies they claim to represent, that had to be taken into account and their negative appraisal of the performance of past administrations in the regional government.

So far, the MNLF has not come out with any public position on the current bill. It has in fact participated minimally in the process. ARMM governor Misuari, for instance, was widely criticized by the legislators for not attending the public hearings conducted in Mindanao this year. The

MNLF does appear to have lost all confidence in the process given the lack of genuine interest of the Estrada administration and its apparent dislike for the MNLF leader whose popularity among the wider public has likewise cumulatively deteriorated. For his part, although Estrada said his administration will comply with the Peace Agreement in his July 2000 State-of-the-Nation address, no further step has been undertaken.

Obviously, the escalation of fighting in Mindanao directed against the MILF and the unfriendly ties between the MNLF and the Estrada administration have greatly complicated and worsened the condition for reaching the next stage envisioned in the Peace Agreement so much so that only a new administration can allow for a second takeoff from where it has stalled. A new administration can have the advantage of starting on a cleaner slate, and being able to rethink more strategically the best format for autonomy rule, taking into consideration as well the negotiations with the MILF.

Given the remaining time left for the present Eleventh Congress before sessions end in February 2001 to give way to local and congressional elections, and since the Senate will be preoccupied with the impeachment lodged against President Estrada for the remaining period of its term, the task of finalizing a new Organic Act for Muslim Mindanao will fall on the next, or the Twelfth Congress. After the 2001 elections, a new set of power configuration would have emerged — whether or not President Estrada gets to finish his term. Again, several months will be used up in dividing chairships of the various congressional committees. By force of circumstance, Phase 1 of the Peace Agreement will again have to be extended and Phase 2 delayed probably up to year 2002. As manifested in two-and-a-half years of the Estrada administration, the pace would ultimately depend on the importance given to the GRP-MNLF Agreement by the new set of legislators as well as the President.

The Tasks Ahead

Up to this point, to the MNLF the 1996 Peace Agreement continues to be the standard in defining "meaningful autonomy." This is because it considers the Agreement as embodying the spirit of the Tripoli Agreement, to which the MNLF has anchored all subsequent negotiations after Marcos. As a signatory to the Tripoli Agreement and to the 1996

Peace Agreement, the OIC is likewise committed to see through the realization of this Agreement and its promise of meaningful autonomy.

If the MNLF in the end rejects the new autonomy law by boycotting the plebiscite on the grounds that the law does not reflect the spirit of the 1996 Agreement, then the whole process reverts back to point zero.

It would mean a waste of decades of peace-building efforts, and must therefore be avoided.

The MNLF must engage the legislative arena in order to push for more concessions and arrive at an acceptable Organic Act. It must not abandon this stage. It must also clean up its act in the ARMM and show that it is capable of good governance. It will need this seal of approval from the public when the time comes for the plebiscite.

Moro civil society must feel that they have a stake in this legislative process and the subsequent required plebiscite. They must make a stand and push for their desired provisions. However, being far from the national center where the lawmaking takes place does make it difficult for them to participate in Congressional lobby. They must therefore network with other people's organizations and NGOs in Metro Manila in order to build up strong support. In Mindanao, they will find allies in the different peace groups and social movements, including the Catholic Church which had strongly opposed Estrada's war policy. They must build strength in cooperation with the social and political movements in Mindanao which have already manifested an appreciation of the historical and social justice dimensions of the "Moro problem." It is true however that Christian biases against the Muslims run high among the ordinary Mindanaoans. A lot of healing and constructive interaction are still needed to bridge this gap. The mass media and the educational system must therefore take an affirmative step in closing this gap.

Legislators must appreciate the bigger context of the "Moro problem" and go beyond partisan politics. They could still strengthen the Bill in favor of meaningful autonomy, make it more responsive to the aspirations for the Islamic way of life and corrective of the history of marginalization of the Moros in Philippine nationhood.

Thus a sincere development and pro-poor program with special attention to Mindanao, especially in the light of the massive displacement that has taken place as a result of the fighting between the MILF and government from late 1999 to July 2000, will complement the political settlement being arrived at through the Organic Act.

The government must also simultaneously pursue negotiations with the MILF, and convince this other Moro rebel group of the merits of the autonomy process with the MNLF so that at the least, the MILF will stay neutral in, if not be supportive of, the autonomous government that will be born from the new Organic Act. The government can show to the MILF for instance, how the MILF's aspiration for an Islamic way of life can be accommodated in the provisions of the Organic Act.³⁰

The current political stability may advise against opening the agenda for constitutional change that will accommodate a federal arrangement. But such a recourse to address the longstanding conflict in Mindanao should be left open. Before such time, however, a meaningful autonomy as envisioned in the Peace Agreement continues to be the best antidote to MNLF separatism and renewed fighting, and the best mechanism to arrive at a peaceful settlement on one front (the MNLF) and thereby clear the way for the peaceful resolution of the armed conflict on other fronts.



Endnotes

1. The House Bill has adopted this new schedule, that is, September as the beginning of the three-year term of office.
2. Introduced by Reps. Abueg, Jaafar, Ermita, Datumanong, Amin, Tammang, Dequina, Salapuddin, Mangotara and Adiong.
3. Introduced by Rep. Macarambon, Jr., and Rep. Salapuddin, respectively.
4. This paper will not be able to provide a comparative analysis of the various House bills.
5. See the OIC Resolution during the 26th Islamic Conference of Foreign Ministers.
6. See the article of National Security Advisor Alexander Aguirre in this issue for the other measures highlighted in the President's July 2000 report to the nation.
7. Baslian Rep. Gerry Salapuddin walked out of the session hall in protest during the July 1999 special sessions. Also expressing unhappiness about the Bill passed on Third Reading were House Committee on Muslim Affairs chair Hussin Amin, Didagen Dilangalen (Maguindanao), Mamintal Adiong (Lanao del Sur), Assani Tamang (Sulu), Nur Jaafar (Tawi-Tawi), Benasing Macarambon (Lanao del Sur), and Abdullak Mangotara (Lanao del Norte).
8. *Today*, July 27, 1999.

- 9 Minutes of Meeting, House of Representatives Eleventh Congress, Committee on Local Government, November 17, 1998.
- 10 The "clustering" approach was elaborated in the early 1990s by Muslim scholar Sukarno D. Tanggol, now Philippine Ambassador to one Middle East country, in his book, *Muslim Autonomy in the Philippines: Rhetoric and Reality* (Marawi City: Mindanao University Press, 1993).
- 11 Note that this matter is not addressed in the Peace Agreement.
- 12 *Today*, July 27, 1999
- 13 Hussin Amin, Benasing Macarambon; Gerry Salapuddin and Didagen Dilangalen.
- 14 Introduced by Senator John Osmena.
- 15 Introduced by Senator Rodolfo Biazon
- 16 Sponsored by Senators Aquilino Pimentel, Jr., and Rodolfo Biazon.
- 17 On January 10, 2001, the Senate passes the Bill on the third reading. The Bill also set the plebiscite for the expanded ARMM on May 14, 2001, simultaneous with the congressional and local elections.
- 18 This assessment will exclude the study of the progression of Shariah courts and law in the existing and proposed laws although these areas were addressed (see Art. IX of SB 2129). I do not feel qualified to evaluate whether or not the amendments have effectively curtailed or enhanced Shariah law's application.
- 19 Named "Muslim autonomous region in Mindanao" in the SB 2129.
- 20 In effect, the recently released 2000 census.
- 21 However, the Code's requirement that the concerned areas go through a plebiscite to effect the alteration is dispensed with.
- 22 Term used to refer to non-Islamized indigenous groups in Mindanao.
- 23 See other sections of Art. X on "Fiscal Autonomy."
- 24 See "Breaking the Impasse: Formulae for Muslim Autonomy," *Philippine Political Science Association Journal*, Nos. 39-42 (1995-1998), pp. 43-72.
- 25 Compared to the new Regional Autonomy Law in Indonesia which allowed only for a 20-80 share in revenues from natural resources, with only 20% being retained by the province, the fiscal autonomy provisions being offered to Muslim Mindanao is definitely liberal. However, it should be noted that Aceh generates a big share of Indonesian revenue collections from natural resources while the current ARMM provinces' income contribution are among the lowest in the country.
- 26 Among the Philippines' 78 provinces, the current four-province Autonomous Region of Muslim Mindanao (ARMM) is poorer in many ways. Average annual income in the region in 1997 was only approximately 60% of the national average: P74,885 as against P123,168. The region also suffers from the lowest literacy rate at 73.82% against the national rating of 95.02% in 1994. Region 12 (Central Mindanao), where other significant populations of Islamicized ethnolinguistic groups reside, does not fare as badly, with simple literacy at 91.71%. But like ARMM, its average annual income falls below the national mean although at P81,093 in 1997, its income is still higher than ARMM's. (<http://www.nso.org//>)
- 27 Marianne Keanny, "Autonomy not Enough?," *Strait Times*, March 27, 1998, at <http://www.mail-archive.com/reformasitoral@egroups.com>.
- 28 See "Framework for Autonomy for Southeast Asia's Plural Societies" which I wrote for the Ford Foundation-IDSS fellowship grant for 2000 (unpublished).
- 29 It has been pointed out that this requirement sets a standard for the regional legislators higher than that for the Philippine president. President Estrada was a college dropout.
- 30 The relevant provisions that can be highlighted and further enhanced are those that have to do with the creation of Shariah courts; the application of Shariah law over cases involving persons, family and property relations; the codification of Muslim laws,

recognition of and support for Madrasah schools; the promotion of Islamic values alongside Filipino values, and the teaching of Arabic language as mandated in Islamic practice. Related provisions in the Senate Bill as well as in the existing Code of Muslim laws has been criticized as "good enough for the MNLF constituency but not enough for the MILF constituency which seeks an Islamic system of life and governance in predominantly Muslim areas that want it" (see Soliman Santos, Jr., "What can the OIC do?," *PDI*, October 21, 2000, p. A14). They limit the coverage of Muslim law to persons, family and property relations only and allegedly contain some un-Islamic provisions.